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LEGISLATIVE EDITION

CONSOLIDATED STATUTES

OF

NORTH CAROLINA

Prepared under Chapter two hundred and fifty-two of the
Laws of nineteen hundred and seventeen

BY
L. P. McGEHEE

REVISION COMMISSION

HARRY W. STUBBS, Chairman; LINDSAY C. WARREN, STAHL LINN,
CARTER DALTON, HARRY P. GRIER



IN TWO VOLUMES

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REPORT OF REVISION COMMISSION

SUBMITTED TO THE GENERAL ASSEMBLY WITH THE CONSOLIDATED STATUTES

Chapter 252 of the Public Laws of 1917 provided for "the compiling, collating, and revising of the public statutes of North Carolina." For the basis of this work the Revisal of 1905 is necessarily the starting point, and the public statutes of a general character, enacted since the date of the Revisal, are incorporated in the new compilation.

The proposed title of the present compilation is "Consolidated Statutes of North Carolina," to be cited "C. S." The successive compilations of North Carolina laws have been called "Revised Statutes," the usual citation being R. S.; "Revised Code," cited R. C.; "The Code," cited Code; "Revisal," cited Rev. The title, Consolidated Statutes, is distinctive and has a distinctive and convenient abbreviation. In addition, Consolidated Statutes accurately describes the character of the work. It is a mere compilation or consolidation of the body of public statutes, and not properly a code, a term which implies a freer hand in reshaping material than seems contemplated in the statute authorizing the revision or than the time for preparation permitted.

The chapter headings show that the alphabetical arrangement of the Revisal has been followed with modifications here and there.

SUBDIVISIONS OF CHAPTERS

In classifying the matter under the great majority of the chapters an intermediate division between chapter and section is necessary; and following the plan adopted in many of our sister states, such subdivisions are introduced and called "Articles." In some of the very long chapters, for instance, Civil Procedure, Crimes and Punishments, Education, Municipal Corporations, Public Health, and Taxation, groups of articles are united into "Subchapters." In some instances again the articles have been divided into "Parts." In all these cases the purpose is to facilitate reference by the classification.

LOCAL STATUTES

The handling of local statutes has involved a number of difficulties. In general, of course, local enactments have been omitted. But it is impossible to follow such a rule absolutely, and certain chapters of the Revisal and former compilations are honeycombed with local legislation. An effort is made to keep sections of this compilation of a general application free from local matter, by gathering the local modifications which have accumulated around the section originally general into a separate section following the general section. For instance, the general statutes dealing with county clerks' fees is placed in one section, Salaries and Fees (sec. 44), and this is followed by a section collecting alphabetically various local modifications (sec. 45).

GAME LAWS

The chapter, Game Laws, is by reason of local legislation of peculiar difficulty. The close season for game is regulated practically by local laws in each county, and frequently different townships and precincts have special laws; and yet the subject is one which interests a wide public within and without the state, and which should be accessible in a unified and convenient form. At a great expense of time and labor it was the endeavor to make the sections dealing with these subjects a tabulation of the local statutes. This was but the carrying out the idea of the Revisal with an effort to economize space as much as possible.

It is suggested that the legislature might pass a general uniform statute, but vesting county authorities with the power to regulate these matters, under a state game or game and forest commission, somewhat as is done now in regard to the public health laws. The state commission should, however, have some supervisory power over the local regulations, to prevent the numberless local laws defeating the very end of their enactment; that is, game protection. Thus in neighboring counties, if the open season in one begins two weeks before the open season in another, the natural result is that the game in both counties is doubly hunted with danger of extermination. At the very least it should be enacted that local regulations as to game should have validity only from the time when

such regulations are filed with the state commission, so as to enable the state commission to know and to inform persons interested as to the local laws.

FISH

The numerous local laws as to fishing (chapter, Fish and Fisheries) raise similar questions. But the state fisheries commission is already invested with extensive powers of regulation, so that numerous sections in the Revisal and in this compilation seem to be law only until the fisheries commission make a conflicting regulation.

OTHER CONSPICUOUS INSTANCES OF LOCAL LEGISLATION

Other sections dealing with purely local legislation which the legislature, it is thought, might deal with advantageously, are sections 25 of Landlord and Tenant (where enactments originally local now apply to a majority of counties), and the last two sections of Rivers and Creeks, dealing with obstructing streams by sawdust, etc.

GENERAL CONSIDERATIONS ON LOCAL ENACTMENTS

In some of the cases referred to above, for instance the section dealing with sawdust in streams, a general statute might be passed on the subject but giving county commissioners authority to dispose of the matter by local regulation. In connection with Fish and Fisheries, where a number of statutes are apparently dependent upon the regulations of the Fisheries Commission, it might be well worth considering whether all this local matter should not be withdrawn from the general statutes and enacted into a chapter of the public local statutes, under a title such as Local Fishing Laws, making their operation expressly dependent on action by the fisheries commission, and requiring that body to publish from time to time a list of their regulations in connection with the local fishing laws, and perhaps declaring that their regulations should not be operative until published in an official bulletin. The same course might be followed as to game laws if the plan of a game commission were adopted.

Some such plan of dealing with local legislation on special topics would seem in harmony with our recent constitutional amendments.

SECTIONS EXCEPTING COUNTIES FROM GENERAL STATUTES

Many statutes originally general contain sections excepting counties specified from their operation; and this list of excepted counties is added to or subtracted from by local enactments in subsequent legislatures. It is a task of great difficulty to bring such lists of excepted counties to date with assurance of absolute accuracy. The members of the general assembly are urged so far as possible to verify such sections for their own senatorial districts and counties.

CRIMES AND PUNISHMENTS

The chapter on Crimes in Revisal 1905 has been modified considerably. An effort is made to remove from it a number of sections which create misdemeanors in connection with the regulation of a particular subject, and which are meant to give a method of enforcing such regulations through criminal law. These enactments find their proper context in the chapters wherein the police regulations covering the particular subjects are collected. A single section of a long statute, or a mere part of a section, should not be torn from its context and placed under crimes.

The criminal law, freed from these police enactments, has been rearranged so as to bring cognate crimes together, and the effort and thought have been to make the scheme of arrangement of subchapters and articles an assistance to a person seeking the law on a particular topic.

MARITIME QUARANTINE

In the chapter on Public Health, Art. 20, Maritime Quarantine ought probably to be omitted. The paramount control of this subject is in the federal authorities, under acts of congress of March 27, 1890 (26 U. S. Stat. at Large, 31), February 15, 1893 (27 Stat. at Large, 452), August 24, 1912 (37 Stat. at Large, 309). These acts of congress, however, do not supersede state legislation, but practically the matter is wholly under federal authority. If it is thought best to retain the article (which it will be noticed is based on statutes of the eighteenth and early nineteenth centuries) the power to make rules for maritime quarantine

should, it is thought, be vested, not in the commissioners of navigation and municipal authorities, but entirely in the state or local health officers.

STATE DEBT

The chapter on State Debt should be rewritten, so that Art. 1 will include all the general provisions as to issuing bonds, including the formal execution, the denomination, rate of interest, manner of sale, exemption from taxation, investment by fiduciaries, and record to be kept. It should also contain a general provision as to exchange of bonds from coupon to registered bonds and the like, the method of transfer, the cancellation of bonds upon payment or surrender, etc. If desired, general authority should be given to the state treasurer to issue contingent bonds for the payment of interest on bonds outstanding, since the present statute (Revisal, secs. 5041, 5042, 5043) would seem to apply only to the bonds authorized to be issued in funding the old debt of the state.

The other articles would then contain only the authority to issue bonds for a particular purpose, the amount to be issued, and the application of the proceeds.

This would make it unnecessary to repeat in every statute authorizing a bond issue the formal provisions as to formal execution, etc., but a reference to the provisions of the Consolidated Statutes, Art. 1, would be sufficient.

STATE'S PRISON

There is apparently a conflict in the statutes placed under the chapter, State's Prison, as to the right to hire out convicts. Sec. 10 of the chapter (sec. 5391 of Rev.) gives the directors general power to hire out. Sec. 68 (1917, c. 286, s. 2) limits this authority except in work for the state or for a county, or for state institutions. Sec. 69 (1917, c. 286, s. 23) seems in conflict with sec. 68 in permitting certain contracts for railroads forbidden by sec. 68. The matter thus lacking clearness, secs. 64 and 65 (Rev. 5410, 5411) were retained, although they included towns as well as counties. The legislature should also consider in connection with this matter, secs. 16, 17, 66, and 67.

TAXATION

In the chapter, Taxation, Subchapter 1, Levy of Taxes, will necessarily be changed by each legislature, as they vary the rate and subjects of taxation; but it is suggested that the publication of changes may be materially shortened by making amendments to the sections in this subchapter and publishing the amended sections in full as amended.

Subchapter 2, Assessment and Listing of Taxes, might be permanently retained, with very slight changes made from time to time in the method of listing and assessing, but it would not be necessary to reenact the whole chapter at each session of the legislature.

Subchapter 3, Collection of Taxes, contains the sections in the Revisal which were intended to be permanent and, in addition, such sections of the Machinery Act as apply to the general subject. It is suggested that this could be retained permanently and thus avoid the necessity of enacting and publishing the whole Machinery Act by each legislature.

FINAL CHAPTER; CONCERNING THE CONSOLIDATED STATUTES

This chapter is based on the final chapter of the Revisal of 1905. That chapter contains provisions of totally different characters. The first seven sections deal with the construction and effect of the body of the compilation. The next three sections refer to the approval, printing, and the distribution of copies. The matter of the first seven sections is retained. The next three sections are entirely for the legislature in adopting the compilation; their contents should not be carried into the Consolidated Statutes. The last section will necessarily be a part of the adopting statute, and should be carried from that into the final form of the Consolidated Statutes.

In connection with sec. 7, since much local legislation has accumulated in regard to other subjects besides those enumerated in the section, but within the mischief against which the section is directed, an attempt has been made to have the section exclude all such legislation; and if the wording adopted is not sufficient for that purpose, it should be broadened so as not to leave any conflicting legislation.

INDEX

The indexing of a general revision of statutes is the key which makes accessible its contents. Without a full and adequate index such a compilation loses a great part of its value.

The index can only be added after the compilation has been modified and put into final form by the general assembly and the sections have been consecutively numbered. This is a work which demands the utmost care of competent workers.

SECTION TABLES

A table of the disposition of the matter of Revisal 1905, with references to the corresponding sections of the Consolidated Statutes, should be added and published in the final edition for general distribution as was done in the Revisal. In addition, a supplementary table should be added showing each statute since the Revisal used in the Consolidated Statutes with references to the sections of the Consolidated Statutes wherein it is to be found. It is conceived that such a table would be of the greatest value.

ANNOTATIONS TO THE CONSOLIDATED STATUTES

Since the issue of Judge Pell's edition of the Revisal ten years ago, the profession and every person who has occasion to use or consult the statutes of the state has become accustomed to the convenience of an annotated edition. No one would willingly return to an edition without annotation. We urge upon the general assembly our earnest conviction that it should provide for the issue of an edition annotated to date to be sold at a price which would fairly remunerate the state.

HARRY W. STUBBS, *Chairman.*

LINDSAY C. WARREN.

STAHLÉ LINN.

CARTER DALTON.

H. P. GRIER.

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STATE OF NORTH CAROLINA

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINETEEN

AN ACT

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

The General Assembly of North Carolina do enact the following named chapters, subchapters and sections, to be known as the CONSOLIDATED STATUTES, that is to say :

CHAPTER 1

ADMINISTRATION

ART. 1. PROBATE JURISDICTION.

1. Clerk of superior court has probate jurisdiction.
2. Exclusive in clerk who first gains.

ART. 2. NECESSITY FOR LETTERS AND THEIR FORM.

3. Letters must issue; immediate rights of family.
4. Executor de son tort.
5. Form of letters.

ART. 3. RIGHT TO ADMINISTER.

6. Order in which persons entitled.
7. Husband to administer to wife; right in surplus.
8. Disqualifications enumerated.
9. Effect of disqualification of person entitled.
10. Divorce a vinculo or felonious slaying is forfeiture.
11. Elopement and adultery of wife is forfeiture.
12. Husband's conduct forfeiting rights in wife's estate.
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- 18a. Bond.
19. When to obtain letters.
20. Powers generally and on expiration of term.

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22. Qualifications and bond.

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23. Appointment of collectors.
24. Qualifications and bond.
25. Powers of collectors.
26. When collector's powers cease; duty to account.

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ART. 1. PROBATE JURISDICTION

1. Clerk of superior court has probate jurisdiction. The clerk of the superior court of each county has jurisdiction, within his county, to take proof of wills and to grant letters testamentary, letters of administration with the will annexed, and letters of administration in cases of intestacy, in the following cases:

1. Where the decedent at, or immediately previous to, his death was domiciled in the county of such clerk, in whatever place such death may have happened.

2. Where the decedent at his death had his fixed place of domicile in more than one county, the clerk of any such county has jurisdiction.

3. Where the decedent, not being domiciled in this state, died out of the state, leaving assets in the county of such clerk, or assets of such decedent thereafter come into the county of such clerk.

4. Where the decedent, not being domiciled in this state, died in the county of such clerk, leaving assets in the state, or assets of such decedent thereafter come into the state.

Rev., s. 16; Code, s. 1374; C. C. P., s. 433; R. C., c. 46, s. 1; 1868-9, c. 113, s. 115.

2. Exclusive in clerk who first gains. The clerk who first gains and exercises jurisdiction under this chapter thereby acquires sole and exclusive jurisdiction over the decedent's estate.

Rev., s. 17; Code, s. 1375; C. C. P., 434.

ART. 2. NECESSITY FOR LETTERS AND THEIR FORM

3. Letters must issue; immediate rights of family. No person shall enter upon the administration of any decedent's estate until he has obtained letters therefor,

under the penalty of one hundred dollars, one-half to the use of the informer and the other half to the state; but nothing herein contained shall prevent the family of the deceased from using so much of the crop, stock and provisions on hand as may be necessary, until the widow's year's support is assigned therefrom, as prescribed by law.

Rev., s. 1; Code, s. 1522; 1868-9, c. 113, s. 93.

4. Executor de son tort. Every person who receives goods or debts of any person dying intestate, or any release of a debt due the intestate, upon a fraudulent intent, or without such valuable consideration as amounts to the value or thereabout, is chargeable as executor of his own wrong, so far as such debts and goods, coming to his hands, or whereof he is released, will satisfy.

Rev., s. 2; Code, s. 1494; 1868-9, c. 113, s. 67; 43 Eliz., c. 8.

5. Form of letters. All letters must be issued in the name of the state, and tested in the name of the clerk of the superior court, signed by him, and sealed with his seal of office, and shall have attached thereto copies of the section of this chapter requiring an inventory to be filed within three months, and of the section requiring annual accounts to be filed.

Rev., s. 36; Code, ss. 1399, 2172; C. C. P., ss. 471, 478; 1871-2, c. 46.

ART. 3. RIGHT TO ADMINISTER

6. Order in which persons entitled. Letters of administration, in case of intestacy, shall be granted to the persons entitled thereto and applying for the same, in the following order:

1. To the husband or widow, except as hereinafter provided.

2. To the next of kin in the order of their degree, where they are of different degrees; if of equal degree, to one or more of them, at the discretion of the clerk.

3. To the most competent creditor who resides within the state, and proves his debt on oath before the clerk.

4. To any other person legally competent.

Rev., s. 3; Code, s. 1376; C. C. P., s. 456; R. C., c. 46, ss. 2, 3; 1868-9, c. 113, s. 115.

7. Husband to administer to wife; right in surplus. If any married woman dies wholly or partially intestate, the surviving husband shall be entitled to administer on her personal estate, and shall hold the same, subject to the claims of her creditors and others having rightful demands against her, to his own use, except as hereinafter provided. If the husband dies after his wife, but before administering, his executor or administrator or assignee shall receive the personal property of the said wife, as a part of the estate of the husband, subject as aforesaid, and except as provided by law.

Rev., s. 4; Code, s. 1479; 1871-2, c. 193, s. 32.

8. Disqualifications enumerated. The clerk shall not issue letters of administration or letters testamentary to any person who, at the time of appearing to qualify—

1. Is under the age of twenty-one years.
2. Is a nonresident of this state; but a nonresident may qualify as executor.
3. Has been convicted of a felony.
4. Is adjudged by the clerk incompetent to execute the duties of such trust by reason of drunkenness, improvidence or want of understanding.
5. Fails to take the oath or give the bond required by law.
6. Has renounced his right to qualify.

Rev., s. 5; Code, ss. 1377, 1378, 2162; C. C. P., s. 457.

9. Effect of disqualification of person entitled. Where an executor named in the will, or any person having a prior right to administer, is under the disqualification of nonage, or is temporarily absent from the state, such person is entitled to six months, after coming of age or after his return to the state, in which to make application for letters testamentary, or letters of administration.

Rev., s. 6; Code, ss. 1379, 2165; C. C. P., ss. 452, 460; R. C., c. 46, s. 12.

10. Divorce a vinculo or felonious slaying is forfeiture. When a marriage is dissolved a vinculo, the parties respectively, or when either party is convicted of the felonious slaying of the other, or of being accessory before the fact of such felonious slaying, the party so convicted 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.

Rev., s. 7; Code, s. 1480; 1889, c. 499; 1871-2, c. 193, s. 42.

NOTE. For forfeiture generally by divorce a vinculo, see Married Women.

11. Elopement and adultery of wife is forfeiture. If any married woman elopes 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.

Rev., s. 8; Code, s. 1481; 1871-2, c. 193, s. 44.

NOTE. For forfeiture generally for elopement, see Married Women.

12. Husband's conduct forfeiting rights in wife's estate. If any husband shall separate himself from his wife, and be living in adultery at her death, or if she has obtained a divorce a mensa et thoro, and shall not be living with her husband at her death, or if the husband has abandoned his wife, or has 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.

Rev., s. 9; Code, s. 1482; 1871-2, c. 193, s. 45.

13. Executor may renounce. Any person appointed an executor may renounce the office by a writing signed by him, and on the same being acknowledged or proved to the satisfaction of the clerk of the superior court, it shall be filed.

Rev., s. 10; Code, s. 2163; C. C. P., s. 450.

14. Renunciation of prior right required. 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.

Rev., s. 11; Code, s. 1378; C. C. P., s. 459.

15. Failure to apply as renunciation. 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. If no person entitled to administer applies for letters of administration on the estate of a decedent within six months from his death, then the clerk may, in his discretion, deem all prior rights renounced and appoint some suitable person to administer such estate.

Rev., s. 12; Code, s. 1380; C. C. P., s. 460 (a); 1868-9, c. 203.

16. Person named as executor failing to qualify or renounce. If any person appointed an executor does not qualify or renounce within sixty days after the will is admitted to probate, the clerk of the superior court, on the application of any other executor named in the same will, or any party interested, shall issue a citation to such person to show cause why he should not be deemed to have renounced. If, upon service of the citation, he does not qualify or renounce within such time, not exceeding thirty days, as is allowed in the citation, an order must be entered by the clerk decreeing that such person has renounced his appointment as executor.

Rev., s. 13; Code, s. 2164; C. C. P., s. 451.

ART. 4. PUBLIC ADMINISTRATOR

17. Appointment and term. There may be a public administrator in every county, appointed by the clerk of the superior court for the term of eight years.

Rev., s. 18; Code, s. 1389; 1868-9, c. 113.

18. Oath. The public administrator shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties of his trust; and the oath so taken and subscribed must be filed in the office of the clerk of the superior court.

Rev., s. 19; Code, ss. 1393; 1868-9, c. 113, ss. 2, 5.

18a. Bond. The public administrator shall enter into bond, with three or more sureties, approved by the clerk, in the penal sum of four thousand dollars, payable to the state of North Carolina, conditioned faithfully to perform the duties of his office, and obey all lawful orders of the clerk or other court touching the administration of the several estates that may come into his hands, and such bond shall be renewed every two years. Whenever the aggregate value of the real and personal property belonging to the several estates in the hands of the public

administrator exceeds the one-half of his bond, the clerk shall require him to enlarge his bond in amount so as to cover, at all times, at least the double of such aggregate.

Rev., s. 320; Code, ss. 1390, 1391, 1392; 1868-9, c. 113, ss. 2, 3, 4; 1915, c. 216, s. 1.

19. When to obtain letters. The public administrator shall apply for and obtain letters on the estates of deceased persons in the following cases:

1. When the period of six months has elapsed from the death of any decedent, and no letters testamentary, or letters of administration or collection, have been applied for and issued to any person.

2. When any stranger, or person without known heirs, shall die intestate in any county.

3. When any person entitled to administration shall request, in writing, the clerk to issue the letters to the public administrator.

Rev., s. 20; Code, s. 1394; 1868-9, c. 113, s. 6.

20. Powers generally and on expiration of term. The public administrator shall have, in respect to the several estates in his hands, all the rights and powers, and be subject to all the duties and liabilities of other administrators. On the expiration of the term of office of a public administrator, or his resignation, he may continue to manage the several estates committed to him prior thereto until he has fully administered the same, if he then enters into a bond as required by law for administrators.

Rev., s. 21; Code, s. 1395; 1868-9, c. 113, s. 7; 1876-7, c. 239.

ART. 5. ADMINISTRATOR WITH WILL ANNEXED

21. When letters c. t. a. issue. If there is no executor appointed in the will, or if, at any time, by reason of death, incompetency adjudged by the clerk of the superior court, renunciation, actual or decreed, or removal by order of the court, or on any other account there is no executor qualified to act, the clerk of the superior court may issue letters of administration with the will annexed, to some suitable person or persons, in the order prescribed in this chapter.

Rev., s. 14; Code, s. 2166; C. C. P., s. 453.

22. Qualifications and bond. Administrators with the will annexed shall have the same qualifications and give the same bond as other administrators; but the executor of an executor shall not be entitled to qualify as executor of the first testator.

Rev., s. 15; Code, s. 2167; C. C. P., s. 454; 1905, c. 286.

ART. 6. COLLECTORS

23. Appointment of collectors. When, for any reason, a delay is necessarily produced in the admission of a will to probate, or in granting letters testamentary, letters of administration, or letters of administration with the will annexed, the clerk may issue to some discreet person or persons, at his option, letters of collection, authorizing the collection and preservation of the property of the decedent.

Rev., s. 22; Code, s. 1383; C. C. P., s. 463; R. C., c. 46, s. 9; 1868-9, c. 113, s. 115.

24. Qualifications and bond. Every collector shall have the qualifications and give the bond prescribed by law for an administrator.

Rev., s. 23; Code, s. 1384; C. C. P., s. 464.

25. Powers of collectors. Every collector has authority to collect the personal property, preserve and secure the same, and collect the debts and credits of the decedent, and for these purposes he may commence and maintain or defend suits, and he may sell, under the direction and order of the clerk, any personal property for the preservation and benefit of the estate. He may be sued for debts due by the decedent, and he may pay funeral expenses and other debts.

Rev., s. 24; Code, s. 1385; C. C. P., s. 465; R. C., c. 46, s. 6; 1868-9; c. 113, s. 115.

26. When collector's powers cease; duty to account. When letters testamentary, letters of administration or letters of administration with the will annexed are granted, the powers of such collector shall cease, but any suit brought by the collector may be continued by his successor, the executor or the administrator, in his own name. Such collector must, on demand, deliver to the executor or administrator all the property, rights and credits of the decedent under his control, and render an account, on oath, to the clerk of all his proceedings. Such delivery and account may be enforced by citation, order or attachment.

Rev., s. 25; Code, s. 1386; C. C. P., s. 466; R. C., 46, s. 7; 1868-9, c. 113, s. 115.

ART. 7. APPOINTMENT AND REVOCATION

27. Facts to be shown on applying for administration. 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 residences of such guardians, if known. Such affidavit or other proof must be recorded and filed by the clerk.

Rev., s. 26; Code, s. 1381; C. C. P., s. 461.

28. Right to contest application for letters; proceedings. Any person interested in the estate may, on complaint filed and notice to the applicant, contest the right of such applicant to letters of administration, and on any issue of fact joined, or matter of law arising on the pleadings, the cause may be transferred to the superior court for trial, or an appeal be taken, as in other special proceedings.

Rev., s. 27; Code, s. 1382; C. C. P., s. 462.

29. Letters of administration revoked on proof of will. If, after the letters of administration are issued, a will is subsequently proved and letters testamentary are issued thereon; or, if after letters testamentary are issued, a revocation of the will, or a subsequent testamentary paper revoking the appointment of executors is proved and letters are issued thereon, the clerk of the superior court must

thereupon revoke the letters first issued, by an order in writing to be served on the person to whom such first letters were issued; and, until service thereof, the acts of such person, done in good faith, are valid.

Rev., s. 37; Code, s. 2170; C. C. P., s. 469.

30. Letters revoked for disqualification or default. If, after any letters have been issued, it appears to the clerk, or if complaint is made to him on affidavit, that any person to whom they were issued is legally incompetent to have such letters, or that such person has been guilty of default or misconduct in the due execution of his office, or that the issue of such letters was obtained by false representations made by such person, the clerk shall issue an order requiring such person to show cause why the letters should not be revoked. On the return of such order, duly executed, if the objections are found valid, the letters issued to such person must be revoked and superseded, and his authority shall thereupon cease.

Rev., s. 38; Code, s. 2171; C. C. P., s. 470.

31. On revocation, successor appointed and estate secured. In all cases of the revocation of letters, the clerk must immediately appoint some other person to succeed in the administration of the estate; and pending any suit or proceeding between parties respecting such revocation, the clerk is authorized to make such interlocutory order as, without injury to the rights and remedies of creditors, may tend to the better securing of the estate.

Rev., s. 35; Code, s. 1521; 1868-9, c. 113, s. 92.

ART. 8. BONDS

31a. Bond; approved; condition; penalty. Every executor from whom a bond is required by law, and every administrator and collector, before letters are issued, must give a bond payable to the state, with two or more sufficient sureties, to be justified before and approved by the clerk, conditioned that such executor, administrator or collector shall faithfully execute the trust reposed in him and obey all lawful orders of the clerk or other court touching the administration of the estate committed to him. The penalty of such bond must be at least double the value of all the personal property of the deceased; such value to be ascertained by the clerk by examination on oath of the applicant or of some other competent person. If the personal property of any decedent is sufficient to pay his debts and the charges of administration, and it becomes necessary for his executor or administrator to apply for the sale of real estate for assets, and the bond previously given is not double the value of both the real and personal estate of the deceased, such executor (if bond is required of him by law) or administrator shall, before or at the time of filing his petition for such sale, give another bond payable and conditioned as the one above prescribed and with like security, in double the value of the real estate for the sale of which application is made.

Rev., s. 319; Code, s. 1388; 1870-1, c. 93; C. C. P., s. 468.

32. When executor to give bond. Executors shall give bond as prescribed by law in the following cases:

1. Where the executor resides out of the state. Except in the cases otherwise provided in this chapter, no foreign executor has any authority to intermeddle

with the estate, until he has entered into bond, and the bond must be given not later than one year after the death of the testator.

2. When a man marries a woman who is an executrix, and if the husband in such case fail to give bond, the clerk, on application of any creditor or other party interested in the estate, shall revoke the letters issued to the wife and grant letters of administration with the will annexed to some other person.

3. Where an executor, other than such as may have already given bond, obtains an order to sell any portion of the real estate for the payment of debts, as hereinafter provided, the court or clerk to whom application is made shall require before granting any order of sale, such executor to enter into bond.

Rev., s. 28; Code, s. 1515; R. C., c. 46, ss. 12, 13.

33. When executor may give bond after one year. Where a nonresident of the state by will sufficient according to the laws of the state, and duly probated and recorded in the proper county, devises real property situated in this state, the executor acting under the will, if he has not intermeddled with the property devised in the will, and if no letters of administration in this state on the estate have been issued subsequent to the probate of the will, may, after the expiration of one year from the testator's death, give bond in double the value of the property devised, and he shall then be entitled to all the rights, powers and privileges of a resident executor.

1909, c. 825.

34. No bond in certain cases of executor with power to convey. Where a citizen or subject of a foreign country, by will sufficient according to the laws of this state, and duly probated and recorded in the proper county, devises to his executor with power to sell and convey, real property situated in this state in trust for a person named in the will, the power being vested in the executor as such trustee, the executor may execute the power without giving bond in this state.

1909, c. 901.

35. No bond where will waives bond and coexecutor a resident. A nonresident executor appointed under a will which dispenses with the executor's bond shall not be required to give bond, if a resident of the state is appointed and qualifies as coexecutor, unless the clerk of the court of the county where the will is first probated shall, upon the petition of the creditors or beneficiaries of the estate, deem the bond of the nonresident executor necessary for the protection of the creditors or beneficiaries. This section applies to nonresident executors who qualified before its enactment as well as to those qualifying afterwards.

1911, c. 176.

36. Certain executors' deeds without bond before 1911 validated. Where prior to January first, one thousand nine hundred and eleven, a nonresident executor has sold and conveyed lands in this state under a power in the will of a citizen of another state or of a foreign country, and the will was executed according to the laws of this state and was duly proved and recorded in the state or foreign country where the testator and his family and the executor resided, the sale and conveyance is valid although the executor prior to the execution of the deed had not given bond or obtained letters in this state.

1911, c. 90.

37. Oath and bond required before letters issue. Before letters testamentary, letters of administration with the will annexed, letters of administration or letters of collection are issued to any person, he must give the bond required by law and must take and subscribe an oath or affirmation before the clerk that he will faithfully and honestly discharge the duties of his trust, which oath must be filed in the office of the clerk.

Rev., s. 29; Code, ss. 1387, 1388, 2169; C. C. P., ss. 467, 468; 1870-1, c. 93.

38. Right of action on bond. Every person injured by the breach of any bond given by an executor, administrator or collector, may put the same in suit and recover such damages as he may have sustained.

Rev., s. 30; Code, s. 1516; 1868-9, c. 113, s. 87.

39. Rights of surety in danger of loss. Any surety on the bond of an executor, administrator or collector, who is in danger of sustaining loss by his suretyship, may exhibit his petition on oath to the clerk of the superior court wherein the bond was given, setting forth particularly the circumstances of his case, and asking that such executor, administrator or collector be removed from office, or that he give security to indemnify the petitioner against apprehended loss, or that the petitioner be released from responsibility on account of any future breach of the bond. The clerk shall issue a citation to the principal in the bond, requiring him, within ten days after service thereof, to answer the petition. If, upon the hearing of the case, the clerk deem the surety entitled to relief, he may grant the same in such manner and to such extent as may be just. And if the principal in the bond gives new or additional security, to the satisfaction of the clerk, within such reasonable time as may be required, the clerk may make an order releasing the surety from liability on the bond for any subsequent act, default or misconduct of the principal.

Rev., s. 33; Code, s. 1519; 1868-9, c. 113, s. 90.

40. On revocation of letters, bond liable to successors. When the letters of an executor, administrator or collector are revoked, his bond may be prosecuted by the person or persons succeeding to the administration of the estate, and a recovery may be had thereon to the full extent of any damage, not exceeding the penalty of the bond, sustained by the estate of the decedent by the acts or omissions of such executor, administrator or collector, and to the full value of any property received and not duly administered. Moneys so recovered shall be assets in the hands of the person recovering them.

Rev., s. 31; Code, s. 1517; 1868-9, c. 113, s. 88.

41. When new bond or new sureties required. If complaint be made on affidavit to the clerk of the superior court that the surety on any bond of an executor, administrator or collector is insufficient, or that one or more of such sureties is or is about to become a nonresident of this state, or that the bond is inadequate in amount, the clerk must issue an order requiring the principal in the bond to show cause why he should not give a new bond, or further surety, as the case may be. On the return of the order duly executed, if the objections in the complaint are found valid, the clerk shall make an order requiring the party to give further surety or a new bond in a larger amount within a reasonable time.

Rev., s. 32; Code, s. 1518; 1868-9, c. 113, s. 89.

42. On failure to give new bond, letters revoked. If any person required to give a new bond, or further security, or security to indemnify, under the two preceding sections, fails to do so within the time specified in any such order, the clerk must forthwith revoke the letters issued to such person, whose right and authority, respecting the estate, shall thereupon cease.

Rev., s. 34; Code, s. 1520; 1868-9, c. 113, s. 91.

ART. 9. NOTICE TO CREDITORS

43. Advertisement for claims. Every executor, administrator and collector, within twenty days after the granting of letters, shall notify all persons having claims against the decedent to exhibit the same to such executor, administrator or collector, at or before a day to be named in such notice; which day must be twelve months from the day of the first publication of such notice. The notice shall be published once a week for six weeks in a newspaper, if any there be published in the county. If there is no newspaper published in the county, then the notice shall be posted at the courthouse and four other public places in the county. The cost of publishing in a paper shall in no case exceed two dollars and fifty cents.

Rev., s. 39; Code, ss. 1421, 1422; 1868-9, c. 113, s. 29; 1881, c. 278, s. 2.

44. Proof of advertisement. A copy of the advertisement directed to be posted or published in pursuance of the preceding section with an affidavit, taken before some person authorized to administer oaths, of the proprietor, editor or foreman of the newspaper wherein the same appeared, to the effect that such notice was published for six weeks in said newspaper, or an affidavit stating that such notices were posted shall be filed in the office of the clerk by the executor, administrator or collector. The copy so verified or affidavit shall be deemed a record of the court, and a copy thereof, duly certified by the clerk, shall be received as conclusive evidence of the fact of publication in all the courts of this state.

Rev., s. 40; Code, s. 1423; 1868-9, c. 113, s. 31.

45. Personal notice to creditor. The executor, administrator or collector may cause the notice to be personally served on any creditor, who shall, thereupon, within six months after personal service thereof, exhibit his claim, or be forever barred from maintaining any action thereon.

Rev. s. 41; Code, s. 1424; 1868-9, c. 113, s. 32; 1885, 96.

ART. 10. INVENTORY

46. Inventory within three months. Every executor, administrator and collector, within three months after his qualification, shall return to the clerk, on oath, a just, true and perfect inventory of all the real estate, goods and chattels of the deceased, which have come to his hands, or to the hands of any person for him, which inventory shall be signed by him and be recorded by the clerk. He shall also return to the clerk, on oath, within three months after each sale made by him, a full and itemized account thereof, which shall be signed by him and recorded by the clerk.

Rev., s. 42; Code, s. 1396; R. C., c. 46, s. 16; 1868-9, c. 113, s. 8.

47. Compelling the inventory. If the inventory and account of sale specified in the preceding section are not returned as therein prescribed, the clerk must issue an order requiring the executor, administrator or collector to file the same within the time specified in the order, which shall not be less than twenty days, or to show cause why an attachment should not be issued against him. If, after due service of the order, the executor, administrator, or collector does not, on the return day of the order, file such inventory or account of sale, or obtain further time to file the same, the clerk shall have power to vacate the office of administrator, executor or collector.

Rev., s. 43; Code, s. 1397; 1868-9, c. 113, s. 9.

48. New assets inventoried. When further property of any kind, not included in any previous return, comes to the hands or knowledge of any executor, administrator or collector, he must cause the same to be returned, as hereinbefore prescribed, within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as in the case of the first inventory.

Rev., s. 44; Code, s. 1398; 1868-9, c. 113, s. 10.

49. Trustees in wills to file inventories and accounts. Trustees appointed in any will admitted to probate in this state, into whose hands assets come under the provisions of the will, shall file in the office of the clerk of the county where the will is probated inventories of the assets and annual and final accounts thereof, such as are required of executors and administrators. The power of the clerk to enforce the filing and his duties in respect to audit and record shall be the same as in such cases. This section shall not apply to any will in which a different provision is made for filing inventories and accounts.

1907, c. 804.

ART. 11. ASSETS

50. Distinction between legal and equitable assets abolished. The distinction between legal and equitable assets is abolished, and all assets shall be applied in the discharge of debts in the manner prescribed by this chapter.

Rev., s. 45; Code, s. 1406; 1868-9, c. 113, s. 14.

51. Trust estate in personalty. If any trustee, or any person interested in any trust estate, dies leaving any equitable interest in personal estate which shall come to his executor, administrator or collector, the same estate shall be deemed personal assets.

Rev., s. 46; Code, s. 1403; 1868-9, c. 113, s. 11.

52. Crops ungathered at death. The crops of every deceased person, remaining ungathered at his death, shall, in all cases, belong to the executor, administrator or collector, as part of the personal assets, and shall not pass to the widow with the land assigned as dower; nor to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.

Rev., s. 47; Code, s. 1407; 1868-9, c. 113, s. 15.

53. Real estate sold to pay debts is personal assets. All proceeds arising from the sale of real property, for the payment of debts, as hereinafter provided, shall

be deemed personal assets in the hands of the executor, administrator or collector, and applied as though the same were the proceeds of personal estate.

Rev., s. 48; Code, s. 1404; 1868-9, c. 113, s. 12.

54. Surplus of realty sold for debts is real assets. All proceeds from the sale of real estate, as hereinafter provided, which may not be necessary to pay debts and charges of administration, shall, notwithstanding, be considered real assets, and as such shall be paid by the executor, administrator or collector to such persons as would have been entitled to the land had it not been sold.

Rev., s. 49; Code, s. 1405; 1868-9, c. 113, s. 13.

55. Personalty fraudulently conveyed recoverable. If there is not sufficient real and personal assets of the deceased to satisfy all the debts and liabilities of deceased, together with the costs and charges of administration, the personal representative shall have the right to sue for and recover any and all personal property which the deceased may in any wise have transferred or conveyed with intent to hinder, delay, or defraud his creditors, and any money or property so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts. But if the fraudulent alienee of deceased has sold the property or estate so fraudulently acquired by him to a bona fide purchaser for value without notice of the fraud, then such fraudulent alienee shall be liable to the personal representative for the value of the property and estate so acquired and disposed of. If the whole recovery from any fraudulent alienee of a decedent shall not be necessary for the payment of the debts of decedent and the costs and charges of administration of his estate, the surplus shall be returned to such fraudulent alienee or his assigns.

Rev., s. 50.

56. Debt due from executor not discharged by appointment. The appointing of any person executor shall not be a discharge of any debt or demand due from such person to the testator.

Rev., s. 51; Code, s. 1431; 1868-9, c. 113, s. 40.

57. Joint liability of heirs, etc., for debts. All persons succeeding to the real or personal property of a decedent, by inheritance, devise, bequest or distribution, shall be liable jointly, and not separately, for the debts of such decedent.

Rev., s. 52; Code, s. 1528; 1868-9, c. 113, s. 99.

58. Extent of liability of heirs, etc. No person shall be liable, under the preceding section, beyond the value of the property so acquired by him, or for any part of a debt that might by action or other due proceeding have been collected from the executor, administrator or collector of the decedent, and it is incumbent on the creditor to show the matters herein required to render such person liable.

Rev., s. 53; Code, s. 1529; 1868-9, c. 113, s. 100.

59. Judgment against heirs, etc., apportioned; costs. In any such action the recovery must be apportioned in proportion to the assets or property received by each defendant, and judgment against each must be entered accordingly. Costs in such actions must be apportioned among the several defendants, in proportion to the amount of the recovery against each of them.

Rev., s. 54; Code, s. 1530; 1868-9, c. 113, s. 101.

60. Persons liable for debts to observe priorities. Every person who is liable for the debts of a decedent must observe the same preferences in the payment thereof as are established in this chapter; nor shall the commencement of an action by a creditor give his debt any preference over others.

Rev., s. 55; Code, s. 1531; 1868-9, c. 113, s. 102.

61. Existence of other debts of prior or equal class. 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.

Rev., s. 56; Code, s. 1532; 1868-9, c. 113, s. 103.

62. Debts paid taken as unpaid as against heirs, etc. 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.

Rev., s. 57; Code, s. 1533; 1868-9, c. 113, s. 104.

63. Compelling contribution among heirs, etc. 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 undevisee, within two years after probate of the will, and setting forth the facts which entitle the party to relief; and the costs shall be within the discretion of the court.

Rev., s. 58; Code, s. 1534; 1868-9, c. 113, s. 106.

ART. 12. SALES OF PERSONAL PROPERTY

64. Executor or administrator may sell without court order. Every executor and administrator shall have power in his discretion and without any order, except as hereinafter provided, to sell, as soon after his qualification as practicable, all the personal estate of his decedent.

Rev., s. 62; Code, s. 1408; 1868-9, c. 113, s. 16.

65. Collector may sell only on order of court. All sales of personal property by collectors shall be made only upon order obtained, by motion, from the clerk of the superior court, who shall specify in his order a descriptive list of the property to be sold.

Rev., s. 61; Code, s. 1409; 1868-9, c. 113, s. 17.

66. Sale to be public; notice. All sales of personal estate by an executor, administrator or collector shall be publicly made, on credit or for cash, after twenty days notification posted at the courthouse and four other public places in the county.

Rev., s. 63; Code, s. 1410, 1411; 1868-9, c. 113, ss. 18, 19.

67. Clerk may order private sale in certain cases. When personal property consists of cotton, tobacco, goods, wares and merchandise, state, national or municipal bonds, or the stocks in incorporated companies, the executor or administrator may, upon application to the clerk of the superior court, obtain an order to sell and may sell such personal property at private sale for the best price that can be obtained, and shall report such sale to the clerk for confirmation.

Rev., s. 64; 1893, c. 346.

68. Clerk must confirm sale on creditor's objection. When any person interested, either as creditor or legatee, on the day of sale objects to the completion of any sale on account of the insufficiency of the amount bid, title to such property shall not pass until the sale is reported to and confirmed by the clerk.

Rev., s. 63; Code, s. 1411; 1868-9, c. 113, s. 19.

69. Security required when sale on credit; representative's liability. The proceeds of all sales of personal estate and rentings of real property by public auction or privately shall be secured by bond and good personal security; and such proceeds shall be collected as soon as practicable: otherwise the executor, administrator or collector shall be answerable for the same.

Rev., s. 65; Code, s. 1413; 1893, c. 346, s. 2; 1868-9, c. 113, s. 21.

70. Hours of public sale; penalty. All public sales or rentings provided for in this chapter shall be between the hours of ten o'clock a. m. and four o'clock p. m. of the day on which the sale or renting is to be made, except that in towns or cities of more than five thousand inhabitants public sales of goods, wares, and merchandise may be continued until the hour of ten o'clock p. m.; and every executor, administrator or collector who otherwise makes any sale or renting shall forfeit and pay two hundred dollars to any person suing for the same.

Rev., s. 66; Code, s. 1414; 1893, c. 346, s. 3; 1868-9, c. 113, s. 22.

71. Debts uncollected after year may be sold; list filed. Every executor, administrator and collector, at any time after one year from the grant of letters, is authorized to sell at public auction, in the manner prescribed in this chapter, all bills, bonds, notes, accounts, or other evidences of debt belonging to the decedent, which he has been unable to collect or which may be deemed insolvent. Before offering such evidences of debt at public sale he shall file with the clerk a descriptive list thereof, and obtain an order of sale therefor from the clerk, and shall make return of the proceeds of such sale as in other cases of assets.

Rev., s. 67; Code, s. 1412; 1868-9, c. 113, s. 20.

ART. 13. SALES OF REAL PROPERTY

72. Sale of realty ordered, if personalty insufficient for debts. When the personal estate of a decedent is insufficient to pay all his debts, including the charges of administration, the executor, administrator or collector may, at any time after the grant of letters, apply to the superior court of the county where the land or some part thereof is situated, by petition, to sell the real property for the payment of the debts of such decedent.

Rev., s. 68; Code, s. 1436; 1868-9, c. 113, s. 42.

72a. When court may order rental. Such executor, administrator or collector, in lieu of asking for an order for the immediate sale of real estate, may ask for an order authorizing him to rent out the same for a term of not exceeding three years, and if it appears to the court that the best interests of the heirs at law and devisees of the deceased will be promoted by granting such order and that it is probable that the rents derived from the real estate during the term will be sufficient to pay off and discharge the debts and the costs of the administration, the superior court may, with the consent of the creditors, make such order upon such terms as may be best for the heirs at law, devisees and creditors of the estate; or if it is made to appear to the court that such executor, administrator or collector is able to borrow sufficient money with which to pay off and discharge all valid and just claims against the estate of the deceased, then the court shall have the power to authorize said executor or administrator to borrow money for the purpose of paying off and discharging such claims and authorizing him to rent the real estate for a term not exceeding three years and to apply the rents to the repayment of the money thus borrowed, and the said estate shall be and remain liable for the payment of said sums as may be borrowed under such order of the court to the same extent and no further as the estate was liable for the indebtedness of the deceased to pay off and discharge the debt for which the said sums were borrowed. All orders made by the court pursuant to this section shall be approved by the judge residing in or holding the courts of the district in which such county is situated.

1913, c. 49, s. 1.

73. Lands conveyed by heir within two years sold. 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.

Rev., s. 70; Code, s. 1442; 1868-9, c. 113, s. 105.

74. Lands conveyed in fraud of creditors sold. The real estate subject to sale under this chapter shall include all the deceased may have conveyed with intent to defraud his creditors, and all rights of entry and rights of action and all other rights and interests in lands, tenements and hereditaments which he may devise, or by law would descend to his heirs: Provided, that lands so fraudulently conveyed shall not be taken from any one who purchased them for a valuable consideration and without a knowledge of the fraud.

Rev., s. 72; Code, s. 1446; 1868-9, c. 113, s. 51.

75. Effect of bona fide purchase from fraudulent grantee. When an executor, administrator or collector files his petition to sell lands which have been fraudulently conveyed, and of which there has been a subsequent bona fide sale, whereby he cannot have a decree of sale of the land, the court may give judgment in favor of such executor, administrator or collector for the value of the land, against all persons who may have fraudulently purchased the same; and if the whole recovery is not necessary to pay the debts and charges, the residue shall be restored to the person of whom the recovery was made.

Rev., s. 73; Code, s. 1447; 1868-9, c. 113, s. 52.

76. Contents of petition for sale. The petition, which must be verified by the oath of the applicant, shall set forth, as far as can be ascertained:

1. The amount of debts outstanding against the estate.
2. The value of the personal estate, and the application thereof.
3. A description of all the legal and equitable real estate of the decedent, with the estimated value of the respective portions or lots.
4. The names, ages and residences, if known, of the devisees and heirs at law of the decedent.

Rev., s. 77; Code, s. 1437; 1868-9, c. 113, s. 43.

77. Heirs and devisees necessary parties. 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 required by law.

Rev., s. 74; Code, s. 1438; 1868-9, c. 113, s. 44.

78. Adverse claimant to be heard. When the land, which is sought to be sold, is claimed by another person under any pretense 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.

Rev., s. 76; Code, s. 1441; 1868-9, c. 113, s. 47.

79. Upon issues joined, transferred to term. 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.

Rev., s. 78; Code, s. 1440; 1868-9, c. 113, s. 46.

80. Order granted, if petition not denied. 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.

Rev., s. 79; Code, s. 1443; 1868-9, c. 113, s. 48.

81. Notice of sale as on execution. Notice of sale under this proceeding shall be the same as for the sale of real estate by sheriffs on execution.

Rev., s. 81; Code, s. 1445; 1868-9, c. 113, s. 50.

82. Court fixes extent and terms; title on confirmation. The court may decree a sale of the whole or any specified parcel of the premises, in such a manner as to size of lots, place of sale, terms of credit, and security for payment of purchase money, as may be most advantageous to the estate, and may also authorize and empower the petitioner or any commissioner appointed by the court to subdivide the land in question, or any part thereof, in such manner as he may deem proper and for the best interest of the estate, and, in making such division, to dedicate to the public such parts thereof as he may find necessary for public streets, alleys, and highways, and to sell such premises, either in bulk or in separate lots, with such streets, alleys, and highways excepted or reserved; but no sale, whether public or private, shall be concluded until reported to and approved and confirmed by the court. Upon the coming in of the report of the sale and

the confirmation thereof, title shall be made by such person, and at such time as the court may prescribe, and in all cases where the persons in possession have been made parties to the proceeding, the court may grant an order for possession.

Rev., s. 80; Code, s. 1444; 1868-9, c. 113, s. 49; 1917, c. 127, s. 1.

82a. Court may order private sale; terms; sale reopened. If it is made to appear to the court by petition and by satisfactory proof that it will be more for the interest of said estate to sell such real estate by private sale, the court may authorize said petitioner, or any commissioner appointed by the court, to sell the same at private sale, either in whole or in part, for cash in hand, or upon deferred payments, not exceeding two years, with interest from date of sale, the deferred payments to be secured by mortgage or deed of trust upon the property, or by the retention of the title thereto until the purchase money is paid. When any order for private sale has been or may hereafter be made by any superior court of the state, all the provisions of chapter, Mortgages and Deeds of Trusts, sec. 14, not inconsistent with this section shall apply; and the court may also, upon motion of any person interested in the proceeds of such sale, filed in writing within ten days from the date and report of said sale, together with satisfactory proof that said real property has not been sold for its real value, require the sale to be reopened, and thereupon the court may issue an order for the sale of such premises at public sale, as required by chapter, Mortgages and Deeds of Trust, section 14, and in such order the court may require such premises to be sold in such parcels and on such terms as to the court may seem most advantageous to the estate.

83. Undevised realty first sold. 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.

Rev., s. 69; Code, s. 1430; 1868-9, c. 113, s. 39.

84. Specifically devised realty; contribution. If, upon the hearing of any petition for the sale of real estate to pay debts, under this chapter, the court decrees 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.

Rev., s. 86; Code, s. 1535; 1868-9, c. 113, s. 107.

85. Under power in will, sales public or private. Sales of real property made pursuant to authority given by will, unless the will otherwise directs, may be public or private, and on such terms as, in the opinion of the executor, are most advantageous to those interested therein.

Rev., s. 84; Code, s. 1503; 1868-9, c. 113, s. 75.

86. Where executor with power dies, power executed by survivor, etc. When any or all of the executors of a person making a will of lands to be sold by his executors die, fail or for any cause refuse to take upon them the administration; or after having qualified shall die, resign, or for any cause be removed from the position of executor; or when there is no executor named in a will devising lands

to be sold, in every such case such executor or executors as survive or retain the burden of administration, or the administrator with the will annexed, or the administrator de bonis non, may sell and convey such lands; and all such conveyances which have been or shall be made by such executors or administrators shall be effectual to convey the title to the purchaser of the estate so devised to be sold.

Rev., s. 82; Code, s. 1493; 1889, c. 461.

87. Death of vendor under contract, representative to convey. When any deceased person has bona fide sold any lands, and has given a bond or other written contract to the purchaser to convey the same, and the bond or other written contract has been duly proved and registered in the county where the lands are situated, if within the state, or, if not in the state, shall be proved before the clerk of the superior court and registered in the county where the obligee lives or obligor died, his executor, administrator or collector may execute a deed to the purchaser conveying such estate as shall be specified in the bond or other written contract; and such deed shall convey the title as fully as if it had been executed by the deceased obligor: Provided, that no deed shall be made but upon payment of the price, if that be the condition of the bond or other written contract.

Rev., s. 83; Code, s. 1492; 1868-9, c. 113, s. 65; 1874-5, c. 251.

88. Title in representative for estate, he or successor to convey. When land is conveyed to a personal representative for the benefit of the estate he represents, he may sell and convey same upon such terms as he may deem just and for the advantage of said estate; which sale shall be public, after due advertisement, as for judicial sales, unless the conveyance is made to the party entitled to the proceeds. If such land is not conveyed by such personal representative during his life or term of office his successor may sell and convey such land as if the title had been made to him: Provided, if the predecessor has contracted in writing to sell said lands, but fails to convey same, his successor in office may do so upon payment of the purchase price.

Rev., s. 71; 1905, c. 342.

ART. 14. PROOF AND PAYMENT OF DEBTS OF DECEDENT

89. Order of payment of debts. The debts of the decedent must be paid in the following order:

First class. Debts which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses.

Third class. Taxes assessed on the estate of the deceased previous to his death.

Fourth class. Dues to the United States and to the state of North Carolina.

Fifth class. Judgments of any court of competent jurisdiction within this state, docketed and in force, to the extent to which they are a lien on the property of the deceased at his death.

Sixth class. Wages due to any domestic servant or mechanical or agricultural laborer employed by the deceased, which claim for wages shall not extend to a period of more than one year next preceding the death; or if such servant or

laborer was employed for the year current at the decease, then from the time of such employment; for medical services within the twelve months preceding the decease.

Seventh class. All other debts and demands.

Rev., s. 87; Code, s. 1416; 1868-9, c. 113, s. 24.

90. No preference within class. No executor, administrator or collector shall give to any debt any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class.

Rev., s. 88; Code, ss. 1417, 1418; 1868-9, c. 113, ss. 25, 26.

91. When payment out of class held valid. Where any executor or administrator has paid any debt of his testator or intestate before all the debts of higher dignity have been paid and satisfied, and the estate of such testator or intestate was at the time of such payment solvent, but has since been rendered insolvent by the emancipation of the slaves, or the insolvency of the debtors of the estate, or other cause, without any fault or want of diligence on the part of the executor or administrator, or when any creditor has refused to accept payment of his debt in Confederate currency, and such currency was afterwards used by the executor or administrator in payment of debts of the estate, or it became of no value by the termination of the war, in all such cases payments thus made shall be deemed and held valid in law, and shall be allowed to such executor or administrator in all suits by creditors of the estate seeking to charge such executor or administrator with assets of the estate or with devastavit thereof without regard to the dignity of the debt thus paid, or on which such suit may be brought.

Rev., s. 96; Code, s. 1496; 1869-70, c. 150.

92. Debts due representative not preferred. No property or assets of the decedent shall be retained by the executor, administrator or collector in satisfaction of his own debt, in preference to others of the same class; but such debt must be established upon the same proof and paid in like manner and order as required by law in case of other debts.

Rev., s. 89; Code, s. 1420; 1868-9, c. 113, s. 28.

93. Debts not due rebated. Debts not due may be paid on a rebate of interest thereon for the time unexpired.

Rev., s. 90; Code, s. 1419; 1868-9, c. 113, s. 27.

94. Affidavit of debt may be required. Upon any claim being presented against the estate, the executor, administrator or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if any payments have been made, or any offsets exist, their nature and amount must be stated in such affidavit.

Rev., s. 91; Code, s. 1425; 1868-9, c. 113, s. 33.

95. Disputed debt may be referred. If the executor, administrator or collector doubts the justness of any claim so presented, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such

reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against it.

Rev., s. 92; Code, s. 1426; 1868-9, c. 113, s. 34; 1872-3, c. 141.

96. Disputed debt not referred, barred in six months. If a claim is presented to and rejected by the executor, administrator or collector, and not referred as provided in the preceding section, the claimant must, within six months after due notice in writing 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.

Rev., s. 93; Code, s. 1427; 1868-9, c. 113, s. 35; 1913, c. 3, s. 1.

97. If claim not presented in twelve months, representative discharged as to assets paid. 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.

Rev., s. 94; Code, s. 1428; 1868-9, c. 113, s. 37.

98. No lien by suit against representative. No lien shall be created by the commencement of a suit against an executor, administrator or collector.

Rev., s. 95; Code, s. 1432; 1868-9, c. 113, s. 41.

99. When costs against representative allowed. 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.

Rev., s. 97; Code, s. 1429; 1868-9, c. 113, s. 38.

NOTE. See Costs; see also, *infra*, s. 115.

100. Obligations binding heirs collected as other debts. Bonds and other obligations in which the ancestor has bound his heirs shall not be put in suit against the heirs or devisees of the deceased, but shall be paid as other debts of the same class in the manner provided in this chapter.

Rev., s. 98; Code, s. 1404; 1868-9, c. 113, s. 12.

ART. 15. ACCOUNTS AND ACCOUNTING

101. Annual accounts. Every executor, administrator and collector shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file, in the office of the clerk of the superior court, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year

in the form of debit and credit. He must produce vouchers for all payments. The clerk may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and, having carefully revised and audited such account, if he approve the same he must endorse his approval thereon, which shall be deemed *prima facie* evidence of correctness.

Rev., s. 99; Code, s. 1399; C. C. P., s. 478; 1871-2, c. 46.

102. Clerk may compel account. If any executor, administrator or collector omits to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such executor, administrator or collector 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 executor, administrator or collector fail to appear or refuse to exhibit such account, the clerk may issue an attachment against him for a contempt and commit him till he exhibit such account, and may likewise remove him from office.

Rev., s. 100; Code, s. 1400; C. C. P., s. 479.

103. 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. And this section shall apply to guardians, collectors, trustees and to all other persons acting in a fiduciary character.

Rev., s. 101; Code, s. 1401; C. C. P., s. 480.

104. Gravestones authorized. It is lawful for executors and administrators to provide suitable gravestones to mark the graves of their testators or intestates, and to pay for the cost of erecting the same, and the cost thereof shall be paid as funeral expenses and credited as such in final accounts. The cost thereof shall be in the sound discretion of the executor or administrator, having due regard to the value of the estate and to the interests of creditors and needs of the widow and distributees of the estate. Where the executor or administrator desires to spend more than one hundred dollars for such purpose he shall file his petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose, and same shall be approved by the resident judge of the district.

Rev., s. 102; 1905, c. 444.

105. Final accounts. An executor or administrator may be required to file his final account for settlement in the office of the clerk of the superior court by a citation directed to him, at any time after two years from his qualification, at the instance of any person interested in the estate; 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.

Rev., s. 103; Code, s. 1402; C. C. P., s. 481.

106. Creditor's special proceeding for accounting. Any creditor of a deceased person may, within the times prescribed by law, prosecute a special proceeding or a civil action before the judge in his own name and in behalf of himself and

all other creditors of the deceased without naming them, against the personal representative of the deceased, to compel him to an account of his administration, and to pay the creditors what may be payable to them respectively.

Rev., s. 104; Code, s. 1448; 1871-2, c. 213; 1876-7, c. 241, s. 6.

107. Rules which govern creditor's proceeding. The special proceeding shall be governed by the rules of practice prescribed for special proceedings, except so far as the same are modified by this chapter.

Rev., s. 105; Code, s. 1449; 1871-2, c. 213, s. 2.

108. When and where summons returnable. The summons in said special proceeding shall be returnable before the clerk of the superior court of the county in which letters testamentary or of administration were granted, and on a day not less than forty nor more than one hundred days from the issuing thereof, and not less than twenty days after the service thereof.

Rev., s. 106; Code, s. 1450; 1871-2, c. 213, s. 3.

109. Clerk to advertise for creditors. On issuing the summons, the clerk shall advertise for all creditors of the deceased to appear before him on or before the return day and file the evidences of their claims.

Rev., s. 107; Code, s. 1451; 1871-2, c. 213, s. 4.

110. Publication of advertisement. The advertisement shall be published at least once a week for not less than four weeks in some newspaper which may be thought by the clerk the most likely to inform all the creditors, and shall also be posted at the courthouse door for not less than thirty days. If, however, the estate does not exceed three thousand dollars in value, and the creditors are supposed by the clerk all to reside within the county or to be known, publication in a newspaper may be omitted, and in lieu thereof the advertisement shall be posted at four public places in the county, besides the courthouse door. Proof of personal service on a creditor or that a copy of the advertisement was sent to him by mail at his usual address shall be as to him equivalent to publication.

Rev., s. 108; Code, s. 1452; 1903, c. 134; 1871-2, c. 213, s. 5.

111. Creditors to file claims and appoint agent. The creditors of the deceased on or before the required day shall file with the clerk the evidences of their demands, and every creditor on filing such claim shall endorse thereon or otherwise name some person or place within the town in which the court is held, upon whom or where notices in the cause may be served or left, otherwise he shall be deemed to have notice of all motions, orders and proceedings in the cause filed or made in the clerk's office.

Rev., s. 109; Code, s. 1453; 1871-2, c. 213, s. 6.

112. Proof of claims. If the evidence of the demand is other than a judgment, or some writing signed by the deceased, it shall be accompanied by the oath of the creditor, or if he be nonresident or infirm or absent, or in any other proper case, of some witness of the transaction, or of some agent of the creditor, that to the best of his knowledge and belief the claim is just, and that all due credits have been given.

Rev., s. 110; Code, s. 1454; 1871-2, c. 213, s. 7.

113. Representative to file claims; notice to creditors. On the day of his appearance the personal representative shall on oath give to the clerk a list of all claims against the deceased of which he has received notice or has any knowledge, with the names and residences of the claimants to the best of his knowledge and belief; and if any person so named has failed to file evidence of his claim, the clerk shall immediately cause a notice requiring him to do so to be served on him, which may be done by posting the same, directed to him at his usual address.

Rev., s. 111; Code, s. 1455; 1871-2, c. 213, s. 8.

114. Clerk to exhibit to representative claims filed. On the day fixed for the appearance of the personal representative, the clerk shall exhibit to him a list of all the claims filed in his office with the evidences thereof.

Rev., s. 112; Code, s. 1456; 1871-2, c. 213, s. 9.

115. If representative denies claim, creditor notified. Within five days thereafter the defendant shall state in writing on said list, or on a separate paper, which of said claims he disputes in whole or in part. The clerk shall then notify the creditor, as above provided, that his claim is disputed, and the creditor shall thereupon file in the office of the clerk a complaint founded on his said claim, and the pleadings shall be as in other cases.

Rev., s. 113; Code, s. 1457; 1871-2, c. 213, s. 10.

116. Issues joined; cause sent to superior court. If the issues joined be of law, the clerk shall send the papers to the judge of the superior court for trial, as is provided for by the chapter on Civil Procedure in like cases. If the issues shall be of fact, the clerk shall send so much of the record as may be necessary to the next term of the superior court for trial.

Rev., s. 114; Code, s. 1458; 1871-2, c. 213, s. 11.

117. When representative personally liable for costs. If any personal representative denies the liability of his deceased upon any claim evidenced as is provided in this chapter, and the issue is finally decided against him, the costs of the trial shall be paid by him personally, and not allowed out of the estate, unless it appears that he had reasonable cause to contest the claim and did so bona fide.

Rev., s. 115; Code, s. 1459; 1871-2, c. 213, s. 12.

NOTE. See s. 97.

118. Court may permit representative to appear after return day. If the personal representative fails to appear on the return day, the clerk or judge of the superior court may permit him afterward to appear and plead on such terms as may be just.

Rev., s. 116; Code, s. 1460; 1871-2, c. 213, s. 13.

119. Clerk to state account. Immediately after the return day the clerk or judge shall proceed to hear such evidence as shall be brought before him, and to state an account of the dealings of the personal representative with the estate of his deceased according to the course of his court.

Rev., s. 117; Code, s. 1461; 1871-2, c. 213, s. 14.

120. Exception to report; final report and judgment. After the clerk has stated the account and prepared his report, he shall notify all the parties to

examine and except to the same. Any party may then except to the same in whole or in part. The clerk shall then pass on the exceptions and prepare and sign his final report and judgment, of which the parties shall have notice.

Rev., s. 118; Code, s. 1462; 1871-2, c. 213, s. 15.

121. Appeal from judgment; security for costs. Any party may appeal from a final judgment of the clerk to the judge of the superior court in term time, on giving an undertaking with surety, or making a deposit, to pay all costs which shall be recovered against him. If any creditor appeals and gives such security, his appeal shall be deemed an appeal by all who are damaged by the judgment, and no other creditor shall be required to give any undertaking.

Rev., s. 119; Code, s. 1464; 1871-2, c. 213, s. 17.

122. Papers on appeal filed and cause docketed. On an appeal the clerk shall file his report and judgment and all the papers in his office as clerk of the superior court, and enter the case on his trial docket for the next term.

Rev., s. 120; Code, s. 1465; 1871-2, c. 213, s. 18.

123. Prior creditors not affected by appeal may docket judgments. If the exceptions and questions, from the decision on which the appeal is taken, affect only the creditors in one or more classes, the creditors in the prior classes by the leave of the clerk, or of the judge of the superior court, may docket their judgments and issue execution thereon.

Rev., s. 121; Code, s. 1466; 1871-2, c. 213, s. 19.

124. Judgment where assets sufficient to pay a class. If upon taking the account it is admitted, or is found, without appeal, that the defendant has assets sufficient, after the deduction of all proper costs and charges, to pay all the claims which have been presented of any one or more of the classes, the clerk shall give judgment in favor of the creditors whose debts of such classes have been admitted, or adjudged by any competent court; and if any claim in any preferred class is in litigation, the amount of such claim, with the probable cost of the litigation, shall be left in the hands of the personal representative, and not carried to the credit of any subsequent class until the litigation is ended.

Rev., s. 122; Code, s. 1467; 1871-2, c. 213, s. 20.

125. Judgment where assets insufficient to pay a class. If the assets are insufficient to pay in full all the claims of any class, the amounts thereof having been found or admitted as aforesaid, the clerk may adjudge payment of a certain part of such claims, proportionate to the assets applicable to debts of that class.

Rev., s. 123; Code, s. 1468; 1871-2, c. 213, s. 21.

126. Contents of judgment; execution. All judgments given by a judge or clerk of the superior court against a personal representative for any claim against his deceased shall declare—

1. The certain amount of the creditor's demand.

2. The amount of assets which the personal representative has applicable to such demand. Execution may issue only for this last sum with interest and costs.

Rev., s. 124; Code, s. 1469; 1871-2, c. 213, s. 22.

127. When judgment to fix with assets. No judgment of any court against a personal representative shall fix him with assets, except a judgment of the judge or clerk, rendered as aforesaid, or the judgment of some appellate court rendered upon an appeal from such judgment. All other judgments shall be held merely to ascertain the debt, unless the personal representative by pleading expressly admits assets.

Rev., s. 125; Code, s. 1470; 1871-2, c. 213, s. 23.

128. Form and effect of execution. All executions issued upon the order or judgment of the judge or clerk or of any appellate court against any personal representative; rendered as aforesaid, shall run against the goods and chattels of the deceased, and if none, then against the goods and chattels, lands and tenements of the representative. And all such judgments docketed in any county shall be a lien on the property for which execution is adjudged as fully as if it were against him personally.

Rev., s. 126; Code, s. 1471; 1871-2, c. 213, s. 24.

129. Report is evidence of assets only at date. The account and report and adjudication by the judge, clerk or any appellate court shall not be evidence as to the assets except on the day to which such adjudication relates.

Rev., s. 127; Code, s. 1472; 1871-2, c. 213, s. 25.

130. Creditor giving security may show subsequent assets. Any creditor may afterwards, on filing an affidavit by himself or his agent that he believes that assets have come to the hands of the personal representative since that day, and on giving an undertaking, with surety, or making a deposit for the costs of the personal representative, may sue out a summons against him alleging subsequent assets, and the proceedings thereon shall be as hereinbefore prescribed, so far as the same may be necessary.

Rev., s. 128; Code, s. 1473; 1871-2, c. 213, s. 26.

131. Suits for accounting at term. In addition to the remedy by special proceeding, actions against executors, administrators, collectors and guardians may be brought originally to the superior court at term time; and in all such cases it is competent for the court in which said actions are pending to order an account to be taken by such person or persons as said court may designate, and to adjudge the application or distribution of the fund ascertained, or to grant other relief, as the nature of the case may require.

Rev., s. 129; Code, ss. 215, 1511; 1876-7, c. 241, s. 6.

132. Proceedings against land, if personal assets fail. If it appears at any time during, or upon, or after the taking of the account of a personal representative that his personal assets are insufficient to pay the debts of the deceased in full, and that he died seized of real property, it is the duty of the judge or clerk, at the instance of any party, to issue a summons in the name of the personal representative or of the creditors generally, to the heirs, devisees and others in possession of the lands of the deceased, to appear and show cause why said lands should not be sold for assets. Upon the return of the summons the proceeding shall be as is directed in other like cases.

Rev., ss. 130, 131; Code, ss. 1474, 1475; 1871-2, c. 213, ss. 27, 28.

ART. 16. DISTRIBUTION

133. Order of distribution. The surplus of the estate, in case of intestacy, shall be distributed in the following manner, except as hereinafter provided:

1. If there are not more than two children, one-third part to the widow of the intestate, and all the residue by equal portions to and among the children of the intestate and such persons as legally represent such children as may then be dead.

2. If there are more than two children, then the widow shall share equally with all the children and be entitled to a child's part.

3. If there is no child nor legal representative of a deceased child, then one-half the estate shall be allotted to the widow, and the residue be distributed equally to every of the next of kin of the intestate, who are in equal degree, and to those who legally represent them.

4. If there is no widow, the estate shall be distributed, by equal portions, among all the children, and such persons as legally represent such children as may be dead.

5. If there is neither widow nor children, nor any legal representative of the children, the estate shall be distributed equally to every of the next of kin of the intestate, who are in equal degree, and those who legally represent them.

6. If in the lifetime of its father and mother, a child dies intestate, without leaving husband, wife or child, or the issue of a child, its estate shall be equally divided between the father and mother. If one of the parents is dead at the time of the death of the child, the surviving parent shall be entitled to the whole of the estate. The terms "father" and "mother" shall not apply to a step-parent, but shall apply to a parent by adoption.

7. If there is no child nor legal representative of a deceased child nor any of the next of kin of the intestate, then the widow, if there is one, shall be entitled to all the personal estate of such intestate.

8. If a married woman die intestate leaving one child and a husband, the estate shall be equally distributed between the child and husband; if she leave more than one child and a husband, the estate shall be distributed in equal portions and the husband shall receive a child's part.

Rev., s. 132; Code, s. 1478; 1893, c. 82; 1868-9, c. 113, s. 53; 1913, c. 166; 1915, c. 37.

NOTE. For distribution of recovery for wrongful death, see this chapter, s. 158.

134. Advancements to be accounted for. Children who shall have any estate by the settlement of the intestate, or shall be advanced by him in his 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.

Rev., s. 133; Code, s. 1483; 1868-9, c. 113, s. 54.

135. Children advanced to render inventory; effect of refusal. Where any parent dies 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 particulars by him or her received of the intestate in his or her lifetime. In case any child who had,

in the lifetime of the intestate, received a part of said estate, refuses to give such inventory, he shall be considered to have had and received his full share of the deceased's estate, and shall not be entitled to receive any further part or share.

Rev., ss. 134, 135; Code, ss. 1484, 1485; 1868-9, c. 113, ss. 55, 56.

136. Illegitimates next of kin to mother and to each other. Every illegitimate child of the mother dying intestate, or the issue of such illegitimate child deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate as prescribed in this chapter. Illegitimate children, born of the same mother, shall be considered legitimate as between themselves and their representatives, and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock.

Rev., ss. 136, 137; Code, ss. 1486, 1487; 1868-9, c. 113, ss. 57, 58.

137. Allotment to after-born child in real estate. The share of an after-born child in real estate shall be allotted to him out of any lands not devised, if there is enough for that purpose; and if there is none undevised, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up of the lands devised; and so much thereof shall be taken from the several devisees according to their respective values, as near as may be convenient, as will make the proper share of such child.

Rev., s. 138; Code, s. 1536; 1868-9, c. 113, s. 108.

138. Allotment to after-born child in personal property. The share of an after-born child in the personal estate shall be paid and delivered to him out of any such estate not bequeathed, if there is enough for that purpose; and if there is none undisposed of, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up from the estate bequeathed; and so much shall be taken from the several legacies, according to their respective values, as will make the proper share of such child.

Rev., s. 139; Code, s. 1537; 1868-9, c. 113, s. 109.

139. Allotment of personalty from proceeds of realty. If, after satisfaction of the child's share of real estate out of undevised lands, there is a surplus of such lands, and there is no personal estate undisposed of, or not enough to make up his share of such estate, then the surplus of undevised land, or as much as may be necessary, shall be sold and the proceeds applied to making up his share of personal estate. And if, after satisfaction of the child's share of personal estate out of property undisposed of by the will, there is a surplus of such property, then the surplus thereof shall be applied, as far as it will go, in exoneration of land, both devised and descended; and the same shall be set apart and secured as real estate to such child, if an infant, non compos, or feme covert.

Rev., s. 140; Code, s. 1538; 1868-9, c. 113, s. 110.

140. Effect of allotment of realty; contribution to equalize burden. Upon the allotment to such child of any real estate in the manner aforesaid, he shall thenceforth be seized thereof in fee simple; and the court shall give judgment severally,

in favor of such of the devisees and legatees, of whose lands and legacies more has been taken away than in proportion to the respective values of said lands and legacies, against such of said devisees and legatees, of whose lands and legacies a just proportion has not been taken away, for such sums as will make the contribution on the part of each and every of them equitable, and in the ratio of the values of the several devises and legacies.

Rev., s. 141; Code, s. 1539; 1868-9, c. 113, s. 111.

141. After-born child on allotment deemed devisee or legatee. An after-born child after such decrees shall be considered and deemed in law a legatee and devisee as to his portion, shall be styled as such in all legal proceedings, and shall be liable to all the obligations and duties by law imposed on such: Provided, that all judgments or decrees bona fide obtained against the devisees and legatees previously to the preferring of any petition, and which were binding upon or ought to operate upon the lands and chattels devised or bequeathed, shall be carried into execution and effect notwithstanding, and the petitioner shall take his portion completely subject thereto: Provided further, that any suit instituted against the devisees and legatees previously to such petition shall not be abated or abatable thereby nor by the decree thereon, but shall go on as instituted, and the judgment and decree, unless obtained by collusion, be carried into execution; but on the filing of the petition, during the pendency of such suit, the petitioner, by guardian, if an infant, may become a defendant in the suit.

Rev., s. 142; Code, s. 1540; 1868-9, c. 113, s. 112.

142. Before settlement executor may have claimants' shares in estate ascertained. In case no petition is filed within two years, as herein prescribed, the executor or administrator with the will annexed, before he shall pay or deliver the legacies in the will given, or before paying to the next of kin of the testator any residue undisposed of by the will, shall call upon the legatees, devisees, heirs and next of kin, and the said after-born child, by petition in the superior court, to litigate their respective claims, and shall pray the court to ascertain the share to which said child shall be entitled, and to apportion the shares and sums to which the legatees, devisees, heirs or next of kin shall severally contribute toward the share to be allotted to said child, and the court shall adjudge and decree accordingly.

Rev., s. 143; Code, s. 1541; 1868-9, c. 113, s. 113.

143. Legacy or distributive share recoverable after two years. Legacies and distributive shares may be recovered from an executor, administrator or collector by petition preferred in the superior court, at any time after the lapse of two years from his qualification, unless the executor, administrator or collector shall sooner file his final account for settlement. The suit shall be commenced and the proceedings therein conducted as prescribed in other cases of special proceedings.

Rev., s. 144; Code, s. 1510; 1868-9, c. 113, s. 83.

144. Payment to clerk after one year discharges representative pro tanto. It is competent for any executor, administrator or collector, at any time after twelve months from the date of letters testamentary or of administration, to pay into the office of clerk of the superior court of the county where such letters were

granted, any moneys belonging to the legatees or distributees of the estate of his testator or intestate, and such payment shall have the effect to discharge such executor, administrator or collector and his sureties on his official bond to the extent of the amount so paid.

Rev., s. 145; Code, s. 1543; 1881, c. 305, s. 1.

145. On payment clerk to sign receipt. It is the duty of the clerk, in the cases provided for in the preceding section, to receive such money from any executor, administrator or collector, and to execute a receipt for the same under the seal of his office.

Rev., s. 146; Code, s. 1544; 1881, c. 305, s. 3.

ART. 17. SETTLEMENT

146. Representative must settle after two years. No executor, administrator or collector, after two years from his qualification, shall hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements and such debts as he shall legally pay; but all such estate so remaining shall, immediately after the expiration of two years, be divided and be delivered and paid to the person to whom the same may be due by law or the will of the deceased.

Rev., s. 147; Code, s. 1488; 1868-9, c. 113, s. 59.

147. Representative may retain claim undue or in litigation. If, on a final accounting before the judge or clerk, it appears that any claim exists against the estate which is not due, or on which suit is pending, the judge or clerk shall allow a sum sufficient to satisfy such claim, or the proportion to which it may be entitled, to be retained in the hands of the executor, administrator or collector, for the purpose of being applied to the payment when due or when recovered, with the expense of contesting the same. The order allowing such sum to be retained must specify the amount and nature of the claim.

Rev., s. 148; Code, s. 1489; 1868-9, c. 113, s. 60.

148. After final account representative may petition for settlement. An executor, administrator or collector, who has filed his final account for settlement, may, at any time thereafter, file his petition against the parties interested in the due administration of the estate, in the superior court of the county in which he qualified, or before the judge in term time, setting forth the facts, and praying for an account and settlement of the estate committed to his charge. The petition shall be proceeded on in the manner prescribed by law, and, at the final hearing thereof, the judge or clerk may make such order or decree in the premises as shall seem to be just and right.

Rev., s. 150; Code, s. 1525; 1868-9, c. 113, s. 96.

149. Payment into court of fund due absent defendant or infant. When any balance of money or other estate which is due an absent defendant or infant without guardian is found in the hands of an executor, administrator or collector who has preferred his petition for settlement, the court or judge may direct such money or other estate to be paid into court, to be invested upon interest, or

otherwise managed under the direction of the judge, for the use of such absent person or infant.

Rev., s. 151; Code, s. 1526; 1868-9, c. 113, s. 97; 1893, c. 317.

150. Procedure where person entitled unheard of for seven years. When the party entitled to the money has not been heard of for seven years or more, the fund shall be distributed among the next of kin of the absent deceased person as prescribed by statute, in the following manner: An administrator shall be appointed and made a party to a special proceeding in which a verified petition shall be filed setting forth the facts, with names of the parties entitled, and such other evidence as may be required by the clerk in whose office said fund was deposited, and the proceedings conducted as other special proceedings; and the order disposing of the fund shall be approved and confirmed by the judge, either at term or at chambers.

Rev., s. 151; Code, s. 1526; 1868-9, c. 113, s. 97; 1893, c. 317.

151-2. Parties to proceeding for settlement. In all actions and proceedings by administrators or executors for a final settlement of their estates and trusts, whether at the instance of distributees, legatees or creditors or of themselves, if the personal representative dies or is removed pending such actions or proceedings, the administrator de bonis non or administrator with the will annexed, as the case may be, shall be made party as provided in other cases, or in such way as the court may order, and the action or proceeding shall be conducted to its end, and such judgment shall be rendered on the confirmation of the report, or upon the terms of settlement, if any shall be agreed upon by the parties, as will fully protect and discharge all parties to the record.

Rev., s. 154; 1893, c. 206.

153. When legacies may be paid in two years. It is in the power of the judge or court, on petition or action, within two years from the qualification of an executor, administrator or collector, to adjudge the payment in full or partially, of legacies and distributive shares, on such terms as the court deems proper, when there is no necessity for retaining the fund.

Rev., s. 155; Code, s. 1512.

154. Commissions allowed representatives. Executors, administrators and collectors shall be entitled to a commission not exceeding five per cent upon the amount of receipts and expenditures which shall appear to be fairly made in the course of administration, and such allowance may be retained out of the assets against creditors and all other persons claiming an interest in the estate. In determining the allowance the trouble and time expended in the management of the business shall be considered; but in sales of land for payment of debts commissions shall not be allowed on any larger amount of the proceeds than the sum actually applied in payment of debts. Such commissions are authorized and directed to be allowed by the clerk of the superior court when the final account of the representative entitled is filed for settlement, or by any judge of the superior court or commissioner appointed by the said court to take and state an account of the assets of any decedent in the hands of his representative upon a plea of fully administered. Nothing in this section shall prevent any

executor, administrator or collector from retaining a reasonable sum for necessary charges and disbursements in the management of the estate.

Rev., s. 149; Code, s. 1524; 1868-9, c. 113, s. 95; 1869-70, c. 189.

155. Liability and compensation of clerk. Every clerk of the superior court who may be intrusted with money or other estate in such case shall be liable on his official bond for the faithful discharge of the duties enjoined upon him by the judge in relation to said estate, and he may receive such compensation for his services as the judge may allow.

Rev., s. 152; Code, s. 1527; 1868-9, c. 113, s. 98.

ART. 18. ACTIONS BY AND AGAINST REPRESENTATIVE

156. Action survives to and against representative. Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as hereinafter provided, shall survive to and against the executor, administrator or collector of his estate.

Rev., s. 156; Code, s. 1490; 1868-9, c. 113, s. 63.

157. Death by wrongful act; recovery not assets. When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured party had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their executors, administrators, collectors or successors, shall be liable to an action for damages, to be brought within one year after such death, by the executor, administrator or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, but shall be disposed of as provided in this chapter for the distribution of personal property in case of intestacy.

Rev., s. 59; Code, ss. 1498, 1500; 1868-9, c. 113, ss. 70, 72, 115; R. C., c. 46, ss. 8, 9.

158. Damages recoverable for death by wrongful act. The plaintiff in such action may recover such damages as are a fair and just compensation for the pecuniary injury resulting from such death.

Rev., s. 60; Code, s. 1499; 1868-9, c. 113, s. 71; R. C., c. 1, s. 10.

159. Actions which do not survive. The following rights of action do not survive:

1. Causes of action for libel and for slander, except slander of title.
2. Causes of action for false imprisonment and assault and battery.
3. Causes where the relief sought could not be enjoyed, or granting it would be nugatory, after death.

Rev., s. 157; Code, s. 1491; 1868-9, c. 113, s. 64; 1915, c. 38, s. 1.

160. Right of action survives to successor. Executors and administrators shall have actions in like manner as the first testator or intestate might have had against any person, his executors and administrators, in all cases, except where

such actions, being commenced, are not allowed by statute to be revived on the death of any party.

Rev., s. 158; Code, s. 1497; 1868-9, c. 113, s. 69; 1905, c. 286.

161. To sue or defend in representative capacity. 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.

Rev., s. 160; Code, s. 1507; 1868-9, c. 113, s. 79.

162. Service on or appearance by one binds all. 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.

Rev., s. 161; Code, s. 1508; 1868-9, c. 113, s. 81.

163. When creditor may sue on claim; execution in such action. 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 ratable part, and such judgment shall be a lien on the property of the defendant only from the time of such leave granted.

Rev., s. 162; Code, s. 1509; 1868-9, c. 113, s. 82.

164. Service by publication on executor without bond. Whenever process may issue against an executor who has not given bond, and the same cannot be served upon him by reason of his absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions.

Rev., s. 163; Code, s. 1523; 1868-9, c. 113, s. 94.

165. Execution by successor in office. Any executor, administrator or collector may have execution issued on any judgment recovered by any person who preceded him in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.

Rev., s. 164; Code, s. 1513; 1868-9, c. 113, s. 84.

166. Action to continue, though letters revoked. In case the letters of an executor, administrator or collector are revoked, pending an action to which he is a party, the adverse party may, notwithstanding, continue the action against him in order to charge him personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the executor, administrator or collector in the administration of the estate, in the same manner as in case of death.

Rev., s. 165; Code, s. 1514; 1868-9, c. 113, s. 85.

ART. 19. REPRESENTATIVE'S POWERS, DUTIES AND LIABILITIES

167. Representative may maintain appropriate suits and proceedings. Executors, administrators or collectors may maintain any appropriate action or proceeding to recover assets, and to recover possession of the real property of which executors are authorized to take possession by will; and to recover for any injury done to such assets or real property at any time subsequent to the death of the decedent.

Rev., s. 159; Code, s. 1501; 1868-9, c. 113, s. 73.

168. Representative may purchase for estate to prevent loss. 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.

Rev., s. 85; Code, s. 1505; 1868-9, c. 113, s. 77.

169. Representatives hold in joint tenancy. Every estate vested in executors, administrators or collectors, as such, shall be held by them in joint tenancy.

Rev., s. 166; Code, s. 1502; 1868-9, c. 113, s. 74.

170. Representatives liable for devastavit. The executors and administrators of persons, who, as rightful executors or as executors in their own wrong, or as administrators, shall waste or convert to their own use any estate or assets of any person deceased, shall be chargeable in the same manner as their testator or intestate might have been.

Rev., s. 167; Code, s. 1495; 1868-9, c. 113, s. 68.

171. Nonresident executor or guardian to appoint process agent. A nonresident qualifying in the state as an executor or guardian shall at the time of his qualification appoint in writing a resident agent in the county of his qualification, on whom may be served citations, notices, and all processes required by law to be served on such executor or guardian. The executor or guardian shall file the appointment with the clerk in the county of his qualification, and the clerk shall record it in the record book immediately after the record of qualification, and shall properly index it in the record book. All citations, notices, and processes served on such process agent shall be as effective as if served on the executor or guardian, but the return date shall not be sooner than ten days from the date of the issuance of the citation, notice, or process. No letters shall be granted to an executor nor shall a guardian be permitted to qualify, unless the process agent is named simultaneously with the application for letters or for qualification.

1917, c. 198, ss. 1, 2, 3.

172. Executor or guardian removing from state; to appoint process agent. When a resident executor or guardian removes from the state, he shall, before removing or within thirty days thereafter, appoint a process agent in the manner as provided in the case of a nonresident, and upon failure to make the appointment within thirty days, the clerk shall remove him and appoint an administrator with the will annexed, or a new guardian, as the case may be.

1917, c. 198, s. 4.

173. Nonresident's failure to obey process ground for removal. The clerk may remove any nonresident executor or guardian who fails or refuses to obey any citation, notice or process served on the process agent appointed as provided in the preceding two sections, and appoint a resident.

1917, c. 198, s. 5.

ART. 20. APPLICATION OF CHAPTER

174. Where no time specified, reasonable time allowed; extension. If no length of notice, or no time for the doing of an act, is stated in this chapter, the time shall be reasonable, and in any case it may be enlarged by the clerk from time to time, or by the judge of the superior court, on application to him or on appeal to him from the clerk.

Rev., s. 169; Code, s. 1463; 1871-2; c. 213, s. 16.

175. Powers under will not affected. Nothing in this chapter shall be construed to affect the discretionary powers, trusts and authorities of an executor or other trustee acting under a will, provided creditors be not delayed thereby, nor the order changed in which by law they are entitled to be paid.

Rev., s. 170; Code, s. 1415; 1868-9, c. 113, s. 23; R. C., c. 46, ss. 12, 13.

176. Chapter applies to administration since 1869. This chapter shall apply only to cases where the grant of letters of collection or of probate or of administration shall have issued on or after the first day of July, one thousand eight hundred and sixty-nine, except in case of administrations de bonis non upon estates where the former letters of administration or letters testamentary were granted prior to the first of July, one thousand eight hundred and sixty-nine, in all which cases estates shall be administered, closed up and settled according to the law as it existed just prior to the first of July, one thousand eight hundred and sixty-nine.

Rev., s. 173; Code, s. 1476; 1871-2, c. 213, s. 29; 1872-3, c. 179.

177. Cases pending at adoption of constitution of 1868. All cases for the sale of real estate for assets heretofore in the county courts, in which final orders for collection and application or distribution of purchase money and making titles were not made before the adoption of the present constitution, may, at the instance of any person interested, be transferred, as other cases, to the superior court of the county where such proceeding was pending, and such court shall have full authority to make all necessary orders to complete the same.

Rev., s. 171; Code, s. 1542; 1871-2, c. 161.

178. Administrations prior to 1869. This chapter shall apply to the estates of such deceased persons only whereof original administration has been granted subsequent to the first day of July, one thousand eight hundred and sixty-nine, and all estates whereon administration was granted prior to the said first day of July, one thousand eight hundred and sixty-nine shall be dealt with, administered and settled according to the law as it existed just prior to said date, and it is hereby declared that such is the true intent and meaning of this chapter: Provided, that nothing herein shall be construed to prevent the application of

this chapter so far as it relates only to the courts having jurisdiction of any action or proceeding for the settlement of an administration or to the practice and procedure therein. If any person shall have bona fide administered any estate or any part of the estate of any deceased person whereof original administration was granted prior to the first day of July, under the said act of one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, he shall not be deemed guilty of a devastavit.

Rev., ss. 168, 172; Code, ss. 1433, 1434; 1869-70, c. 58, ss. 1, 2.

CHAPTER 2

ADOPTION OF MINORS

1. Petition for adoption; contents.
2. Parties to proceeding.
3. Order and letters of adoption.
4. Effect of order; child's right of succession.
5. Change of child's name.
6. Bond to secure orphan's property.
7. Record of order; revocation.
8. Abandonment by parent; custody forfeited.
9. Restoration of parent's rights.
10. Procuring possession of child unlawfully.

1. Petition for adoption; contents. 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 or them are living, and if there is no living parent, the name of the guardian, if any, and if there is 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.

Rev., s. 174; Code, s. 1; 1872-3, c. 155.

2. Parties to proceeding. The parent or guardian, or the person having charge of such child, or with whom it may reside, must be a party of record in this proceeding.

Rev., s. 175; Code, s. 6; 1872-3, c. 155, s. 6.

3. Order and letters of adoption. 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 is a proper and suitable person, sanction and allow such adoption by an order granting letters of adoption.

Rev., s. 176; Code, s. 2.

4. Effect of order; child's right of succession. Such order, when made, shall have the effect forthwith to establish the relation 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. The child shall not inherit and be entitled to the personal estate, if the petitioner specially sets forth in his petition such to be his desire and intention.

Rev., s. 177; Code, s. 3; 1872-3, c. 155, s. 3; 1885, c. 390.

5. Change of child's name. For proper cause shown in the petition the court may decree that the name of the child shall be changed to that of the petitioner.

Rev., s. 177; 1885, c. 390.

6. Bond to secure orphan's property. If the child is an orphan and without guardian, and possesses any estate, the court shall require from the petitioner such bond as is required by law to be given by guardians.

Rev., s. 178; Code, s. 4.

7. Record of order; revocation. The order granting letters of adoption shall be recorded in the office of the clerk of the superior court of the county in which it is made, and may be revoked at any time by the court for good cause shown.

Rev., s. 179; Code, s. 5, 1872-3, c. 155, s. 5.

8. Abandonment by parent; custody forfeited. In all cases where the parent or parents of any child has willfully abandoned the care, custody, nurture and maintenance of the child to kindred, relatives or other persons, such parent or parents shall be deemed to have forfeited all rights and privileges with respect to the care, custody and services of such child.

Rev., s. 180; 1885, c. 120, s. 1; 1909, c. 917.

9. Restoration of parent's rights. The rights and privileges of such parent may be restored by the voluntary surrender of such child by the person in whose care and custody such child may be, or by order of any judge of the superior court in the district in which such child may be, when it appears to the satisfaction of such judge that the interest and welfare of such child will not be materially prejudiced by such restoration. The person having the care and custody of any such child shall have at least ten days notice of the time and place of the hearing of the application for such order of restoration, and shall be permitted to resist the same.

Rev., s. 181; 1885, c. 120, ss. 2, 3.

10. Procuring possession of child unlawfully. Any parent whose rights and privileges have been forfeited as provided by the second preceding section, who shall procure the possession and custody of such child, with respect to whom his rights and privileges are forfeited, otherwise than as by law provided, shall be guilty of a crime and shall be punished as for abduction.

Rev., s. 2373; 1885, c. 120, s. 4.

CHAPTER 3

ALIENS

1. Rights as to real property.
2. Contracts validated.

1. Rights as to real property. It is 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.

Rev., s. 182; Code, s. 7; 1870-1, c. 255.

2. Contracts validated. 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.

Rev., s. 183; Code, s. 8; 1870-1, c. 255, s. 2.

CHAPTER 4

APPRENTICES

ART. 1. GENERAL PROVISIONS.

1. Application of chapter.
2. Incapacity, desertion or drunkenness determined before clerk.
3. Record of indenture.
4. White child not apprenticed to negro.

ART. 2. APPRENTICESHIP OF INDIGENT CHILDREN.

5. Indigent children defined.
6. Clerk apprentices on application for apprentice.
7. Clerk apprentices or commits to orphanage on complaint.
8. Clerk may modify indenture; discharge and reapprentice.
9. Clerk directs disposition of wages agreed for.
10. When \$100 wages accumulate, clerk appoints guardian.
11. Term of apprenticeship.
12. Form and contents of indenture.
13. Employer's obligation to provide for apprentice.
14. Employer's reports.
15. Violation of indenture by employer; clerk hears complaint.
16. Action on indenture; limitation.
17. Apprentice compelled by clerk to serve.
18. Apprentice not to be removed from state.
19. Enticing or harboring apprentice; penalty.

ART. 3. APPRENTICESHIP TO LEARN A TRADE.

20. Who may be apprenticed.
21. Apprentice over fourteen to sign indenture.
22. Orphanages may execute indentures.
23. Contents of indenture.
24. Apprentice compelled to serve.
25. Failure to teach apprentice; damages and penalty.

ART. 1. GENERAL PROVISIONS

1. Application of chapter. This chapter provides for apprenticeship of, first, indigent children under the conditions stated; second, of minors to learn a trade.

2. Incapacity, desertion or drunkenness determined before clerk. Incapacity, desertion or drunkenness shall be decided before the clerk of the superior court upon application, as in special proceedings, when necessary.

Rev., s. 185; 1889, c. 169, s. 19.

3. Record of indenture. Every indenture of apprenticeship shall be proved and recorded as deeds and conveyances are proved and recorded in the office of the register of deeds of the county where the parties reside, and shall be subject to the same rules of evidence as deeds and conveyances.

Rev., s. 200; 1889, c. 169, s. 20.

4. White child not apprenticed to negro. No white child shall be apprenticed to any other than a white person.

Rev., ss. 186, 201; 1889, c. 169, ss. 1, 17.

ART. 2. APPRENTICESHIP OF INDIGENT CHILDREN

5. Indigent children defined. Indigent children within the meaning of this article include:

1. All orphans whose estates are of so small value that no person will educate and maintain them for the benefit thereof.

2. All infants whose fathers have deserted their families and been absent six months, leaving them without sufficient support.

3. Any poor child who is or may be chargeable to the county or shall beg alms.

4. Any child who has no father, and the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood.

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

6. All indigent infants under sixteen years of age who, on account of the neglect, crime, drunkenness, lewdness or other vice of the parents, or person with whom such infants reside, are in circumstances exposing such infants to lead an idle and dissolute life.

Rev., s. 190; 1889, c. 169, s. 2; 1901, c. 628.

6. Clerk apprentices on application for apprentice. On application of a person to have an indigent child bound to him as an apprentice it is the duty of the clerk to inform himself of the circumstances of the case and for this purpose he may cite before him the relatives of the orphan or infant for examination, and he may examine also such other persons as he may deem proper. If satisfied that the child for whose apprenticeship application is made is an indigent child he may, when in his opinion the best interests of the child will be subserved by the child's apprenticeship, bind him out as an apprentice. In the selection of an employer he shall, having regard to the best interest of the child, prefer some tradesman of a useful art or mystery.

Rev., s. 186; 1889, c. 169, ss. 1, 8.

7. Clerk apprentices or commits to orphanage on complaint. Upon complaint made in writing by three reputable citizens to the clerk of the superior court of any county that there is any infant in such county subject to any of the conditions enumerated in this article, it is the duty of the clerk upon ten days notice to the complainants, and to the parents or persons with whom such infant resides, to examine into the allegations of the complaint, upon oath, and if the clerk finds upon such examination that the conditions set forth in complaint are true, it is the duty of the clerk in his discretion to procure for the infant admission into some orphan asylum in the state, or to bind out the infant as an apprentice.

Rev., s. 184; 1889, c. 169, s. 2; 1901, c. 628.

8. Clerk may modify indenture, discharge and reapprentice. The clerk has power, when circumstances require it, upon application of either the employer of a person indentured as indigent or of the apprentice, to modify the indentures of an apprentice or to discharge him from his apprenticeship; and in case any money or other thing of value has been paid by either party in relation to such

apprenticeship, the clerk shall make such order concerning the same as shall be just and reasonable; and he has power where an apprentice is discharged to reapprentice him, when such a course seems proper and practicable.

Rev., s. 187; 1889, c. 169, s. 13.

9. Clerk may direct disposition of wages agreed for. When money, wages or other thing of value is agreed to be paid to the apprentice, apprenticed as indigent, the clerk is empowered to direct such disposition of the same as shall seem to him just and proper; and in the case of money, he may either direct that so much be placed at the disposal of the apprentice as shall be proper, or so much paid to the parents of the apprentice for their use, or so much paid into the clerk's office to the credit of the said apprentice.

Rev., s. 188; 1889, c. 169, s. 5.

10. When \$100 wages accumulate, clerk appoints guardian. Whenever as much as one hundred dollars come into the hands of any clerk of the superior court belonging to an apprentice by reason of the preceding section, it is his duty to appoint and qualify a guardian for the estate of said apprentice, and turn the said funds over to said guardian for investment; and the guardian shall be appointed and qualified and be governed by the same rules and regulations as guardians of said estate.

Rev., s. 189; 1889, c. 169, s. 6.

11. Term of apprenticeship. Indigent male children may be apprenticed till the age of twenty-one, and females till the age of eighteen; but said children shall be apprenticed for a less number of years, whenever in the opinion of the clerk the best interests of the apprentice will be subserved thereby.

Rev., s. 198; 1889, c. 169, s. 3.

12. Form and contents of indenture. The indenture of indigents shall be in the name of the clerk of the superior court where they reside, of the first part, and of the employer to whom apprenticed of the other part, and shall contain—

1. The age of the child or children apprenticed at the date of the indenture.

2. The employer's obligation as set out in this article to provide for the apprentice, and to make reports to the clerk.

Rev., ss. 197, 198, 194, 195; 1889, c. 169, ss. 1, 3, 4, 7.

13. Employer's obligation to provide for apprentice. When an indigent child is apprenticed, his employer shall agree to provide (1) diet, clothes, lodging and accommodations fit and necessary; (2) that the apprentice be taught to read and write and the rules of arithmetic to the double rule of three; (3) six dollars in cash, a new suit of clothes and a new Bible at the end of the apprenticeship; (4) such other education as may be agreed upon and inserted in the indenture by the clerk; (5) the clerk shall also insert in the indenture the amount of money or other thing of value to be paid to the apprentice by his employer annually during the continuance of the apprenticeship, so that the indenture will show the compensation to be paid the apprentice for each year's service.

Rev., s. 194; 1889, c. 169, s. 4.

14. Employers' reports. Employers of apprentices indentured as indigents are required to make a report annually to the clerk as to whether the stipulations

in the indenture have been performed or not, as required in the same. The report shall set forth the amount to be paid, and the amount actually paid said apprentice, and also the progress and general condition of the apprentice, including his moral, mental and physical condition. The report shall be required under the same pains, penalties and regulations as is required of guardians. The employer shall also, at the end of the apprenticeship, make a final report to the clerk as to the apprenticeship as guardians are required to do.

Rev., s. 195; 1889, c. 169, s. 7.

• **15. Violation of indenture by employer; clerk hears complaint.** Upon the complaint of any apprentice indentured as indigent that his employer is guilty of cruelty or ill usage toward him, or refuses him necessary provisions or clothing, or violates any other stipulation of the indenture or of the law toward such an apprentice, the clerk may, by order, compel the appearance of the employer before him, when he shall examine and determine the complaint, and if the same is well founded, he shall cancel the indenture and discharge such apprentice from his obligation of service, and may proceed to apprentice the discharged infant to some other employer.

Rev., s. 191; 1889, c. 169, s. 10; 1762, c. 69, ss. 19, 20.

16. Action on indenture; limitation. The apprentice indentured as indigent may bring an action on the indenture in the name of the clerk and his successors in office and recover any damages sustained by reason of the breach of the covenants contained in said indenture; but no action on an indenture shall be commenced after two years from the expiration of the term of service.

Rev., s. 199; 1889, c. 169, s. 11.

17. Apprentice compelled by clerk to serve. If a person indentured as an indigent child refuses to serve as required by the indenture or by law, the clerk may, on application of the employer, compel him by citation or otherwise to appear for inquiry into the facts, and if the complaint is well founded and the apprentice persists in such refusal, the clerk may commit him by warrant to the house of correction or to the common jail of the county until he consents.

Rev., s. 192; 1889, c. 169, s. 9.

18. Apprentice not to be removed from state. It is unlawful for an employer to remove a person apprenticed as an indigent out of this state, and whenever the employer wishes to remove out of this state, or to quit his trade or business, he shall appear with his apprentice before the clerk of the proper county, and if the clerk is satisfied the employer has done justice to the said apprentice for the time he has had charge of him, he has power to discharge such apprentice from the service of such employer and again bind him, if necessary, to some other person.

Rev., s. 196; 1889, c. 169, s. 14.

19. Enticing or harboring apprentice; penalty. If any person entices away from his employer a person apprenticed as an indigent, he shall pay therefor three dollars for every day the apprentice remains out of the service of the said employer; and any person who knowingly conceals, harbors or employs such an apprentice shall in like manner pay the employer therefor three dollars per day for every day such apprentice is concealed, harbored or employed.

Rev., s. 193; 1889, c. 169, s. 15.

ART. 3. APPRENTICESHIP TO LEARN A TRADE

20. Who may be apprenticed. Minor children above the age of fourteen and under twenty-one years being males, and eighteen being females, whether indigent or not, may be apprenticed to learn any trade or craft by their father, or in case of his death, incompetency, or where he has willfully abandoned his family for six months without making suitable provisions for their support, or has become an habitual drunkard, by their mother or by their legal guardian; and if illegitimate, they may be bound by their mother, and if they have no parent competent to act and no guardian, they may bind themselves with the approbation of the superior court clerk of the county where they reside; but the power of a mother to bind her children, whether legitimate or illegitimate, shall cease upon her subsequent marriage and shall not be exercised by herself or her husband at any time during such marriage. But no negro child shall be bound to any white person if a competent and suitable negro can be found in the county who desires such child bound to him.

Rev. s. 201; 1889, c. 169, s. 17.

21. Apprentice over fourteen to sign indenture. When an apprentice is bound who is over fourteen years of age, as provided in the foregoing section, his or her consent shall be expressed in the indenture and testified to by signing the same, and the age of said apprentice shall also be inserted in said indenture.

Rev., s. 202; 1889, c. 169, s. 18.

22. Orphanages may execute indentures. Any orphan asylum, or charitable institution organized and incorporated for the purpose of taking care of indigent children under any general or special law of this state, is authorized and empowered to execute indentures apprenticing children in their charge for the purpose of learning trades, the said children being fourteen years of age, and they shall have the same rights and assume the same liabilities thereunder as in case of natural persons.

Rev., s. 203; 1889, c. 169, s. 21.

23. Contents of indenture. All indentures apprenticing minors to learn trades shall contain the following covenants and provisions:

1. That said minor shall be bound to serve his employer for a term of not less than three nor more than five years.

2. That said minor so indentured shall not leave his said employer during the term for which he shall be indentured, and if any apprentice so indentured as aforesaid shall leave his employer except as hereinafter provided, the said employer may compel the return of said apprentice under the penalties of this chapter.

3. That said employer shall covenant and agree in said indenture as to the compensation which is to be given the apprentice annually, specifying board, medical attention, lodging and clothes, when they are to be given, and also the wages to be paid in money and at what periods to be paid, and to whom.

4. That the employer shall teach, or cause to be carefully and skillfully taught, to said apprentice every branch of the business to which he is indentured.

5. That said employer shall, at the expiration of said apprenticeship, give to said apprentice a certificate in writing stating that said apprentice has served a full term of apprenticeship of not less than three nor more than five years at such trade or craft as may be specified in said indenture.

6. That if either the employer or the apprentice, during the continuance of the apprenticeship, shall be unavoidably prevented from performing any of the conditions of the indenture and a settlement with respect to the same cannot be made by the parties to the indenture, the matter shall be referred to arbitrators for settlement, one to be selected by the employer and one on the part of the apprentice, and if they cannot decide the controversy, the two arbitrators chosen to select a third, and the decision of any two of said arbitrators to be final as to the matters in controversy.

Rev., s. 204; 1889, c. 169, s. 22.

24. Apprentice compelled to serve. Any apprentice, so indentured, who leaves his employer without his consent, or without sufficient cause, and refuses to return, may be arrested upon complaint of said employer and taken before any justice of the peace of the county where the employer resides, and said justice of the peace may order said indentures canceled, and on conviction may commit said apprentice to the house of correction or county jail until said apprentice agrees to abide by the indenture, which shall not exceed thirty days; and in case said apprentice so indentured still willfully neglects or refuses to perform his portion of the contract as specified in said indenture, then said indenture may be canceled in the manner aforesaid, and said apprentice so violating said indenture shall forfeit all back pay and all claims against said employer. Either party may appeal from the justice's decision.

Rev., s. 205; 1889, c. 169, s. 23.

25. Failure to teach apprentice; damages and penalty. Should any employer neglect or refuse to teach or cause to be taught to said apprentice the art or mystery of the trade or craft to which said apprentice has been indentured, or fail to perform any of the stipulations of the indenture, said apprentice, by his parent, guardian or next friend, may bring an action against said employer to recover damages sustained by reason of said neglect or refusal; and if proved to the satisfaction of the court, said court shall direct said indenture to be canceled and may impose a penalty on said employer not exceeding three hundred dollars and not less than fifty dollars, and said penalty shall be collected and paid over to said apprentice or his parent or guardian for his sole use and benefit.

Rev., s. 206; 1889, c. 169, s. 24.

CHAPTER 5

ATTORNEYS AT LAW

ART. 1. LICENSING AND QUALIFICATIONS OF ATTORNEYS.

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2. Dates and methods of holding examination.
3. Conditions precedent to examination.
4. Oaths taken in open court.
5. Persons disqualified.
- 5a. Officers of inferior courts disqualified in certain cases.

ART. 2. RELATION TO CLIENT.

6. Authority filed or produced if requested.
7. Failure to file complaint, attorney liable for costs.
8. Fraudulent practice, attorney liable in double damages.

ART. 3. ARGUMENTS.

9. Court's control of argument.

ART. 4. DISBARMENT.

10. Only for causes set out.
11. Conviction or confession of crime.
12. Failure to account for property or money collected.
13. Fraud or soliciting business; discretion of court.

ART. 5. PROCEEDING FOR DISBARMENT.

14. Instituted by state bar association.
15. Accusation delivered to solicitor.
16. Solicitor to draw accusation and move; citation; service and return.
17. Order on accused to show cause.
18. Answer of accused.
19. Trial and judgment; surrender of license.
20. Proceedings in state's name by solicitor; costs.
21. Appeal from judgment.

ART. 1. LICENSES AND QUALIFICATIONS OF ATTORNEYS

1. Examination in writing; scope; issuance. No person shall practice law without first obtaining license so to do from the supreme court. All examinations shall be in writing, and based upon such course of study, and conducted under such rules, as the court may prescribe. All applicants who satisfy the court of their competent knowledge of the law and upright character shall receive license to practice in all the courts of this state.

Rev., s. 207; Code, s. 17; R. C., c. 9, s. 1; 1818, c. 963, s. 3; 1907, c. 70, s. 1.

2. Dates and method of holding examinations. The examinations for license to practice law may be held in the city of Raleigh on Monday, one week prior to the spring and fall terms of the supreme court, by the chief justice and two associate justices to be designated by the court, and upon their certification license shall be issued, signed by all the members of the court. The chief justice and each associate justice holding said examinations shall receive the sum of one hundred dollars and actual expenses for each examination, to be paid out of the fees of applicants for license, and not otherwise.

1917, c. 87, ss. 1, 2.

3. Conditions precedent to examination. Before being allowed to stand an examination each applicant must comply with the following conditions:

1. He must be at the time twenty-one years of age, or will arrive at that age before the time for the next examination.

2. He must file with the clerk of the court a certificate of good moral character signed by two attorneys who practice in that court. An applicant from another state may have such certificate signed by any state officer of the state from which he comes.

3. He must deposit with the clerk twenty-one dollars and fifty cents. Of this sum one dollar and fifty cents shall be retained by the clerk. If the applicant obtains license the remaining twenty dollars shall be paid by the clerk to the librarian for use of the supreme court library. If the applicant fails on examination the twenty dollars shall be repaid him.

Rev., s. 208; Code, s. 18; R. C., c. 9, s. 2; 1777, c. 115, s. 8.

4. Oath taken in open court. Attorneys before they shall be admitted to practice law shall, in open court before a justice of the supreme or judge of the superior court, take the oath prescribed for attorneys, and also the oaths of allegiance to the state, and to support the constitution of the United States, prescribed for all public officers, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken, may act as attorneys during their good behavior.

Rev., s. 209; Code, s. 19; R. C., c. 9, s. 3; 1777, c. 115, s. 8.

5. Persons disqualified. No clerk of the superior or supreme court, nor deputy or assistant clerk of said courts, nor sheriff, nor any justice of the peace, nor county commissioner shall practice law. Persons violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars.

Rev., ss. 210, 3641; Code, ss. 27, 28, 110; 1870-1, c. 90; 1883, c. 406; 1871-2, c. 120; 1880; c. 43; C. C. P., s. 424.

NOTE. Practicing attorney not eligible to office of sheriff, see Sheriff.

5a. Officers of inferior courts disqualified in certain cases. No judge or prosecuting attorney of any recorder's, municipal, or county court shall appear in any other court on behalf of the defendant in a criminal action, where such criminal action has been tried in the court of such officer. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars. This section shall not apply to Iredell County.

1917, c. 213.

ART. 2. RELATION TO CLIENT

6. Authority filed or produced if requested. Every attorney who claims to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court in which he claims to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf, otherwise he shall not be allowed so to do: Provided, that when any attorney claims to enter an appearance by virtue of a letter to him directed (whether such letter purport a general or particular employment), and it is

necessary for him to retain the letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and the clerk shall make a note to that effect upon the docket.

Rev., s. 213; Code, s. 29; R. C., c. 31, s. 57 (16).

7. Failure to file complaint, attorney liable for costs. When a plaintiff is compelled to pay the costs of his suit in consequence of a failure on the part of his attorney to file his complaint in proper time, he may sue such attorney for all the costs by him so paid, and the receipt of the clerk may be given in evidence in support of such claim.

Rev., s. 214; Code, s. 22; R. C., c. 9, s. 5; 1786, c. 253, s. 6.

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

Rev., s. 215; Code, s. 23; R. C., c. 9, s. 6; 1743, c. 37.

ART. 3. ARGUMENTS

9. Court's control of argument. In all trials in the superior courts there shall be allowed two addresses to the jury for the state or plaintiff and two for the defendant, except in capital felonies when there shall be no limit as to number. The judges of the superior court are also authorized to limit the time of argument on the trial of all actions, civil and criminal, except in capital felonies, but in no instance shall the time be limited to less than one hour on each side in misdemeanors, or to less than three hours on each side in other causes. Where any greater number of addresses or any extension of time are desired, motion shall be made, and it shall be in the discretion of the judge to allow the same or not, as the interests of justice may require. In jury trials the whole case as well of law as of fact may be argued to the jury.

Rev., s. 216; 1903, c. 433.

ART. 4. DISBARMENT

10. Only for causes set out. No duly licensed attorney at law shall be disbarred or deprived of his license and right to practice law, either permanently or temporarily, unless for a cause set forth in this chapter and unless he be disbarred according to the provisions thereof.

Rev., s. 211; Code, s. 26; 1870-1, c. 216, s. 4.

11. Conviction or confession of crime. No attorney at law shall be disbarred for crime unless after conviction or confession in open court of a felony or of a criminal offense showing him to be unfit to be trusted in the duties of his profession. After conviction of felony he must be disbarred by the court.

Rev., s. 211; Code, s. 26; 1870-1, c. 216, s. 4; 1907, c. 941, s. 1.

12. Failure to account for property or money collected. When final judgment is rendered against an attorney at law for property received or money collected by him as an attorney and retained by him without any bona fide claim thereto or to any part thereof, he must be disbarred by the court. The clerk of

the court shall retain such cause on the trial docket until the next term of such court beginning not less than ninety days after the rendition of such final judgment. If such judgment is not then satisfied, the judge presiding shall make an order, which shall be entered on the records of the court, for such attorney to show cause, at a time and place to be named in such order, and upon the return thereof may make an order debaring such attorney at law from practicing law in any of the courts, and he shall thereby be debarred from so practicing. When any such judgment is rendered in the court of a justice of the peace, and it is thereupon sought to debar an attorney at law under this section, the cause shall be docketed on the civil issue docket of the superior court, and written notice served on such attorney ninety days before action by the court.

Rev., s. 212; Code, ss. 24, 25; 1881, c. 129; 1907, c. 941, s. 1.

13. Fraud or soliciting business, discretion of court. An attorney at law may be disbarred or suspended at the discretion of the court upon its being found by a jury that he has been guilty of any conduct in the practice of his profession involving willful deceit or fraud; or, that he has by himself or another solicited professional business.

1907, c. 941, s. 2.

ART. 5. PROCEEDINGS FOR DISBARMENT

14. Instituted by state bar association. Proceedings for the disbarment or suspension of any attorney under this article shall be instituted and prosecuted only by the committee on grievances of the North Carolina state bar association.

1907, c. 941, s. 3.

15. Accusation delivered to solicitor. The accusation as formulated by the committee on grievances of said state bar association shall be signed by the chairman of said committee and attested by the secretary of said association, accompanied by the written affidavit of any person or persons who make charges against such attorney, if any, duly verified and setting forth the facts upon which the same may be based, and shall be delivered by the secretary of said association or by the chairman of said committee to the solicitor of the judicial district in which such attorney resides.

1907, c. 941, s. 4.

16. Solicitor to draw accusation and move; citation, service and return. Upon the receipt from the chairman of the committee of grievances of the bar association of the accusation signed, attested and verified as above provided, the solicitor shall draw up such accusation, citing the accused to appear before the superior court of the county in which he resides, or in some adjoining county thereto, on a day named therein, and moving the court for the disbarment or suspension of such attorney, and have the same served by the sheriff of said county by delivering a copy thereof to the accused, and the original thereof, with the return of the sheriff, shall be delivered to the judge holding the courts of the district.

1907, c. 941, s. 4.

17. Order on accused to show cause. The judge of the superior court must, if of opinion that the accusation would, if true, warrant the disbarment or suspension of the accused attorney, make an order requiring the accused to appear

and answer the same at a specified day during the next term of the court in which the proceeding is instituted, or at any other time when the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be duly served upon the accused. If such order is made as much as ten days before any term of the court, the accusation must be made returnable and be heard during such term, unless continued for good cause by the court upon such terms as it may impose; and if such proceeding is begun less than ten days before a term of the court, it shall stand for hearing at the succeeding term unless the court shall order otherwise.

1907, c. 941, s. 5.

18. Answer of accused. The accused attorney may answer such accusation either by objecting in writing to its sufficiency or by denying the truth of the facts alleged, or setting forth the facts of his defense, which said answer as to facts by denial or otherwise must be in writing, signed by the accused and duly verified by him; and thereupon the accusation, objections and answer are hereby made a part of the records of the court as in other civil actions therein pending.

1907, c. 941, s. 6.

19. Trial and judgment; surrender of license. If the accused pleads guilty or fails or refuses to answer the accusations, the court must proceed to judgment of disbarment or suspension; and if he answers the accusation, the court must as such time as it may appoint proceed to try the same; the jury or judge finding the facts must make a special finding of the facts upon issues of facts submitted to them, and the court must, upon such facts found, thereupon render judgment of acquittal or of disbarment or of suspension, as such facts may warrant. The accused attorney may at any time stop or prevent the prosecution of the proceeding by a surrender of his license as an attorney at law, and record of such surrender shall be made in the supreme court of the state.

1907, c. 941, s. 7.

20. Proceedings in state's name by solicitor; costs. The proceedings must be conducted in the name of the state, and in all cases the solicitor of the district shall appear and prosecute the accusation and be responsible for the faithful discharge of the duties required of him under this article, and he may be assisted by other counsel. The court may, upon the motion of the solicitor, and upon good cause shown at the time, require the North Carolina state bar association to give security for the costs of such proceedings, to be approved by the court within ten days after notice thereof, and the hearing of the cause shall be postponed for that time unless security be given.

1907, c. 941, s. 8.

21. Appeal from judgment. Either party may appeal to the supreme court of North Carolina from an adverse judgment rendered by said superior court in the manner now prescribed by law for appeals in civil actions.

1907, c. 941, s. 9.

CHAPTER 6

BANKS

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ART. 1. CREATION

1. How incorporated. Three or more persons may be incorporated for the purpose of establishing and operating commercial banks of deposit and discount, or savings banks of loan and deposit, or banks with both classes of business, or banks with a trust, fiduciary and surety business, by setting forth in a certificate of incorporation—

1. The name of the corporation; no name can be assumed already in use by another corporation organized under the laws of this state or of congress, or so similar as to lead to uncertainty or confusion.

2. The location of its principal office in the state. No branch office or business may be established and maintained without the approval first obtained of the corporation commission.

3. The nature of its business, whether that of commercial bank, or savings bank, or both, or of a bank with a trust, fiduciary and surety business.

4. The amount of the authorized capital stock, the number of shares into which it is divided, and the par value of each share, which must be either fifty or one hundred dollars; the amount of capital stock with which it will commence business, which must be at least \$5,000 in cities and towns of 1,500 population or less, \$10,000 in cities and towns of 1,500 and not over 5,000 population, and \$25,000 in all other places, the population to be ascertained by the last preceding national census; and if there is more than one class of stock, a description of the different classes with the terms on which they are created.

5. The names and postoffice addresses of the stock subscribers and the number of shares subscribed for by each; the aggregate of the subscriptions must be the amount of the capital with which the corporation will commence business.

6. The period, if any, for the duration of the corporation.

Rev., s. 222; 1901, c. 769; 1903, c. 275, ss. 1, 2; 1907, c. 829, s. 1; 1917, c. 165, s. 1.

2. Requirements as to certificate of incorporation. The certificate of incorporation shall be signed by a majority of the original stock subscribers, and must be proved or acknowledged before an officer duly authorized under the laws of this state to take the proof or acknowledgment of deeds. The certificate when so proved, shall then be filed in the office of the secretary of state, who shall, if it is in accordance with law, cause it to be recorded in his office in a book to be kept for that purpose and known as the Corporation Book. Upon the payment of the organization tax and fees, the secretary of state shall certify under his official seal two copies of the certificate of incorporation and probates, one of which shall be forthwith recorded in the office of the clerk of the superior court of the county where the principal office of said corporation in this state is, or is to be, located, in a book to be known as the Record of Incorporations, and the other shall be filed in the office of the corporation commission. The said persons shall thereupon become a body politic and corporate under the name stated in the certificate. The certificate of incorporation, or a copy thereof duly filed by the secretary of state or by the clerk of the superior court of the county in which it is recorded, or by the clerk of the corporation commission, under their respective seals, is evidence in all courts and places, and in all judicial proceedings is prima facie evidence, of the complete incorporation and organization of the corporation purporting thereby to have been established.

Rev., s. 223; 1901, c. 2, s. 9; 1903, c. 275, s. 3; 1903, c. 343.

3. Payment of capital stock. No bank shall be authorized to commence business with less than a paid in capital stock of \$5,000 and until at least fifty per cent of the capital has been paid in in cash. The remainder of the capital stock shall be paid in monthly installments of at least ten per cent in cash of the whole of the capital, payable at the end of each succeeding month from the time it is authorized by the corporation commission to commence business, and the payment of each installment shall be certified to the corporation commission, under oath, by the cashier or president of the bank.

Rev., s. 224; 1903, c. 275, s. 10; 1909, c. 911, s. 1.

4. When and how authorized to begin business. Before a corporation may begin the banking, or banking and trust, fiduciary or surety business there must

be filed with the corporation commission a statement under oath, by the cashier or president, containing the names of all of the directors and officers, with the date of the election or appointment, term of office, residence and postoffice address of each, the amount of capital stock of which each is the owner in good faith, and the amount of money paid in on account of the capital stock. Nothing shall be received in payment of capital stock but money. If from this statement, or upon examination, if an examination appears necessary, it appears to the corporation commission that the corporation is lawfully entitled to commence the business of banking, the commission shall, within thirty days after the filing of the certificate required by law, give to the corporation a certificate signed by the chairman and attested by the secretary of the commission, that such corporation has complied with all the provisions required to be complied with before commencing the business of banking and is authorized to commence such business. The corporation commission may withhold from any such corporation its certificate authorizing the commencement of business whenever it has reason to believe that the stockholders have formed the same for any other purpose than the legitimate objects contemplated by this chapter.

Rev., s. 227; 1903, c. 275, s. 6; Rev., ss. 225, 226, 227; 1903, c. 275, ss. 5, 6, 7, 10; 1907, c. 829, ss. 2, 3, 4.

ART. 2. POWERS AND RESTRICTIONS

5. Powers. In addition to the powers conferred by law upon private corporations, a banking corporation and banking and trust company doing a fiduciary and surety business has power—

1. To exercise by its board of directors or duly authorized officers or agents, subject to law, all powers necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt, receiving deposits, buying and selling exchange, coin and bullion, and by loaning money on personal security or real or personal property. At the time of making loans or discounts it may take in advance such interest as is agreed upon, not exceeding the legal rate.

2. To purchase, hold and convey such real estate as is—

(1) Necessary for the convenient transaction of its business, including with its banking offices other apartments to rent as a source of income, which investment shall not exceed twenty-five per cent of its paid-in capital stock and permanent surplus.

(2) Mortgaged to it in good faith by way of security for loans made or money due to it.

(3) Conveyed to it in satisfaction of debts previously contracted in the course of its dealing.

(4) Acquired by it under execution sale or judgment of any court in its favor.

All powers and privileges heretofore granted to any person, firm or corporation doing a banking business in connection with a fiduciary and surety business, or the right to deal to any extent in real estate inconsistent with this chapter, are hereby repealed.

Rev., s. 228; 1903, c. 275, ss. 8, 9; 1907, c. 829, ss. 5, 12.

6. Restriction as to investment in real estate. A bank and trust company doing a general banking and trust, fiduciary and surety business, and dealing

in real estate, shall not invest more than twenty-five per cent of the capital stock and permanent surplus in real estate, except that acquired to protect its loans, debts contracted in the course of its dealings or by sale under execution or judgment of any court in its favor.

1907, c. 829, s. 6.

7. When bank may purchase its stock. No bank may be the holder as pledgee or as purchaser of any portion of its capital stock, unless such purchase is necessary to prevent loss upon a debt previously contracted in good faith.

Rev., s. 229; 1903, c. 275, s. 1.

8. Reserve fund. Every bank, or banking or trust company engaging in a banking, trust, fiduciary or surety business, and dealing in real estate, must at all times have on hand as a reserve in available funds fifteen per cent of the aggregate amount of its deposits, and two-fifths of this fifteen per cent must be cash in the vaults of the bank. Savings banks must have on hand at all times, as a reserve in available funds, five per cent of their aggregate deposits. The available funds consist of cash on hand and balances due from other solvent banks. Cash includes lawful money of the United States, and exchange of any clearing house association. A bank shall not make any new loans or discounts, otherwise than by discounting or purchasing bills of exchange payable at sight, and shall not make any dividends of its profits, when the available funds are below the reserve herein required.

Rev., ss. 231, 232; 1903, c. 275, ss. 28, 29; 1907, c. 829, s. 7.

9. Restriction on loans. The total liabilities to any bank or banking institution or banking or trust company doing a fiduciary and surety business and dealing in real estate, of any person, corporation or firm, for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the paid-in capital stock of such institution. But the discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial or business paper actually owned by the person negotiating it shall not be considered as money borrowed. This section does not apply to banks with a paid-up capital of one hundred thousand dollars or less.

Rev., s. 233; 1897, c. 298, s. 3; 1897, c. 432; 1907, c. 829, s. 8.

10. Deposits of minors. When a deposit is made by or in the name of a person who is a minor of the age of fifteen years and upwards, in any state or national bank in this state, it shall be held for the exclusive right and benefit of the minor, free from the control of all persons; and it shall be paid, together with any interest thereon, to the person in whose name the deposit was made, and the receipt or check of such minor to the said state or national bank is a valid and sufficient discharge for such deposit or any part thereof.

1907, c. 750, s. 1.

11. Deposits in trust for minors. When a deposit not in excess of fifty dollars is made in any bank, banking institution or trust company doing business in this state in trust for a person who is a minor of the age of fifteen years and upward, and no other or further notice of the existence and terms of a legal

and valid trust have been given to the bank, in the event of the death of the trustee, all or any part of the deposit, together with the dividends or interest thereon, may be paid to the person for whom it was made.

1909, c. 459, s. 1.

12. Deposits in two names. When a deposit has been or is hereafter made in any bank, trust company, banking and trust company, or any other institution transacting business in this state, in the names of two persons, payable to either, or payable to either or the survivor, all or any part of the deposit, or any interest or dividend thereon, may be paid to either of said persons, whether the other is living or not; and the receipt or acquittance of the person so paid is a valid and sufficient discharge to the bank for payment so made.

1917, c. 243, s. 1.

13. Liability for forged or raised check. No bank, banking institution or trust company doing business in this state is liable to a depositor for the payment by it of a forged or raised check or order to pay money, unless within six months after the return to the depositor of the voucher of such payment he notifies the bank of the forgery or raising.

1909, c. 105, s. 1.

14. Reorganization. When a bank, under the laws of this state or of the United States, is authorized to dissolve and has taken the necessary steps to effect dissolution, it is lawful for a majority of the directors of the bank, upon the authority in writing of the owners of two-thirds of its capital stock, with the approval of the corporation commission, to execute a certificate of incorporation as provided in this chapter, which certificate, in addition to other requirements of law, shall further set forth the authority derived from the stockholders of the dissolved bank. Upon filing the certificate as hereinbefore provided for the organization of banks, the same becomes a bank under the laws of this state, and all assets of the dissolved national bank by operation of law become the property of the state bank, subject to all liabilities of the national bank not liquidated under the laws of the United States before the reorganization.

Rev., s. 230; 1903, c. 275, s. 17.

15. Chapter on corporations applicable. All of the provisions of law relating to private corporations, and particularly those enumerated in the chapter entitled Corporations, not inconsistent with this chapter, or with the business of banking, are applicable to banks.

Rev., s. 234; 1903, c. 275, s. 4.

ART. 3. STOCKHOLDERS AND INSOLVENCY

16. Individual liability. The stockholders of every bank organized under any general law or special act of North Carolina are individually responsible, equally and ratably, for all contracts, debts and engagements of such corporation, to the extent of the par value of their stock, in addition to the amount invested in such shares. The term "stockholder," when used in this chapter, applies not only to the persons who appear by the books of the corporation as stockholders, but also to every legal or equitable owner of stock, although the

same is on such books in the name of another person; but does not apply to persons who hold the stock as collateral security for the payment of a debt, or as executors, administrators, guardians, or trustees, but the estate and funds in their hands is liable in like manner and extent as the testator, intestate, ward, or cestui que trust would be if living and competent to act and hold the stock in his own name.

Rev., ss. 235, 237; 1897, c. 298; 1903, c. 275, s. 13; U. S. Rev. Stat., s. 5152.

17. Assessment of stock when assets insufficient. When a banking corporation chartered by the state becomes insolvent, and it appears to the court with jurisdiction of the cause that the bank's assets are insufficient to discharge its obligations, and that it will be necessary to assess the shares of stock issued by such bank as provided by law, an accounting may be had in the original action and the shareholders made parties defendant thereto. When upon the facts found it is adjudged that such deficiency exists and the amount thereof is determined, the court shall assess the stock of the corporation equally and ratably, and not in excess of the limitation provided by statute, and adjudge the holders indebted to the receiver of the corporation in proportion to the amount of stock therein credited to them upon the books of the bank within thirty days next preceding its suspension. The certificates of stock are thereafter evidence as against all stockholders of an indebtedness due the receiver equivalent to the assessment thereon, and the judgment shall establish the amount of the deficiency, the necessity of the assessment, the names of the shareholders, and their several liabilities as such.

1911, c. 25, s. 1.

18. Receiver to sue and collect from stockholders. The receiver of the insolvent bank is empowered to demand, sue for, and collect by lawful process all indebtedness due from its stockholders, whether they reside within or without the state, and wherever they or their legal representatives may be served with process, or wherever any property belonging to them, or their estate, may be subject to attachment, garnishment, or other lawful process. All indebtedness due from such stockholders, their representatives or estates, is payable to the receiver as corporate assets, and the title thereto vests in and must be applied by him for the equal benefit of all persons entitled to share in the distribution of the fund and disbursed ratably under the orders of the court. The receiver may, within ten years after an assessment on the stock, institute civil actions against the stockholders to reduce their liability thereon to final judgment, and in any such action the creditors of the bank may be proper but are necessary parties plaintiff.

1911, c. 25, ss. 2, 3, 6.

19. Liability as affected by stock assignment. A person who has in good faith and without any intent to evade his liability as a stockholder, transferred his stock on the books of the corporation to a person of full age, previous to a default in the payment of any debt or liability of the corporation, is not subject to any personal liability on account of the nonpayment of such debt or liability, but the assignee is liable to the amount of the stock, in the same manner as if he had been the owner at the time the corporation contracted the debt or liability. But no transfer of stock in an insolvent state bank made within thirty days of its

suspension releases or discharges the assignor thereof, but is prima facie evidence that the assignment was made with knowledge of the insolvency of the bank and with an intent to avoid liability thereon.

Rev., s. 238; 1903, c. 275, s. 14; 1911, c. 25, s. 5.

20. Assignment by bank evidence of insolvency. When any state bank makes a voluntary assignment of its assets to trustees, such fact is prima facie evidence of insolvency, and sufficient to authorize the appointment of a receiver.

1911, c. 25, s. 4.

21. Stock sold if subscription unpaid. When a stockholder or his assignee fails to pay any installment on the stock, when the same is required by law to be paid, the directors of the bank may sell the stock of the delinquent stockholder at public sale, having first given him twenty days notice, personally or by mail at his last known address. If no party can be found who will pay for the stock the amount due thereon to the bank, with any additional indebtedness of such stockholder to the bank, the amount previously paid shall be forfeited to the bank and the stock sold as the directors order within six months of the time of the forfeiture, and if not sold, it shall be canceled and deducted from the capital of the bank.

Rev., s. 239; 1903, c. 275, s. 11.

ART. 4. CORPORATION COMMISSION

22. Banking institutions and receivers under supervision of. Every bank, corporation, partnership, or individual transacting a banking, banking and trust, fiduciary and surety, or banking and real estate business, within and under the laws of this state, is subject to the provisions of this chapter, and under the supervision of the corporation commission, which has power to make such rules, consistent with law, for the government of such institutions, as in its judgment seems wise and expedient. When a receiver has been appointed for a failing bank or banking institution or corporation doing a banking business, he is under the control of the corporation commission and shall obey its orders in so far as they do not conflict with the orders or decrees of the court made in the case.

Rev., ss. 240, 241; 1903, c. 275, ss. 19, 20; 1907, c. 829, ss. 9, 13.

23. Quarterly reports and publication. Every bank and corporation, partnership, or individual transacting a banking or banking and trust, fiduciary and surety business, or banking and real estate business shall make to the corporation commission not less than four reports each year, according to the form prescribed by the commission. These reports shall be verified in the case of incorporated banking companies by the oath or affirmation of the president, vice president or cashier, and two of the board of directors, and in other cases by the oath or affirmation of the partners, or individual owner. The bank, corporation or individual making such report shall publish it in a newspaper in the county in which the bank, corporation or individual is located.

Rev., s. 242; 1903, c. 275, s. 21; 1907, c. 829, s. 10.

24. Quarterly reports from banks of trust and surety or guarantee business. Every individual, partnership or corporation doing a banking and trust and fiduciary and surety or guarantee business shall make to the corporation com-

mission not less than four reports each year, showing the entire amount of trust and surety and fiduciary and guarantee business as a part of the liabilities of said banking institution, which report shall be published as are the reports of other banking institutions. If any individual, partnership or corporation shows by the reports, or by the examination of the bank examiner, that such liabilities are equal to the amount of the capital stock, the corporation commission has the authority and is empowered to make such rules and regulations and reductions of said liabilities as it deems necessary for the protection of the creditors and depositors of the institution.

1907, c. 829, s. 11.

25. Annual and special reports. Every bank shall at all times keep a correct record of the names of its stockholders, and once in each year, or whenever called upon, must file in the office of the corporation commission a correct list of its stockholders, with the number of shares held by each. The commission has power to call for special reports from any bank, corporation, firm or individual transacting a banking business, whenever necessary, in order to obtain a full and complete knowledge of such bank.

Rev., ss. 243, 244; 1903, c. 275, ss. 16, 22.

26. Penalty and action for failure to report. Every bank, corporation, partnership, or individual that fails to make any report, or any published statement required by the provisions of this chapter is subject to a penalty of two hundred dollars. This penalty shall be recovered by the state in a civil action in any court of competent jurisdiction, and it is the duty of the attorney general to prosecute all such actions.

Rev., s. 245; 1903, c. 275, s. 26.

ART. 5. BANK EXAMINERS

27. Appointment and Compensation. The corporation commission shall appoint from time to time a bank examiner and such number of assistant bank examiners as are necessary to make a thorough examination of the affairs of every bank, corporation, or individual doing a banking business, as often as is deemed necessary and proper and at least once in every year, and it is the duty of these examiners to verify the report made by the directors, members, or individual conducting any banking institution, as required by section 23 in this chapter. The corporation commission may also appoint such clerks and stenographers as are necessary to effectually carry out the provisions of the banking laws of the state, and may at any time remove any person appointed by it under this section. The commission shall fix the compensation to be paid to the bank examiner, assistant bank examiners, clerks and stenographers employed in the banking department, and certify the same to the state auditor; but their total compensation and expenses shall not exceed in any one year the total fees collected under section 29 in this chapter for the examination of banks and the expenses of examiners.

1917, c. 165, ss. 4, 5; Ex. Sess. 1913, c. 36, s. 1.

28. Powers and reports of examination. The bank examiner and assistant bank examiners have power to make a thorough examination into all the books,

papers and affairs of the bank or corporation, partnership or individual transacting a banking business, and, in so doing, to administer oaths and affirmations and to examine on oath or affirmation any individual banker and the officers, agents, partners and clerks of such bank, corporation, partnership or individual touching the matters they are authorized and directed to inquire into, and to examine, and to summon, and by attachment compel the attendance of, any person or persons in this state to testify under oath before them in relation to the affairs of such corporation, partnership, or individual. They shall make a full and detailed report in writing to the corporation commission of each examination within ten days after it has been made.

Rev., ss. 247, 248; 1903, c. 275, s. 24.

29. Annual examinations; fees and expenses. One examination each year is designated as the annual examination, and for this the bank, corporation, or individual examined shall pay into the office of the corporation commission the following fees: banks, banking institutions, and individuals with total resources of \$100,000 or less, \$15; over \$100,000 and not over \$200,000, \$20; over \$200,000 and not over \$300,000, \$25; over \$300,000 and not over \$500,000, \$30; over \$500,000 and not over \$750,000, \$35; over \$750,000 and not over \$1,000,000, \$40; \$1,000,000 and over, \$40, plus \$2 for each \$100,000 and fraction thereof, up to \$5,000,000, then \$1 additional for each \$100,000 or fraction thereof. The expenses incurred and services, other than examinations performed specially for any bank, shall be paid by such bank or banking institution. No bank may be compelled to pay for more than one examination in each year unless it appears that the condition of the bank, banking institution, or banker is precarious, or in any way unsatisfactory, then it is the duty of the commission to order a special examination, which must be paid for by such bank at the same rates as the annual examinations.

The corporation commission shall not later than the tenth of each month turn into the state treasury any balance it may have on hand from fees collected the previous month for bank examinations or expenses of the examiners, after payment of the expenses incurred by the examiners.

Rev., s. 249; 1903, c. 275, s. 25; 1917, c. 165, ss. 2, 3.

30. May take possession of bank; receiver appointed. A bank examiner who has filed the bond required by the commission, when ordered by the commission, has authority to take possession of any bank doing business under the laws of this state and retain possession thereof for a time sufficient to make a thorough examination into its affairs and financial condition; and in case it is found by the examiner that the bank is insolvent or is conducting its business in an unsafe and unauthorized manner, or is jeopardizing the interests of its depositors, then he, when authorized by the corporation commission, has authority to take and retain possession of all the property of every description belonging to such bank, corporation, partnership, or individual, until the corporation commission can receive and act on the report made by the examiner of such bank, and have a receiver appointed, for the purpose of winding up and settling the affairs of such bank, banking institution or banker, according to law; and the corporation commission is hereby empowered, in its own name, to institute and maintain civil actions for the appointment of receivers in such cases, and for such other relief

as is necessary or proper to protect the creditors of the bank. The commissioners may grant such bank, corporation or individual sixty days in which to correct any errors or irregularities, and make good any deficiencies or losses shown in any reports or otherwise.

Rev., s. 250; 1903, c. 275, s. 30.

31. May make arrests; procedure. When it appears to a bank examiner, by examination or otherwise, that any officer, agent, employee, director, stockholder or owner of a bank or banking institution is guilty of a violation of the criminal laws of the state relating to banks and banking institutions, it is his duty to hold and detain such person until a warrant can be procured for his arrest; and for such purpose the examiner has all the powers of a peace officer of such county, and may arrest without warrant for past offenses. Upon report of his action to the corporation commission, it may direct the release of the person held, or, if in its judgment he should be prosecuted, the commission shall cause the solicitor of the judicial district in which the detention is had to be promptly notified, and the action against such person shall be continued a reasonable time to enable the solicitor to be present at the trial.

Rev., s. 251.

NOTE. For malfeasance by bank examiners, see Crimes and Punishments.

CHAPTER 7

BASTARDY

1. Justices have jurisdiction; when warrant issued.
2. Complaint as to bastard by county commissioners.
3. Woman declaring father; issue of paternity; appeal.
4. Judgment on appeal to superior court against putative father.
5. Woman's examination presumptive evidence.
6. Upon appeal parties and witnesses recognized.
7. Putative father out of county.
8. Continuance till birth of child.
9. Allowance and bond.
10. Action barred in three years after birth.
11. Execution for maintenance.
12. Putative father when committed or apprenticed.
13. Legitimation of bastards.
14. Effects of legitimation.
15. Legitimation by subsequent marriage.

1. Justices have jurisdiction; when warrant issued. Justices of the peace of the several counties 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.

Rev., s. 252; Code, s. 31.

2. Complaint as to bastard by county commissioner. When complaint is made on affidavit by a county commissioner to a 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, the justice may cause her to be brought before him, or any other justice of the county, to be examined upon oath respecting the father. If she refuses to declare the father, she shall pay a fine of five dollars and give a bond payable to the state with sufficient surety to keep such child 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.

Rev., s. 253; Code, s. 32.

3. Woman declaring father; issue of paternity; appeal. If any woman, upon oath, accuses any man of being the father of her bastard child, the justice before whom such oath is made shall cause him to be brought before some justice of the peace of such county to answer the charge. If he denies, upon oath, that he is the father of such child, the justice shall proceed to try the issue of paternity, and if it is found that he is the father of the child, or if he does not deny upon oath that he is the father of the child, then he shall stand charged with the maintenance thereof, as the court may order, and shall give bond, with sufficient surety, payable to the state, to perform said order, and to indemnify the county where such child is born from charges for his maintenance and may be committed to prison until he finds surety for the same, and shall be liable for the costs of

the issue or proceeding. From this judgment and finding the affiant, the woman or the defendant may appeal to the next term of the superior court of the county where the trial is to be had de novo.

Rev., s. 254; Code, s. 32.

4. Judgment on appeal to superior court against putative father. If the jury at term finds that the person accused is the father of the child, then the judge shall make the order for the maintenance and for costs of proceeding, and shall take bond from the defendant and his sureties for the maintenance of the child and to indemnify the county and pay the costs; and, in default thereof, may imprison the defendant.

Rev., s. 255; Code, s. 32.

5. Woman's examination presumptive evidence. Upon the trial of the issue of paternity whether before the justice or at term, the examination of the woman taken and returned, shall be presumptive evidence against the person accused, subject to be rebutted by other evidence which may be introduced by the defendant.

Rev., s. 255; Code, s. 32.

6. Upon appeal parties and witnesses recognized. When an appeal is taken the justice shall recognize the person accused of being the father of the child with sufficient surety for his appearance at the next term of the superior court for the county, and to abide by and perform the order of the court. The justice shall also recognize the woman and other witnesses to appear at the superior court, and shall return to the court the original papers in the proceeding and a transcript of his proceedings as required in other cases of appeal. If the putative father fails to appear, unless for good cause shown, the judge shall direct the issue of paternity to be tried. If the issue is found against the person accused, he shall order a *capias* or attachment to be issued for the father, and may also enter up judgment against the father and his surety on his recognizance.

Rev. s. 257; Code, s. 33.

7. Putative father out of county. If the putative father escapes or is in any other county than that of the justice issuing the warrant, it shall be issued, indorsed, executed and returned as provided in warrants in criminal actions.

Rev., s. 256; Code, s. 32.

8. Continuance till birth of child. When the judge or justice, as the case may be, trying the issue of paternity, deems it proper, he may continue the case until the woman is delivered of the child. When a continuance is granted, the court shall recognize the person accused of being the father of the child with surety for his appearance either at the next term of the court or at a time to be fixed by the justice granting the continuance, which shall be after the delivery of the woman.

Rev., s. 258; Code, s. 34.

9. Allowance and bond. When the issue of paternity is found against the putative father, or when he admits the paternity, the judge or justice shall make an allowance to the woman not exceeding the sum of fifty dollars, to be paid in

such installments as the judge or justice shall see fit, and he shall give bond to indemnify the county as prescribed by law; and in default of such payment he shall be committed to prison.

Rev., s. 259; Code, s. 35.

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

Rev., s. 260; Code, s. 36.

11. Execution for maintenance. When the judge or justice charges the father of a bastard child with its maintenance and the father neglects to pay the same, then the judge or justice, upon application of the party aggrieved, notice being served on the defendant at least ten days before the return day stated in the notice, or such notice being returned by the sheriff or constable that the defendant is not to be found, may order an execution against the property of the father for such sum as the court shall adjudge sufficient for the maintenance of the bastard child.

Rev., s. 261; Code, s. 37.

12. Putative father when committed or apprenticed. In all cases arising under this chapter, when the putative father is charged with costs or the payment of money for the support of a bastard child, and he is, by law, subject to be committed to prison in default of paying the same, it is competent for the court to sentence him to the house of correction for such time not exceeding twelve months, as the court may deem proper. The 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, and the price obtained shall be paid to the county treasurer. On the indenture being signed by the judge of the court and by the master receiving such apprentice, the person thus bound shall be treated and regarded as an apprentice in all matters except education.

Rev., s. 262; Code, s. 38.

13. Legitimation of bastards. The putative father of any illegitimate child may apply by petition in writing to the superior court of the county in which he resides, praying that such child may be declared legitimate; and if it appears 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.

Rev., s. 263; Code, s. 39.

14. Effects of legitimation. 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. 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.

Rev., s. 264; Code, s. 40.

15. Legitimation by subsequent marriage. When the mother of any bastard child and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall in all respects after such intermarriage be deemed and held to be legitimate and entitled to all the rights in and to the estate, real and personal, of its father and mother that it would have had had it been born in lawful wedlock.

1917, c. 219, s. 1.

CHAPTER 8

BONDS

ART. 1. OFFICIAL BONDS.

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35. Officer liable for negligence in collecting debt.

ART. 1. OFFICIAL BONDS

1. Irregularities not to invalidate. When any instrument is taken by or received under the sanction of the board of county commissioners, 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 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.

Rev., s. 279; Code, s. 1891; R. C., c. 78, s. 9; 1842, c. 61; 1869-70, c. 169, s. 16.

2. Penalty for officer acting without bond. Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the state for each attempt so to exercise his office.

Rev., s. 278; Code, s. 1882; R. C., c. 78, s. 8.

3. Condition and term of official bonds. 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 give a bond for the term of the office to which such officers are chosen, respectively.

Rev., s. 308; Code, s. 1874; 1869-70, c. 169; 1876-7, c. 275, s. 5; 1895, c. 207, s. 4; 1899, c. 54, s. 54.

4. Annual examination of bonds; keeping good; increase. The bonds shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits herein prescribed, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits herein prescribed for the term of office.

Rev., s. 308; Code, s. 1874; 1869-70, c. 169; 1876-7, c. 275, s. 5; 1895, c. 207, s. 4; 1899, c. 54, s. 54.

5. Effect of failure to renew bond. Upon the failure of any such officer to make such 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 is 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.

Rev., s. 309; Code, s. 1875; 1869-70, c. 169, s. 2.

6. Justification of sureties. 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 some person authorized by law to administer an oath, 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. But nothing herein shall be construed to abridge the power of the said board of

commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix for examination as to his financial condition or other qualifications as surety.

Rev., s. 310; Code, s. 1876; 1869-70, c. 169, s. 3; 1879, c. 207; 1889, c. 7; 1891, c. 385; 1901, c. 32.

7. Action against officer to compel justification; office vacated; successor appointed. When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer, not exceeding twenty days, to give another bond, the judge fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure to give a good bond to the satisfaction of the judge within the twenty days, he shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid.

Rev., s. 316; Code, s. 1885; 1874-5, c. 120.

8. Successor to give bond; official bonds to be liabilities. The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities.

Rev., s. 317; Code, s. 1886; 1874-5, c. 120, s. 2.

9. Judge to file statement of proceedings with commissioners. When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him.

Rev., s. 318; Code, s. 1887; 1874-5, c. 120, s. 3.

10. Approval, acknowledgment and custody of bonds. 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 endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds for safe keeping.

Rev., s. 311; Code, s. 1877; 1869-70, c. 169, s. 4; 1879, c. 207, s. 2.

11. Votes of commissioners on approval recorded; penalty. It is the duty of the clerk of the board of commissioners to record in the proceedings of the board

the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board.

Rev., s. 312; Code, ss. 1878, 1881; 1869-70, c. 169, ss. 5, 8; R. C., c. 78, s. 7; 1790, c. 327; 1809, c. 777.

12. When commissioner liable as surety. Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond.

Rev., s. 313; Code, s. 1879; 1869-70, c. 169, s. 6.

13. Record of board conclusive as to facts stated. In all actions under the preceding section, a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth.

Rev., s. 314; Code, s. 1881; 1869-70, c. 169, s. 8.

14. Person required to approve bond not to be surety. No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond, upon the sufficiency of which the board of which he is a member may have to pass.

Rev., s. 315; Code, s. 1887; 1874-5, c. 120, s. 3.

ART. 2. BONDS IN SURETY COMPANY

15. State officers may be bonded in surety company. All persons who are required to give bond to the state of North Carolina to be received by the governor or by any department of the state government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the state of North Carolina, subject to such regulations as the governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the insurance commissioner as to the condition of such company as required in this Revisal.

Rev., s. 272; 1901, c. 754.

NOTE. For certificate of solvency and insolvency of surety companies, see Insurance.

16. Surety company sufficient surety on bonds and undertakings. A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein shall be sufficient when it is executed or guaranteed by a corporation authorized in this state to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it is given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings.

Rev., s. 273; 1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706.

16a. Clerk to notify county commissioners of condition of company. Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this state, and of each surety company whose license has been revoked, in which any officer of the county has been bonded.

Rev., ss. 295, 4803.

17. Release of company from liability. A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings.

Rev., s. 274; 1899, c. 54, s. 48.

18. Company not to plead ultra vires. Any company which executes any bond, obligation or undertaking under the provisions of this article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability.

Rev., s. 275; 1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5.

19. Failure to pay judgment is forfeiture. If a surety company against which a judgment is recovered fails to discharge the same within sixty days from the time such final judgment is rendered, it shall forfeit its right to do business in this state, and the insurance commissioner shall cancel its license.

Rev., s. 275; 1901, c. 706, s. 1, subsec. 5.

20. On presentation of proper bond officer to be inducted. Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the state of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office.

Rev., s. 276; 1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5.

21. Expense of fiduciary bond charged to fund. A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship not exceeding one-half of one per cent per annum on the account of such bonds as the clerk, judge or court may allow.

Rev., s. 277; 1901, c. 706, s. 1, subsec. 5.

NOTE. For requisites for surety companies to be accepted as bondsmen, see Insurance.

ART. 3. MORTGAGE IN LIEU OF BOND

22. Mortgage in lieu of bond required to be given. An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the state of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for thirty days.

Rev., s. 265; Code, s. 118; 1874-5, c. 103, s. 2.

23. Mortgage in lieu of security for appearance, costs, or fine. Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the state of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk or justice of the peace in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

Where such mortgage upon real property is executed before a justice of the peace the power of sale shall be enforced by the clerk of the court of the county in which the criminal proceeding is had.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale of the mortgaged property, as shall also the following fees, to wit: For each sale of real property mortgaged under this section the clerk shall receive two dollars, and for each sale of personal property mortgaged under this section the clerk or justice of the peace who enforces the power of sale shall receive one dollar.

Rev., s. 266; Code, s. 120; 1874-5, c. 103, s. 3; 1891, c. 425, ss. 1, 2, 3.

24. Cancellation of mortgage in such proceedings. Any mortgage given by any person in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action, which has been registered, when the party made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the court of the county where such action was pending by entry of "satisfaction" upon the margin of the record where such mortgage is recorded, in the presence of the register of deeds or his deputy, who shall subscribe his name as a witness thereto, and such release shall have the effect to discharge and release all the right, title and interest of the state of North Carolina in and to the property described in such mortgage.

Rev., s. 267; 1905, c. 106.

25. Clerk of court may give surety by mortgage deposited with register. In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the state, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk.

Rev., s. 268; Code, s. 122; 1874-5, c. 103, s. 6.

26. Mortgage in lieu of bond to prosecute or defend in civil case. It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking, required to be given at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for thirty days.

Rev., s. 269; Code, s. 117; 1874-5, c. 103, s. 1.

27. Affidavit of value of property required. In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed, or of the justice, to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given.

Rev., s. 270; Code, s. 121; 1874-5, c. 103, s. 4.

28. When additional security required. If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given.

Rev., s. 271; Code, s. 119; 1874-5, c. 103, s. 5.

ART. 4. ACTIONS ON BONDS

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

Rev., s. 280; Code, s. 51; R. C., c. 13, s. 11.

30. On official bonds injured party sues in name of state; successive suits. Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry-taker, surveyor, sheriff, coroner, constable, county treasurer, or other officer may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the state, without any

assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office.

Rev., s. 281; Code, s. 1883; R. C., c. 78, s. 1; 1793, c. 384, s. 1; 1833, c. 17; 1825, c. 9; 1869-70, c. 169, s. 10.

31. Complaint must show party in interest; election to sue officer individually. Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury.

Rev., s. 282; Code, s. 1884; R. C., c. 78, s. 2; 1793, c. 384, ss. 2, 3; 1869-70, c. 169, s. 11.

32. Summary remedy on official bond. When a sheriff, coroner, constable, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days notice in writing of the motion must have been previously given.

Rev., s. 283; Code, s. 1889; R. C., c. 78, s. 5; 1819, c. 1002; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2.

33. Officer unlawfully detaining money liable for damages. When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum per annum from the time of detention until payment.

Rev., s. 284; Code, s. 1890; R. C., c. 78, s. 9; 1819, c. 1002, s. 2; 1868-9, c. 169.

34. 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 the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which, by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions.

Rev., s. 285; Code, s. 1345; R. C., c. 44, s. 10; 1844, c. 38; 1881, c. 8.

35. Officer liable for negligence in collecting debt. When a claim is placed in the hands of any sheriff, coroner or constable for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof.

Rev., s. 286; Code, s. 1888; R. C., c. 78, s. 3; 1844, c. 64; 1869-70, c. 169, s. 12.

NOTE. For particular classes of bonds allowed as investments to fiduciaries, see Trustees.

CHAPTER 9

BOUNDARIES

1. Special proceedings to establish.
2. Occupation sufficient ownership.
3. Procedure.
4. Surveys in disputed boundaries.

1. Special proceeding to establish. The owner of land, any of whose boundary lines are in dispute, may establish any of such lines by special proceedings in the superior court of the county in which the land or any part thereof is situated.

Rev., s. 325; 1893, c. 22.

2. Occupation sufficient ownership. The occupation of land constitutes sufficient ownership for the purposes of this chapter.

Rev., s. 326; 1893, c. 22; 1903, c. 21.

3. Procedure. *1. Petition; summons; hearing.* The owner shall file his petition under oath stating therein facts sufficient to constitute the location of such line as claimed by him and making defendants all adjoining owners whose interest may be affected by the location of said line. The clerk shall thereupon issue summons to the defendants as in other cases of special proceedings. If the defendants fail to answer, judgment shall be given establishing the line according to petition. If the answer deny the location set out in the petition, the clerk shall issue an order to the county surveyor or, if cause shown, to any competent surveyor to survey said line or lines according to the contention of both parties, and make report of the same with a map at a time to be fixed by the clerk, not more than thirty days from date of order; to which time the cause shall be continued. The cause shall then be heard by the clerk upon the location of said line or lines and judgment given determining the location thereof.

2. Appeal to term. Either party may within ten days after such determination by the clerk serve notice of appeal from the ruling of the clerk determining the said location. When notice of appeal is served it shall be the duty of the clerk to transmit the issues raised before him to the next term of the superior court of the county for trial by a jury, when the question shall be heard de novo.

3. Survey after judgment. When final judgment is given in the proceeding the court shall issue an order to the surveyor to run and mark the line or lines as determined in the judgment. The surveyor shall make report including a map of the line as determined, which shall be filed with the judgment roll in the cause and entered with the judgment on the special proceedings docket.

4. Procedure as in special proceedings. The procedure under this chapter the jurisdiction of the court, and the right of appeal shall, in all respects, be the same as in special proceedings except as herein modified.

Rev., s. 326; 1893, c. 22; 1903, c. 21.

4. Surveys in disputed boundaries. When in any suit pending in the superior court, the boundaries of lands are drawn in question, the court may, if deemed necessary, order a survey of the lands in dispute, agreeable to the boundaries and lines expressed in each party's titles, and such other surveys as shall be deemed useful; which surveys shall be made by two surveyors appointed by the court, one to be named by each of the parties, or by one surveyor, if the parties agree; and the surveyors shall attend according to the order of the court, and make the surveys, and shall make as many accurate plans thereof as shall be ordered by the court; and for such surveys the court shall make a proper allowance, to be taxed as among the costs of the suit.

Rev., s. 1504; Code, s. 939; R. C., c. 31, s. 119; 1779, c. 157; 1786, c. 252.

CHAPTER 10

BURNT AND LOST RECORDS

1. Copy of destroyed record as evidence; may be recorded.
2. Originals may be again recorded.
3. Establishing boundaries and interest, where original and copy destroyed.
4. Copy of lost will may be probated.
5. Copy of lost will as evidence; letters to issue.
6. Establishing contents of will, where original and copy destroyed.
7. Perpetuating destroyed judgments and proceedings.
8. Color of title under destroyed instrument.
9. Action on destroyed official bond.
10. Destroyed witness tickets; duplicates may be filed.
11. Replacing lost official conveyances.
12. Court records as proof of destroyed instruments set out therein.
13. Copies contained in court records may be recorded.
14. Rules for petitions under this chapter.
15. Records allowed under this chapter to have effect of original records.
16. Destroyed court records proved prima facie by recitals in conveyances executed before their destruction.
17. Conveyances reciting court records prima facie evidence thereof.
18. Court records and conveyances to which chapter extends.
19. Local, Moore County; certain records presumed burned.
20. Local: Buncombe, Haywood, Madison, and Yancey; destroyed court records therein.

1. **Copy of destroyed record as evidence; may be recorded.** When the office of any registry is destroyed by fire or other accident, and the records and other papers thereof are burnt or destroyed, the copies of all such proceedings; instruments and papers as are of record or registry, certified by the proper officer, though without the seal of office, shall be received in evidence whenever the original or duly certified exemplifications would be. Such copies, when the court is satisfied of their genuineness, may be ordered to be recorded or registered.

Rev., s. 327; Code, s. 55.

2. **Originals may be again recorded.** All original papers, once admitted to record or registry, whereof the record or registry is destroyed, may, on motion, be again recorded or registered, on such proof as the court shall require.

Rev., s. 328; Code, s. 56.

3. **Establishing boundaries and interest, where original and copy destroyed.** When any conveyance of real estate, or of any right or interest therein, is lost, the registry thereof being also destroyed, any person claiming under the same may cause the boundaries thereof to be established in the manner provided in the chapter entitled Boundaries, or he may proceed in the following manner to establish both the boundaries and the nature of his estate:

He shall file his petition before the clerk of the superior court, setting forth the whole substance of the conveyance as truly and specifically as he can, the location and boundaries of his land, whose land it adjoins, the estate claimed therein, and a prayer to have his own boundaries established and the nature of his estate declared.

All persons claiming any estate in the premises, and those whose lands adjoin shall be notified of the proceedings. Unless they or some of them, by answer on

oath, deny the truth of all or some of the matters alleged, the clerk shall order a surveyor to run and designate the boundaries of the petitioner's land, and return his survey, with a plot thereof, to court. This, when confirmed, shall, with the declaration of the court as to the nature of the estate of the petitioner, be registered and have, as to the persons notified, the effect of a deed for the same, executed by the person possessed of the same next before the petitioner. But in all cases, however, wherein the process of surveying is disputed, and the surveyor is forbidden to proceed by any person interested, the same proceedings shall be had as under the chapter entitled Boundaries.

If any of the persons notified deny by answer the truth of the conveyance, the clerk shall transfer the issues of fact to the superior court at term, to be tried as other issues of fact are required by law to be tried; and on the verdict and the pleadings, the judge shall adjudge the rights of the parties, and declare the contents of the deed, if any deed is found by the jury, and allow the registration of such judgment and declaration, which shall have the force and effect of a deed.

Rev., s. 328; Code, s. 56.

4. Copy of lost will may be probated. In counties where the original wills on file in the office of the clerk of superior court, and will-books containing copies, are lost or destroyed, if the executor or any other person has preserved a copy of a will (the original being so lost or destroyed) with a certificate appended, signed by a clerk of the court in whose office the will was, or is required to be filed, stating that said copy is a correct one, this copy may be admitted to probate, under the same rules and in the same manner as now prescribed by law for proving wills. The proceedings in such cases shall be the same as though such copy was the original offered for the first time for probate, except that the clerk who signed such certificate shall, on oath, acknowledge his signature, or in case it appears that he has died or left the state, then his signature shall be proved by a competent witness; and the witness or witnesses to the original, who may be examined, shall be required to swear that he or they signed in the presence of the testator and by his direction a paper writing purporting to be his last will and testament.

Rev., s. 329; Code, s. 57.

5. Copy of lost will as evidence; letters to issue. In any action or proceeding at law, where it becomes necessary to introduce such will to establish title, or for any other purpose, a copy of the will and of the record of the probate, with a certificate signed by the clerk of the superior court for the county where the will may be recorded, stating that said record and copy are full and correct, shall be admitted as competent evidence; and when a copy of a will is admitted to probate, the clerk shall thereupon issue letters testamentary.

Rev., s. 330; Code, s. 58.

6. Establishing contents of will, where original and copy destroyed. Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file his petition in the office of the clerk of the superior court, setting forth the entire contents thereof, according to the best of his knowledge, information and belief. All persons having an interest under the same shall be made parties, and if the truth of such petition is denied, the

issues of fact shall be transferred to the superior court at term for trial by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the judge, shall be recorded as the will of the testator. Any devisee or legatee is a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same.

Rev., s. 331; Code, s. 59.

7. Perpetuating destroyed judgments and proceedings. Every person desirous of perpetuating the contents of destroyed judgments, orders 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. 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.

Rev., s. 332; Code, s. 60.

8. Color of title under destroyed instrument. Every person who has 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, is 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 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, makes affidavit and produces such proof as is 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: Provided further, that such presumption shall not arise against infants, persons of nonsane 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.

Rev., s. 333; Code, s. 61.

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

Rev., s. 334; Code, s. 62.

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

Rev., s. 335; Code, s. 63.

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

Rev., s. 336; Code, s. 64.

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

Rev., s. 337; Code, s. 65.

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

Rev., s. 338; Code, s. 66.

14. Rules for petitions under this chapter. The following rules shall be observed in petitions and motions under this chapter:

1. The facts stated in every petition or motion shall be verified by affidavit of the petitioner that they are true according to the best of his knowledge, information, and belief.

2. The instrument or paper sought to be established by any petition shall be fully set forth in its substance, and its precise language shall be stated when the same is remembered.

3. All persons interested in the prayers of the petition or decree, shall be made parties.

4. Petitions to establish a record of any court shall be filed at term in the superior court of the county where the record is sought to be established. Other petitions may be filed in the office of the clerk.

5. The costs shall be paid as the court may decree.

6. Appeals shall be allowed as in all other cases, and where the error alleged shall be a finding by the superior court at term, of a matter of fact, the same may be removed on appeal to the supreme court, and the proper judgments directed to be entered below.

7. It shall be presumed that any order or record of the court of pleas and quarter sessions, which was made and has been lost or destroyed, was made by a legally constituted court, and the requisite number of justices, without naming said justices.

Rev., s. 339; Code, s. 69; 1893, c. 295.

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

Rev., s. 340; Code, s. 68.

16. Destroyed court records proved prima facie by recitals in conveyances executed before their destruction. The recitals, reference to, or mention of any decree, order, judgment or other record of any court of record of any county in which the courthouse, or records of said courts, or both, have been destroyed by fire or otherwise, contained, recited or set forth in any deed of conveyance, paper writing, or other bona fide written evidence of title, executed prior to the destruction of the courthouse and records of said county, by any executor or administrator with a will annexed, or by any clerk and master, superior court clerk, clerk of the court of pleas and quarter sessions, sheriff, or other officer, or commissioners appointed by either of said courts, and authorized by law to execute said deed or other paper writing, are deemed, taken and recognized as true in fact, and are prima facie evidence of the existence, validity and binding force of said decree, order, judgment or other record so referred to or recited in said deed, or paper writing, and are to all intents and purposes binding and valid against all persons mentioned or described in said instrument of writing, deed, etc., as purporting to be parties thereto, and against all persons who were parties to said decree, judgment, order or other record so referred to or recited, and against all persons claiming by, through or under them or either of them.

Rev., s. 341; Code, s. 69.

17. Conveyances reciting court records prima facie evidence thereof. Such deed of conveyance, or other paper writing, executed as aforesaid, and registered according to law, may be read in any suit now pending or which may hereafter be instituted in any court of this state, as prima facie evidence of the existence and validity of the decree, judgment, order, or other record upon which the same purports to be founded, without any other or further restoration or reinstatement of said decree, order, judgment, or record, than is contained in this chapter.

Rev., s. 342; Code, s. 70.

18. Court records and conveyances to which chapter extends. This chapter shall extend to records of any court which has been, or may be destroyed by fire or otherwise, and to any deed of conveyance, paper writing, or other bona fide evidence of title executed before the destruction of said records.

Rev., s. 343; Code, s. 71.

19. Local: Moore County; certain records presumed burned. In all cases in Moore County of bonds, indentures, accounts, minutes, judgment rolls and all other records that cannot be found on record or on file in the said clerk's office after diligent search therefor by the clerk of the court, and cannot be otherwise accounted for, the same having been on record or file therein on or before September fifth, one thousand eight hundred and eighty-nine, shall be presumed to have been destroyed by fire. In all cases in which said bonds, indentures, accounts, minutes, judgment rolls and other records or any part thereof have been lost or destroyed and in which it may become necessary to use the same in evidence, it shall be presumed that the same were executed, filed, audited or adjudicated, as the case may be, in due and legal form and were in all respects lawful records and documents.

Rev., s. 344; 1891, c. 55.

20. Local: Buncombe, Haywood, Madison and Yancey; destroyed court records therein. Whenever any of the records of any of the courts in this state have been burnt, lost or destroyed, and there is in existence any copy thereof, or of any part of the same, duly certified, whether under the seal of the court or otherwise, by any former clerk of said court, it shall be the duty of the present clerk of said court, or any clerk of said court hereafter in office, upon presentation to him of such copy and the payment of his lawful fees therefor, to record said copy upon the minutes or records of said court; and after the same shall have been so recorded the record then shall be used as and be taken and deemed and shall have all the force and effect of the original record so burnt, lost or destroyed; and such record thereof, or a copy of the same duly certified by the clerk of said court, shall be in all respects competent in the same way and manner as the original record in all the courts of this state. This section shall apply only to the counties of Buncombe, Madison, Yancey and Haywood.

Rev., s. 345; 1905, c. 308.

CHAPTER 11

CITIZENSHIP RESTORED

1. Petition filed.
2. When and where petition filed.
3. Notice given.
4. Hearing and evidence.
5. Decree.
6. Procedure in case of pardon or suspension of judgment.

1. Petition filed. Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited rights, and that he has not before been restored to the lost rights of citizenship.

Rev., s. 2675; Code, ss. 2938, 2940; R. C., c. 58, ss. 1, 3; 1840, c. 36, s. 4.

2. When and where petition filed. At any time after the expiration of four years from the date of conviction, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide resident, or in the superior court of the county, at term, where the indictment was found upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different counties, the petition shall be filed in the superior court of that county where the last indictment was found.

Rev., s. 2676; Code, ss. 2940, 2941; 1897, c. 110; R. C., c. 58, ss. 3, 4; 1840, c. 36, s. 3.

3. Notice given. Upon filing the petition the clerk of the court shall advertise the substance thereof, at the courthouse door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard.

Rev., s. 2677; Code, s. 2938; R. C., c. 58, s. 1; 1840, c. 36.

4. Hearing and evidence. The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition, or by any one who may oppose the grant of his prayer. The petitioner shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this state for three years next preceding the filing of the petition.

Rev., s. 2678; Code, ss. 2938, 2939; 1897, c. 110; 1901, c. 533; R. C., c. 58, ss. 1, 2; 1840, c. 36.

5. Decree. At the hearing the court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved that the character of

applicant for truth and honesty is good, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto.

Rev., s. 2679; Code, s. 2938; R. C., c. 58, s. 1; 1840, c. 36.

6. Procedure in case of pardon or suspension of judgment. Any person convicted of any crime, whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor, or the court suspended judgment on payment of the costs and the costs have been paid, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the governor, and also that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. No notice of the petition in such case shall be necessary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied as to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the lost rights of citizenship, and the clerk shall spread the decree upon his minute docket: Provided, that in all cases where the court suspended judgment it shall not be necessary to allege or prove that pardon has been granted by the governor, and in such cases the petition may be made and the forfeited rights of citizenship restored at any time after conviction.

Rev., s. 2680; 1899, cc. 44, 249; 1905, c. 547.

CHAPTER 12

CIVIL PROCEDURE

SUBCHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

ART. 1. DEFINITIONS.

1. Remedies.
2. Actions.
3. Special proceedings.
4. Kinds of action.
5. Criminal action.
6. Civil action.
7. When court means clerk.

ART. 2. GENERAL PROVISIONS.

8. Remedies not merged.
9. One form of action.
10. Plaintiff and defendant.
11. How party may appear.
12. Feigned issues abolished and substituted.
13. Jurisdiction of clerk.

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ART. 3. LIMITATIONS. GENERAL PROVISIONS.

14. When action commenced.
15. Run from accrual of cause of action; objection.
16. Deemed pleaded by insane party.
17. Disabilities.
18. Disability of marriage.
19. Cumulative disabilities.
20. Disability must exist when right of action accrues.
21. Defendant out of state; when action begun or judgment enforced.
22. Death before limitation expires; action by or against executor.
23. Time of stay by injunction or prohibition.
24. Time during controversy on probate of will or granting letters.
25. New action within one year after nonsuit.
26. New promise must be in writing.
27. Admission by partner or comaker.
28. Undisclosed partner.
29. Cotenants.
30. Applicable to actions by state.
31. Action on open account.
32. Not applicable to bank bills.
33. Actions against bank directors or stockholders.
34. Aliens in time of war.

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35. Title against state.
36. Possession presumed out of state.
37. Such possession valid against claimants under state.
38. Seven years possession under color.
39. Within 20 years necessary.
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41. Action after entry.
42. Possession follows legal title.
43. Tenant's possession is landlord's.
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45. No title by possession of public ways.

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46. Periods prescribed.

- 47. Ten years.
- 48. Seven years.
- 49. Six years.
- 50. Five years.
- 51. Three years.
- 52. Two years.
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- 54. Six months.
- 55. All other actions, ten years.

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- 56. Real party in interest; grantees and assignees.
- 57. Suits for penalties.
- 58. Action by purchaser under judicial sale.
- 59. Action by executor or trustee.
- 60. Infants, etc., sue by guardian or next friend.
- 61. Infants, etc., defend by guardian ad litem.
- 62. Guardian ad litem to file answer.
- 63. Married women.
- 64. Who may be plaintiffs.
- 65. Who may be defendants.
- 66. Joinder of parties; one may appear for class.
- 67. Persons severally liable.
- 68. Persons jointly liable.
- 69. New parties by order of court; intervener.
- 70. Abatement of actions.
- 71. Procedure on death of party.

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- 73. Where cause of action arose
- 74. Official bonds, executors and administrators
- 75. Domestic corporations
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- 77. Actions against railroads.
- 78. Venue in all other cases.
- 79. Change of venue.
- 80. Removal for fair trial.
- 81. Affidavits on hearing for removal, when removal ordered.
- 82. Additional jurors from other counties.
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- 85. Contents; return; seal.
- 86. Issues to several counties.
- 87. When directed to officer of adjoining county.
- 88. When officer must execute and return.
- 89. When issued within ten days of term.
- 90. Issued more than, served within, ten days of term.
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- 92. Alias and pluries.
- 93. Discontinuance.
- 94. Service by reading.
- 95. Service by copy.
- 96. Service by publication.
- 97. Manner of publication.
- 98. When service by publication complete.
- 99. Jurisdiction acquired from service.

- 100. Proof of service.
- 101. Voluntary appearance by defendant.
- 102. Personal service on nonresident.
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- 136. Form of verification.
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- 146. How conditions precedent pleaded.
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- 323. Debtors of judgment debtor summoned.
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SUBCHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

ART. 1. DEFINITIONS

1. Remedies. Remedies in the courts of justice are divided into—

1. Actions.
2. Special proceedings.

Rev., s. 346; Code, s. 125; C. C. P., s. 1.

2. Actions. An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense.

Rev., s. 347; Code, s. 126; C. C. P., s. 2; 1868-9, c. 277, s. 2.

3. Special proceedings. Every other remedy is a special proceeding.

Rev., s. 348; Code, s. 127; C. C. P., s. 3.

4. Kinds of actions. Actions are of two kinds—

1. Civil.
2. Criminal.

Rev., s. 349; Code, s. 128; C. C. P., s. 4.

5. Criminal action. A criminal action is—

1. An action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof.

2. An action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime against his person or property.

Rev., s. 350; Code, s. 129; C. C. P., s. 5; Const., Art. IV, s. 1.

6. Civil action. Every other is a civil action.

Rev., s. 351; Code, s. 130; C. C. P., s. 6.

7. When court means clerk. In the following sections which confer jurisdiction or power, or impose duties, where the words "superior court," or "court," in reference to a superior court are used, they mean the clerk of the superior court, unless otherwise specially stated, or unless reference is made to a regular term of the court, in which cases the judge of the court alone is meant.

Rev., s. 352; Code, s. 132; C. C. P., s. 9.

NOTE. For the jurisdiction of clerk, see this chapter, sec. 13.

ART. 2. GENERAL PROVISIONS

8. Remedies not merged. Where the violation of a right admits both of a civil and a criminal remedy, the right to prosecute the one is not merged in the other.

Rev., s. 353; Code, s. 131; C. C. P., s. 7.

9. One form of action. The distinction between actions at law and suits in equity and the forms of such actions and suits are abolished, and there is but

one form of action for the enforcement or protection of private rights and the redress of private wrongs, which is denominated a civil action.

Rev., s. 354; Code, s. 133; C. C. P., s. 12; Const., Art. IV, s. 1.

10. Plaintiff and defendant. In civil actions the party complaining is the plaintiff, and the adverse party the defendant.

Rev., s. 355; Code, s. 134; C. C. P., s. 13.

11. How party may appear. A party may appear either in person or by attorney in actions or proceedings in which he is interested.

Rev., s. 356; Code, s. 109; C. C. P., s. 423.

12. Feigned issues abolished and substituted. Feigned issues are abolished, and instead thereof, in the cases where the power formerly existed to order a feigned issue, or when a question of fact not put in issue by the pleadings is to be tried by a jury, an order for the trial may be made by the judge, stating distinctly and plainly the question of fact to be tried; and this order is the only authority necessary for a trial.

Rev., s. 357; Code, s. 135; C. C. P., s. 15.

13. Jurisdiction of clerk. The clerk of the superior court has jurisdiction to hear and decide all questions of practice and procedure and all other matters over which jurisdiction is given to the superior court, unless the judge of the court or the court at a regular term is expressly referred to.

Rev., s. 358; Code, s. 251; C. C. P., s. 108.

SUBCHAPTER 2. LIMITATIONS

ART. 3. LIMITATIONS, GENERAL PROVISIONS

14. When action commenced. An action is commenced as to each defendant when the summons is issued against him.

Rev., s. 359; Code, s. 161; C. C. P., s. 40.

15. Run from accrual of cause of action; objection. Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute. The objection that the action was not commenced within the time limited can only be taken by answer.

Rev., s. 360; Code, s. 138; C. C. P., s. 17.

16. Deemed pleaded by insane party. On the trial of any action or special proceeding to which an insane person is a party, such insane person is deemed to have pleaded specially any defense, and shall on trial have the benefit of any defense, whether pleaded or not, that might have been made for him by his guardian or attorney under the provisions of this chapter. The court, at any time before the action or proceeding is finally disposed of, may order the bringing in, by proper notice, of one or more of the near relatives or friends of the insane person, and may make such other order as it deems necessary for his proper defense.

Rev., s. 361; 1889, c. 89, s. 2.

17. Disabilities. A person entitled to commence an action, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, who is at the time the cause of action accrued, either,

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under sentence for a criminal offense;

May bring his action within the times herein limited, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the same, when he must commence his action, or make his entry, within three years next after the removal of the disability, and at no time thereafter.

Rev., s. 362; Code, ss. 148, 163; C. C. P., ss. 27, 142; 1899, c. 78.

18. Disability of marriage. In any action in which the defense of adverse possession is relied upon, the time computed as constituting such adverse possession shall not include any possession had against a feme covert during coverture prior to February thirteenth, one thousand eight hundred and ninety-nine.

Rev., s. 363; 1899, c. 78, ss. 2, 3.

19. Cumulative disabilities. When two or more disabilities coexist at the time the right of action accrues, or when one disability supervenes an existing one, the limitation does not attach until they all are removed.

Rev., s. 364; Code, ss. 149, 170; C. C. P., ss. 28, 49.

20. Disability must exist when right of action accrues. No person may avail himself of a disability, unless it existed when his right of action accrued.

Rev., s. 365; Code, s. 169; C. C. P., s. 48.

21. Defendant out of state; when action begun or judgment enforced. If, when the cause of action accrues or judgment is rendered or docketed against a person, he is out of the state, action may be commenced, or judgment enforced, within the times herein limited, after the return of the person into this state, and if, after such cause of action accrues or judgment is rendered or docketed, such person departs from and resides out of this state, or remains continuously absent therefrom for one year or more, the time of his absence shall not be a part of the time limited for the commencement of the action, or the enforcement of the judgment.

Rev., s. 366; Code, s. 162; C. C. P., s. 41; 1881, c. 258, ss. 1, 2.

22. Death before limitation expires; action by or against executor. If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives after the expiration of that time, and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative after the expiration of that time, and within one year after the issuing of letters testamentary or of administration, provided the letters are issued within ten years of the death of such person. If the claim upon which

the cause of action is based is filed with the personal representative within the time above specified, and admitted by him, it is not necessary to bring an action upon such claim to prevent the bar, but no action shall be brought against the personal representative upon such claim after his final settlement.

Rev., s. 367; Code, s. 164; C. C. P., s. 43; 1881, c. 80.

NOTE. For survival of actions, see Administration, ss. 156-160.

23. Time of stay by injunction or prohibition. When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Rev., s. 368; Code, s. 167; C. C. P., s. 46.

24. Time during controversy on probate of will or granting letters. In reckoning time when pleaded as a bar to actions, that period shall not be counted which elapses during any controversy on the probate of a will or granting letters of administration, unless there is an administrator appointed during the pendency of the action, and it is provided that an action may be brought against him.

Rev., s. 369; Code, s. 168; C. C. P., s. 47.

25. New action within one year after nonsuit, etc. If an action is commenced within the time prescribed therefor, and the plaintiff is nonsuited, or a judgment therein reversed on appeal, or is arrested, the plaintiff, or if he dies and the cause of action survives, his heir or representative may commence a new action within one year after such nonsuit, reversal, or arrest of judgment, if the costs in the original action have been paid by the plaintiff before the commencement of the new suit, unless the original suit was brought in forma pauperis.

Rev., s. 370; Code, ss. 142, 166; C. C. P., ss. 21, 45; 1915, c. 211, s. 1.

26. New promise must be in writing. No acknowledgment or promise is evidence of a new or continuing contract, from which the statutes of limitations run unless it is contained in some writing signed by the party to be charged thereby; but this section does not alter the effect of any payment of principal or interest.

Rev., s. 371; Code, s. 172; C. C. P., s. 51.

27. Admission by partner or comaker. No act, admission or acknowledgment by partner after the dissolution of the copartnership, or by any of the makers of a promissory note or bond after the statute of limitation has barred the same, is evidence to repel the statute, except against the partner or maker of the promissory note or bond, doing the act or making the admission or acknowledgment.

Rev., s. 372; Code, s. 171; C. C. P., s. 50.

28. Undisclosed partner. The statutes of limitations apply to a civil action brought against an undisclosed partner only from the time the partnership became known to the plaintiff.

Rev., s. 378; 1893, c. 151.

29. Cotenants. If in actions by tenants in common or joint tenants of personal property, to recover the same, or damages for its detention or injury, any of them are barred of their recovery by limitation of time, the rights of the others are affected thereby, but they may recover according to their right and interest, notwithstanding such bar.

Rev., s. 374; Code, s. 173; C. C. P., s. 52.

30. Applicable to actions by state. The limitations prescribed by law apply to civil actions brought in the name of the state, or for its benefit, in the same manner as to actions by or for the benefit of private parties.

Rev., s. 375; Code, s. 159; C. C. P., s. 38.

31. Action on open account. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action accrues from the time of the latest item proved in the account on either side.

Rev., s. 376; Code, s. 160; C. C. P., s. 39.

32. Not applicable to bank bills. The limitations prescribed by law do not affect actions to enforce the payment of bills, notes or other evidences of debt, issued or put in circulation as money by banking corporations incorporated under the laws of this state.

Rev., s. 377; Code, s. 174; C. C. P., s. 53; 1874-5, c. 170.

33. Actions against bank directors or stockholders. The limitations prescribed by law do not affect actions against directors or stockholders of any banking association incorporated under the laws of this state, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

Rev., s. 378; Code, s. 175; C. C. P., s. 54.

34. Aliens in time of war. When a person is an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of the action.

Rev., s. 379; Code, s. 165; C. C. P., s. 44.

ART. 4. LIMITATIONS, REAL PROPERTY

35. Title against state. The state will not sue any person for, or in respect of, any real property, or the issue or profits thereof, by reason of the right or title of the state to the same—

1. When the person in possession thereof, or those under whom he claims, has been in the adverse possession thereof for thirty years, this possession having been ascertained and identified under known and visible lines or boundaries; which shall give a title in fee to the possessor.

2. When the person in possession thereof, or those under whom he claims, has been in possession under colorable title for twenty-one years, this possession having been ascertained and identified under known and visible lines or boundaries.

Rev., s. 380; Code, s. 139; C. C. P., s. 18; R. C., c. 65, s. 2.

36. Possession presumed out of state. In all actions involving the title to real property title is conclusively deemed to be out of the state unless it is a party to the action, but this section does not apply to the trials of protested entries laid for the purpose of obtaining grants, nor to actions instituted prior to May 1, 1917.

1917, c. 195.

37. Such possession valid against claimants under state. All such possession as is described in the preceding section, under such title as is therein described, is hereby ratified and confirmed, and declared to be a good and legal bar against the entry or suit of any person, under the right or claim of the state.

Rev., s. 381; Code, s. 140; C. C. P., s. 19.

38. Seven years' possession under colorable title. When a person or those under whom he claims is and has been in possession of any real property, under known and visible lines and boundaries and under colorable title, for seven years, no entry shall be made or action sustained against such possessor by a person having any right or title to the same, except during the seven years next after his right or title has descended or accrued, who in default of suing within that time, shall be excluded from any claim thereafter made; and such possession, so held, is a perpetual bar against all persons not under disability.

Rev., s. 382; Code, s. 141; C. C. P., s. 20.

39. Seizin within twenty years necessary. No action for the recovery or possession of real property shall be maintained, unless it appears that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within twenty years before the commencement of the action, unless he was under the disabilities prescribed by law.

Rev., s. 383; Code, s. 143; C. C. P., s. 22.

40. Twenty years adverse possession. No action for the recovery or possession of real property, or the issues and profits thereof, shall be maintained when the person in possession thereof, or defendant in the action, or those under whom he claims, has possessed the property under known and visible lines and boundaries adversely to all other persons for twenty years; and such possession so held, gives a title in fee to the possessor, in such property, against all persons not under disability.

Rev., s. 384; Code, s. 144; C. C. P., s. 23.

41. Action after entry. No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action is commenced thereupon within one year after the making of the entry, and within the time prescribed in this chapter.

Rev., s. 385; Code, s. 145; C. C. P., s. 24.

42. Possession follows legal title. In every action for the recovery or possession of real property, or damages for a trespass on such possession the person establishing a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person is deemed to have been under and in subordination to, the

legal title, unless it appears that the premises have been held and possessed adversely to the legal title, for the time prescribed by law before the commencement of the action.

Rev., s. 386; Code, s. 146; C. C. P., s. 25.

43. Tenant's possession is landlord's. When the relation of landlord and tenant has existed, the possession of the tenant is deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Rev., s. 387; Code, s. 147; C. C. P., s. 26.

44. No title by possession of right of way. No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right of way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right of way, depot, stationhouse or place of landing, by any statute of limitation or by occupation of the same by any person whatever.

Rev., s. 388; Code, s. 150; C. C. P., s. 29; R. C., c. 65, s. 23.

45. No title by possession of public ways. No person or corporation shall ever acquire any exclusive right to any part of a public road, street, lane, alley, square or public way of any kind by reason of any occupancy thereof or by encroaching upon or obstructing the same in any way, and in all actions, whether civil or criminal, against any person or corporation on account of an encroachment upon or obstruction or occupancy of any public way it shall not be competent for a court to hold that such action is barred by any statute of limitations.

Rev., s. 389; 1891, c. 224.

ART. 5. LIMITATIONS, OTHER THAN REAL PROPERTY

46. Periods prescribed. The periods prescribed for the commencement of actions, other than for the recovery of real property, are as set forth in this article.

Rev., s. 390; Code, s. 151; C. C. P., s. 30.

47. Ten years. Within ten years an action—

1. Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

2. Upon a sealed instrument against the principal thereto.

3. For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same.

4. For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

Rev., s. 391; Code, s. 152; C. C. P., ss. 14, 31.

NOTE. Sale under power of sale in mortgage barred in ten years, see Mortgages and Deeds of Trust, s. 12.

Allotment of homestead suspends the statute. See this chapter, s. 332.

48. Seven years. Within seven years an action—

1. On a judgment rendered by a justice of the peace, from its date.

2. By a creditor of a deceased person against his personal or real representative, within seven years next after the qualification of the executor or administrator and his making the advertisement required by law for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor. A creditor thus barred of a recovery against the representative of any principal debtor is also barred of a recovery against any surety to the debt.

Rev., s. 392; Code, s. 153; C. C. P., s. 32.

49. Six years. Within six years an action—

1. Upon the official bond of a public officer.

2. Against an executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final account by the proper officer, and the filing of the audited account as required by law.

3. For injury to any incorporeal hereditament.

Rev., s. 393; Code, s. 154; C. C. P., s. 33.

NOTE. Six year limitation against directors of corporations for impairment of capital, see Corporations, s. 66.

50. Five years. Within five years—

1. No suit, action or proceeding shall be brought or maintained against a railroad company owning or operating a railroad for damages or compensation for right of way or use and occupancy of any lands by the company for use of its railroad unless the action or proceeding is commenced within five years after the lands have been entered upon for the purpose of constructing the road, or within two years after it is in operation.

2. No suit, action or proceeding shall be brought or maintained against a railroad company for damages caused by the construction of the road, or the repairs thereto, unless such suit, action or proceeding is commenced within five years after the cause of action accrues, and the jury shall assess the entire amount of damages which the party aggrieved is entitled to recover by reason of the trespass on his property.

Rev., s. 394; 1893, c. 152; 1895, c. 224; 1897, c. 339.

51. Three years. Within three years an action—

1. Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections.

2. Upon a liability created by statute, other than a penalty or forfeiture, unless some other time is mentioned in the statute creating it.

3. For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.

4. For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

5. For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereinafter enumerated.

6. Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

7. Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

8. For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

9. For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

10. For the recovery of real property sold for the nonpayment of taxes, within three years after the execution of the sheriff's deed.

Rev., s. 395; Code, s. 155; C. C. P., s. 34; 1895, c. 165; 1889, cc. 269, 218; 1899, c. 15, s. 71; 1901, c. 558, s. 23; 1913, c. 147, s. 4.

NOTE. For actions against bank officers, see this chapter, s. 33.

For bastardy proceedings, see Bastardy, s. 10.

For involuntary dissolution of a corporation on petition of holders of one-fifth of the stock, see Corporations, s. 73.

52. Two years. Within two years—

1. All claims against counties, cities and towns of this state, shall be presented to the chairman of the board of county commissioners or to the chief officers of the cities and towns, within two years after the maturity of, or the holders shall be forever barred from a recovery thereon.

2. An action to recover the penalty for usury.

Rev., s. 396; Code, ss. 756, 3836; 1874-5, c. 243; 1876-7, c. 91, s. 3; 1895, c. 69.

NOTE. For actions by legatee or distributee against representative, see Administration, ss. 143, 153.

For sale of land conveyed by heirs within two years from grant of letters, see Administration, s. 73.

For actions on apprentice's bond, see Apprentices, s. 16.

For action by holder of tax deed to foreclose the tax lien, see Taxation, s. 258.

53. One year. Within one year an action—

1. Against a public officer, for a trespass under color of his office.

2. Upon a statute, for a penalty or forfeiture, where the action is given to the state alone, or in whole or in part to the party grieved, or to a common informer, except where the statute imposing it prescribes a different limitation.

3. For libel, assault, battery or false imprisonment.

4. Against a public officer, for the escape of a prisoner arrested or imprisoned on civil process.

5. An application for a widow's year's allowance.

Rev., s. 397; Code, s. 156; C. C. P., s. 35; 1885, c. 96.

NOTE. For time within which personal representative may bring action for wrongful death, see Administration, s. 157.

For limit of time for creditors to present claims to personal representative, and effect, see Administration, s. 97.

For minimum limit in contract of insurance, within which to bring suit, see Insurance, s. -----.

For actions to redeem from tax sales, see Taxation, s. 259.

54. Six months. Within six months—

An action for slander.

Rev., s. 398; Code, s. 157; C. C. P., s. 36.

NOTE. Claim against decedent disputed by personal representative, barred in six months, see Administration, s. 96.

55. All other actions, ten years. An action for relief not herein provided for must be commenced within ten years after the cause of action has accrued.

Rev., s. 399; Code, s. 158; C. C. P., s. 37.

NOTE. For limitations of ninety days on actions in nature of quo warranto, see this chapter, s. 480.

SUBCHAPTER 3. PARTIES

ART. 6. PARTIES

56. Real party in interest; grantees and assignees. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided; but this section does not authorize the assignment of a thing in action not arising out of contract. An action may be maintained by a grantee of real estate in his own name, when he or any grantor or other person through whom he derives title, might maintain such action, notwithstanding the conveyance of the grantor is void, by reason of the actual possession of a person claiming under a title adverse to that of the grantor, or other person, at the time of the delivery of the conveyance. In case of an assignment of a thing in action the action by the assignee is without prejudice to any setoff or other defense, existing at the time of, or before notice of, the assignment; but this does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, upon good consideration, and before maturity.

Rev., s. 400; Code, s. 177; C. C. P., s. 55; 1874-5, c. 256.

57. Suits for penalties. Where a penalty is imposed by any law, and it is not provided to what person the penalty is given, it may be recovered, for his own use by any one who sues for it. When a penalty is allowed by statute, and it is not prescribed in whose name suit therefor may be commenced, suit must be brought in the name of the state.

Rev., 1905, ss. 400, 401; Code, ss. 1212, 1213; R. C., c. 35, ss. 47, 48.

58. Action by purchaser under judicial sale. Any one given possession under a judicial sale confirmed, where the title is retained as a security for the price, is the legal owner of the property for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass or wrongful possession, in the same manner as if the title had been conveyed to him on day of sale, unless restrained

by some order of the court directing the sale; and the suit brought is under the control of the court ordering the sale.

Rev., s. 403; Code, s. 942; 1858-9, c. 50.

59. Action by executor or trustee. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, includes a person with whom, or in whose name, a contract is made for the benefit of another.

Rev., s. 404; Code, s. 179; C. C. P., s. 57.

60. Infants, etc., sue by guardian or next friend. In actions and special proceedings when any of the parties plaintiff are infants, idiots, lunatics, or persons non compos mentis, whether residents or nonresidents of this state, they must appear by their general or testamentary guardian, if they have any within the state; but if the action or proceeding is against, or if there is no such guardian, then said persons may appear by their next friend. The duty of the state solicitors to prosecute in the cases specified in chapter entitled Guardian and Ward is not affected by this section.

Rev., s. 405; Code, s. 180; 1893, c. 5; C. C. P., s. 58; 1870-1, c. 233; 1871-2, c. 95.

NOTE. For solicitor's duties with respect to orphan's estates, see Guardian and Ward, Article 9.

61. Infants, etc., defend by guardian ad litem. In all actions and special proceedings when any of the defendants are infants, idiots, lunatics, or persons non compos mentis, whether residents or nonresidents of this state, they must defend by their general or testamentary guardian, if they have one within this state; and if they have no general or testamentary guardian in the state, and any of them has been summoned, the court in which said action or special proceeding is pending, upon motion of any of the parties may appoint some discreet person to act as guardian ad litem, to defend in behalf of such infants, idiots, lunatics, or persons non compos mentis. The guardian so appointed shall, if the cause is a civil action, file his answer to the complaint within the time required for other defendants, unless the time is extended by the court; and if the cause is a special proceeding, a copy of the complaint, with the summons, must be served on him. After twenty days notice of the summons and complaint in the special proceeding, and after answer filed as above prescribed in the civil action, the court may proceed to final judgment as effectually and in the same manner as if there had been personal service upon the said infant, idiot, lunatic, or person non compos mentis, defendants.

Rev., s. 406; Code, s. 181; C. C. P., s. 59; 1870-1, c. 233, s. 5; 1871-2, c. 95, s. 2.

NOTE. See Rule 17 of superior court.

62. Guardian ad litem to file answer. When a guardian ad litem is appointed, he shall file an answer in the action or special proceeding, admitting or denying the allegations thereof. The costs and expenses of the answer, in all applications to sell or divide the real estate of said infants, shall be paid out of the proceeds of the property, or in case of a division shall be charged upon the land if the sale or division is ordered by the court, and if not ordered in any other manner the court directs.

Rev., s. 407; Code, s. 182; 1870-1, c. 233, s. 4.

63. Married women. 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.

2. When the action is between herself and her husband, she may sue or be sued alone.

In no case need she prosecute or defend by a guardian or next friend.

Rev., s. 408; Code, s. 178; C. C. P., s. 56.

64. Who may be plaintiffs. All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs except as otherwise provided.

Rev., s. 409; Code, s. 183; C. C. P., s. 60.

65. Who may be defendants. Any person may be made a defendant who has, or claims, an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved. In an action to recover the possession of real estate, the landlord and tenant may be joined as defendants. Any person claiming title or right of possession to real estate may be made party plaintiff or defendant, as the case requires to such action.

Rev., s. 410; Code, s. 184; C. C. P., s. 61.

66. Joinder of parties; one may appear for class; action by one for a class. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint. When the question is one of a common or general interest of many persons, or where the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Rev., s. 411; Code, s. 185; C. C. P., s. 62.

67. Persons severally liable. Persons severally liable upon the same obligation, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action at the option of the plaintiff.

Rev., s. 412; Code, s. 186; C. C. P., s. 63.

68. Persons jointly liable. In all cases of joint contracts of partners in trade or others, suit may be brought and prosecuted against all or any number of the persons making such contracts.

Rev., s. 413; Code, s. 187; R. C., c. 31, s. 84; 1871-2, c. 24, s. 1.

69. New parties by order of court; intervener. 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, but when a complete determination of the controversy cannot be made without the presence of other parties, the court must cause them to be brought in. 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 its subject matter applies 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 directs. The court may make such an order.

Rev., s. 414; Code, s. 189; C. C. P., s. 65.

NOTE. For intervention in claim and delivery, see this chapter, s. 443.

For intervention in attachment, see this chapter, s. 432.

70. Abatement of actions. 1. No action abates by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survives, or continues. In case of death, except in suits for penalties and for damages merely vindictive, or in case of marriage or other disability of a party, the court, on motion at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued, by, or against, his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

2. After a verdict is rendered in any action for a wrong, the action does not abate by the death of a party.

3. At any time after the death, marriage, or other disability of the party plaintiff, the court in which an action is pending, upon notice to such persons as it directs and upon application of any person aggrieved, may order that the action be abated, unless it is continued by the proper parties, within a time to be fixed by the court, not less than six nor more than twelve months from the granting of the order.

4. No action against a receiver of a corporation abates by reason of his death, but, upon suggestion of the facts on the record, it continues against his successor, or against the corporation in case a new receiver is not appointed.

Rev., s. 415; Code, s. 188; 1901, c. 2, s. 85; C. C. P., s. 64; R. C., c. 1, s. 4; c. 46, s. 43.

71. Procedure on death of party. When party to an action in the superior court dies pending the action, his death may be suggested before the clerk of the court where the action is pending, during vacation. It is then the duty of the clerk to issue a summons to the party who succeeds to the rights or liabilities of a deceased defendant commanding him to appear before him on a day named in the summons, which must be at least twenty days after its service, and answer the complaint, and the issue joined by the filing of the answer stands for trial at the succeeding term of the superior court. It is the duty of the clerk to issue a notice to the party succeeding to the rights of a deceased party who will be necessary to the prosecution of the action to final judgment to appear and become party plaintiff; and if the party made plaintiff files an amended complaint, the defendant has twenty days after notice of same in which to file an answer thereto, and the issue thus made up stands for trial at the succeeding term.

Rev. 1905, ss. 416, 417, 418; 1887, c. 389.

NOTE. For substitution of administrator d. b. n., or executor c. t. a., see Administration, s. 151-2.

SUBCHAPTER 4. VENUE

ART. 7. VENUE

72. Where subject of action situated. Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, in the cases provided by law:

1. Recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

2. Partition of real property.

3. Foreclosure of a mortgage of real property.

4. Recovery of personal property.

Rev., s. 419; Code, s. 190; 1889, c. 219; C. C. P., s. 66.

NOTE. For venue in partition proceedings, see Partition, s. 2.

73. Where cause of action arose. Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the power of the court to change the place of trial, in the cases provided by law:

1. Recovery of a penalty or forfeiture, imposed by statute; except that, when it is imposed for an offense committed on a sound, bay, river, or other body of water, situated in two or more counties, the action may be brought in any county bordering on such body of water, and opposite to the place where the offense was committed.

2. Against a public officer or person especially appointed to execute his duties, for an act done by him by virtue of his office; or against a person who by his command or in his aid, does anything touching the duties of such officer.

Rev., s. 420; Code, s. 191; C. C. P., s. 67.

74. Official bonds, executors and administrators. All actions upon official bonds or against executors and administrators in their official capacity must be instituted in the county where the bonds were given, if the principal or any surety on the bond is in the county; if not, then in the plaintiff's county.

Rev., s. 421; Code, s. 193; 1868-9, c. 258.

75. Domestic corporations. For the purpose of suing and being sued the principal place of business of a domestic corporation is its residence.

Rev., s. 422; 1903, c. 806.

76. Foreign corporations. An action against a corporation created by or under the law of any other state or government may be brought in the superior court of any county in which the cause of action arose, or in which the corporation usually did business, or has property, or in which the plaintiffs, or either of them, reside, in the following cases:

1. By a resident of this state, for any cause of action.

2. By a nonresident of this state in any county where he or they are regularly engaged in carrying on business.

3. By a plaintiff, not a resident of this state, when the cause of action arose, or the subject of the action is situated in this state.

Rev., s. 423; Code, s. 194; C. C. P., s. 361; 1876-7, c. 170; 1907, c. 490.

77. Actions against railroads. In all actions against railroads the action must be tried either in the county where the cause of action arose or where the plaintiff resided at that time, or in some county adjoining that in which the cause of action arose, subject to the power of the court to change the place of trial as provided by statute.

Rev. 1905, s. 424.

78. Venue in all other cases. In all other cases the action must be tried in the county in which the plaintiffs or the defendants, or any of them, reside at its commencement; or if none of the defendants reside in the state, then in the county in which the plaintiffs, or any of them, reside; and if none of the parties reside in the state, then the action may be tried in any county which the plaintiff designates in his summons and complaint, subject to the power of the court to change the place of trial, in the cases provided by statute.

Rev., s. 424; Code, s. 192; C. C. P., s. 68; 1868-9, cc. 59, 277; 1905, c. 367.

79. Change of venue. If the county designated for that purpose in the summons and complaint is not the proper one, the action may, however, be tried therein, unless the defendant, before the time of answering expires, demands in writing that the trial be conducted in the proper county, and the place of trial is thereupon changed by consent of parties, or by order of the court.

The court may change the place of trial in the following cases:

1. When the county designated for that purpose is not the proper one.
2. When the convenience of witnesses and the ends of justice would be promoted by the change.

3. When the judge has, at any time, been interested as party or counsel.

Rev., s. 425; Code, s. 195; C. C. P., s. 69; R. C., c. 31, ss 115, 118; 1870-1, c. 20.

80. Removal for fair trial. In all civil and criminal actions in the superior and criminal courts, when it is suggested on oath or affirmation, on behalf of the state or the traverser of the bill of indictment, or of the plaintiff or defendant, that there are probable grounds to believe that a fair and impartial trial cannot be obtained in the county in which the action is pending, the judge may order a copy of the record of the action removed to some adjacent county for trial, if he is of the opinion that a fair trial cannot be had in said county, after hearing all the testimony offered on either side by affidavits. The county from which the cause is removed must pay to the county in which the cause has been tried the full amount paid by the trial county for jurors' fees, and the full costs in the cause which are not taxable against or cannot be recovered from a party to the action, and for which the trial county is liable.

Rev., s. 426; Code, s. 196; 1879, c. 45; 1899, cc. 104, 508; 1806, c. 693, s. 12; 1917, c. 44.

81. Affidavits on hearing for removal; when removal ordered. No action, civil or criminal, shall be removed, unless the affidavit sets forth particularly and in detail the ground of the application. It is competent for the other side to controvert the allegations of fact in the application, and to offer counter affidavits to that end. The judge shall order the removal of the action, if he is satisfied after thorough examination of the evidence as aforesaid that the ends of justice demand it.

Rev., s. 427; Code, s. 197; 1879, c. 45; 1899, c. 104, s. 2.

82. Additional jurors from other counties instead of removal. Upon suggestion made as provided by the second section preceding, the presiding judge, instead of making order of removal may cause as many jurors as he deems necessary to be summoned from any adjoining county or any county in the same judicial district by the sheriff or other proper officer thereof, to attend, at such time as the judge designates and serve as jurors in said action. The judge may direct the required number of names to be drawn from the jury box in said county in such manner as he may direct, and a list of the same to be delivered to the sheriff or other proper officer of the county, who shall at once summon the jurors so drawn to appear at the time and place specified in the order. In case a jury is not obtained from those so summoned the judge may, in like manner, from time to time, order additional jurors summoned from any adjoining county or any county in the same judicial district, or from the county where the trial is being held until a jury is obtained. These jurors are subject to challenge for cause as other jurors, but not because of nonresidence in the county of trial, or service within two years, or not being freeholders, and all jurors so summoned are entitled to compensation for mileage and time, to be paid by the county to which they are summoned, at the rate now provided by law for regular jurors in the county of their residence.

1913, c. 4, ss. 1, 2.

NOTE. For jurors' fees, see Salaries and Fees, s. 78.

83. Transcript of removal; subsequent proceedings. When a cause is directed to be removed, the clerk shall transmit to the court to which it is removed a transcript of the record of the case, with the prosecution bond, bail bond, and the depositions, and all other written evidences filed therein; and all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of court.

Rev., s. 428; Code, ss. 195, 198; R. C., c. 31, s. 118; 1806, c. 694, s. 12; 1810, c. 787; C. C. P., s. 69.

SUBCHAPTER 5. COMMENCEMENT OF ACTIONS

ART. 8. SUMMONS

84. Civil actions commenced by. Civil actions shall be commenced by issuing a summons; but no summons need issue in controversies submitted without action, and in confessions of judgment without action.

Rev., s. 429; Code, s. 199; C. C. P., s. 70.

NOTE. For summons in special proceedings, see this chapter, s. 357.

For confession of judgment, see this chapter, s. 227.

For controversy without action, see this chapter, ss. 230-232.

85. Contents; return; seal. The summons must run in the name of the state, be signed by the clerk of the superior court having jurisdiction to try the action, and be directed to the sheriff or other proper officer of the county in which any defendant resides or may be found. It must be returnable to the regular term of the superior court of the county from which it issued; and must command the sheriff, or other proper officer, to summon the defendant to appear at the next ensuing term of the superior court and answer the complaint of the plaintiff;

and must contain a notice stating in substance that if the defendant fails to answer the complaint within the time specified, the plaintiff will apply to the court for the relief demanded in the complaint; and must be dated on the day of its issue. Every summons addressed to the sheriff or other officer of a county other than that from which it issued must be attested by the seal of the court; but when addressed to the sheriff or other officer of the county in which it issued, such seal is unnecessary.

Rev. 1905, ss. 430, 431; Code, ss. 200, 203, 213; C. C. P., s. 74; 1876-7, cc. 85, 241.

86. Issued to several counties. The plaintiff may issue a summons, directed to the sheriff of any county where a defendant is most likely to be found, noting on each summons that it is issued in the same action. When the summons is returned, it shall be docketed as if only one had issued, and if any defendant is not served with such process, the same proceeding shall be had as in other cases of similar process not executed.

Rev., s. 432; Code, s. 204; R. C., c. 31, s. 44; 1789, c. 314, ss. 1, 2; 1831, c. 14, s. 2.

87. When directed to officer of adjoining county. If at any time there is not in the county a proper officer to whom summons or other process of a court of record is or ought to be directed, who can lawfully execute it; or if such officer refuses or neglects to execute the same, the clerk of the court from which it has issued or shall issue, upon the facts being verified before him by written affidavit, subscribed by the plaintiff or his agent, shall issue such summons or process to the sheriff of any adjoining county, who has power to, and shall execute the same, in like manner as if he were sheriff of the county. In all cases where the sheriff of any county is interested, if there is no coroner in the county, process may be issued to and shall be executed by the sheriff of any adjoining county.

Rev., ss. 1530, 1531; Code, ss. 929, 930; R. C., c. 31, s. 55; 1779, c. 156; 1821, c. 1080; 1882, c. 1132; 1846, c. 61; 1869-70, c. 175.

88. When officer must execute and return. The officer to whom the summons is addressed must note on it the day of its delivery to him, execute it at least ten days before the beginning of the term to which it is returnable, and return it by the first day of the term.

Rev., s. 433; Code, s. 200; 1876-7, c. 85.

89. When issued within ten days of term. If any summons is issued within less than ten days of the beginning of the next term of the superior court for the county in which it is issued, it must be made returnable to the second term of said court following the date of its issuing, and be executed and returned by the proper officer accordingly.

Rev., s. 434; Code, s. 201; 1876-7, c. 85, s. 2.

90. Issued more than, served within, ten days of term. When the summons is issued more than ten days before the next succeeding term of the superior court of the county to which it is returnable, and executed by the proper officer within less than ten days of that term, it must be returned as if executed in proper time, and the case placed on the summons docket and continued to the next succeeding term, when it shall be treated as if said next succeeding term were the return term. But the parties to the action may, by agreement, make up the pleadings at the term to which the summons is returnable. Nothing herein contained may

release or discharge the sheriff or other officer from any liability he may incur by failing to execute the summons in due time.

Rev., s. 435; Code, s. 202; 1876-7, c. 85, s. 3.

91. When summons returned to second term. Whenever it is necessary to serve summons, warrant of attachment, or other process by publication, and it appears that in order to make publication for the number of weeks required by law sufficient time will not elapse between the order of publication and the next succeeding term of court, it is not necessary to make the process returnable to the term of court next succeeding, but it is lawful for the judge or clerk to direct that it shall be returnable to such other later term of court, as will allow it to be published for the number of weeks required by law so that the publication may be completed before the term of court to which such process is returnable.

Rev., s. 436; 1903, c. 169.

92. Alias and pluries. When the defendant in a civil action or special proceeding is not served with summons within the time in which it is returnable, the plaintiff may sue out an alias or pluries summons, returnable in the same manner as original process.

Rev., s. 437; Code, s. 205; R. C., c. 31, s. 52; 1777, c. 115, ss. 23, 71.

93. Discontinuance. A failure to keep up the chain of summonses issued against a party, but not served, by means of an alias or pluries summons, is a discontinuance as to such party; and if a summons is served after a break in the chain, it is a new action as to such party, begun when the summons was issued.

Rev., s. 438; see *Koonce v. Pelletier*, 115 N. C. R., 233.

94. Service by reading. The summons shall be served in all cases, except as hereinafter provided, by the sheriff or other officer reading it to the party or parties named as defendant.

Rev., s. 439; Code, s. 214; 1876-7, c. 241.

NOTE. For statute forbidding service on Sunday, see *Sundays and Holidays*, s. 3.

95. Service by copy. The summons shall be served by delivering a copy thereof in the following cases:

1. If the action is against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof. Any person receiving or collecting money in this state for a corporation of this or any other state or government is a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property, or the cause of action arose, or the plaintiff resides, in this state, or when it can be made personally within the state upon the president, treasurer or secretary thereof.

2. If against a minor under the age of fourteen years, to the minor personally, and also to his father, mother or guardian, or if there are none within the state, to any person having the care and control of the minor, or with whom he resides or in whose service he is employed.

3. If against a person judicially declared of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee or guardian has been appointed, to such committee or guardian, and

to the defendant personally. If the superintendent or acting superintendent of an insane asylum informs the sheriff or other officer who is charged with the duty of serving a summons or other judicial process, or notice, on an insane person confined in such asylum, that the summons, or process, or notice, cannot be served without danger of injury to the insane person, it is sufficient for the officer to return the same without actual service, but with an endorsement that it was not personally served because of such information; and when an insane person is confined in a common jail it is sufficient for an officer charged with service of a notice, summons, or other judicial process, to return the same with the endorsement that it was not served because of similar information as to the danger of service on such insane person given by the physician of the county in which the jail is situated.

Rev., s. 440; Code, s. 217; C. C. P., s. 82; 1874-5, c. 168; 1889, c. 89.

NOTE. For service on foreign corporations by service on local process agent, see Corporations, s. 24.

For service on corporations for forfeiture of charter, see Corporations, s. 78.

96. Service by publication. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found in the state, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom 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, or the cause of action arose, in the state.

2. Where the defendant, a resident of this state, has departed therefrom or keeps himself concealed therein with intent to defraud his creditors or to avoid the service of a summons.

3. Where he is not a resident but has property in this state, and the court has jurisdiction of the subject of the action.

4. Where the subject of the action is real or personal property in this state, and the defendant has, or claims, or the relief demanded consists wholly or partly in excluding him from any actual or contingent lien or interest therein.

5. Where the action is for divorce. In all cases where publication is made, the complaint must be filed before the expiration of the time of publication ordered.

6. Where the stockholders of a corporation are deemed to be necessary parties to an action and their names or residences are unknown; or where the names or residences of parties interested in real estate the subject of an action are unknown, if the name of at least one of the parties to the action and interested in the subject matter thereof is known, and he is a resident of the state, the court having jurisdiction may, upon affidavit that after due diligence the names or residences of such parties cannot be ascertained, authorize service by publication.

7. Where 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 his residence cannot, with reasonable diligence, be ascertained, and such fact is made to appear by affidavit.

8. Where no officer or agent of a domestic corporation upon whom service can be made can, after due diligence, be found in the state, and such facts are made to appear by affidavit. This subsection also applies to all summonses, orders

to show cause, orders and notices issued by any board of aldermen, board of town or county commissioners or by individuals.

Rev., s. 442; Code, ss. 218, 221; 1885, c. 380; 1889, cc. 108, 263; 1895, c. 334.

97. Manner of publication. The order must direct the publication in 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 is deemed reasonable, not less than once a week for four successive weeks, of a notice, giving the title and purpose of the action, 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, or mailing of the summons and complaint, is necessary. The cost of publishing in a newspaper shall not exceed one dollar and fifty cents an inch of solid type, and shall in no case exceed six dollars for the notice.

Rev., s. 443; Code, s. 219; 1903, c. 134; C. C. P., c. 84; 1876-7, c. 241, s. 3.

98. When service by publication complete. In the cases in which service by publication is allowed, the summons is deemed served at the expiration of the time prescribed by the order of publication, and the party is then in court.

Rev., s. 444; Code, s. 227; C. C. P., s. 88.

99. Jurisdiction acquired from service. From the time of service of the summons, in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all subsequent proceedings.

Rev., s. 445; Code, s. 229; C. C. P., s. 90.

100. Proof of service. Proof of the service of the summons or notice must be—

1. By the certificate of the sheriff or other proper officer.
2. In case of publication, the affidavit of the printer, or of his foreman or principal clerk, showing the same.
3. The written admission of the defendant.

Rev., s. 446; Code, s. 228; C. C. P., s. 89.

101. Voluntary appearance by defendant. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

Rev., s. 447; Code, s. 229; C. C. P., s. 90.

102. Personal service on nonresident. When the place of residence is known and the same is made to appear by affidavit, in lieu of publication in a newspaper it is sufficient to mail a copy of the summons, notice or other process, accompanied by a statement as to the nature of the action or proceeding, to the sheriff or other process officer of the county and state where the defendant resides, who shall serve same according to its tenor. The process officer who serves the papers shall, in making his return, use a form of certificate substantially as follows:

State of _____

County of _____

I, _____, clerk of the _____ court of _____ county, in the state of _____, which court is a court of record having a seal, which is hereto attached, do certify that _____, to me well known as the sheriff of said county of _____, who being by me duly sworn, says that as such sheriff he has full power to serve any and all legal processes issuing from the courts of said state, and that

on the ----- day of -----, 19____, he served the summons hereto attached by reading and delivering a copy of same to-----, the defendant therein named.

-----, Sheriff,
----- County,
----- State of-----

Sworn to and subscribed before me, this ----- day of -----, 19____

[L. s.]

-----, Clerk ----- Court,
County of -----

Rev., s. 448; 1891, c. 120.

103. Defense after judgment on substituted service. The defendant against whom publication is ordered, or who is served under the provisions of the preceding section, 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 are just; and if the defense is successful and the judgment or any part thereof has been collected or otherwise enforced, such restitution may be compelled as the court directs. Title to property sold under such judgment to a purchaser in good faith is not thereby affected. No fiduciary officer or trustee who has made distribution of a fund under such judgment in good faith is personally liable if the judgment is changed by reason of such defense made after its rendition; nor, in case the judgment was rendered for the partition of land, and any persons receiving any of the land in such partition sell it to a third person; the title of such third person is not affected if such defense is successful, but the redress of the person so defending after judgment shall be had by proper judgment against the parties to the original judgment and their heirs and personal representatives, and in no case affects persons who in good faith have dealt with such parties or their heirs or personal representatives on the basis of such judgment being permanent.

Rev., s. 449; Code, s. 220; C. C. P., s. 85; 1917, c. 68.

NOTE. Summons after judgment, see this chapter, s. 109.

ART. 9. PROSECUTION BONDS

104. Plaintiff's, for costs. Before issuing the summons the clerk shall require the plaintiff to do one of the following:

1. Give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that it will be void if the plaintiff pays the defendant all costs which the latter recovers of him in the action.

2. Deposit two hundred dollars with him as security to the defendant for these costs, in which event the clerk must give to the plaintiff and defendant a certificate to that effect.

3. File with him a written authority from a judge or clerk of a superior court, authorizing the plaintiff to sue as a pauper.

Rev. 1905, s. 450; Code, s. 269; R. C., c. 31, s. 40; C. C. P., s. 71.

NOTE. For bond in surety company or mortgage in lieu of bond, see Bonds.

105. Suit as a pauper; counsel. Any judge or clerk of the superior court may authorize a person to sue as a pauper in their respective courts when he proves, by one or more witnesses, that he has a good cause of action, and makes affidavit

that he is unable to comply with the preceding section. The court to which such summons is returnable may assign to the person suing as a pauper learned counsel, who shall prosecute his action.

Rev., s. 452; Code, ss. 210, 211; C. C. P., s. 72; 1868-9, c. 96, s. 2.

NOTE. For costs in action in forma pauperis, see Costs, s. 22.

106. Defendant's, for costs and damages in actions for land. In all actions for the recovery or possession of real property, the defendant, before he is permitted to plead, must execute and file in the office of the clerk of the superior court of the county where the suit is pending an undertaking with sufficient surety, in an amount fixed by the court, not less than two hundred dollars, to be void on condition that the defendant pays to the plaintiff all costs and damages which the latter recovers in the action, including damages for the loss of rents and profits.

Rev., s. 453; Code, s. 237; 1869-70, c. 193.

107. Defense without bond. The undertaking prescribed in the preceding section is not necessary if an attorney practicing in the court where the action is pending certifies 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 also files an affidavit stating that he is unable to give and is not worth the amount of the undertaking in any property whatsoever.

Rev., s. 454; Code, s. 237; 1869-70, c. 193.

ART. 10. JOINT AND SEVERAL DEBTORS

108. Defendants jointly or severally liable. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1. If the action is against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise directs, and if he recovers 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.

2. If the action is 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 has, for any cause, been omitted in an action in which judgment has been rendered against the defendants named in the summons, and the omission was not pleaded in the action, the plaintiff, in case the judgment remains unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he was not named in the original action; but the plaintiff may have satisfaction of only one judgment rendered for the same cause of action.

Rev., s. 455; Code, s. 222; C. C. P., s. 87.

NOTE. For joinder of parties, see this chapter, ss. 65-68.

109. Summoned after judgment; defense. When a judgment is recovered against one or more of several persons jointly indebted upon a contract in accordance with the preceding section, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned. A party so summoned may answer within the time specified denying the judgment, or setting up any defense thereto which has arisen subsequent to such judgment; and may make any defense which he might have made to the action if the summons had been served on him originally.

Rev. 1905, ss. 456, 457; Code, ss. 223, 224; C. C. P., ss. 318, 322.

NOTE. See this chapter, s. 103.

110. Pleadings and proceedings same as in action. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply. The answer and reply must be verified in like cases and manner and be subject to the same rules that apply in an action, and the issues may be tried and judgment given in the same manner as in an action and enforced by execution if necessary.

Rev., ss. 458, 459; Code, ss. 225, 226; C. C. P., ss. 323, 324.

ART. 11. LIS PENDENS

111. Filing of notice of suit. In an action affecting the title to real property, the plaintiff, at or any time after the time of filing the complaint or when or any time after a warrant of attachment is issued, or a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief, at or any time after the time of filing his answer, if it is intended to affect real estate, may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the property in that county affected thereby.

Rev., s. 460; Code, s. 229; C. C. P., s. 90; 1917, c. 106.

112. Effect on subsequent purchasers. From the filing of the notice of lis pendens only is the pendency of the action constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently registered, is a subsequent purchaser or incumbrancer, and is bound by all proceedings taken after the filing of the notice to the same extent as if he were made a party to the action. For the purposes of this section an action is pending from the time of filing the notice.

Rev., s. 462; Code, s. 229; C. C. P., s. 90.

113. Notice void unless action prosecuted. The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an order therefor, or by the personal service on the defendant within sixty days after the filing.

Rev., s. 461; Code, s. 229; C. C. P., s. 90.

114. Cancellation of notice. The court in which the said action was commenced may, at any time after it is settled, discontinued or abated, on application of any person aggrieved, on good cause shown, and on such notice as is

directed or approved by the court, order the notice authorized by this article to be canceled of record, by the clerk of any county in whose office the same has been filed or recorded; and this cancellation must be made by an endorsement to that effect on the margin of the record, which shall refer to the order.

Rev., s. 463; Code, s. 229; C. C. P., s. 90.

114a. Local: lis pendens in Buncombe. Any party to an action desiring to claim the benefit of a notice of lis pendens in Buncombe County, whether given formally under this section or in the pleadings filed in the case, shall cause such notice to be cross-indexed by the clerk of the superior court in a docket to be kept by him, to be called Record of Lis Pendens, which index shall contain the names of the parties to the action, where such notice, whether formal or in the pleadings as filed, the object of the action, the date of indexing and sufficient description of the land to be affected to enable any person to locate said lands. From the time of cross-indexing only shall the pendency of the action be actual or constructive notice to subsequent purchasers or incumbrancers. The word "filing" in the preceding sections of this article, when referring to actions or proceedings in Buncombe County shall read "cross-indexing." The clerk shall be entitled to a fee of twenty-five cents for indexing said notice, to be paid as are other costs in the pending action.

Rev., s. 464; 1903, c. 472.

SUBCHAPTER 6. PLEADINGS

ART. 12. COMPLAINT

115. First pleading and its filing. The first pleading on the part of the plaintiff is the complaint. It must be filed in the clerk's office on or before the third day of the term to which the action is brought, otherwise the suit may, on motion, be dismissed at the cost of the plaintiff.

Rev., ss. 465, 466; Code, ss. 206, 232, 238; C. C. P., s. 92; 1868-9, c. 76, s. 3; 1870-1, c. 42, s. 3.

116. Contents. The complaint must contain—

1. The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation must be distinctly numbered.

3. A demand for the relief to which the plaintiff supposes himself entitled. If the recovery of money is demanded, the amount must be stated.

4. In actions for the recovery of a debt contracted for the purchase of land, a statement that the consideration of the debt was the purchase money of certain land, describing the land in an intelligible manner, such as the location, boundaries, and acreage.

Rev. 1905, ss. 467-8; Code, ss. 233-4; C. C. P., s. 93; 1879, c. 217.

117. What causes of action may be joined. The plaintiff may unite in the same complaint several causes of action, of legal or equitable nature, or both, where they all arise out of—

1. The same transaction; or transaction connected with the same subject of action.
2. Contract, express or implied.
3. Injuries with or without force to person or property.
4. Injuries to character.
5. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same.
6. Claims to recover personal property, with or without damages for the withholding thereof; or,
7. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action so united must all belong to one of these classes, and except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different places of trial, and must be separately stated.

In actions to foreclose mortgages, the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that remains unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor is personally liable for the debt secured; and if the mortgage debt is secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make that person a party to the action, and the court may adjudge payment of the residue of the debt remaining unsatisfied after a sale of the mortgaged premises, against the other person, and may enforce such judgment as in other cases.

Rev., s. 469; Code, s. 267; C. C. P., s. 126.

ART. 13. DEFENDANT'S PLEADINGS

118. Demurrer and answer. The only pleading on the part of the defendant is either a demurrer or an answer. He may demur to one or more of several causes of action stated in the complaint, and answer to the residue.

Rev., ss. 470, 471; Code, ss. 238, 246; C. C. P., ss. 94, 103.

119. When defendant appears and pleads; time for. The defendant must appear and demur or answer at the same term to which the summons is returnable, otherwise the plaintiff may have judgment by default.

Rev., s. 473; Code, 207; 1870-1, c. 42, s. 4.

NOTE. For order enlarging time to plead, see this chapter, s. 143.

120. Sham and irrelevant defenses. Sham and irrelevant answers and defenses may be stricken out on motion, upon such terms as the court may in its discretion impose.

Rev., s. 472; Code, s. 247; C. C. P., s. 104.

NOTE. For judgment on frivolous pleading, see this chapter, s. 203.

ART. 14. DEMURRER

121. Grounds for. The defendant may demur to the complaint when it appears upon the face thereof, either that:

1. The court has no jurisdiction of the person of the defendant, or of the subject of the action; or,
2. The plaintiff has not legal capacity to sue; or,

3. There is another action pending between the same parties for the same cause; or,
 4. There is a defect of parties plaintiff or defendant; or,
 5. Several causes of action have been improperly united; or,
 6. The complaint does not state facts sufficient to constitute a cause of action.
- Rev., s. 474; Code, s. 239; C. C. P., s. 95.

122. Must specify grounds. The demurrer must distinctly specify the grounds of objection to the complaint, or it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

Rev., s. 475; Code, s. 240; C. C. P., s. 96.

123. Division of actions when misjoinder. If the demurrer is sustained for the reason that several causes of action have been improperly united, the judge shall, upon such terms as are just, order the action to be divided into as many actions as are necessary for the proper determination of the causes of action therein mentioned.

Rev., s. 476; Code, s. 272; C. C. P., s. 131.

124. Grounds not appearing in complaint. When any of the matters enumerated as grounds of demurrer do not appear on the face of the complaint, the objection may be taken by answer.

Rev., s. 477; Code, s. 241; C. C. P., s. 98.

125. Objection waived. If objection is not taken either by demurrer or answer, the defendant waives the same, except the objections to the jurisdiction of the court and that the complaint does not state facts sufficient to constitute a cause of action.

Rev., s. 478; Code, s. 242; C. C. P., s. 99.

ART. 15. ANSWER

126. Contents. The answer of the defendant must contain—

1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language, without repetition.

Rev., s. 479; Code, s. 243; C. C. P., s. 100.

127. Debt for purchase money of land denied. If the defendant denies in his answer that the obligation sued on was for the purchase money of the land described in the complaint, it is the duty of the court to submit the issue so joined to the jury.

Rev., s. 480; Code, s. 235; 1879. c. 217.

128. Counterclaim. The counterclaim mentioned in this article must be one existing in favor of a defendant and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

Rev., s. 481; Code, s. 244; C. C. P., s. 101.

129. Several defenses. The defendant may set forth by answer as many defenses and counterclaims as he has, whether they are of a legal or equitable nature, or both. They must be separately stated and numbered, and refer to the cause of action which they are intended to answer in such manner that they may be intelligibly distinguished.

Rev., s. 482; Code, s. 245; C. C. P., s. 102.

NOTE. Statute of limitations pleaded by answer only, see this chapter, s. 15.

130. Contributory negligence pleaded and proved. In all actions to recover damages by reason of the negligence of the defendant, where contributory negligence is relied upon as a defense, it must be set up in the answer and proved on the trial.

Rev., s. 483; 1887, c. 33.

ART. 16. REPLY

131. When filed and cause at issue. The plaintiff shall join issue on the demurrer or shall reply to the answer at the same term to which such demurrer or answer is filed; and the issues, whether of law or of fact, shall stand for trial at the next term succeeding the term at which the pleadings are completed, but where an action is instituted upon a bill, note, bill of exchange, liquidated and settled account, or for divorce, and summons has been served on the defendant and a copy of the complaint filed in the clerk's office at least thirty days before the term of court to which the summons is returnable, if civil cases can be tried at such term, then the action stands for trial at that term.

Rev., s. 484; Code, s. 208; 1870-1, c. 42, s. 5; 1901, c. 626.

132. Content; demurrer to answer. When the answer contains new matter constituting a counterclaim, the plaintiff may reply to the 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 defense to the new matter in the answer. The plaintiff may in all cases demur to an answer containing new matter, where, upon its face, it does not constitute a counterclaim or defense; and he may demur to one or more of such defenses or counterclaims, and reply to the residue. In other cases, when an answer contains new matter constituting a defense by way of avoidance, the court may in its discretion, on the defendant's motion, require a reply to such new matter, and such reply shall be subject to the same rules as a reply to a counterclaim.

Rev., s. 485; Code, s. 248; C. C. P., s. 105.

133. Demurrer to reply. If a reply of the plaintiff to a defense set up by the answer of the defendant is insufficient, the defendant may demur thereto, and must state the grounds thereof.

Rev., s. 486; Code, s. 250; C. C. P., s. 107.

ART. 17. PLEADINGS, GENERAL PROVISIONS

134. Forms of pleading. The forms of pleading in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed by this chapter.

Rev., s. 487; Code, s. 231; C. C. P., s. 91.

135. Subscription and verification of pleading. Every pleading in a court of record must be subscribed by the party or his attorney, and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.

Rev., s. 488; Code, s. 257; C. C. P., s. 116.

136. Form of verification. The verification must be in substance that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true; and must be by affidavit of the party, or if there are several parties united in interest and pleading together, by one at least of such parties acquainted with the facts, if the party is in the county where the attorney resides and is capable of making the affidavit.

Rev., s. 489; Code, s. 258; C. C. P., s. 117, 1868-9, c. 159, s. 7.

137. Verification by agent or attorney. The affidavit may also be made by the agent or attorney, if the action or defense is founded upon a written instrument for the payment of money only and the instrument is in the possession of the agent or attorney, or if all the material allegations of the pleadings are within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge or the grounds of his belief on the subject, and the reasons why it is not made by the party.

Rev., s. 490; Code, s. 258; C. C. P., s. 117; 1868-9, c. 159, s. 7.

138. Verification by corporation or the state. When a corporation is a party the verification may be made by any officer, or managing or local agent thereof upon whom summons might be served; and when the state or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts.

Rev., s. 491; Code, s. 258; 1901, c. 610; C. C. P., s. 117; 1868-9, c. 159, s. 7.

139. Verification before what officer. Any officer competent to take the acknowledgment of deeds, and any judge or clerk of the superior court, notary public, in or out of the state, or justice of the peace, is competent to take affidavits for the verification of pleadings, in any court or county in the state, and for general purposes.

Rev., s. 492; Code, s. 258; 1891, c. 140; C. C. P., s. 117; 1868-9, c. 159, s. 7.

140. When verification omitted; use in criminal prosecutions. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. No pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in it.

Rev., s. 493; Code, s. 258; C. C. P., s. 117; 1868-9, c. 159, s. 7.

141. Items of account; bill of particulars. It is not necessary for a party to set forth in a pleading the items of an account alleged in it; but he must deliver to the adverse party, within ten days after a demand therefor in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney if within the personal knowledge of the agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court or judge may order a further account when the one delivered is defective, and may, in all cases, order a bill of particulars of the claim of either party to be furnished.

Rev., s. 494; Code, s. 259; C. C. P., s. 118.

142. Pleadings construed liberally. In the construction of a pleading for the purpose of determining its effect its allegations shall be liberally construed with a view to substantial justice between the parties.

Rev., s. 495; Code, s. 260; C. C. P., s. 119.

143. Time for pleading enlarged. The judge may likewise, in his discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited, or by an order to enlarge the time.

Rev., s. 512; Code, s. 274; C. C. P., s. 133.

144. Irrelevant, redundant, indefinite pleadings. If irrelevant or redundant matter is inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby, but this motion must be made before answer or demurrer, or before an extension of time to plead is granted. When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Rev., s. 496; Code, s. 261; C. C. P., s. 120.

NOTE. For sham and irrelevant defenses, see this chapter, s. 120.

145. Pleading judgments. In pleading a judgment or other determination of a court or of an officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. If this allegation is controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Rev., s. 497; Code, s. 262; C. C. P., s. 121.

146. How conditions precedent pleaded. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing performance, but it may be stated generally that the party duly performed all the conditions on his part. If this allegation is controverted, the party pleading must establish, on the trial, the facts showing performance.

Rev., s. 498; Code, s. 263; C. C. P., s. 122.

147. How instrument for payment of money pleaded. In an action or defense founded upon an instrument for the payment of money only, it is sufficient for the party pleading to give a copy of the instrument, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims.

Rev., s. 499; Code, s. 263; C. C. P., s. 122.

148. How private statutes pleaded. In pleading a private statute or right derived therefrom it is sufficient to refer to the statute by its title or the day of its ratification, and the court shall thereupon take judicial notice of it.

Rev., s. 500; Code, s. 264; C. C. P., s. 123.

149. Pleadings in libel and slander. In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it is sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation is controverted, the plaintiff is bound to establish on trial that it was so published or spoken.

The defendant may in his answer allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Rev. 1905, ss. 501-2; Code, ss. 265-6; C. C. P., ss. 124-5.

150. Allegations not denied, deemed true. Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer, constituting a counterclaim, not controverted by the reply is, for the purposes of the action, taken as true. But the allegation of new matter in the answer, not relating to a counterclaim, or of new matter in reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case requires.

Rev., s. 503; Code, s. 268; C. C. P., s. 127.

151. Pleading lost, copy used. If an original pleading or paper is lost or withheld by any person, the court may authorize a copy to be filed and used instead of the original.

Rev., s. 504; Code, s. 600; C. C. P., s. 357.

ART. 18. AMENDMENTS

152. Amendment as of course. Any pleading may be once amended of course, without costs, and without prejudice to the proceedings already had, at any time before the period for answering it expires; or it can be so amended at any time, unless it is made to appear to the court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is, or may be, docketed for trial; and if it appears to the court or judge that the amendment was made for that purpose, it may be stricken out, and such terms imposed as seem just to the court or judge.

Rev., s. 505; Code, s. 272; C. C. P., s. 131.

153. Pleading over after demurrer. After the decision on a demurrer, the judge shall, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just.

Rev., s. 506; Code, s. 272; C. C. P., s. 131; 1871-2, c. 173.

154. Amendments in discretion of court. The judge or court may, before and after judgment, in furtherance of justice, and on such terms as may be proper.

amend any pleading, process or proceeding, by adding or striking out the name of any party; by correcting a mistake in the name of a party, or a mistake in any other respect; by inserting other allegations material to the case; or when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the fact proved. When a proceeding taken by a party fails to conform to law in any respect, the trial judge may permit an amendment of the proceeding so as to make it conformable thereto.

Rev., ss. 507, 512; Code, ss. 273, 274; C. C. P., ss. 132, 133.

155. Amendment changing nature of action or relief; effect. When the complaint is so amended as to change the nature of the action and the character of the relief demanded, the judgment rendered does not operate as an estoppel upon any person acquiring an interest in the property in controversy prior to the allowance of the amendment.

Rev., s. 508; 1901, c. 486.

156. Unsubstantial defects disregarded. The court or judge shall, in every stage of the action, disregard any error or defect in the pleadings or proceedings which do not affect the substantial rights of the adverse party; and no judgment may be reversed or affected by reason of such error or defect.

Rev., s. 509; Code, s. 276; R. C., c. 3, ss. 5, 6; C. C. P., s. 135.

157. Defendant sued in fictitious name; amendment. When the plaintiff is ignorant of the name of a defendant the latter may be designated in a pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

Rev., s. 510; Code, s. 275; C. C. P., s. 134.

158. Supplemental pleadings. The plaintiff or defendant respectively may be allowed on motion to make a supplemental complaint, answer or reply, alleging facts material to the case occurring after, or of which the party was ignorant when his former pleading was filed. Either party may set up by a supplemental pleading, the judgment or decree of any court of competent jurisdiction, rendered since the commencement of an action, determining all or any part of the matter in controversy in said action, and if the judgment is set up by the plaintiff, it shall be without prejudice to any provisional remedy theretofore issued or other proceedings had in the action on his behalf.

Rev., s. 511; Code, s. 277; C. C. P., s. 136.

159. Variance, material and immaterial. 1. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action upon the merits. Whenever it is alleged that a party has been so misled, that fact and in what respect he has been misled, must be proved to the satisfaction of the court; and thereupon the judge may order the pleading to be amended upon such terms as shall be just.

2. Where the variance is not material as herein provided, the judge may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

Rev., ss. 515, 516; Code, ss. 269, 270; C. C. P., ss. 128, 129.

160. Total failure of proof. Where the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it is not deemed a case of variance, but a failure of proof.

Rev., s. 526; Code, s. 397; C. C. P., s. 223.

SUBCHAPTER 7. TRIAL AND ITS INCIDENTS

ART. 19. TRIAL

161. Defined. A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Rev., s. 526; Code, s. 397; C. C. P., s. 223.

162. How issue tried. An issue of law must be tried by the judge or court, unless it is referred. An issue of fact must be tried by a jury, unless a trial by jury is waived or a reference ordered. Every other issue is triable by the court, or judge, who, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it.

Rev., s. 527; Code, ss. 398, 399; C. C. P., ss. 224, 225.

NOTE. For compulsory reference, see this chapter, s. 179.

163. Issues of fact. Every issue of fact joined on the pleadings, and inquiry of damages ordered to be tried by a jury, must be tried at the term of the court next ensuing the joinder of issue or order for inquiry, if the issue was joined or order made more than thirty days before such term, but if not, they must be tried at the second term after the joinder or order.

Rev., s. 528; Code, s. 400; C. C. P., s. 226.

164. Issues of fact before the clerk. All issues of fact joined before the clerk shall be transferred to the superior court for trial at the next succeeding term, and in case of such transfer neither party is required to give an undertaking for costs.

Rev., s. 529.

165. Continuance before term; affidavit. A party to an action may apply to the court in which it is pending, or to the judge thereof, by affidavit, thirty days before the trial term, and after three days notice in writing to the adverse party, to have the trial continued to a term subsequent to that in which it is regularly triable. The court or judge may continue the trial as asked for, on such terms as may be just, if satisfied—

1. That the applicant has used due diligence to have his case ready for trial.
2. That by reason of circumstances beyond his control, which he must set forth, he cannot have a fair trial at the regular trial term. If the application is made by reason of the expected absence of a witness, it must state the name and residence of the witness, the facts expected to be proved by him, the grounds for the expectation of his nonattendance, and that the applicant expects to procure his evidence at or before some named subsequent term. The applicant must in all cases pay the costs of the application.

Rev., s. 530; Code, s. 401; C. C. P., s. 227.

166. Continuance during term. The judge at any time during the term at which an action is triable, may continue the trial on the application of either party, and on such terms as shall be just, if satisfied—

1. That the applicant has used due diligence to be ready for trial.

2. That he cannot have a fair trial at that term, by reason of circumstances stated, and if the ground of application is the nonattendance of a witness, the affidavit must contain the particulars required by subdivision two of the preceding section. Unless the applicant also sets forth in his affidavit that the facts upon which his application is grounded occurred or came to his knowledge too late to allow him to apply as prescribed in the preceding section, and that his application is made as soon as it reasonably could be after the knowledge of those facts, the continuance shall not be granted, except on the payment of the costs in the action for the term.

Rev., s. 531; Code, s. 402; C. C. P., s. 228; R. C., c. 31. s. 57.

167. Counter affidavits as to continuance. It is competent in all civil cases only for the opposing side to controvert the allegations of fact in applications for continuance, and to offer counter affidavits to that end. The judge shall not allow the continuance unless satisfied, after thorough examination of the evidence aforesaid, that the ends of justice demand it.

Rev., s. 532; 1885, c. 394.

168. Order of business. The criminal calendar must be first disposed of, unless, by consent of counsel, or for reasons satisfactory to the judge, particular criminal actions may be deferred. The issues on the civil calendar must be disposed of in the following order, unless, for the convenience of parties or the dispatch of business, the court otherwise directs.

1. Issues of fact to be tried by a jury.

2. Issues of fact to be tried by the court.

3. Issues of law.

Rev., s. 533; Code, s. 403; C. C. P., s. 229.

169. Separate trials. A separate trial between a plaintiff and any of several defendants may be allowed by the court, when, in its opinion, justice will thereby be promoted.

Rev., s. 534; Code, s. 407; C. C. P., s. 230.

170. Judge to explain law, but give no opinion on facts. No judge, in giving a charge to the petit jury, either in a civil or a criminal action, shall give an opinion whether a fact is fully or sufficiently proven, that being the true office and province of the jury; but he shall state in a plain and correct manner the evidence given in the case and declare and explain the law arising thereon.

Rev., s. 535; Code, s. 413; C. C. P., s. 237; R. C., c. 31, s. 130; 1796, c. 452.

171. Requests for instructions. Counsel praying of the judge instructions to the jury, must put their requests in writing entitled of the cause, and sign them; otherwise the judge may disregard them. They must be filed with the clerk as a part of the record.

Rev., s. 538; Code, s. 415; C. C. P., s. 239.

172. Instructions in writing; when to be taken to jury room. The judge, at the request of any party to an action on trial, made at or before the close of the evidence, before instructing the jury on the law, must put his instructions in writing, and read them to the jury. He shall then sign and file them with the clerk as a part of the record of the action.

When a judge puts his instructions in writing either of his own will or at the request of a party to the action, he must, at the request of either party to the action, allow the jury to take his instructions with them on their retirement, and the jury must return the instructions with their verdict to the court.

Rev. 1905, ss. 536, 537; Code, s. 414; C. C. P., s. 238; 1885, c. 137.

173. Demurrer to evidence. When on trial of an issue of fact in a civil action or special proceeding, the plaintiff has introduced his evidence and rested his case, the defendant may move to dismiss the action, or for judgment as in case of nonsuit. If the motion is allowed the plaintiff may except and appeal to the supreme court. If the motion is refused the defendant may except, and if the defendant introduces no evidence the jury shall pass upon the issues in the action, and the defendant has the benefit of his exception on appeal to the supreme court. After the motion is refused he may waive his exception and introduce his evidence just as if he had not made the motion, and he may again move to dismiss after all the evidence on both sides is in. If the motion is then refused, upon consideration of all the evidence, he may except, and after the jury has rendered its verdict, he has the benefit of the latter exception on appeal to the supreme court.

Rev., s. 539; 1897, c. 109; 1899, c. 131; 1901, c. 594.

174. Waiver of jury trial. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions in the manner following:

1. By failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent, entered in the minutes.

Rev., s. 540; Code, s. 416; C. C. P., s. 240.

NOTE. For submission of controversy without action, see this chapter, ss. 230-232.

175. Findings of fact and conclusions of law by judge. Upon trial of an issue of fact by the court, its decision shall be given in writing, and shall contain a statement of the facts found, and the conclusions of law separately. Upon trial of an issue of law, the decision shall be made in the same manner, stating the conclusions of law. Such decision must be filed with the clerk during the court at which the trial takes place and judgment upon it shall be entered accordingly.

Rev., s. 541; Code, s. 417; C. C. P., s. 241.

176. Exceptions to decision of court. 1. For the purposes of an appeal, either party may except to a decision on a matter of law arising upon a trial by the court within ten days after the judgment, in the same manner and with the same effect as upon a trial by jury. Where the decision does not authorize a final judgment, but directs further proceedings before a referee or otherwise, either party may except thereto, and make a case or exception as above provided in case of an appeal.

2. Either party desiring a review, upon the evidence appearing on the trial of the questions of law, may at any time within ten days after the judgment, or within such time as is prescribed by the rules of the court, make a case or exceptions in like manner as upon a trial by jury, except that the judge, in settling the case must briefly specify the facts found by him, and his conclusions of law.

Rev., s. 542; Code, s. 418; C. C. P., s. 242.

177. Proceedings upon judgment on issue of law. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of section No. 192 herein upon failure of the defendant to answer, where the summons was personally served. If judgment is for the defendant, upon an issue of law, and if taking of an account or the proof of any fact is necessary to enable the court to complete the judgment, a reference or assessment by jury may be ordered, as provided in section No. 193 herein.

Rev., s. 543; Code, s. 419; C. C. P., s. 243.

ART. 20. REFERENCE

178. By consent. Any or all of the issues in an action, whether of fact or law, may be referred, upon the written consent of the parties, except in actions to annul a marriage, or for divorce and separation.

Rev., s. 518; Code, s. 420; C. C. P., s. 244.

179. Compulsory. Where the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. Where the trial of an issue of fact requires the examination of a long account on either side; in which case the referee may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein.

2. Where the taking of an account is necessary for the information of the court, before judgment, or for carrying a judgment or order into effect.

3. Where the case involves a complicated question of boundary, or one which requires a personal view of the premises.

4. Where a question of fact other than upon the pleadings arises upon motion or otherwise, in any stage of the action.

5. Where the issues of fact and questions of fact arise in an action of which the courts of equity of the state had exclusive jurisdiction prior to the adoption of the constitution of one thousand eight hundred and sixty-eight, and in which the matter or amount in dispute is not less than the sum or value of five hundred dollars.

The compulsory reference under this section does not deprive either party of his constitutional right to a trial by jury of the issues of fact arising on the pleadings.

Rev., s. 519; Code, s. 421; 1897, c. 237, ss. 1, 2; C. C. P., s. 245; 1917, c. 280.

180. How referees chosen or appointed. In all cases of reference the parties as to whom issues are joined in the action (except when the defendant is an infant or an absentee) may agree in writing upon a person or persons, not

exceeding three, and a reference shall be ordered to him or them, and to no other person or persons. And if such parties do not agree, the court shall appoint one or more referees, not more than three, who are free from exception. No person may be appointed referee to whom all parties in the action object. No judge or justice of any court may sit as referee in an action pending in the court of which he is judge or justice, and not already referred, unless the parties otherwise stipulate.

Rev., s. 520; Code, s. 423; C. C. P., s. 247.

181. Referees may administer oaths. Every referee has power to administer oaths in any proceeding before him, and has generally the power vested in a referee by law.

Rev., s. 521; Code, s. 599; C. C. P., s. 356.

182. Powers of referee of trial. The trial by referees shall be conducted in the same manner as a trial by the court. Referees have the same power to grant adjournments and to allow amendments to pleadings and to the summons, as the court upon such trial, upon the same terms and with like effect. They shall have the same power to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses before them by attachment and to punish them as for contempt for nonattendance or refusal to be sworn or to testify, as is possessed by the court.

Rev., s. 522; Code, s. 422; C. C. P., s. 246.

183. Testimony reduced to writing. The testimony of all witnesses on both sides must be reduced to writing by the referee, or under his direction, and signed by the witnesses, and the evidence so taken and signed shall be filed in the cause, and constitute a part of the record.

Rev., s. 523; 1897, c. 237, s. 3.

184. Report; review, and judgment. The referee shall make and deliver a report, within the time ordered by the court, to the clerk of the court in which the action is pending. Either party, during the term or upon ten days notice to the adverse party out of term, may move the judge to review the report, and set aside, modify or confirm it in whole or in part, and no judgment may be entered on any reference except by order of the judge.

Rev., s. 524; Code, s. 423; C. C. P., s. 247.

185. Report, contents and effect. The referee must state the facts found and the conclusions of law separately. His decision must be given, and may be excepted to and reviewed in like manner, and with like effect in all respects as in cases of appeal; and he may in like manner settle a case or exceptions. The report of the referee upon the whole issue stands as the decision of the court, and judgment may be entered thereon upon application to the judge. When the reference is to report the facts, the report has the effect of a special verdict.

Rev., s. 525; Code, s. 422; C. C. P., s. 246.

ART. 21. ISSUES

186. Defined. Issues arise upon the pleadings, when a material fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds:

1. Of law.
2. Of fact.

Rev., s. 544; Code, s. 391; C. C. P., s. 219.

187. Of law. An issue of law arises upon a demurrer to the complaint, answer or reply, or to some part thereof.

Rev., s. 545; Code, s. 392; C. C. P., s. 220.

188. Of fact. An issue of fact arises—

1. Upon a material allegation in the complaint controverted by the answer; or,
2. Upon new matter in the answer, controverted by the reply; or,
3. Upon new matter in the reply, unless an issue of law is joined thereon.

Rev., s. 546; Code, s. 393; C. C. P., s. 221.

189. Order of trial. Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In these cases the issues of law must be first tried, unless the court otherwise directs.

Rev., s. 547; Code, s. 394; C. C. P., s. 222.

190. Form and preparation. Issues shall be framed in concise and direct terms, and prolixity and confusion must be avoided, by not having too many issues. The issues arising upon the pleadings, material to be tried, must be made up by the attorneys appearing in the action, or by the judge presiding, and reduced to writing, before or during the trial.

Rev. 1905, ss. 548-9; Code, ss. 395-6.

ART. 22. VERDICT

191. General and special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Rev., s. 550; Code, s. 408; C. C. P., s. 232.

192. Special controls general. Where a special finding of facts is inconsistent with the general verdict, the former controls, and the court shall give judgment accordingly.

Rev., s. 552; Code, s. 410; C. C. P., s. 234.

193. Character of, for different actions. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer,

which the prevailing party has sustained by reason of the detention or taking and withholding the property. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk, and entered upon the minutes.

Rev., s. 551; Code, s. 409; C. C. P., s. 233.

194. Jury to assess damages; counterclaim. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer. If a counterclaim, established at the trial, exceeds the plaintiff's demand so established, judgment for the defendant must be given for the excess; or if it appears that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

Rev., s. 553; Code, s. 411; C. C. P., s. 235.

195. Entry of verdict and judgment. Upon receiving a verdict, the clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon, or an order that the cause be reserved for argument or further consideration. If a different direction is not given by the court, the clerk must enter judgment in conformity with the verdict.

Rev., s. 554; Code, s. 412; C. C. P., s. 236.

196. Exceptions. 1. If an exception is taken upon the trial, it must be reduced to writing at the time with so much of the evidence or subject matter as may be material to the exception taken; the same must be entered in the judge's minutes and filed with the clerk as a part of the case upon appeal.

2. If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.

Rev., s. 554; Code, s. 412; C. C. P., s. 236.

197. Motion to set aside. The judge who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion can only be heard at the same term at which the trial is had. When the motion is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a case or exceptions must be settled in the usual form, upon which the argument of the appeal must be had.

Rev., s. 554; Code, s. 412; C. C. P., s. 236.

SUBCHAPTER 8. JUDGMENT

ART. 23. JUDGMENT

198. Defined. A judgment is either interlocutory, or the final determination of the rights of the parties in the action.

Rev., s. 555; Code, s. 384; C. C. P., s. 216.

199. By default final. Judgment by default final may be had on failure of defendant to answer—

1. Where the 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.

2. Where the defendant, by his answer in such action, does not deny the plaintiff's claim, but sets up a counterclaim, amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of his claim over the counterclaim, in like manner in any such action, upon the plaintiff's filing with the court a statement admitting the counterclaim, which statement must 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 is 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 apply and are admitted to defend the action, and succeed in such defense.

4. In actions for the recovery of real property, or for the possession thereof, upon the failure of the defendant to file the undertaking required by law, or upon failure of his sureties to justify according to law, unless the defendant is excused from giving such undertaking before answering.

Rev., s. 556; Code, ss. 385, 390; C. C. P., s. 217; 1870-1, c. 42; 1869-70, c. 193, s. 4.

NOTE. For interest on judgment, see Interest, s. 6.

In Gaston County judgment by default final may be taken at any of the criminal terms of the superior court. 1915, c. 114.

200. By default and inquiry. In all other actions, except those mentioned in the preceding section, when the defendant fails to answer and upon a like proof, judgment by default and inquiry may be had at the return term, and inquiry shall be executed at the next succeeding term. If the taking of an intricate or

long account is necessary to execute properly the inquiry, the court, at the return term, may order the account to be taken by the clerk of the court or some other fit person, and the referee shall make his report at the next succeeding term; in all other cases, the inquiry shall be executed by a jury, unless by consent the court is to try the facts as well as the law.

Rev., s. 557; Code, s. 386.

NOTE. In Gaston County judgment by default and inquiry may be taken at any of the criminal terms of the superior court. 1915, c. 114.

201. By default for defendant. If the answer contains a statement of new matter constituting a counterclaim, and the plaintiff fails to reply or demur thereto, the defendant may move for such judgment as he is entitled to upon such statement; and if the case requires it, an order for an inquiry of damages by a jury may be made.

Rev., s. 558; Code, s. 249; C. C. P., s. 106.

202. Rendered in vacation. In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election.

Rev., s. 559; Code, s. 230; 1871-2, c. 3.

203. On frivolous pleading. If a demurrer, answer or reply is frivolous, the party prejudiced thereby may apply to the court or judge for judgment thereon, which may be given accordingly.

Rev., s. 560; Code, s. 388; C. C. P., s. 218.

NOTE. For sham and irrelevant defense, see this chapter, s. 120.

For irrelevant, redundant, and indefinite pleadings, see this chapter, s. 144.

204. Mistake, surprise, excusable neglect. The judge shall, upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, verdict or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect, and may supply an omission in any proceeding.

Rev., s. 513; Code, s. 274; 1893, c. 81; C. C. P., s. 133.

205. Stands until reversed. Every judgment given in a court of record having jurisdiction of the subject, is, and continues to be in force until reversed according to law.

Rev., s. 561; Code, s. 935; R. C., c. 31, s. 103; 4 Hen. IV, c. 23.

206. For and against whom given; failure to prosecute. 1. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may determine the ultimate rights of the parties on each side, as between themselves.

2. It may grant to the defendant any affirmative relief to which he may be entitled.

3. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

4. The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to

serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

Rev., s. 563; Code, s. 424; C. C. P., s. 248.

207. Against married women. In an action brought by or against a married woman, judgment may be given against her for costs or damages or both, in the same manner as against other persons, to be levied and collected solely out of her separate estate.

Rev., 563.

208. Nonsuit not allowed after verdict. In actions where a verdict passes against the plaintiff, judgment shall be entered against him.

Rev., s. 1520; Code, s. 936; R. C., c. 31, s. 110; 2 Hen. IV. c. 7.

209. Party dying after verdict. In no action shall the death of either party between the verdict and the judgment be alleged for error, if the judgment is entered within two terms after the verdict.

Rev., s. 564; Code, s. 938; R. C., c. 31, s. 112; 17 Charles II, c. 8.

210. On satisfaction of penalty bond. If at any time, pending an action on a bond with a penalty, the defendant brings into the court where the action is pending, all the principal money and interest due, and all costs which have been expended in any suit upon such bond, the said money is a full satisfaction and discharge of the bond, and the court shall give judgment accordingly.

Rev., s. 1523; Code, s. 934; R. C., c. 31, s. 102; 4 Anne, c. 16.

211. When limited by demand in complaint. The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Rev., s. 565; Code, s. 425; C. C. P., s. 249.

212. When passes legal title. In any action wherein the court declares a party entitled to the possession of real or personal property, the legal title of which is in another party to the suit, and the court orders a conveyance of such legal title to him so declared to be entitled, or where, for any cause, the court orders that one of the parties holding property in trust shall convey the legal title to be held in trust to another person although not a party, the court, after declaring the right and ordering the conveyance, has power also, to be used in its discretion, to declare in the order then made, or in any made in the progress of the cause, that the effect thereof is to transfer to the party to whom the conveyance is directed to be made, the legal title of the said property, to be held in the same plight, condition and estate as though the conveyance ordered were in fact executed; and shall bind and entitle the parties ordered to execute or to take benefit of the conveyance, in and to all such provisions, conditions and covenants as are adjudged to attend the conveyance, in the same manner and to the same extent as the conveyance would if the same were executed according to the order. A party taking benefit under the judgment has the same redress at law on account of the matter adjudged as he might on the conveyance, if the same had been executed.

Rev., s. 566; Code, s. 426; R. C., c. 32, s. 24; 1850, c. 107; 1874-5, c. 17.

213. Regarded as a deed and registered. Every judgment, in which the transfer of title is so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person ordered to convey, and shall be registered in the proper county, under the rules and regulations prescribed for conveyances of similar property executed by the party. The party desiring registration of such judgment must produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate. All laws which are passed for extending the time for registration of deeds include such judgments, provided the conveyance, if actually executed, would be so included.

Rev., ss. 567-8; Code, ss. 427, 429; R. C., c. 32, ss. 25, 27; 1850, c. 107, ss. 2, 4; 1874-5, c. 17, ss. 2, 4.

214. Certified registered copy evidence. In all legal proceedings, touching the right of parties derived under such judgment, a certified copy from the register's books is evidence of its existence and of the matters therein contained, as fully as if proved by a perfect transcript of the whole case.

Rev., s. 569; Code, s. 428; R. C., c. 32, s. 26; 1850, c. 107, s. 3; 1874-5, c. 17, s. 3.

215. In action for recovery of personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or for the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or for the value thereof in case a return cannot be had, and damages for taking and withholding the same.

Rev., s. 570; Code, s. 431; C. C. P., s. 251.

216. What judge approves judgments. In all cases where a judgment, decree or order of the superior court is required to be approved by a judge, it shall be approved by the judge having jurisdiction of receivers and injunctions.

Rev., s. 571; Code, s. 432; 1876-7, c. 223, s. 3; 1879, c. 63; 1881, c. 51.

NOTE. For judge approving when infants are petitioners, see this chapter, s. 365.

217. Judgment roll. Unless the party or his attorney furnishes a judgment roll, the clerk, immediately after entering the judgment, shall attach together and file the following papers which constitute the judgment roll:

1. In case the complaint is not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

2. In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment.

Rev., s. 572; Code, s. 434; C. C. P., s. 253.

218. Docketed and indexed; held as of first day of term. Every judgment of the superior court, affecting the right to real property, or requiring in whole or in part the payment of money, shall be entered by the clerk of said superior

court on the judgment docket of the court. The entry must contain the names of the parties, and the relief granted, date of judgment and date of docketing; and the clerk shall keep a cross-index of the whole, with the dates and numbers thereof. In all cases affecting the title to real property the clerk shall enter upon the judgment docket the number and page of the minute docket where the judgment is recorded, and if the judgment does not contain particular description of the lands, but refers to a description contained in the pleadings, the clerk shall enter upon the minute docket, immediately following the judgment, the description so referred to.

All judgments rendered in any county by the superior court, during a term of the court, and docketed during the same term, or within ten days thereafter, are held and deemed to have been rendered and docketed on the first day of said term.

Rev., s. 573; Code, s. 433; C. C. P., s. 252; Supr. Ct. Rule VIII; 1909, c. 709.

219. Where and how docketed; lien. Upon filing a judgment roll upon a judgment affecting the title of real property, or directing in whole or in part the payment of money, it shall be docketed on the judgment docket of the superior court of the county where the judgment roll was filed, and may be docketed on the judgment docket of the superior court of any other county upon the filing with the clerk thereof a transcript of the original docket, and is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for ten years from the date of the rendition of the judgment. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the ten years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.

Rev., s. 574; Code, s. 435; C. C. P., s. 254.

NOTE. Statute of limitation does not run against judgment when homestead allotted. see this chapter, s. 332.

220. Of supreme court docketed in superior court; lien. It is the duty of the clerk of the supreme court, on application of the party obtaining judgment in that court, directing in whole or in part the payment of money, or affecting the title to real estate, or on the like application of the attorney of record of said party, to certify under his hand and the seal of said court a transcript of the judgment, setting forth the title of the court, the names of the parties thereto, the relief granted, that the judgment was so rendered by said court, the amount and date of the judgment, what part thereof bears interest and from what time; and said clerk shall send such certificate and transcript to the clerk of the superior court of such counties as he is directed; and the clerk of the superior court receiving the certificate and transcript shall docket them in like manner as judgment rolls of the superior court are docketed. And when so docketed, the lien of said judgment is the same in all respects, subject to the same restrictions and qualifications, and the time shall be reckoned as is provided and prescribed

in the preceding sections for judgments of the superior court, so far as the same are applicable. The party desiring the certificate and transcript provided for in this section, may obtain them at any time after such judgment has been rendered, unless the supreme court otherwise directs.

Rev., s. 575; Code, s. 436; 1881, c. 75, ss. 1, 4.

221. Of federal court docketed; lien. Judgments and decrees rendered in the circuit and district courts of the United States within this state may be docketed on the judgment dockets of the superior courts in the several counties of this state for the purpose of creating liens of such judgments and decrees upon property within the county where the same are so docketed in like manner as judgments of superior courts, for the purpose of creating liens upon property, but in no other manner, extent or order than as contemplated, provided and intended by the act of Congress entitled "An act to regulate the liens of judgments and decrees of the courts of the United States," approved August first, one thousand eight hundred and eighty-eight. And it is the duty of the clerk of the superior court, when a judgment roll of said circuit and district courts is filed with him, to docket it as judgments of the said superior courts are required to be docketed.

Rev., s. 576; 1889, c. 439.

222. Paid to clerk; docket credited; transcript to other counties. The party against whom a judgment for the payment of money is rendered, by any court of record, may pay the whole, or any part thereof, to the clerk of the court in which the same was rendered, at any time thereafter, although no execution has issued on such judgment; and this payment of money is good and available to the party making it, and the clerk shall enter the payment on the judgment docket of the court, and immediately forward a certificate thereof to the clerk of the superior court of each county, to whom a transcript of said judgment has been sent, and the clerk of such superior court shall enter the same on the judgment docket of such court and file the original with the judgment roll in the action. Entries of payment or satisfaction on the judgment dockets in the office of the clerk of the superior court, by any person other than the clerk, shall be made in the presence of the clerk or his deputy, who shall witness the same, and when entries of full payment or satisfaction have been made, the clerk or his deputy shall enter upon the judgment index kept by him, opposite and on a line with the names of the parties to the judgment, the words "Paid" or "Satisfied."

Rev., s. 577; Code, s. 438; R. C., c. 31, s. 127; 1823, c. 1212; 1911, c. 76.

223. Clerk to pay money to party entitled. The clerk, to whom money is paid as aforesaid, shall pay it to the party entitled to receive it, under the same rules and penalties as if the money had been paid into his office by virtue of an execution.

Rev., s. 578; Code, s. 439; R. C., c. 31, s. 128; 1823, c. 1212, s. 2.

224. Credits upon judgments. Where a payment has been made on a judgment docketed in the office of the clerk of the superior court, and no entry made on the judgment docket, or where any docketed judgment appealed from has been reversed or modified on appeal and no entry made on such docket, any

person interested therein may move in the cause before the clerk, upon affidavit after notice to all persons interested, to have such credit, reversal or modification entered; and upon the hearing before the clerk he may hear affidavits, oral testimony, depositions and any other competent evidence, and shall render his judgment, from which any party may appeal in the same manner as in appeals in special proceedings. On the trial of any issue of fact on the appeal either party may demand a jury trial, which shall be had upon the evidence before the clerk, which he shall reduce to writing. On a final judgment ordering any such credit, reversal or modification, transcript thereof shall be sent by the clerk of the superior court to each county in which the original judgment has been docketed, and the clerk of such county shall enter the same on the judgment docket of his county opposite such judgment and file the transcript. No final process shall issue on any such judgment after affidavit filed in the cause until the motion for credit, reversal or modification has been finally disposed of.

Rev., s. 579; 1903, c. 558.

NOTE. For form of judgment for purchase-money of land, see this chapter, s. 279 (5). For estoppel of judgment after amendment of pleadings, see this chapter, s. 155.

225. For money due on judicial sale. The supreme and other courts ordering a judicial sale, or having possession of bonds taken on such sale, may, on motion, after ten days notice thereof in writing, enter judgment as soon as the money becomes due against the debtors or any of them, unless for good cause shown the court directs some other mode of collection.

Rev., s. 1524; Code, s. 941; R. C., c. 31, s. 129.

226. Applicable to justice's courts. This article applies, wherever appropriate, to proceedings in courts of justices of the peace.

Rev., s. 562; Code, s. 389.

ART. 24. CONFESSION OF JUDGMENT

227. When and for what. A judgment by confession may be entered without action either in or out of term, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this article.

Rev., s. 580; Code, s. 570; C. C. P., s. 325.

228. Debtor to make verified statement. A statement in writing must be made, signed, and verified by the defendant, to the following effect:

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

2. If it is for money due, or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed is justly due, or to become due.

3. If it is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed does not exceed the same.

Rev., s. 581; Code, s. 571; C. C. P., s., 326.

229. Judgment; execution; installment debt. The statement may be filed with the clerk of the superior court of the county in which the defendant resides,

or if he does not reside in the state, of some county in which he has property. The clerk shall indorse upon it and enter on his judgment docket a judgment of the court for the amount confessed, with three dollars costs, together with disbursements. The statement and affidavit, with the judgment indorsed, thenceforth becomes the judgment roll. Executions may be issued and enforced thereon in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable in installments, and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form; but must have indorsed thereon, by the attorney or person issuing it, a direction to the sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment remains as security for the installments thereafter to become due; and whenever any further installment becomes due, execution may, in like manner, be issued for its collection and enforcement.

Rev., s. 582; Code, s. 572; C. C. P., s. 327.

ART. 25. SUBMISSION OF CONTROVERSY WITHOUT ACTION

230. Submission, affidavit, and judgment. Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The judge shall hear and determine the case, and render judgment thereon as if an action were pending.

Rev., s. 803; Code, s. 567; C. C. P., s. 315.

231. Judgment roll. Judgment shall be entered on the judgment docket, as in other cases, but without costs for any proceeding prior to trial. The case, the submission, and a copy of the judgment, constitute the judgment roll.

Rev., s. 804; Code, s. 568; C. C. P., s. 316.

232. Judgment enforced; appeal. The judgment may be enforced in the same manner as if it had been rendered in an action, and is subject to appeal in like manner.

Rev., s. 805; Code, s. 569; C. C. P., s. 317.

SUBCHAPTER 9. APPEAL

ART. 26. APPEAL

233. Writs of error abolished. Writs of error in civil actions are abolished, and the only mode of reviewing a judgment, or order, in a civil action, is that prescribed by this chapter.

Rev., s. 583; Code, s. 544; C. C. P., s. 296.

234. Certiorari, recordari and supersedeas. Writs of certiorari, recordari and supersedeas are authorized as heretofore in use. The writs of certiorari and recordari, when used as substitutes for an appeal, may issue when ordered upon

the applicant filing a written undertaking for the costs only; but the supersedeas, to suspend execution, shall not issue until an undertaking is filed, or a deposit made to secure the judgment sought to be vacated, as in cases of appeal where execution is stayed.

Rev., s. 584; Code, s. 545; 1874-5, c. 109.

235. Appeal to supreme court; security on appeal; stay. Cases shall be taken to the supreme court by appeal, as provided by law. All provisions in this article as to the security to be given upon appeals and as to the stay of proceedings apply to appeals taken to the supreme court.

Rev., ss. 595, 1540; Code, ss. 561, 946; C. C. P., s. 312.

236. Who may appeal. Any party aggrieved may appeal in the cases prescribed in this chapter.

Rev., s. 585; Code, s. 547; C. C. P., s. 298.

237. Appeal from clerk to judge. Appeals lie to the judge of the superior court having jurisdiction, either in term time or vacation, from judgments of the clerk of the superior court in all matters of law or legal inference. In case of such transfer or appeal neither party need give an undertaking for costs; and the clerk shall transmit, on the transfer or appeal, to the superior court, or to the judge thereof, the pleadings, or other papers, on which the issues of fact or of law arise. An appeal must be taken within ten days after the entry of the order or judgment of the clerk. But an appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed the order or judgment appealed from, or who, being entitled to be heard thereon, had no opportunity of being heard, which fact may be shown by affidavit or other proof.

Rev. 1905, ss. 586, 610-11; Code, ss. 116, 252-3; C. C. P., ss. 109, 492.

238. Clerk to transfer issues of fact to civil issue docket. If issues of law and of fact, or of fact only, are raised before the clerk, he shall transfer the case to the civil issue docket for trial of the issues at the next ensuing term of the superior court.

Rev., s. 588; Code, s. 256; C. C. P., s. 115.

239. Duty of clerk on appeal. On such appeal the clerk, within three days thereafter, shall prepare and sign a statement of the case, of his decision and of the appeal, and exhibit such statement to the parties or their attorneys on request. If the statement is satisfactory, the parties or their attorneys must sign it. If either party objects to the statement as partial or erroneous, he may put his objections in writing, and the clerk shall attach the writing to his statement, and within two days thereafter he shall send such statement, together with the objections, and copies of all necessary papers, by mail or otherwise, to the judge residing in the district, or in his absence to the judge holding the courts of the district, for his decision.

Rev., s. 612; Code, s. 254; C. C. P., s. 110.

240. Duty of judge on appeal. It is the duty of the judge on receiving a statement of appeal from the clerk, or the copy of the record of an issue of law, to decide the questions presented within ten days. But if he has been informed in writing, by the attorney of either party, that he desires to be heard

on the questions, the judge shall fix a time and place for the hearing, and give the attorneys of both parties reasonable notice. He must transmit his decision in writing, endorsed on or attached to the record, to the clerk of the court, who shall immediately acknowledge its receipt, and within three days after notify the attorneys of the parties of the decision and on request and the payment of his legal fees, give them a copy thereof, and the parties receiving such notice may proceed thereafter according to law.

Rev., s. 613; Code, s. 255; C. C. P., s. 113.

241. Judge determines entire controversy; may recommit. Whenever a civil action or special proceeding begun before the clerk of a superior court is for any ground whatever sent to the superior court before the judge, the judge has jurisdiction; and it is his duty, upon the request of either party, to proceed to hear and determine all matters in controversy, in such action, unless it appears to him that justice would be more cheaply and speedily administered by sending the action back to be proceeded in before the clerk, in which case he may do so.

Rev., s. 614; 1887, c. 276.

242. Appeal from superior court judge. An appeal may be taken from every judicial order or determination of a judge of a superior court, upon or involving a matter of law or legal inference, whether made in or out of term, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial.

Rev., s. 587; Code, s. 548; C. C. P., s. 299; 1818, c. 962, s. 4.

NOTE. For appeal in creditors' proceeding against personal representative, see chapter Administration, s. 121.

243. Appeal from judge in special proceedings. Any party, within ten days after notice of such judgment, may appeal to the supreme court of the state, upon any matter of law or legal inference therein, under the regulations provided for appeals in other cases.

Rev., s. 588; Code, s. 256; C. C. P., s. 115.

244. Interlocutory orders reviewed on appeal from judgment. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.

Rev., s. 589; Code, s. 562; C. C. P., s. 313.

245. When appeal taken. The appeal must be taken from a judgment rendered out of term within ten days after notice thereof, and from a judgment rendered in term within ten days after its rendition, unless the record shows an appeal taken at the trial, which is sufficient, but execution shall not be suspended until the giving by the appellant of the undertakings hereinafter required.

Rev., s. 590; Code, s. 549; 1889, c. 161; C. C. P., s. 300.

246. Entry and notice of appeal. Within the time prescribed in the preceding section, the appellant shall cause his appeal to be entered by the clerk on the judgment docket, and notice thereof to be given to the adverse party unless the record shows an appeal taken or prayed at the trial, which is sufficient.

Rev., s. 591; Code, s. 550; C. C. P., s. 301.

247. Case on appeal; statement, service, and return. The appellant shall cause to be prepared a concise statement of the case, embodying the instructions of the judge as signed by him, if there be an exception thereto, and the request of the counsel of the parties for instructions if there be any exception on account of the granting or withholding thereof, and stating separately, in articles numbered, the errors alleged. A copy of this statement shall be served on the respondent within fifteen days from the entry of the appeal taken; within ten days after such service the respondent shall return the copy with his approval or specific amendments indorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved.

Rev., s. 591; Code, s. 550; C. C. P., s. 301; 1905, c. 448.

248. Settlement of case on appeal. If the case on appeal is returned by the respondent with objections as prescribed, the appellant shall immediately request the judge to fix a time and place for settling the case before him. If the appellant delays longer than fifteen days after the respondent serves his counterclaim, or exceptions, to request the judge to settle the case on appeal and delays for such period to mail the case and counterclaim or exceptions to the judge, then the exceptions filed by the respondent shall be allowed, or the counterclaim served by him shall constitute the case on appeal, but the time may be extended by agreement.

The judge shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, within the judicial district, which time shall not be more than twenty days from the receipt of the request. At the time and place stated, the judge shall settle and sign the case, and deliver a copy to the attorney of each party, or if the attorneys are not present, file a copy in the office of the clerk of the court. If the judge has left the district before the notice of disagreement, he may settle the case without returning to the district.

In settling the case, the written instructions signed by the judge, and the written request for instructions signed by the counsel, and the written exceptions are deemed conclusive as to what these instructions, requests and exceptions were. If a copy of the case settled was delivered to the appellant, he shall within five days thereafter file it with the clerk, and if he fails to do so, the respondent may file his copy.

The judge shall settle the case on appeal within sixty days after the termination of a special term or after the courts of the districts have ended, and if the judge in the meantime has gone out of office, he shall settle the case as if he were still in office. Any judge failing to comply with this section is liable to a penalty of five hundred dollars, for the use of any person who sues for it.

Rev., s. 591; Code, s. 550; C. C. P., s. 301; 1880, c. 161; 1907, c. 312.

249. Clerk to prepare transcript. The clerk on receiving a copy of the case settled, as required in the preceding sections, shall make a copy of the judgment roll and of the case, and within twenty days transmit the same, duly certified, to the clerk of the supreme court. The clerk, except in cases where parties are allowed to appeal without giving an undertaking on appeal, shall not be required

to make the copy of the record in the case for the supreme court until the appellant has given the undertaking on appeal or made the deposit required.

Rev., s. 592; Code, s. 551; 1889, c. 135; C. C. P., s. 302.

250. Undertaking on appeal; filing; waiver. To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in such sum as may be ordered by the court, not exceeding two hundred and fifty dollars, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk by whom the judgment or order was entered; or such sum as is ordered by the court must be deposited with the clerk by whom the judgment or order was entered, to abide the event of the appeal. The undertaking or deposit may be waived by a written consent on the part of the respondent. No appeal shall be dismissed in the supreme court on the ground that the undertaking on appeal was not filed, or deposit made, earlier, if the undertaking is filed or the deposit made before the record of the case is transmitted by the clerk of the superior court to the supreme court. When no undertaking on appeal has been filed, or deposit made before the record of the case is transmitted to the supreme court, the supreme court shall, upon good cause shown, on such terms as may be just, allow the appellant to file an undertaking or make the deposit.

Rev., ss. 593, 595; Code, ss. 552, 561; C. C. P., ss. 303, 312; 1889, c. 135, s. 2; 1871-2, c. 31.

251. Justification of sureties. The undertaking on appeal must be accompanied by the affidavit of one of the sureties that he is worth double the amount specified therein. The respondent may except to the sufficiency of the sureties within ten days after the notice of appeal; and unless they or other sureties justify within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification must be upon a notice of not less than five days.

Rev., s. 594; Code, s. 560; C. C. P., s. 310; 1887, c. 121.

252. Notice of motion to dismiss; new bond or deposit. Before the appellee is permitted to move to dismiss an appeal, either for any irregularity in the undertaking on appeal or for failure of sureties to justify, he must give written notice to the appellant of such motion at least twenty days before the district from which the cause is sent up is called, and this notice must state the grounds upon which the motion is based. At least five days before the district from which the cause is sent up is called, the appellant may file with the clerk of the supreme court a new bond justified according to law and containing a penalty the same in amount as the penalty in the original bond, or he may deposit with the said clerk a sum of money equal to the penalty in the original bond. When a new bond has been thus filed or deposit made the cause stands as if the bond had been duly given or deposit duly made in the court below.

Rev., s. 596; 1887, c. 121.

253. Appeals in forma pauperis; clerk's fees. When any party to a civil action tried and determined in the superior court, at the time of trial desires an appeal from the judgment rendered in the action to the supreme court, and is unable, by reason of his poverty, to make the deposit or to give the security

required by law for said appeal, it shall be the duty of the judge or clerk of said superior court to make an order allowing said party to appeal from the judgment to the supreme court as in other cases of appeal, without giving security therefor. The party desiring to appeal from said judgment shall within five days make affidavit that he is unable by reason of his poverty to give the security required by law, and that he is advised by counsel learned in the law that there is error in matter of law in the decision of the superior court in said action. The affidavit must be accompanied by a written statement from a practicing attorney of said superior court that he has examined the affiant's case, and is of opinion that the decision of the superior court, in said action, is contrary to law. The appeal when passed upon and granted by the clerk shall be within ten days from the expiration by law of said term of court. The clerk of the superior court cannot demand his fees for the transcript of the record for the supreme court of a party appealing in forma pauperis, in case such appellant furnishes to the clerk two true and correctly typewritten copies of such records on appeal. Nothing contained in this section deprives the clerk of the superior court of his right to demand his fees for his certificate and seal as now allowed by law in such cases.

Rev., s. 597; Code, s. 553; 1889, c. 161; 1873-4, c. 60; 1907, c. 878.

254. Undertaking to stay execution on money judgment. If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time, before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made, pursuant to such order, is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, 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.

Rev.. s. 598; Code, s. 554; C. C. P., ss. 304, 311.

255. How judgment for personal property stayed. If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment is not stayed by appeal, unless the things required to be assigned or delivered are brought into court, or placed in the custody of such officer or receiver as the court appoints, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court or a judge thereof directs to the effect that the appellant will obey the order of the appellate court upon the appeal.

Rev., s. 599; Code, s. 555; C. C. P., s. 305.

256. How judgment directing conveyance stayed. If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment is not stayed by the appeal until the instrument has been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

Rev., s. 600; Code, s. 556; C. C. P., s. 306.

257. How judgment for real property stayed. If the judgment appealed from directs the sale or delivery of possession of real property, the execution is not stayed, unless a bond is executed on the part of the appellant, with one or more sureties, to the effect that, during his possession of such property, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment is 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 must 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 must also provide for the payment of this deficiency.

Rev., s. 601; Code, s. 557; C. C. P., s. 307.

258. Docket entry of stay. When an appeal from a judgment is pending, and the undertaking requisite to stay execution on the judgment has been given, and the appeal perfected, the court in which the judgment was recovered may, on special motion, after notice to the person owning the judgment, on such terms as it sees fit, direct an entry to be made by the clerk on the docket of such judgment, that the same is secured on appeal, and no execution can issue upon such judgment during the pendency of the appeal.

Rev., s. 621; Code, s. 435; 1887, c. 192; C. C. P., s. 254.

259. Scope of stay; security limited for fiduciaries. When an appeal is perfected as provided by this article 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. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars, where it would otherwise exceed that sum.

Rev., s. 602; Code, s. 558; C. C. P., s. 308.

260. Undertaking in one or more instruments; served on appellee. The undertakings 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 the required deposit is made and notice thereof given.

Rev., s. 603; Code, s. 559; C. C. P., s. 309.

261. Judgment not vacated by stay. The stay of proceedings provided for in this article shall not be construed to vacate the judgment appealed from, but in all cases such judgment remains in full force and effect, and its lien remains unimpaired, notwithstanding the giving of the undertaking or making the deposit required in this chapter, until such judgment is reversed or modified by the supreme court.

Rev., s. 604; 1887, c. 192.

262. Judgment on appeal and on undertakings; restitution. 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. 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 person prosecuting the writ of certiorari and his sureties, in all cases where judgment is rendered against the appellant or person prosecuting the writ.

Rev., s. 605; Code, s. 563; C. C. P., s. 314; R. C., c. 4, s. 10; 1785, c. 233, s. 2; 1810, c. 793; 1831, c. 46, s. 2.

NOTE. For jurisdiction of supreme court in connection with appeals, see Courts, Art. 1.

263. Procedure after determination of appeal. In civil cases, at the first term of the superior court after a certificate of the determination of an appeal is received, if the judgment is affirmed the court below shall direct the execution thereof to proceed, and if the judgment is modified, shall direct its modification and performance. If a new trial is ordered the cause stands in its regular order on the docket for trial at such first term after the receipt of the certificate from the supreme court.

Rev., s. 1526; 1887, c. 192, s. 2.

264. Appeal from justice heard de novo; judgment by default; appeal dismissed. When an appeal is taken from the judgment of a justice of the peace to a superior court, it shall be therein reheard, on the original papers, and no copy thereof need be furnished for the use of the appellate court. An issue shall be made up and tried by a jury at the first term to which the case is returned, unless continued, and judgment shall be given against the party cast and his sureties. When the defendant defaults, 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. If the appellant fails to have his appeal docketed as required by law, the appellee may, at the term of court next succeeding the term to which the appeal is taken, have the case placed

upon the docket, and upon motion the judgment of the justice shall be affirmed and judgment rendered against the appellant, and for the costs of appeal and against his sureties upon the undertaking, if there are any, according to the conditions thereof. Nothing herein prevents the granting the writ of recordari in cases now allowed by law.

Rev. 1905, ss. 607, 609; Code, ss. 565, 881; C. C. P., s. 540; 1889, c. 443; R. C., c. 31, s. 105; 1777, c. 115, s. 63; 1794, c. 414.

265. Appeal from justice docketed for trial de novo. When the return is made from the justice's court the clerk of the appellate court shall docket the case on his trial docket for a new trial of the whole matter at the ensuing term of said court.

Rev., s. 608; Code, s. 880; C. C. P., s. 539; 1876-7, c. 251, s. 8.

266. Plaintiff's cost bond on appeal from justice. When a defendant appeals from the judgment of a justice of the peace to the superior court, or when the judgment of the justice is removed by the defendant, by recordari or otherwise, to a superior court, the court having cognizance of the 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.

Rev., s. 606; Code, s. 564; R. C., c. 31, s. 104; 1831, c. 29.

SUBCHAPTER 10. EXECUTION

ART. 27. EXECUTION

267. Judgment enforced by execution. Where a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution, as provided in this article. Where it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuses, he may be punished by the court as for contempt.

Rev., s. 615; Code, s. 441; C. C. P., s. 257.

268. Kinds of; signed by clerk; when sealed. There are three kinds of execution: one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, and shall be subscribed by the clerk, and when to run out of his county, must be sealed with the seal of his court.

Rev., s. 616; Code, s. 442; C. C. P., s. 258.

269. Against married woman. An execution may issue against a married woman, and it must direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

Rev., s. 617; Code, s. 443; C. C. P., s. 259.

270. Clerk to issue, in six weeks; penalty. The clerks of the superior court shall issue executions on all judgments rendered in their respective courts, unless

otherwise directed by the plaintiff, within six weeks of the rendition of the judgment, and must endorse upon the record the date of such issue. If the executions issued are not returned satisfied to the courts to which they are made returnable, the clerks must issue alias executions, within six weeks thereafter, unless otherwise instructed as aforesaid. Every clerk who fails to comply with the requirements of this section is liable to be amerced in the sum of one hundred dollars for the benefit of the party aggrieved, under the same rules that are provided by law for amercing sheriffs, and is further liable to the party injured by suit upon his bond.

Rev., s. 618; Code, s. 470; R. C., c. 45, s. 29; 1850, c. 17, ss. 1, 2, 3.

271. Within three years as of course. The party in whose favor judgment is given, and in case of his death, his personal representatives duly appointed, may at any time within three years after the entry of judgment proceed to enforce it by execution, as provided in this article.

Rev., s. 619; Code, s. 437; C. C. P., s. 255.

272. After three years by leave. After the lapse of three years from the entry of judgment on the judgment docket, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he is absent or nonresident, or cannot be found to make such service, in which case service may be made by publication, or in such other manner as the court directs. This leave shall not be granted unless it is established by the oath of the party, or by other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due. But the leave is not necessary when execution has been issued on the judgment within the three years next preceding the suing for execution, and return thereof unsatisfied in whole or in part.

Rev., s. 620; Code, s. 440; C. C. P., s. 256.

273. Issued from and returned to court of rendition. Executions and other process for the enforcement of judgments can issue only from the court in which the judgment for the enforcement of the execution or other final process was rendered; and the returns of executions or other final process shall be made to the court of the county from which it issued.

Rev., s. 623; Code, s. 444; 1871-2, c. 74; 1881, c. 75.

274. To what counties issued. When the execution is against the property of the judgment debtor it may be issued to the sheriff of any county where the judgment is docketed. No execution may issue from the superior court of any county upon a judgment until it is docketed in that county. When it requires the delivery of real or personal property it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Rev., s. 622; Code, s. 443; C. C. P., s. 259; 1871-2, c. 74; 1881, c. 75; 1905, c. 412.

275. Sale of land under execution. Real property adjudged to be sold must be sold in the county where it lies, by the sheriff of the county or by a referee appointed by the court for that purpose; and thereupon the sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold.

Rev., s. 622; Code, s. 443; C. C. P., s. 259.

276. When attested and returnable. Executions shall be attested as of the term next before the day on which they were issued, and are returnable to the next term of the court beginning not less than forty days after the issuing thereof, and no execution against property shall issue until the end of the term during which the judgment was rendered.

Rev., s. 624; Code, s. 449; 1903, c. 544; 1870-1, c. 42, s. 7; 1873-4, c. 7.

277. Against the person. If the action is one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the state, after the return of an execution against his property wholly or partly unsatisfied. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the article Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts is necessary to the cause of action or not.

Rev., s. 625; Code, s. 447; 1891, c. 541, s. 2; C. C. P., s. 260.

278. Defendant dying in execution; new execution against property. Parties, at whose suit the body of a person is taken in execution for a judgment recovered, their executors or administrators, may, after the death of the person so taken and dying in execution, have new execution against the property of the person deceased, as they might have had if that person had never been in execution.

Rev., s. 626; Code, s. 469; R. C., c. 45, s. 28; 21 James I, s. 24.

279. Form of execution. The execution must be directed to the sheriff, or coroner when the sheriff is a party or interested, subscribed by the clerk of the court, and must intelligibly refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. Against property—no lien on personal property until levy. If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

2. Against property in hands of personal representative. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees it shall require the officer to satisfy the judgment out of such property.

3. Against the person. If it is against the person of the judgment debtor, it shall require the officer to arrest him, and commit him to the jail of the county until he pays the judgment or is discharged according to law.

4. For delivery of specific property. If it is for the delivery of the possession of real or personal property, it shall require the officer to deliver the posses-

sion of the same, particularly describing it to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery cannot be had; and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and in that respect is deemed an execution against property.

5. For purchase money of land. If the answer in an action for recovery of a debt contracted for the purchase of land does not deny, or if the jury finds, that the debt was so contracted, it is the duty of the court to have embodied in the judgment that the debt sued on was contracted for the purchase money of the land, describing it briefly; and it is also the duty of the clerk to set forth in the execution that the said debt was contracted for the purchase of the land, the description of which must be set out briefly as in the complaint.

Rev., s. 627; Code, ss. 234-236, 448; C. C. P., s. 261; 1868-9, c. 148; 1879, c. 217.

280. Variance between judgment and execution. When property has been sold by an officer by virtue of an execution or other process commanding sale, no variance between the execution and the judgment whereon it was issued, in the sum due, in the manner in which it is due, or in the time when it is due, invalidates or affects the title of the purchaser of such property.

Rev., s. 628; Code, s. 1347; R. C., c. 44, s. 13; 1848, c. 53.

281. Property liable to sale under execution. The property of the judgment debtor, not exempted from sale under the constitution and laws of this state, may be levied on and sold under execution as hereinafter prescribed:

1. Goods, chattels, and real property belonging to him.
2. All leasehold estates of three years duration or more, owned by him.
3. Equitable and legal rights of redemption in real property pledged or mortgaged by him.
4. Real property or goods and chattels of which any person is seized or possessed in trust for him.

But no execution shall be levied on growing crops until they are matured.

Rev., ss. 629, 632; Code, ss. 450, 453; R. C., c. 45, ss. 1-5, 11; 5 Geo. II, c. 7, s. 4; 1777, c. 115, s. 29; 1812, c. 830, ss. 1, 2; 1822, c. 1172; 1844, c. 35.

282. Sale of trust estates; purchaser's title. Upon the sale under execution of trust estates whereof the judgment debtor is beneficiary the sheriff shall execute a deed to the purchaser, and the purchaser thereof shall hold and enjoy the same freed and discharged from all encumbrances of the trustee.

Rev., s. 630; Code, s. 452; R. C., c. 45, s. 4; 1812, c. 830.

283. Sheriff's deed on sale of equity of redemption. The sheriff selling equitable and legal rights of redemption shall set forth in the deed to the purchaser thereof that the said estates were under mortgage at the time of judgment, or levy in the case of personal property and sale.

Rev., s. 631; Code, s. 451; R. C., c. 45, s. 5; 1812, c. 830, s. 2; 1822, c. 1172.

284. Forthcoming bond for personal property. If a sheriff or other officer who has levied an execution or other process upon personal property, permits it to

remain with the possessor, the officer may take a bond attested by a credible witness, for the forthcoming thereof to answer the execution or process; but the officer remains, nevertheless, in all respects liable as heretofore to the plaintiff's claim.

Rev., 633; Code, 463; R. C., c. 45, s. 21; 1807, c. 731, s. 3; 1828, c. 12, s. 2.

285. Summary remedy on forthcoming bond. If the condition of such bond be broken, the sheriff or other officer, on giving ten days previous notice in writing to any obligor therein, may on motion have judgment against him in a summary manner, before the superior court or before a justice of the peace, as the case may be, of the county in which the officer resides, for all damages which the officer has sustained, or may be adjudged liable to sustain, not exceeding the penalty of the bond, to be ascertained by a jury, under the direction of the court or justice.

Rev., 635; Code, s. 465; R. C., c. 45, s. 23; 1822, c. 1141.

286. Requirement of bond; possession and sale of property. When the forthcoming bond is taken the officer must specify therein the property levied upon and furnish to the surety a list of the property in writing under his hand, attested by at least one credible witness, and stating therein the day of sale. The property levied upon is deemed in the custody of the surety, as the bailee of the officer. All other executions thereafter levied on this property create a lien on the same from and after the respective levies, and shall be satisfied accordingly out of the proceeds of the sale of the property; but the officer thereafter levying shall not take the property out of the custody of the surety. But in all such cases, sales of chattels shall take place within thirty days after the first levy; and if sale is not made within that time any other officer who has levied upon the property may seize and sell it.

Rev., 634; Code, s. 464; R. C., c. 45, s. 22; 1844, c. 34; 1846, c. 50.

287. Entry of returns on judgment docket; penalty. When an execution is returned, the return of the sheriff or other officer must be noted by the clerk on the judgment docket; and when it is returned wholly or partially satisfied, it is the duty of the clerk of the court to which it is returned to send a copy of such last mentioned return, under his hand, to the clerk of the superior court of each county in which such judgment is docketed, who must note such copy in his judgment docket, opposite the judgment, and file the copy with the transcript of the docket of the judgment in his office. A clerk failing to send a copy of the payments on the execution or judgment to the clerks of the superior court of the counties wherein a transcript of the judgment has been docketed, and a clerk failing to note said payment on the judgment docket of his court, shall, on motion, be fined one hundred dollars nisi, and the judgment shall be made absolute upon notice to show cause at the succeeding term of the superior court of his county.

Rev., s. 636; Code, s. 445; 1871-2, c. 74, s. 2; 1881, c. 75.

288. Cost of keeping livestock; officer's account. The court or justice shall make a reasonable allowance to officers for keeping and maintaining horses, cattle, hogs, or sheep, and all other property taken into their custody under legal process, the keeping of which is chargeable to them; and this allowance may be retained by the officers out of the sales of the property, in preference to the

satisfaction of the process under which the property was seized or sold. The officer must make out his account and, if required, give the debtor or his agent a copy of it, signed by his own hand, and must return the account with the execution or other process, under which the property has been seized or sold, to the justice or court to whom the execution or process is returnable, and shall swear to the correctness of the several items set forth; otherwise he shall not be permitted to retain the allowance.

Rev., s. 637-8; Code, ss. 466-7; R. C., c. 45, ss. 25-6; 1807, c. 731.

289. Purchaser of defective title; remedy against defendant. Where real or personal property is sold on any execution or decree, by any officer authorized to make the sale, and the sale is made legally and in good faith, and the property did not belong to the person against whose estate the execution or decree was issued, by reason of which the purchaser has been deprived of the property, or been compelled to pay damages in lieu thereof to the owner, the purchaser, his executors or administrators, may sue the person against whom such execution or decree was issued, or the person legally representing him, in a civil action, and recover such sum as he may have paid for the property, with interest from the time of payment: But the property, if personal, must be present at the sale and actually delivered to the purchaser.

Rev., s. 639; Code, s. 468; R. C., c. 45, s. 27; 1807, c. 723.

290. Costs on execution paid to clerk; penalty. The sheriff or other officer must pay the costs on all executions which are satisfied in whole or in part, to the clerk of the court from which the execution issued, and to no other person, on the second day of the term of the court; and any such officer making default herein shall forfeit and pay forty dollars for the benefit of the party aggrieved, under the same rules that are provided by law for amercing sheriffs.

Rev., s. 640; Code, s. 472; R. S., c. 76, s. 5; 1822, c. 1149.

NOTE. For execution against corporation property and stock, see Corporations, Art. 9.

ART. 28. EXECUTION SALES

291. How advertised; cost of newspaper publication. No real property shall be sold under execution, deed of trust, mortgage, or other contract, except as provided in the following section, until notice of the sale has been posted at the courthouse door and three other public places in the county for thirty days immediately preceding the sale, and also published once a week for four weeks in some newspaper published in the county, if a paper is published in the county. The cost of such newspaper publication shall not exceed three dollars, to be taxed as costs in the action, special proceeding or proceeding to sell.

Rev., s. 641; Code, s. 456; 1885, c. 38; 1905, c. 147; 1868-9, c. 237, s. 10; R. C., c. 45, s. 16; 1881, c. 278; 1909, c. 705.

NOTE. For further provisions as to mortgage sales, see Mortgages and Deeds of Trust, Art. 3.

In Edgecombe and Nash the advertisement must be published "in some newspaper published in any city or town nearest the property advertised." P. L. 1913, c. 723.

292. Advertisement of resale. In all cases where a sheriff, commissioner, executor or administrator resells any real estate at public auction because of an insufficient bid, want of bidders, the placing of an additional or ten per cent bid

on the price bid at a prior sale, or other cause, public notice of the resale, where ordered by the court, is sufficient notice if it recites the cause of resale and is posted at the courthouse door and at least three other public places in the county for at least fifteen days, and published at least once a week for two successive weeks in some newspaper, if a paper is published in the county where the resale is made.

1913, c. 19.

NOTE. For reopening sales for advanced bids, see Mortgages and Deeds of Trust, s. 14.

293. Notice served on defendant; when on governor. In addition to the advertisement above required, the sheriff shall in every case, at least ten days before a sale of real property under execution, serve a copy of so much of the advertisement as relates to the real property of any defendant on him personally if he is found in the county, or on his agent if he has a known agent therein, or if he cannot be found within the county and has no known agent therein, but his address is known, by mail to such address; and the date of service shall be ascertained by the usual course of the mail from the place where sent to the place of its address. In case of the sale under execution, or under the order of any court, of any real or personal property in which the state is interested as a stockholder or otherwise, notice in writing must be served upon the governor and attorney general, at least thirty days before the sale, of the time and place of sale, and under what process it is made, otherwise the sale is invalid.

Rev., s. 642; Code, s. 457; 1868-9, c. 237, s. 11; 1876-7, c. 224.

294. Sale days. All real property sold under execution, or by order of court, shall be sold at the courthouse door of the county in which all or a part of the property is situated, on the first Monday in any month, or during the first three days of any term of the superior court of said county, unless in the order directing the sale some other place and time is designated, and then it shall be sold as directed in such order, on any day except Sunday or holidays, after advertising as required by law.

Rev., s. 643; Code, s. 454; 1876-7, c. 216, ss. 2, 3; 1883, c. 94, ss. 1, 2.

295. Sale hours. No sale under an execution or decree shall commence before ten o'clock in the morning, or continue after four o'clock in the afternoon, of the day on which the sale is to be made, except that in towns or cities of more than five thousand inhabitants public sales of goods, wares and merchandise may be continued until ten o'clock p. m.

Rev., s. 644, Code, s. 459; R. C., c. 45, s. 17; 1794, c. 41.

296. Postponement. The sheriff or other person making the sale, for the absence of bidders or any other just cause, may postpone the sale from day to day, but not for more than six days in all, and upon postponement he must post a notice thereof on the courthouse door of his county.

Rev., s. 645; Code, s. 455; 1868-9, c. 237, s. 9.

297. Certain sales validated. All sales of realty made under executions issued prior to March the fifteenth, one thousand nine hundred and one, on judgments regularly obtained in courts of competent jurisdiction, are hereby validated, whether such sales were continued from day to day or for a longer period, not exceeding ten days: Provided, that such executions and sales are in all other

respects regular: Provided further, that purchasers and their assigns shall have held continuous and adverse possession under a sheriff's deed for three years: Provided further, that the rights of minors and married women shall in nowise be prejudiced hereby.

Rev., s. 646; 1901, c. 742.

298. Certain private acts repealed. All private acts, by which lands in particular counties are required or allowed to be sold at places, or at times, other than those hereinbefore prescribed, are hereby repealed.

Rev., s. 647; Code, s. 458; 1868-9, c. 237, s. 12.

299. Advertisement as to personal property. No sale of personal property under execution may be made until it has been advertised for ten days at the door of the courthouse of the county in which it is to be sold, and at three other public places in the county, and the advertisement must designate the place and the time of sale.

Rev., s. 648; Code, s. 460; R. C., c. 45, s. 16; 1808, c. 753; 1820, c. 1066.

300. Penalty for selling contrary to law. A sheriff or other officer who makes any sale contrary to the true intent and meaning of this article shall forfeit two hundred dollars to any person suing for it, one-half for his own use and the other half to the use of the county where the offense is committed.

Rev., s. 649; Code, s. 461; R. C., c. 45, s. 18; 1820, c. 1066, s. 2; 1822, c. 1153, s. 3.

301. Officer's return of no sale for want of bidders; penalty. When a sheriff or other officer returns upon an execution that he has made no sale for want of bidders, he must state in his return the several places he has advertised and offered for sale the property levied on; and an officer failing to make such statement is on motion subject to a fine of forty dollars; and every constable, for a like omission of duty, is subject to a fine of ten dollars, for the use and benefit of the plaintiff in the execution; for which, on motion of the plaintiff, judgment shall be granted by the court to which, or by justice to whom, the execution shall be returned. Nothing in, nor any recovery under, this section is a bar to any action for a false return against the sheriff or other officer.

Rev., s. 650; Code, s. 462; R. C., c. 45, s. 19; 1815, c. 887.

302. Officer to prepare deed for property sold. Sheriffs or other officers selling lands by authority of any execution or process, shall, upon payment of the price, prepare, execute and deliver to the purchaser a deed for the property purchased. The purchaser of land must furnish the officer with a description of it.

Rev., s. 651; Code, s. 471, R. C., c. 45, s. 30; 1848, c. 39.

ART. 29. BETTERMENTS

303. Petition by claimant; execution suspended; issues found. A defendant against whom a judgment is rendered for land, may, at any time before execution, present a petition to the court rendering the judgment, stating that he, or those under whom he claims, while holding the premises under a color of title believed to be good, have made permanent improvements thereon, and praying that he may be allowed for the improvements, over and above the value of the use and occupation of the land. The court may, if satisfied of the probable truth

of the allegation, suspend the execution of the judgment and impanel a jury to assess the damages of the plaintiff and the allowance to the defendant for the improvements. In any such action, this inquiry and assessment may be made upon the trial of the cause.

Rev., s. 652; Code, s. 473; 1871-2, c. 147.

304. Annual value of land and waste charged against defendant. The jury, in assessing the damages, shall estimate against the defendant the clear annual value of the premises during the time he was in possession, exclusive of the use of the improvements thereon made by himself or those under whom he claims, and also the damages for waste or other injury to the premises committed by the defendant. The defendant is not liable for the annual value or for damages for waste or other injury for any longer time than three years before the suit, unless he claims for improvements.

Rev. 1905, ss. 653-4; Code, ss. 474-5; 1871-2, c. 147, ss. 2-3.

305. Value of improvements estimated. If the jury is satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the premises, permanent and valuable improvements, they shall estimate in his favor, the value of the improvements made before notice, in writing, of the title under which the plaintiff claims, not exceeding the amount actually expended in making them and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment.

Rev., s. 655; Code, s. 476; 1871-2, c. 147, s. 4.

306. Improvements to balance rents. If the sum estimated for the improvements exceeds the damages estimated against the defendant as aforesaid, the jury shall then estimate against him for any time before the said three years, the rents and profits accrued against, or damages for waste or other injury done by him, or those under whom he claims, so far as is necessary to balance his claim for improvements; but the defendant in such case shall not be liable for the excess, if any, of such rents, profits, or damages beyond the value of improvements.

Rev., s. 656; Code, s. 477; 1871-2, c. 147, s. 5.

307. Verdict, judgment, and lien. After offsetting the damages assessed for the plaintiff, and the allowances to the defendant for any improvements, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment shall be entered therefor according to the verdict. Any such balance due to the defendant is a lien upon the land recovered by the plaintiff until it is paid.

Rev., 1905, ss. 657-8; Code, ss. 478-9; 1871-2, c. 147, ss. 67.

308. Life tenant recovers from remainderman. If the plaintiff claims only an estate for life in the land recovered and pays any sum allowed to the defendant for improvements, he or his personal representative may recover at the determination of his estate from the remainderman or reversioner, the value of the said improvements as they then exist, not exceeding the amount as paid by him, and he has a lien therefor on the premises as if they had been mortgaged for the payment thereof, and may keep possession of said premises until it is paid.

Rev., s. 659; Code, s. 480; 1871-2, c. 147, s. 8.

309. Value of premises without improvements. When the defendant claims allowance for improvements, the plaintiff may by entry on the record require that the value of his estate in the premises without the improvements shall also be ascertained. The value of the premises in such cases shall be estimated as it would have been at the time of the inquiry, if no such improvements had been made by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements.

Rev. 1905, ss. 661-2; Code, ss. 482-3; 1871-2, c. 147, ss. 10-11.

310. Plaintiff's election that defendant take premises. The plaintiff in such case, if judgment is rendered for him, may, at any time during the same term, or before judgment is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant at the value as ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit, if he pays therefor the said value with interest in the manner ordered by the court.

Rev., s. 663; Code, s. 484; 1871-2, c. 147, s. 12.

311. Payment made to court; land sold on default. The payment must be made to the plaintiff, or into court for his use, and the land is bound therefor, and if the defendant fails to make the payment within or at the times limited therefor, the court may order the land sold and the proceeds applied to the payment of said value and interest, and any surplus to be paid to the defendant; but if the net proceeds are insufficient to satisfy the said value and interest, the defendant is not bound for the deficiency.

Rev., s. 664; Code, s. 485; 1871-2, c. 147, s. 13.

312. If plaintiff is a married woman, minor or insane. If the party by or for whom the land is claimed in the suit is a married woman, minor, or insane person, such value is deemed to be real estate, and shall be disposed of as the court considers proper for the benefit of the persons interested therein.

Rev., s. 665; Code, s. 486; 1871-2, c. 147, s. 14.

313. Defendant evicted, may recover from plaintiff. If the defendant, his heirs, or assigns, after the premises are so relinquished to him, is evicted by force of a better title than that of the original plaintiff, the person so evicted may recover from the plaintiff or his representatives the amount paid for the premises, as so much money had and received by the plaintiff in his lifetime for the use of such person, with lawful interest thereon from the time of the payment.

Rev., s. 666; Code, s. 487; 1871-2, c. 147, s. 15.

314. Not applicable to suit by mortgagee. Nothing in this article applies to any suit brought by a mortgagee or his heirs or assigns against a mortgagor or his heirs or assigns for the recovery of the mortgaged premises.

Rev., s. 660; Code, s. 481; 1871-2, c. 147, s. 9.

ART. 30. SUPPLEMENTAL PROCEEDINGS

315. Execution unsatisfied, debtor ordered to answer. When an execution against property of a judgment debtor, or any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of

business, or if he does not reside in the state, to the sheriff of the county where a judgment roll or a transcript of a justice's judgment is filed, is returned wholly or partially unsatisfied, the judgment creditor at any time after the return, and within three years from the time of issuing the execution, is entitled to an order from the court to which the execution is returned or from the judge thereof, requiring such debtor to appear and answer concerning his property before such court or judge, at a time and place specified in the order, within the county to which the execution was issued.

Rev., s. 667; Code, s. 488, subsec. 1; C. C. P., s. 264; 1868-9, c. 95, s. 2.

316. Property withheld from execution; proceedings. After the issuing of an execution against property, and upon proof by affidavit of a party, his agent or attorney, to the satisfaction of the court or a judge thereof, that any judgment debtor residing in the judicial district where such judge or sheriff resides has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as provided upon the return of an execution, and the judgment creditor is entitled to the order of examination under this and the preceding section, although the judgment debtor has an equitable estate in land subject to the lien of the judgment, or choses in action, or other things of value unaffected by the lien of the judgment and incapable of levy.

Rev., s. 668; Code, s. 488, subsec. 2; C. C. P., s. 264; 1868-9, c. 95, s. 2.

317. Proceedings against joint debtors. Proceedings supplemental to execution may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which the action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in like manner and to the like effect. These provisions apply to all proceedings and actions pending and to those terminated by final decree or judgment.

Rev., s. 669; Code, s. 490; C. C. P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245.

318. Debtor leaving state, or concealing himself, arrested; bond. Instead of the order requiring the attendance of the judgment debtor, the court or judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor leaving the state or concealing himself, and that there is reason to believe that he has property which he unjustly refuses to apply to the judgment, issue a warrant requiring the sheriff of any county where such debtor is, to arrest him and bring him before the court or judge. Upon being brought before the court or judge, the debtor may be examined on oath, and, if it appears that there is danger of his leaving the state, and that he has property which he has unjustly refused to apply to the judgment, he shall be ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the court or judge as directed, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In

default of entering into such undertaking, he may be committed to prison by warrant of the court or judge, as for contempt.

Rev., s. 671; Code, s. 488, subsec. 4; 1868-9, c. 148, s. 4; 1868-9, c. 277, s. 8.

319. Examination of parties and witnesses. On examination under this article either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness; and the party or witnesses may be required to appear before the court or judge, or a referee appointed by either, and testify on any proceedings under this article in the same manner as upon the trial of an issue. If before a referee, the examination shall be taken by the referee, and certified to the court or judge. All examinations and answers before a court or judge or referee, under this article must be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

Rev. 1905, ss. 670, 676; Code, s. 488 (subsec. 2), 491, 492; C. C. P., ss. 264, 267, 268; 1868-9, c. 95, s. 2; 1871-2, c. 245.

320. Incriminating answers not privileged; not used in criminal proceedings. No person, on examination pursuant to this article, is excused from answering any question on the ground that it will tend to convict him of the commission of a crime or that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

Rev., s. 672; Code, s. 488, subsec. 5; C. C. P., s. 264; 1868-9, c. 95, s. 2.

321. Disposition of property forbidden. The court or judge may, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution.

Rev., s. 673; Code, ss. 488 (subsec. 6), 494; C. C. P., s. 264; 1868-9, c. 95, s. 2.

322. Debtors of judgment debtor may satisfy execution. After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid.

Rev., s. 674; Code, s. 489; C. C. P., s. 265.

323. Debtors of judgment debtor, summoned. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars, the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the same. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper.

Rev., s. 675; Code, s. 490; C. C. P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245.

324. Where proceedings instituted and defendant examined. Proceedings supplemental to execution must be instituted in the county in which the judgment was rendered; but the place designated where the defendant must appear and answer must be within the county where he resides.

Rev., s. 677.

325. Debtor's property ordered sold. The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.

Rev., s. 678; Code, s. 493; C. C. P., s. 269; 1870-1, c. 245.

326. Receiver appointed. The court or judge having jurisdiction over the appointment of receivers may also by order in like manner, and with like authority, appoint a receiver in proceedings under this article, of the property of the judgment debtor, whether subject or not to be sold under execution, except the homestead and personal property exemptions. But before the appointment of the receiver, the court or judge shall ascertain if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if so, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to the receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The title of the receiver relates back to the service of the restraining order, herein provided for.

Rev., s. 679; Code, s. 494; C. C. P., s. 270; 1870-1, c. 245; 1876-7, c. 223; 1879, c. 63; 1881, c. 51.

NOTE. For statutes regulating receivers, see this chapter, Art. 37, and Corporations, Art. 10.

327. Filing and record of appointment; property vests in receiver. When the court or a judge grants an order for the appointment of a receiver of the property of the judgment debtor, it shall be filed in the office of the clerk of the superior court of the county where the judgment roll in the action or transcript from justice's judgment, upon which the proceedings are taken, is filed; and the clerk shall record the order in a book to be kept for that purpose in his office, to be called Book of Orders Appointing Receivers of Judgment Debtors, and shall note the time of its filing therein. A certified copy of the order shall be delivered to the receiver named therein, and he is vested with the property and effects of the judgment debtor from the time of the service of the restraining order, if such restraining order has been made, and if not, from the time of the filing and recording of the order for the appointment of a receiver. The receiver of the judgment debtor is subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded.

Rev., s. 680; Code, s. 495; C. C. P., s. 270; 1870-1, c. 245.

328. Where order of appointment recorded. Before the receiver is vested with any real property of the judgment debtor, a certified copy of the order of appointment must be filed and recorded on the execution docket, in the office of the clerk of the superior court of the county in which any real estate of the judgment debtor is situated, and also in the office of the clerk of the superior court of the county in which the debtor resides.

Rev., s. 681; Code, s. 496; C. C. P., s. 270.

329. Receiver to sue debtors of judgment debtor. If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation by the receiver; but the court or judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity is given to the receiver to commence, and prosecute the action to judgment and execution, but such order may at any time be modified or dissolved by the court or judge having jurisdiction, on such security as he directs.

Rev., s. 682; Code, s. 497; C. C. P., s. 271; 1870-1, c. 245.

330. Reference. The court or judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts. The appointment of the referee may be made in the first order or at any time.

Rev., s. 683; Code, s. 498; C. C. P., s. 272.

331. Disobedience of orders punished as for contempt. Any person, party or witness, who disobeys an order of the court or judge or referee, duly served, may be punished by the judge as for a contempt. In all cases of commitment under this article, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the judge committing him, or the judge having jurisdiction, on such terms as are just.

Rev., s. 684; Code, s. 500; C. C. P., s. 274; 1869-70, c. 79, s. 3.

SUBCHAPTER 11. HOMESTEAD AND EXEMPTIONS

ART. 31. PROPERTY EXEMPT FROM EXECUTION

332. Property exempted. The homestead and personal property exemptions as defined and declared by the article of the state constitution entitled Homesteads and Exemptions are exempt from sale under execution and other final process, as provided in the state constitution: Provided, the allotment of the homestead shall, as to all property therein embraced, suspend the running of the statute of limitations on all judgments against the homesteader during the continuance of the homestead: Provided, further, the owners of judgments docketed since March eleventh, one thousand eight hundred and eighty-five, have two years from the first day of April, one thousand nine hundred and one, within which to assign and set apart their homesteads under such judgments.

Rev., s. 685; Code, s. 501; 1885, c. 359; 1887, c. 17; 1895, c. 397; 1901, c. 612; 1879, c. 256; R. C., c. 45, s. 7; 1848, c. 38; R. C., c. 45, s. 8; 1844, c. 32; 1846, c. 53; 1848, c. 38, s. 2; 1866-7, c. 61, s. 7; 1876-7, c. 263.

333. Conveyed homestead not exempt. The allotted homestead is exempt from levy so long as owned and occupied by the homesteader or by any one for him, but when conveyed by him in the mode authorized by the constitution, article ten, section eight, the exemption ceases as to liens attaching prior to the conveyance. The homesteader who has conveyed his allotted homestead may have another allotted, and as often as is necessary. This section shall not have any retroactive effect.

Rev., s. 686; 1905, c. 111.

334. Sheriff to summon and swear appraisers. Before levying upon the real estate of any resident of this state who is entitled to a homestead under this article, and the constitution of this state, the sheriff or other officer charged with the levy, shall summon three discreet persons qualified to act as jurors, to whom he shall administer the following oath: "I, A. B., do solemnly swear (or affirm) that I have no interest in the homestead exemption of C. D., and that I will faithfully perform the duties of appraiser (or assessor, as the case may be), in valuing and laying off the same. So help me, God." In cases where he deems it necessary he may summon the county surveyor or some other competent surveyor to assist in laying off the homestead by metes and bounds.

Rev., s. 687; Code, s. 502; 1893, c. 58; 1868-9, c. 137, s. 2.

NOTE. For allotment where land is held in cotenancy, see Partition, s. 5.

335. Duty of appraisers; proceedings on return. The appraisers shall value the homestead with its dwelling and buildings thereon, and lay off to the owner or to any agent or attorney, in his behalf, such portion as he selects not exceeding in value one thousand dollars, and must fix and describe the same by metes and bounds. They must then make and sign in the presence of the officer a return of their proceedings, setting forth the property exempted, which shall be returned by the officer to the clerk of the court for the county in which the homestead is situated and filed with the judgment roll in the action, and a minute of the same entered on the judgment docket, and a certified copy thereof under the hand of the clerk shall be registered in the office of the register of deeds for the county. The officer must likewise make a transcript of the return over his hand and return it without delay to the clerk of the court of the county from whence the execution issued, and said clerk must likewise file and make minute of the same as above directed. In all judicial proceedings the original return or a certified copy may be read in evidence.

Rev., 1905, ss. 688, 689; Code, ss. 503-4; 1868-9, c. 137, ss. 3-4; 1877, c. 272.

336. Reallotment for increase of value. A judgment creditor of a debtor whose homestead has been allotted may apply in writing to the clerk of the superior court of the county in which the homestead lies for an order for its reallotment, if there is in the hands of the sheriff of that county an execution issued from the proper court against said debtor. The application must be accompanied by the affidavits of three disinterested freeholders of the county in which the homestead lies, setting forth that, in their opinion, it has increased in value fifty per centum or more since the last allotment. Upon the filing of the application and affidavits the clerk shall issue notice to the judgment debtor to appear before him on a day not more than five days from the day of its service and show cause why his homestead should not be reallotted. The notice must state upon whose application it is issued. Upon the return day of the notice the clerk shall consider the affidavits filed, as heretofore required, and any additional affidavits filed by either party, and if he is of opinion that the homestead has probably appreciated in value fifty per centum or more since the last allotment, he shall command the sheriff to reallot to the judgment debtor his homestead, in the same manner as if no homestead had been allotted. If upon the reallotment any excess is found, it shall be disposed of by the sheriff as in ordinary cases of execution and levy. This section does not prevent the

judgment creditor from resorting to the equity jurisdiction of the courts for a reallocation of the homestead of his judgment debtor in any case.

Rev., s. 691; 1893, c. 149.

337. Appeal as to reallocation. From the order of the clerk commanding or refusing a reallocation, either party may appeal to the judge resident in or holding the courts of the district, who shall hear the matter in chambers in any county of the judicial district to which belongs the county in which the proceedings were instituted. In other respects the proceedings upon such appeal are as now provided for appeals from the clerk on issues of law.

Rev., 1905, s. 691; 1893, c. 149.

338. Levy on excess; return of officer. The levy may be made upon the excess of the homestead, not laid off according to this chapter, and the officer shall make substantially the following return upon the execution: "A. B., C. D., and E. F., summoned and qualified as appraisers or assessors (as the case may be) who set off to X. Y. the homestead exempt by law. Levy made upon the excess."

Rev., s. 692; Code, s. 505; 1868-9, c. 137, s. 5.

339. When appraisers select. If no selection is made by the owner, or any one acting in his behalf, of the homestead to be laid off as exempt, the appraisers shall make selection for him, including always the dwelling and buildings used therewith.

Rev., s. 693; Code, s. 506; 1868-9, c. 137, s. 6.

340. Homestead in tracts not contiguous. Different tracts of land not contiguous may be included in the same homestead, when a homestead of contiguous land is not of the value of one thousand dollars.

Rev., s. 694; Code, s. 509; 1868-9, c. 137, s. 15.

341. Personal property appraised on demand. When the personal property of any resident of this state is levied upon by virtue of an execution or other final process issued for the collection of a debt, and the owner or an agent, or attorney in his behalf, demands that the same, or any part thereof, be exempt from sale under such execution, the sheriff or other officer making the levy shall summon three appraisers, as heretofore provided, who, having been first duly sworn, shall appraise and lay off to the judgment debtor such articles of personal property as he or another in his behalf selects and to which he is entitled under this article and the constitution of the state, in no case to exceed in value five hundred dollars, which articles are exempt from said levy, and return thereof shall be made by the appraisers, as upon the laying off of a homestead exemption.

Rev., s. 695; Code, s. 507; 1868-9, c. 137, ss. 12, 13.

342. Appraiser's oath and fees. The persons summoned to appraise the personal property exemption must take the same oath and are entitled to the same fees as the appraisers of the homestead, and when both exemptions are claimed by the judgment debtor, at the same time, one board of appraisers must lay off both, and are entitled to but one fee.

Rev., s. 696; Code, s. 508; 1868-9, c. 137, s. 14.

343. Returns registered. It is the duty of the register of deeds to endorse on each of said returns the date when received for registration, and to cause the same to be registered without unnecessary delay. He shall receive for registering the returns the same fees allowed him by law for other similar or equivalent services, which fees shall be paid by said resident applicant, his agent or attorney, upon the reception of the returns by the register.

Rev., s. 698; Code, s. 513; 1868-9, c. 137, s. 9.

344. Exceptions to valuation and allotment; procedure. If the judgment creditor for whom levy is made, or judgment debtor or other person entitled to homestead and personal property exemption, is dissatisfied with the valuation and allotment of the appraisers or assessors he, within ten days thereafter, or any other creditor, within six months, and before sale under execution of the excess, may notify the adverse party and the sheriff having the execution in hand, and file with the clerk of the superior court of the county where the allotment is made a transcript of the return of the appraisers or assessors which they or the sheriff shall allow to be made upon demand, together with his objections in writing to said return. Thereupon the said clerk shall put the same on the civil issue docket of the superior court for trial at the next term thereof as other civil actions, and such issue joined has precedence over all other issues at that term. The sheriff shall not sell the excess until after the determination of said action. The ten days and six months respectively begin to run from the date of the filing of the return of the valuation and allotment of the appraisers or assessors by the officer with the clerk of the superior court of the county from whence the execution issued.

Rev., s. 699; Code, s. 519; 1887, c. 272, s. 2; 1883, c. 357.

345. Increase demanded; jury verdict; commissioners; report. When an increase of the exemption or an allotment in property other than that set apart is demanded, the party demanding must in his exceptions specify the property from which the increase or reallocation is to be had. If the appraisal or assessment is reduced, the jury shall assess the value of the property embraced therein; if increased, the value of the property specified in the objections from which the increase is demanded shall also be assessed; but if the allotment is made in property other than that first set apart, the jury shall assess the value of the property so allotted. The court shall appoint three disinterested commissioners to lay off and set apart the homestead and personal property exemption in accordance with the verdict of the jury and the judgment of the court, and in the manner prescribed by law. The commissioners, who shall be summoned by the sheriff, must meet upon the premises and, after being sworn by the sheriff or a justice of the peace to faithfully perform the duties of appraisers or assessors in allotting and laying off the homestead or personal property exemption, or both, in accordance with the verdict and judgment aforesaid, must allot and lay off the same and file their report to the next term of the court, when it shall be heard by the court upon exceptions thereto.

Rev., s. 700; 1885, c. 347.

346. Undertaking of objector. The creditor, debtor, or claimant objecting to the allotment made by the appraisers or assessors under execution or petition, must file with the clerk of the superior court an undertaking in the sum of one

hundred dollars for the payment to the adverse party of such costs as are adjudged against him.

Rev., s. 701; Code, s. 522.

347. Set aside for fraud, or irregularity. An appraisal or allotment by appraisers or assessors, may be set aside for fraud, complicity or other irregularity; but after an allotment or assessment is made or confirmed by the superior court at term time, as hereinbefore provided, the homestead shall not thereafter be set aside or again laid off by any other creditor except for increase in value.

Rev., s. 702; Code, s. 523.

348. Return registered; original or copy evidence. When the homestead and personal property exemption is decided by the court at term time the clerk of the superior court shall immediately file with the register of deeds of the county a copy of the same, which shall be registered as deeds are registered; and in all judicial proceedings the original or a certified copy of the return may be introduced in evidence.

Rev., s. 703; Code, s. 524.

349. Allotted on petition of owner. When any resident of this state desires to take the benefit of the homestead and personal property exemption as guaranteed by article ten of the state constitution, or by this article, such resident, his agent or attorney, must apply to a justice of the peace of the county in which he resides, who shall appoint as assessors three disinterested persons, qualified to act as jurors, residing in said county. The jurors, on notice by the order of the justice, shall meet at the applicant's residence, and, after taking the oath prescribed for appraisers before some officer authorized to administer an oath, lay off and allot to the applicant a homestead with metes and bounds, according to the applicant's direction, not to exceed one thousand dollars in value, and make and sign a descriptive account of the same and return it to the office of the register of deeds.

Said assessors shall set apart of the personal property of said applicant, to be by him selected, articles of personalty to which he is entitled under this chapter, not exceeding in value the sum of five hundred dollars, and make, sign and return a descriptive list thereof to the register of deeds.

Rev., ss. 697, 704; Code, ss. 511, 512; 1868-9, c. 137, ss. 7, 8.

350. Advertisement of petition; time of hearing. When a person entitled to a homestead and personal property exemption files the petition before a justice of the peace to have the same laid off and set apart under the preceding sections, the justice shall make advertisement in some newspaper published in the county, for six successive weeks, and if there is no newspaper in the county, then at the courthouse door of the county in which the petition is filed, notifying all creditors of the applicant of the time and place, for hearing the petition. The petition shall not be heard nor any decree made in the cause in less than six nor more than twelve months from the day of making advertisement as above required.

Rev., s. 705; Code, s. 515; 1868-9, c. 137, s. 11.

351. Exceptions, when allotted on petition. When the homestead or personal property exemption is allotted on the petition of the person entitled thereto, any

creditor may, within six months from the time of the assessment or appraisal, and upon ten days notice to the petitioner, file his objections with the register of deeds of the county in which the premises are situated, and the register of deeds shall return the same to the clerk of the superior court of that county, who shall place them on the civil issue docket, and they shall be tried as provided for homestead and personal property exemptions set off under execution.

Rev., s. 706; Code, s. 520.

352. Allotted after death of homesteader. If a person entitled to a homestead exemption dies without the homestead having been set apart, his widow, if he leaves no children, or his child or children under the age of twenty-one years, if he leaves such, may proceed to have the homestead exemption laid off by petition. If the widow or children have failed to have the exemption set apart in the manner provided, then in an action brought by his personal representatives to subject the realty of the decedent to the payment of debts and charges of administration, it is the duty of the court to appoint three disinterested freeholders to set apart to such widow, child or children a homestead exemption under metes and bounds in the lands of the decedent. The freeholders shall under their hands and seals make return of the same to the court, which shall be registered in the same manner as homestead exemptions.

Rev., s. 707; Code, s. 514; 1893, c. 332; 1868-9, c. 137, s. 10.

353. Liability of officer as to allotment, return and levy. Any officer making a levy, who refuses or neglects to summon and qualify appraisers as heretofore provided, or fails to make due return of his proceedings, or levies upon the homestead set off by appraisers or assessors except as herein provided, is guilty of a misdemeanor, and he and his sureties are liable to the owner of the homestead for all costs and damages in a civil action.

Rev., ss. 708, 3584; Code, s. 516; 1868-9, c. 137, s. 17.

354. Liability of officer, appraiser, or assessor, for conspiracy or fraud. Any officer, appraiser, or assessor, who willfully or corruptly conspires with a judgment debtor, judgment creditor, or other person, to undervalue or to overvalue the homestead or personal property exemption of a debtor, or applicant, or assigns false metes and bounds, or makes or procures to be made a false and fraudulent return thereof, is guilty of a misdemeanor and is liable to the party injured thereby for all costs and damages in a civil action.

Rev., ss. 690, 3585, 3586; Code, ss. 517, 518; 1868-9, c. 137, ss. 18, 19.

355. Forms. The following forms must be substantially followed in proceedings under this article:

[No. 1]

APPRAISER'S RETURN

When the homestead is valued at less than one thousand dollars, and personal property also appraised.

The undersigned having been duly summoned and sworn to act as appraisers of the homestead and personal property 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 buildings thereon, owned and occupied by said A. B. as a homestead, to be one thousand dollars (or any less sum) and that the entire tract, bounded by the lands of

-----and-----is therefore exempted from sale under execution according to law. At the same time and place we viewed and appraised at the values 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-----, 19-----

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]

PETITION FOR HOMESTEAD BEFORE A JUSTICE OF THE PEACE

Before-----, J. P.
-----County.

In the Matter of A. B.

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]

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-----, 19-----

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]

CERTIFICATE OF QUALIFICATION TO BE ENDORSED ON RETURN BY SHERIFF

The within named B. F., G. H., and J. R. were summoned and qualified according to law, as appraisers of the-----exemption of the said A. B., under an execution in favor of X. Y., this-----day of-----, 19-----

C. D. ----- (Sheriff).

[No. 5]

MINUTE ON EXECUTION DOCKET

X-----Y-----
vs.
A-----B----- }

Execution issued-----, 19-----

Homestead appraised and set off and return made-----, 19-----

Rev., s. 709; Code, s. 524.

SUBCHAPTER 12. SPECIAL PROCEEDINGS

ART. 32. SPECIAL PROCEEDINGS

356. Chapter applicable to special proceedings. The provisions of this chapter on civil procedure are applicable to special proceedings, except as otherwise provided.

Rev., s. 710; Code, s. 278.

357. Contested special proceedings; commencement; summons. Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall command the officer to summon the defendant to appear at the office of the clerk of the superior court on a day named in the summons, to answer the complaint or petition of the plaintiff. The number of days within which the defendant is summoned to appear shall in no case be less than ten exclusive of the day of service.

Rev. 1905, ss. 711, 712; Code, ss. 279, 287; 1868-9, c. 93, s. 4.

NOTE. Ex parte proceedings are begun by petition. See this chapter, s. 363.

358. Return of summons. The officer to whom the summons is addressed shall note on it the day of its delivery to him, and if required by the plaintiff, shall execute it immediately. When executed, he shall immediately return the summons with the date and manner of its execution, by mail or otherwise, to the clerk of the court issuing it.

Rev., s. 713; Code, s. 280; C. C. P., s. 75.

359. When complaint filed. The plaintiff must file his complaint or petition with the clerk of the court, to which the summons is returnable, at the time of issuing the summons or within ten days thereafter.

Rev., s. 714; Code, s. 281; C. C. P., s. 76; 1876-7, c. 241, s. 4.

360. Nonsuit for failure to file. If the plaintiff fails to file his complaint or petition within the time limited by the summons for the appearance and answer of the defendant, the defendant may demand judgment of nonsuit against the plaintiff.

Rev., s. 715; Code, s. 282; C. C. P., s. 78.

361. Filing time enlarged. The time for filing the complaint, petition, or any pleading, may be enlarged by the court for good cause shown by affidavit, but may not be enlarged by more than ten additional days, nor more than once, unless the default was occasioned by accident over which the party applying had no control, or by the fraud of the opposing party.

Rev., s. 716; Code, s. 283; C. C. P., s. 79.

362. Defenses pleaded; transferred to civil issue docket; amendments. In special proceedings a defendant or other party thereto may plead any equitable or other defense, or ask any equitable or other relief in the pleadings which it would be competent to ask in a civil action; and when such pleas are filed the clerk shall transfer the cause to the civil issue docket for trial during term upon all issues raised by the pleadings. The trial judge may, with a view to substantial

justice between the parties, allow amendments to the pleadings and interpleas in behalf of any person claiming an interest in the property.

Rev., s. 717; 1903, c. 566.

363. Ex parte; commenced by petition. If all the parties in interest join in the proceeding and ask the same relief, the commencement of the proceedings shall be by petition, setting forth the facts entitling the petitioners to relief, and the nature of the relief demanded.

Rev., s. 718; Code, s. 284; 1868-9, c. 93.

364. Clerk acts summarily; authority from nonresident. In cases, under the preceding section, if all persons to be affected by the decree, or their attorney, have signed the petition and are of full age, the clerk of the superior court has power to hear and decide the petition summarily. If any of the petitioners reside out of the state, an authority from them, to the attorney, in writing, must be filed with the clerk before he may make any order or decree to prejudice their rights.

Rev., s. 719; Code, s. 285; 1868-9, c. 93, s. 2.

365. Judge approves when petitioner is infant. If any petitioner is an infant, or the guardian of an infant, acting for him, no final order or judgment of the clerk, affecting the merits of the case and capable of being prejudicial to the infant, is valid, unless submitted to and approved by the judge resident or holding court in the district.

Rev., s. 720; Code, s. 286; 1887, c. 61; C. C. P., s. 420; 1868-9, c. 93, s. 3.

NOTE. See for the judge who is to approve, see this chapter, s. 216.

366. Orders signed by judge. Every order or judgment in a special proceeding required to be made by a judge of the superior court, in or out of term, must be authenticated by his signature.

Rev., s. 722; Code, s. 288; 1868-9, c. 93, s. 5; 1872-3, c. 100.

367. Reports of commissioners and jurors. Every order or judgment in a special proceeding imposing a duty on commissioners or jurors must prescribe the time within which the duty must be performed, except in cases where the time is prescribed by statute. The commissioners or jurors shall within twenty days after the performance of the duty file their report with the clerk of the superior court, and if no exception is filed to it within twenty days, the court may proceed to confirm the same on motion of any party and without special notice to the other parties.

Rev., s. 723; 1893, c. 209.

368. No report set aside for trivial defect. No report or return made by any commissioners may be set aside and sent back to them or others for a new report because of any defect or omission not affecting the substantial rights of the parties, but the defect or omission may be amended by the court, or by the commissioners with permission of the court.

Rev., s. 724; Code, s. 289; 1868-9, c. 93, s. 7.

369. Commissioner of sale to account in sixty days. In all actions or special proceedings when a person is appointed commissioner to sell real or personal property, he shall, within sixty days after the maturity of the note or bond for

the balance of the purchase money of said property, or the payment of the amount of the bid when the sale is for cash, file with the clerk of the superior court a final account of his receipts and disbursements on account of the sale; and the clerk must audit the account and record it in the book in which the final settlements of executors and administrators are recorded.

Rev., s. 725; 1901, c. 614, ss. 1, 2.

SUBCHAPTER 13. PROVISIONAL REMEDIES.

ART. 33. ARREST AND BAIL

370. Arrest only as herein prescribed. No person may be arrested in a civil action, except as prescribed by this article, but this provision shall not apply to proceedings for contempt.

Rev., s. 726; Code, s. 290; C. C. P., s. 148.

371. In what cases arrest allowed. The defendant may be arrested, as herein-after prescribed, in the following cases:

1. In an action for the recovery of damages on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for injury to person or character, or for injuring, or for wrongfully taking, detaining or converting real or personal property.

2. In an action for a fine or penalty, for seduction, for money received, for property embezzled or fraudulently misapplied by a public officer, attorney, solicitor, or officer or agent of a corporation or banking association in the course of his employment, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property, unjustly detained, where all or any part of the property, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

5. When the defendant has removed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

No woman shall be arrested in any action, except for a willful injury to person, character or property, and no person shall be arrested on Sunday.

Rev., s. 727; Code, s. 291; C. C. P., s. 149; 1869-70, c. 79; R. C., c. 31, s. 54; 1777, c. 118, s. 6; 1891, c. 541.

NOTE. For arrest and bail of defendant usurping an office, see this chapter, s. 477.

372. Order and affidavit. An order for the arrest of the defendant must be obtained from the court in which the action is brought or a judge thereof, and may be made where it appears to the court or judge, by affidavit of the plaintiff

or of any other person, that a sufficient cause of action exists and that the case is one of those provided for in this article.

Rev., ss. 728, 729; Code, ss. 292, 293; C. C. P., ss. 150, 151.

373. Undertaking before order. Before making the order the court or judge shall require a written undertaking on the part of the plaintiff of at least one hundred dollars, with sufficient surety payable to the defendant, to the effect that if the defendant recovers judgment, the plaintiff will pay all damages which he sustains by reason of the arrest, not exceeding the sum specified in the undertaking.

Rev., s. 730; Code, s. 294; C. C. P., s. 152; 1868-9, c. 277, s. 7.

374. Issuance and form of order. 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. Notice of the return must be served on the plaintiff or his attorney as prescribed by law for the service of other notices.

Rev., s. 731; Code, s. 295; C. C. P., s. 153.

375. Copies of affidavit and order to defendant. The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy thereof.

Rev., s. 732; Code, s. 296; C. C. P., s. 154.

376. Execution of order. The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law. The sheriff may call the power of the county to his aid in the execution of the arrest.

Rev., s. 733; Code, s. 297; C. C. P., s. 155.

377. Vacation of order for failure to serve. The order of arrest is of no avail, and shall be vacated or set aside on motion, unless it is served upon the defendant, as provided by law, before the docketing of any judgment in the action.

Rev., s. 734; Code, s. 295; C. C. P., s. 153.

378. Motion to vacate order; jury trial. A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail. He may deny upon oath the facts alleged in the affidavit of the plaintiff on which the order of arrest was granted, and demand that the issue so raised by the plaintiff's affidavit and the defendant's denial be submitted to the jury and tried in the same manner as other issues. If the issues are found by the jury in favor of the defendant, judgment shall be rendered discharging him from arrest and vacating the order of arrest, and he shall recover of the plaintiff all costs of the proceeding in such arrest incurred by him in defending the action.

Rev., s. 735; Code, s. 316; 1889, c. 497; C. C. P., s. 174.

379. Counter affidavits by plaintiff. If the motion is 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 order of arrest was made.

Rev., s. 736; Code, s. 317; C. C. P., s. 175.

380. How defendant discharged. 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 article.

Rev., s. 737; Code, s. 298; C. C. P., s. 156.

381. Defendant's undertaking. The defendant may give bail by causing a written undertaking, payable to the plaintiff, to be executed by sufficient surety 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 is arrested in an action to recover the possession of personal property unjustly claimed, an undertaking to the same effect as that provided by law to be given by defendant for the retention of property, under the article entitled Claim and Delivery.

Rev., s. 738; Code, s. 299; C. C. P., s. 157.

382. Defendant's undertaking delivered to clerk; exception. Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the clerk of the court in which the suit is brought, with his return endorsed, and a certified copy of the undertaking of the bail, and notify the plaintiff or his attorney thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he is deemed to have accepted it and the sheriff is exonerated from the liability.

Rev., s. 739; Code, s. 304; C. C. P., s. 162.

383. Notice of justification; new bail. On the receipt of notice of exception to the bail, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bondsmen (specifying the places of residence and occupation of the latter) before the court, justice of the peace, or judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bondsmen given, there must be a new bond, in the form hereinbefore prescribed.

Rev., s. 741; Code, s. 305; C. C. P., s. 163.

384. Qualifications of bail. The qualifications of bail must be as follows:

1. Each of them must be a resident and freeholder within the state.
2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification is equivalent to that of two sufficient bail.

Rev., s. 740; Code, s. 306; C. C. P., s. 164.

385. Justification of bail. For the purpose of justification, each of the bail shall attend before the court or judge, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the court, judge or justice of the peace, in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

Rev., s. 742; Code, s. 307; C. C. P., s. 165.

386. Allowance of bail. If the court, judge or justice of the peace finds the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk. The sheriff is then exonerated from liability.

Rev., s. 743; Code, s. 308; C. C. P., s. 166.

387. Deposit in lieu of bail. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall then give a certificate of the deposit to the defendant who shall be discharged from custody.

Rev., s. 744; Code, s. 309; C. C. P., s. 167.

388. Deposit paid into court; liability on sheriff's bond. Within four days after the deposit, the sheriff must pay it into court, and take from the officer receiving it two certificates of such payment, one of which he must deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency.

Rev., s. 745; Code, s. 310; C. C. P., s. 168.

389. Bail substituted for deposit. If money is deposited, as provided in the two preceding sections, bail may be given and justified upon notice according to law at any time before judgment. Thereupon the judge, court or justice of the peace shall direct, in the order of allowance, that the money deposited be refunded by the sheriff or other officer to the defendant, and it shall be refunded accordingly.

Rev., s. 746; Code, s. 311; C. C. P., s. 169.

390. Deposit applied to plaintiff's judgment. When money has been deposited, and remains on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk or other officer shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment, shall refund any surplus to the defendant. If the judgment is in favor of the defendant the clerk or other officer shall refund to him the whole sum deposited and remaining unapplied.

Rev., s. 747; Code, s. 312; C. C. P., s. 170.

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

Rev., s. 748; Code, s. 318; R. C., c. 11, s. 8.

392. When sheriff liable as bail. If, after arrest, the defendant escapes, or is rescued, or bail is not given or justified, or a deposit is not made instead thereof, the sheriff is himself liable as bail. But he may discharge himself from such liability by the giving and justification of bail at any time before process against the person of the defendant, to enforce an order or judgment in the action.

Rev., s. 749; Code, s. 313; C. C. P., s. 171.

393. Action on sheriff's bond. If a judgment is recovered against the sheriff, upon his liability as bail, and an execution thereon is returned wholly or partly unsatisfied, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

Rev., s. 750; Code, s. 314; C. C. P., s. 172.

394. Bail exonerated. At any time before final judgment against them, the bail may be exonerated, either by the death of the defendant or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution of the judgment.

Rev., s. 751; Code, s. 303; C. C. P., s. 161.

395. Surrender of defendant. At any time before final judgment against them, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and acknowledge the surrender by a certificate in writing.

2. Upon the production of a copy of the undertaking and sheriff's certificate, the court, or judge may, upon a notice to the plaintiff of ten days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and papers used on said application, they shall be exonerated accordingly. But this section does not apply to an arrest in an action to recover the possession of personal property unjustly detained, so as to discharge the bail from an undertaking given to the effect provided by law to be given by defendant for the retention of property, under the article entitled Claim and Delivery.

Rev., s. 752; Code, s. 300; C. C. P., s. 158.

396. Bail may arrest defendant. For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person over twenty-one years of age to do so.

Rev., s. 753; Code, s. 301; C. C. P., s. 159.

397. Proceedings against bail by motion. In case of failure to comply with the undertaking the bail may be proceeded against by motion in the cause on ten days notice to them.

Rev., s. 754; Code, s. 302; C. C. P., s. 160.

398. Liability of bail to sheriff. The bail taken upon the arrest are, unless they justify, or other bail are given or justified, liable to the sheriff by action for damages which he may sustain by reason of such omission.

Rev., s. 755; Code, s. 315; C. C. P., s. 173.

399. When bail to pay costs. When a notice issues against a person, as the bail of another, and the bail, at or before the term of the court at which he is bound to appear, or ought to plead, is not discharged from his liability by the death or surrender of his principal or otherwise, he is liable for all costs which

accrue on said notice, notwithstanding he may be afterwards discharged, by the death or surrender of the principal, or otherwise.

Rev., s. 756; Code, s. 319; R. C., c. 11, s. 10.

400. Bail not discharged by amendment. No amendment of process or pleading discharges the bail of the party arrested thereon, unless it enlarges the sum demanded beyond the sum expressed in the bail bond.

Rev., s. 757; Code, s. 320; R. C., c. 11, s. 11.

ART. 34. ATTACHMENT

401. In what actions attachment granted. A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff, as specified in this article, when the action is to recover a sum of money only, or damages for one or more of the following causes:

1. Breach of contract, express or implied.
2. Wrongful conversion of personal property.
3. Any other injury to real or personal property, in consequence of negligence, fraud, or other wrongful act.
4. Any injury to the person, caused by negligence or wrongful act.

Rev., s. 758; Code, s. 347; 1893, c. 77; 1901, c. 740; C. C. P., s. 197.

402. Affidavit must show what. To entitle the plaintiff to a warrant of attachment he must show by affidavit to the satisfaction of the court as follows:

1. That one of the causes of action specified in the preceding section exists against the defendant. If the action is to recover damages for breach of contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation or a nonresident of the state, or a domestic corporation none of whose officers can be found in the state after due diligence; or, if he is a natural person and a resident of the state, that he has departed therefrom, or keeps himself concealed therein, with intent to defraud his creditors or to avoid service of summons; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property with like intent.

Rev., s. 759; Code, s. 349; 1897, c. 476; C. C. P., s. 201.

403. Affidavit to be filed. It is the duty of the plaintiff procuring a warrant of attachment, within ten days from its issuance, to file the affidavit on which it was granted in the office of the clerk of the superior court to which, or with the justice of the peace before whom, the process is returnable.

Rev., s. 760; Code, s. 355; C. C. P., s. 201.

404. By whom granted. If the action is not founded on a contract, or if founded on a contract and the sum demanded exceeds two hundred dollars, a warrant of attachment may be obtained from the judge of the district embracing the county in which the action was begun, or from the clerk of the superior court from which the summons in the action issued; and it may be issued to any county

in the state where the defendant has property, money, effects, choses in action or debts due him, and shall be made returnable in term time to the court from which the summons issued.

Rev., s. 761; Code, s. 351; C. C. P., s. 199; 1869-70, c. 147; 1870-1, c. 166, ss. 1, 3; 1874-5, c. 111; 1876-7, c. 251.

405. Time of issuance; service of summons. The warrant of attachment may be granted to accompany the summons, or at any time thereafter. Personal service of the summons must be made upon the defendant against whose property the attachment is granted, within thirty days after its granting, or else upon the expiration of the same time, service of summons by publication must be commenced pursuant to an order obtained therefor, and if publication has been, or is thereafter commenced, the service must be made complete by the continuance thereof.

Rev., s. 762; Code, s. 348; C. C. P., s. 197.

406. Undertaking. The officer, before issuing the warrant, must require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect, that if the defendant recovers judgment, or the attachment is set aside by order of the court, the plaintiff will pay all costs that are awarded to the defendant, and all damages which he sustains by reason of the attachment, not exceeding the sum specified in the undertaking, which must be at least two hundred dollars.

Rev., s. 763; Code, s. 356; C. C. P., s. 202.

407. Validity of undertaking. It is not a defense to an action upon an undertaking, given upon granting a warrant of attachment, that the warrant was granted improperly, for want of jurisdiction, or for any other cause.

Rev., s. 764; Code, s. 358.

408. To whom warrant directed; duty of officer. The warrant shall be directed to the sheriff of any county in which the property of the defendant is located, or in case it is issued by a justice of the peace, to the sheriff or any constable of such county, and shall require the sheriff or constable to attach and safely keep all the property of the defendant within his county, or so much thereof as is sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, together with costs and expenses; it must also state when and where it shall be returned. Several warrants may be issued at the same time to the sheriffs of different counties, but where the warrant is issued by a justice of the peace to another county than his own, the clerk of the superior court of his county must certify that he is a justice of the peace and that the signature to the warrant is in the handwriting of the justice.

Rev., s. 765; Code, s. 357; 1895, c. 435, s. 1; C. C. P., s. 203.

409. Notice; service and content. When the warrant of attachment is taken out at the time of issuing the summons, and the summons is to be served by publication, the order shall direct that notice be given in the publication to the defendant of the issuing of the attachment. When the warrant of attachment is obtained after the issuing of the summons, the defendant must be notified by publication of the fact for four successive weeks in some newspaper published in the county to which it is returnable, or if none, then in one published in the judicial district including said county. The publication shall state the names

of the parties, the amount of the claims, and in a brief way the nature of the demand and the time and place to which the warrant is returnable. In proceedings by attachment begun before justices of the peace, advertisement in a newspaper is not necessary, but advertisement at the courthouse door and four other public places in the county for four successive weeks is sufficient publication, both as to the summons and warrant of attachment.

Rev., s. 766; Code, s. 352; 1893, c. 363; 1870-1, c. 166, s. 3; 1874-5, c. 111, s. 2.

410. Execution, levy, and lien. The officer to whom the warrant of attachment is directed and delivered, shall seize and take into his possession the tangible personal property of the defendant or so much as is necessary, and he is liable for the care and custody of such property, as if it had been seized under execution. He shall levy on the real estate of the defendant as prescribed for executions, he shall make and return with the warrant an inventory of the property seized or levied on and, subject to the direction of the court, shall collect all debts owing to the defendant, and take such legal proceedings in his own name or in that of the defendant, as are necessary for that purpose. Where the sheriff or other officer levies an attachment upon real estate, he must certify the levy to the clerk of the superior court of the county where the land lies, with the names of the parties, and the clerk must note the same on his judgment docket and index it on the index to judgments, and the levy is a lien only from the date of entry by the clerk, except that if it is so docketed and indexed within five days after being made it is a lien from the time it was made.

Rev., s. 767; Code, s. 359; 1895, c. 435, s. 2; C. C. P., s. 204.

411. Return of warrant by sheriff. The sheriff shall return the warrant of attachment, and the undertakings provided for in this article, with a statement of his proceedings thereon, at the time and place at which it is on its face returnable, and upon, or at any time after, the return, he may obtain from the court to which the warrant was returnable, a certified copy thereof, which, for the purpose of giving him authority, is the same as the original, and when the warrant has been fully executed or discharged, the sheriff shall return it, with his proceedings, to said court.

Rev., s. 768; Code, s. 376; C. C. P., s. 214.

412. When granted by justice of peace. If the action is not founded on contract and the value of the property in controversy does not exceed the sum of fifty dollars, the warrant of attachment may, or if the action is founded on contract and the sum demanded does not exceed two hundred dollars, the warrant of attachment must be obtained from, and made returnable before a justice of the peace of a county to the superior court of which it would have been returnable had the sum demanded exceeded two hundred dollars, or had the action not been founded on contract.

Rev., s. 769; Code, s. 353; C. C. P., s. 200; 1876-7, c. 251.

413. Publication in justice's court. The plaintiff, within thirty days after obtaining a warrant of attachment from a justice of the peace, must cause publication thereof to be made for four successive weeks at the courthouse door and four other public places in the county where the warrant is returnable.

Rev., s. 770; Code, s. 350; C. C. P., s. 198; 1868-9, c. 95, s. 3; 1870-1, c. 166, s. 4; 1874-5, c. 111.

414. Justice's attachment against land. If the attachment is levied on real property, the justice shall proceed to try the action, but may not issue execution to sell the real property, and shall return the papers in the case to the office of the clerk of the superior court of his county, where the judgment shall be docketed. The levy of the attachment, however, is a lien on the real estate, when the provisions of the section as to execution and levy of attachment are complied with.

Rev., s. 771; Code, s. 354; 1868-9, c. 95, s. 4.

415. Sale of attached property pending litigation. If any property seized under attachment is perishable, or of a character to materially deteriorate in value pending litigation, 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, does not within ten days after the serving of the attachment reclaim the same, the sheriff or other officer having possession, shall apply to the court for authority to sell the property, stating the circumstances. The property shall then be sold, under the order and direction of the court, and the proceeds are liable to the judgment obtained upon the attachment, and shall be retained by the sheriff or other officer to await the judgment.

Rev., s. 772; Code, s. 360; R. C., c. 7, s. 6; 1777, c. 115, s. 28; C. C. P., s. 205.

NOTE. For sale of corporate property by receiver during litigation, see Corporations, s. 99.

416. Replevy by defendant; undertaking. The person owning the property advertised to be sold according to the provisions of this article, or 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 surety, to the effect that he will return the property to the sheriff or other officer, if its return is adjudged by the court, and pay all costs that are awarded against him; and if return of the property cannot be had, then that he will pay plaintiff its value, and all costs and damages that are awarded against him. Upon the execution of this undertaking, the sheriff, or other officer, shall deliver the property to the person owning it.

Rev., s. 773; Code, s. 361; R. C., c. 7, s. 5; 1777, c. 115, s. 28.

417. Defendant may apply for discharge and delivery of property. When the defendant has appeared in such action, he may apply to the court in which it is pending, or to the judge thereof, for an order to discharge the attachment; and if the order is granted, all the proceeds of sale, and moneys collected in the action, and all property attached remaining in the hands of any officer of the court, under any process or order in the action, shall be delivered or paid to the defendant or his agent, and released from the attachment. Where there is more than one defendant, and the several property of one of them has been seized by virtue of the order of attachment, the defendants whose several property was seized may apply in like manner for relief.

Rev., s. 774; Code, s. 373; C. C. P., s. 212.

418. Defendant's undertaking. Upon the application provided for in the preceding section the defendant must deliver to the court an undertaking in at least

double the amount claimed by the plaintiff in his complaint, executed by two sureties residing in this state, approved by the court, to the effect that the surety will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking. If it appears by affidavit that the property attached is of less value than the amount claimed by the plaintiff, the court or judge may order it to be appraised, and the amount of the undertaking shall then be double the amount so appraised. Where there is more than one defendant, and the several property of one of them has been seized by virtue of the order of attachment, the defendant whose several property was seized may deliver to the court an undertaking, in accordance with this section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against him, and all of this section, applicable to such an undertaking, shall be applied thereto.

Rev., s. 775; Code, s. 374; C. C. P., s. 213.

419. All property liable to attachment. The rights or shares of the defendant in the stock of any association or corporation, with the interest and profits thereon, and all other property in this state of the defendant, are liable to be attached, levied on, and sold to satisfy the judgment and execution.

Rev., s. 776; Code, s. 362; C. C. P., s. 206.

NOTE. For execution against shares of stock, see Corporations, s. 89.

420. Levy on intangible property. 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 debtor or individual holding such property, with a notice showing the property levied on. This certified copy must be furnished to the sheriff by the plaintiff, and the certification must be by the clerk of the court from which the warrant was issued, or by the justice of the peace who issued it. A person receiving or collecting moneys within this state on behalf of any corporation of this or any other state or government is deemed a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property within this state, or the cause of action arose or the plaintiff resides in the state, or when the service can be made within the state personally upon the president, treasurer or secretary thereof.

Rev., s. 777; Code, s. 363; C. C. P., s. 207; 1905, c. 294.

NOTE. See Corporations, Art. 9, Execution.

421. Certificate of defendant's interest to be furnished to sheriff. When the sheriff or other officer, with a warrant of attachment or execution, applies to a president or other head or director, secretary, cashier or managing agent of any association or corporation, or to any debtor or individual, for the purpose of attaching or levying on the property of the defendant in such warrant, such officer, debtor or individual must furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in the association or corporation, with any dividend or any incumbrance thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of, or debt owing to, the defendant. If the officer, debtor or individual refuses to do so, he may be required by the court or judge to

appear before him, and be examined on oath concerning the matter, and obedience to this order may be enforced by attachment.

Rev., s. 778; Code, s. 369; C. C. P., s. 208.

NOTE. See Corporations, s. 89.

422. Proceedings against garnishee. When the sheriff or other officer serves an attachment on any person supposed to be indebted to, or to have any property of the defendant in the attachment, he shall at the same time summon in writing such person as a garnishee. The summons and notice shall be issued by the clerk of the superior court, or justice of the peace, at the request of the plaintiff, to appear at the court to which the attachment is returnable, or if issued by a justice of the peace, at a place and time named in the notice, not exceeding twenty days from date of notice, to answer upon oath what he owes to the defendant and what property of the defendant he has in his hand and had at the time of serving the attachment, and to his knowledge and belief what effects or debts of the defendant there are in the hands of any other, and what person. When an attachment is served on a garnishee in the above manner, upon his appearance and examination, judgment may be entered up and execution awarded for the plaintiff against the garnishee, for all sums of money due the defendant from him, and for all property of any kind belonging to the defendant, in his possession or custody, for the use of the plaintiff, or so much thereof as will satisfy the debt and costs and all charges incident to levying the same. All property whatsoever in the hands of any garnishee belonging to the defendant is liable to satisfy the plaintiff's judgment, and must be delivered to the sheriff or other officer serving the attachment.

Rev., s. 779; Code, s. 364; R. C., c. 7, s. 7; 1777, c. 115, s. 28.

423. Failure of garnishee to appear. When a garnishee is summoned and fails to appear and discover on oath as directed, the court, after solemnly calling the garnishee, shall enter a conditional judgment against him, and thereupon a notice shall issue against him returnable to the court having jurisdiction, to show cause why final judgment should not be entered against him. Upon due execution of the notice, if the garnishee fails to appear at the time and place named, and discover on oath in the manner aforesaid, the court shall confirm the judgment and award execution for the plaintiff's whole judgment and costs. Upon examination of the garnishee, if it appears to the court that there is any of the defendant's property in the hands of a person who has not been summoned, the court, upon motion of the plaintiff, shall grant a judicial attachment, to be levied in the hands of every such person having any of the property of the defendant in his custody or possession, who must appear and answer and be liable as other garnishees.

Rev., s. 780; Code, s. 365; R. C., c. 7, s. 8; 1777, c. 115, s. 28; 1838, c. 2.

424. Garnishee denying debt; issue tried. When a garnishee denies that he owes to, or has in his possession any property of, the defendant, and the plaintiff on oath suggests to the court the contrary, or when a garnishee makes such a statement of facts that the court cannot proceed to give judgment thereon, the court shall order an issue to be made up, which must be tried by a jury, and on their verdict judgment shall be rendered. In a court of a justice of the peace,

he may try such issue, unless a jury is demanded, and then proceedings are to be conducted, in all respects, as in jury trials before justices of the peace.

Rev., s. 781; Code, s. 366; R. C., c. 7, s. 9; 1793, c. 389, s. 2.

425. Property with garnishee valued; garnishee exonerated. When a garnishee on oath confesses that he has in his hands any property of the defendant of a specific nature, or is indebted to him by any security or promise for the delivery of any specific article, except as hereinafter excepted, the court shall immediately order a jury to be empaneled and sworn to inquire into the value of such specific property, and the verdict of the jury subjects the garnishee to the payment of the valuation, or as much of it as is sufficient to satisfy the debt or damages and costs of the plaintiff. In a court of a justice of the peace, he may try such issue, unless a jury is demanded and then proceedings are to be conducted in all respects as in jury trials before justices of the peace. If the garnishee states in his answer that the specific property was left with him by the defendant as a bailment, or that he has tendered said specific articles according 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 them; and such statement is admitted by the plaintiff or found by a jury or the court, 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.

Rev., s. 782; Code, s. 367; R. C., c. 7, s. 11; 1793, c. 389; 1794, c. 424.

426. Conditional judgment against garnishee. When a garnishee declares in his answer that the money or specific article due by him will become payable or deliverable at a future day, and this is admitted by the plaintiff or found by a jury or the court, a conditional judgment shall be entered against the garnishee, and the plaintiff may obtain judgment against the defendant for his demand, but may not take final judgment against the garnishee without notice to show cause.

Rev., s. 783; Code, s. 368; R. C., c. 7, s. 12; 1794, c. 424, s. 2.

427. Satisfaction of judgment. If judgment is entered for the plaintiff in the action, the sheriff shall satisfy the same out of the property attached by him, if it is sufficient for that purpose—

1. By paying over to the plaintiff the proceeds of all property sold and debts or credits collected by him, or so much as is necessary to satisfy the judgment.

2. If any balance remains due, and an execution has been issued on the judgment, he shall sell under the execution as much of the attached real or personal property, except as provided in subdivision four of this section, as is necessary to satisfy the balance, if enough for that purpose remains in his hands. In case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale, and the purchaser has all the rights and privileges in respect thereto which were had by the defendant.

3. If any of the attached property belonging to the defendant has passed out of the hands of the sheriff without having been sold or converted into money,

he shall repossess himself of the same, and for that purpose has all the authority which he had to seize it under the attachment. A person who willfully conceals or withholds such property from the sheriff is liable to double damages at the suit of the party injured.

4. Until the judgment against the defendant is paid, the sheriff may collect the notes and other evidences of debt, and the debts that were seized or attached, under the warrant of attachment, and prosecute any bond he has taken in the course of such proceedings, and apply the proceeds to the payment of the judgment.

At the expiration of six months from the docketing of the judgment the court has power, upon petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff, since the service of the attachment, the property attached, and the disposition thereof, also the affidavit of the sheriff that he has used due diligence, and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same, any part or portion thereof, to order the sheriff to sell the same upon such terms and in such manner as is deemed proper. Notice of this application must be given to the defendant or to his attorney, if the defendant has appeared in the action. If the summons has not been personally served on the defendant, the court shall make such rule or order, as to service of notice and time of service, as is deemed just. When the judgment and all costs of the proceedings have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property or the proceeds thereof.

Rev., s. 784; Code, s. 370; C. C. P., s. 209.

428. Plaintiff may sue on defendant's bond. The actions herein authorized to be brought by the sheriff may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the sheriff, of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff from all damages, costs and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. The sureties must in all cases, when required by the sheriff, justify by making an affidavit that each is a freeholder, and worth double the amount of the penalty of the bond, over and above all demands, liabilities and exemptions.

Rev., s. 785; Code, s. 371; C. C. P., s. 210.

429. On defendant's recovery, bonds and property delivered to him. If the foreign corporation, or the absent, absconding, or concealed defendant, recovers judgment against the plaintiff in such action, any bond taken upon the issuing of the warrant of attachment, and any bond taken by the sheriff, except such as are mentioned in the preceding section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant or to his agent, on request, and the warrant shall be discharged and the property released.

Rev., s. 786; Code, s. 372; C. C. P., s. 211.

430. Motion to vacate or increase security. The defendant, or a person who has acquired a lien upon, or interest in, his property before or after it was attached, may at any time before the actual application of the attached property, or the proceeds thereof, to the payment of a judgment recovered in the action,

apply to the court having jurisdiction to vacate or modify the warrant, or to increase the security given by the plaintiff, or for one or more of those forms of relief, together or in the alternative, as in cases of other provisional remedies.

Rev., s. 787; Code, s. 377.

431. Exceptions to and justification of sureties. The sureties to all undertakings in all proceedings for attachment may be excepted to, and justified as prescribed in respect to bail upon an order of arrest.

Rev., s. 788; Code, s. 378.

432. Interpleader. When the property attached is claimed by any other person, the claimant may interplead, as provided for interpleader in claim and delivery.

Rev., s. 789; Code, s. 375; R. C., c. 7, s. 10; 1793, c. 389, s. 3.

ART. 35. CLAIM AND DELIVERY

433. Claim for delivery of personal property. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of the property, as provided in this article.

Rev., s. 790; Code, s. 321; C. C. P., s. 176.

434. Affidavit and requisites. Where a delivery is claimed, an affidavit must be made, before the clerk of the court in which the action is required to be tried, or before some person competent to administer oaths, by the plaintiff, or some one in his behalf, showing—

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to its possession by virtue of a special property therein, the facts in respect to which must be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention, according to his best knowledge, information and belief.

4. That the property has not been taken for tax, assessment or fine, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and,

5. The actual value of the property.

Rev., s. 791; Code, s. 322; C. C. P., s. 177; 1881, c. 134.

NOTE. For statute forbidding seizure of property taken for a tax, see this chapter, s. 461.

435. Order of seizure and delivery to plaintiff. The clerk of the court shall, thereupon, and upon the giving by the plaintiff of the undertaking prescribed in the succeeding section, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed is located, to take it from the defendant and deliver it to the plaintiff.

Rev., s. 792; Code, s. 323; C. C. P., s. 178.

436. Plaintiff's undertaking. The plaintiff must give a written undertaking payable to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return

of the property to the defendant with damages for its deterioration and detention if return can be had, and if for any cause return cannot be had, for the payment to him of such sum as may be recovered against the plaintiff for the value of the property at the time of the seizure, with interest thereon as damages for such seizure and detention.

Rev., s. 793; Code, s. 324; 1885, c. 50; C. C. P., s. 179.

437. Sheriff's duties. Upon the receipt of the order from the clerk with the plaintiff's undertaking, the sheriff shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.

Rev., s. 793; Code, s. 324; C. C. P., s. 179; 1885, c. 50.

438. Exceptions to undertaking; liability of sheriff. The defendant may, within three days after the service of a copy of the affidavit and undertaking, notify the sheriff personally, or by leaving a copy at his office in the county-seat of the county that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objection to them. When the defendant excepts, the sureties must justify on notice, in like manner as upon bail on arrest. The sheriff is responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or until new sureties are substituted and justify. If the defendant excepts to the sureties, he cannot reclaim the property as provided in the succeeding section.

Rev., s. 794; Code, s. 325; C. C. P., s. 180.

439. Defendant's undertaking for replevy. At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, payable to the plaintiff, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, with damages for its deterioration and detention, and the costs, if delivery can be had, and if delivery cannot be had, for the payment to him of such sum as may be recovered against the defendant for the value of the property at the time of the wrongful taking or detention, with interest thereon, as damages for such taking and detention, together with the costs of the action. If a return of the property is not so required, within three days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, unless it is claimed by an interpleader.

The defendant's undertaking shall include liability for costs, as provided in this section, only where the undertaking is given in actions instituted in the superior court.

Rev., s. 795; Code, s. 326; 1885, c. 50, s. 2; C. C. P., s. 181; 1911, c. 17.

440. Qualification and justification of defendant's sureties. The qualification of the defendant's sureties, and their justification, is as prescribed in respect to

bail upon an order of arrest. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than six days, shall justify before the court, a judge or justice of the peace, and upon this justification the sheriff must deliver the property to the defendant. The sheriff is responsible for the defendant's sureties until justification is completed or expressly waived, and he may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Rev., ss. 796, 797; Code, ss. 327, 328; C. C. P., ss. 182, 183.

441. Property concealed in buildings. If the property, or any part of it, is concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it is not delivered he must cause the building or enclosure to be broken open, and take the property into his possession. If necessary, he may call to his aid the power of his county, and if the property is upon the person the sheriff or other officer may seize the person, and search for and take it.

Rev., s. 798; Code, s. 329; C. C. P., s. 184.

442. Care and delivery of seized property. When the sheriff has taken property, as provided in this article, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping it.

Rev., s. 799; Code, s. 330; C. C. P., s. 185.

443. Property claimed by third person; proceedings. When the property taken by the sheriff is claimed by any person other than the plaintiff or defendant the claimant may interplead upon filing an affidavit of his title and right to the possession of the property, stating the grounds of such right and title; and upon his delivering to the sheriff an undertaking in an amount double the value of the property specified in plaintiff's affidavit, for the delivery of the property to the person entitled to it, and for the payment of all such costs and damages as may be awarded against him; this undertaking to be executed by one or more sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property. A copy of this undertaking and accompanying affidavit shall be served by the sheriff on the plaintiff and defendant at least ten days before the return day of the summons in the action, when the court trying it shall order a jury to be empaneled to inquire in whom is the right to the property specified in plaintiff's complaint. The finding of the jury is conclusive as to the parties then in court, and the court shall adjudge accordingly, unless it is reversed upon appeal. In a court of a justice of the peace he may try such issue unless a jury is demanded, and then proceedings are to be conducted in all respects as in jury trials before justices of the peace. In a court of a justice of the peace an interpleader shall not be required to serve on the plaintiff and defendant the affidavits and bonds required by this section, ten days before return day; but if said bond and affidavit are filed by any person owning the property when such case is called for trial, he shall be allowed to interplead.

Rev., s. 800; Code, s. 331; C. C. P., s. 186; 1793, c. 389, s. 3; R. C., c. 7, s. 10; 1913, c. 188.

444. Delivery of property to intervener. Upon the filing by the claimant of the undertaking set forth in the preceding section, the sheriff is not bound to

keep the property, or to deliver it to the plaintiff; but may deliver it to the claimant, unless the plaintiff executes and deliver to him a similar undertaking to that required of claimant; and notwithstanding such claim, when so made, the sheriff may retain the property a reasonable time to demand such indemnity.

Rev., s. 801; Code, s. 332; R. C., c. 7, s. 10; 1793, c. 389, s. 3.

445. Sheriff to return papers in ten days. The sheriff must return the undertaking, notice and affidavit with his proceedings thereon to the court in which the action is pending within ten days after taking the property mentioned therein.

Rev., s. 802; Code, s. 133; C. C. P., s. 187.

ART. 36. INJUNCTION

446. When temporary injunction issued. A temporary injunction may be issued by order in accordance with the provisions of this article. The order may be made by any judge of the superior court in the following cases, and shall be issued by the clerk of the court in which the action is required to be tried:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and this relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

2. When, during the litigation, it appears by affidavit that a party thereto is doing, or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual; or,

3. When, during the pendency of an action, it appears by affidavit of any person, that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud the plaintiff.

Rev., s. 806; Code, ss. 334, 338; C. C. P., ss. 188, 189.

447. When solvent defendant restrained. In an application for an injunction to enjoin a trespass on land it is not necessary to allege the insolvency of the defendant when the trespass complained of is continuous in its nature, or is the cutting or destruction of timber trees.

Rev., s. 807; 1885, c. 401.

448. Timber lands, trial of title to. In all actions to try title to timber lands and for trespass thereon for cutting timber trees, when the court finds as a fact that there is a bona fide contention on both sides based upon evidence constituting a prima facie title, no order shall be made pending such action, permitting either party to cut said timber trees, except by consent, until the title to said land or timber trees is finally determined in the action. In all cases where the title to any timber or trees, or the right to cut and remove the same during a term of years, is claimed by any party to such action, and the fee of the soil or other estate in the land by another, whether party to the action or not, the time within which such timber or trees may be cut or removed by the party claiming the same, and all other rights acquired in connection therewith, shall not be affected or abridged, but the running of the term is suspended during the pendency of the action.

Rev., s. 808; 1901, c. 666, s. 1; 1903, c. 642.

449. When timber may be cut. In any action specified in the preceding section, when the judge finds as a fact that the contention of either party is not in good faith and is not based upon evidence constituting a prima facie title, upon motion of the other party, who may satisfy the court of the bona fides of his contention and who may produce evidence showing a prima facie title, the court may allow such party to cut the timber trees by giving bond as required by law. Nothing in this section affects the right of appeal, and when any party to such action has been enjoined, a sufficient bond must be required to cover all damages that may accrue to the party enjoined by reason of the injunction as now required by law.

Rev., s. 809; 1901, c. 666, ss. 2, 3.

450. Time of issuing. The injunction may be granted when or at any time after commencing the action, before judgment, upon its appearing satisfactorily to the judge, by affidavit of the plaintiff, or of any other person that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

Rev., s. 810; Code, s. 339; C. C. P., s. 190.

451. Not issued for longer than twenty days without notice. 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 order shall continue and remain in force until vacated after notice, to be fixed by the court, of not less than two nor more than ten days.

Rev., s. 811; Code, s. 346; C. C. P., s. 345; 1905, c. 26.

452. Issued after answer, only on notice. An injunction shall not be allowed after the defendant has answered, except upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the judge granting or refusing the injunction.

Rev., s. 812; Code, s. 340; C. C. P., s. 191.

453. Order to show cause. If the judge deems it proper that the defendant, or any of several defendants, should be heard before granting an injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Rev., s. 813; Code, s. 342; C. C. P., s. 193.

454. What judges have jurisdiction. The judges of the superior court have jurisdiction to grant injunctions and issue restraining orders in all civil actions and proceedings. 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 has jurisdiction to hear and determine under the commission issued to him, and the same is returnable as directed in the order.

Rev., s. 814; Code, s. 335; 1876-7, c. 223, ss. 1, 2; 1879, c. 63, ss. 1, 3.

455. Before what judge returnable. All restraining orders and injunctions granted by any of the judges of the superior court, except one 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 pending, within twenty days from date of order. If the judge before whom the matter is returned fails, for any reason, to hear the motion and application, or to continue them to some other time and place, any judge resident in, or assigned to hold the courts of, some adjoining district, may hear and determine the said motion and application, after giving ten days notice to the parties interested in the application or motion, upon its being satisfactorily shown to him by affidavit or otherwise that the judge before whom the matter was returnable failed to act upon or to continue the same to some other time and place. This removal continues in force the motion and application theretofore granted, till they can be heard and determined by the judge having jurisdiction.

Rev., s. 815; Code, s. 336; 1876, c. 223, s. 2; 1879, c. 63, ss. 2, 3; 1881, c. 51.

456. Stipulation as to judge to hear. By a stipulation in writing, signed by all the parties to an application for an injunction order, or their attorneys, to the effect that the matter may be heard before a judge designated in the stipulation, the judge before whom the restraining order is returnable by law, or who is by law the judge to hear the motion for an injunction order, shall, upon receipt of the stipulation forward it and all the papers to the judge designated, whose duty it then is to hear and decide the matter, and return all the papers to the court out of which they issued, the necessary postage or expressage money to be furnished to the judge.

Rev., s. 816; Code, s. 337; 1883, c. 33.

457. Undertaking. Upon granting a restraining order or an order for an injunction, the judge shall require as a condition precedent to the issuing thereof that the clerk shall take from the plaintiff a written undertaking, with sufficient sureties, to be justified before, and approved by, the clerk or judge, in an amount to be fixed by the judge, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as he sustains by reason of the injunction, if the court finally decides that the plaintiff was not entitled to it.

Rev., s. 817; Code, s. 341; C. C. P., s. 192.

458. Damages on dissolution. A judgment dissolving an injunction carries with it judgment for damages against the party procuring it and the sureties on his undertaking without the requirement of malice or want of probable cause in procuring the injunction, which damages may be ascertained by a reference or otherwise, as the judge directs, and the decision of the court is conclusive as to the amount of damages upon all the persons who have an interest in the undertaking.

Rev., s. 818; Code, s. 341; 1893, c. 251.

459. Issued without notice; application to vacate. If the injunction is granted without notice, the defendant, at any time before the trial, may apply, upon notice to be fixed by the court of not less than two nor more than ten days, to the judge having jurisdiction, to vacate or modify the same, if he is within the district or in an adjoining district, but if out of the district and not in an adjoining district, then before any judge who is at the time in the district, and if there is no judge in the district, before any judge in an adjoining district. 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. If no such application is made, the injunction continues in force until such application is made and determined by the judge, and a verified answer has the effect only of an affidavit.

Rev., s. 819; Code, s. 344; C. C. P., s. 195; 1905, c. 26.

460. When opposing affidavits admitted. If the application is made upon affidavits on the part of the defendant, the plaintiff may oppose the same by affidavits or other proof, in addition to those on which the injunction was granted.

Rev., s. 820; Code, s. 345; C. C. P., s. 196.

461. To restrain collection of taxes. No injunction may be granted by any court or judge to restrain the collection of any tax or any part thereof, or to restrain the sale of any property for the nonpayment of any tax, unless such tax or the part thereof enjoined is levied or assessed for an illegal or unauthorized purpose, or the tax assessment is illegal or invalid.

Rev., s. 821; 1901, c. 558, s. 30; 1899, c. 15, s. 78; 1887, c. 137, s. 84.

ART. 37. RECEIVERS

462. What judge appoints. Any judge of the superior court with authority to grant restraining orders and injunctions has like jurisdiction in appointing receivers, and all motions to show cause are returnable as is provided for injunctions.

Rev., s. 846; Code, s. 379; C. C. P., s. 215; 1876-7, c. 223; 1879, c. 63; 1881, c. 51.

463. In what cases appointed. A receiver may be appointed—

1. Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had on application to the court.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In cases provided in chapter entitled Corporations in the article Receivers; and in like cases, of the property within this state of foreign corporations.

The article Receivers, in the chapter entitled Corporations, is applicable, as near as may be, to receivers appointed hereunder.

Rev., s. 847; Code, s. 379; C. C. P., s. 215; 1876-7, c. 223; 1879, c. 63; 1881, c. 51.

NOTE. For appointment of receivers in supplemental proceedings, see this chapter, article 30, Supplemental Proceedings.

464. Appointment refused on bond being given. In all cases where there is an application for the appointment of a receiver, upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, or that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand,

the judge before whom the application is made or pending shall have the discretionary power to refuse the appointment of a receiver, if the party against whom such relief is asked, whether a person, partnership or corporation, tenders to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient and duly justified sureties, conditioned for the payment of such amount as may be recovered in the action, and summary judgment may be taken upon the undertaking. In the progress of the action the court may in its discretion require additional sureties on such undertaking.

Rev., s. 848; 1885, c. 94.

465. Receiver's bond. A receiver appointed in an action or special proceeding must, before entering upon his duties, execute and file with the clerk of the court in which the action is pending, an undertaking payable to the adverse party with at least two sufficient sureties in a penalty fixed by the judge making the appointment, conditioned for the faithful discharge of his duties as receiver. And the judge having jurisdiction thereof may at any time remove the receiver, or direct him to give a new undertaking, with new sureties, and on the like condition. This section does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver.

Rev., s. 849; Code, s. 383.

ART. 38. DEPOSIT OR DELIVERY OF MONEY OR OTHER PROPERTY.

466. Ordered paid into court. When it is admitted by the pleading or examination of a party that he has in his possession or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the judge may order it deposited in court, or delivered to such party with or without security, subject to the further direction of the judge.

Rev., s. 850; Code, s. 380; C. C. P., s. 215.

467. Ordered seized by sheriff. When, in the exercise of his authority, a judge has ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the judge, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver, or convey it, in conformity with the direction of the judge.

Rev., s. 851; Code, s. 381; C. C. P., s. 215.

468. Defendant ordered to satisfy admitted sum. When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the judge, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or provisional remedy.

Rev., s. 852; Code, s. 382; C. C. P., s. 215.

SUBCHAPTER 14. ACTIONS IN PARTICULAR CASES

ART. 39. MANDAMUS

469. Begun by summons and verified complaint. All applications for writs of mandamus must be made by summons and complaint, which must be duly verified.
Rev., s. 822; Code, s. 622; 1871-2, c. 75.

470. Money demand returnable at term. In applications for a writ of mandamus when the plaintiff seeks to enforce a money demand, the summons, pleadings and practice are the same as prescribed for civil actions.
Rev., s. 823; Code, s. 623; 1871-2, c. 75, s. 2.

471. Other actions returnable in vacation; issues of fact. When the plaintiff seeks relief other than the enforcement of a money demand, the summons must 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 hear and determine the action, both as to law and fact. However, when an issue of fact is raised by the pleading, it is the duty of the court, upon the motion of either party, to continue the action until the issue of fact can be decided by a jury at the next regular term of the court.
Rev., s. 824; Code, s. 623; 1871-2, c. 75, s. 3.

ART. 40. QUO WARRANTO

472. Writs of sci. fa. and quo warranto abolished. The writs of seire facias and of quo warranto, and proceedings by information in the nature of quo warranto, are abolished; and the remedies obtainable in those forms may be obtained by civil actions under this article.

Rev., s. 826; Code, s. 603; C. C. P., s. 362; R. C., c. 26, ss. 5, 25.

473. Action by attorney general. An action may be brought by the attorney general in the name of the state, upon his own information or upon the complaint of a private party, against the parties offending, in the following cases:

1. When a person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state; or,

2. When a public officer, civil or military, has done or suffered an act which, by law, makes a forfeiture of his office.

3. When any person, natural or corporate, has or claims to have or hold any rights or franchises by reason of a grant or otherwise, in violation of the provisions of the section of article one of the chapter entitled State Lands, which declares entries and grants not authorized by that chapter to be void and not to constitute color of title.

Rev., s. 827; Code, s. 607; C. C. P., s. 366; 1911, cc. 195, 201.

NOTE. For actions in nature of quo warranto against corporations, see Corporations, Art. 8, Dissolution.

For actions by state to forfeit grants, see State Land, s. 57.

474. Action by private person with leave. When application is made to the attorney-general by a private relator to bring such an action, he shall grant leave that it may be brought in the name of the state, upon the relation of such applicant, upon the applicant tendering to the attorney general satisfactory security to indemnify the state against all costs and expenses which may accrue in consequence of the action.

Rev., s. 828; Code, s. 608; 1874-5, c. 76; 1881, c. 330.

NOTE. For costs in such action, see Costs, s. 13.

For involuntary dissolution of corporations at the instance of private persons, see Corporations, s. 72.

475. Solvent sureties required. The attorney general, before granting leave to a private relator to bring a suit to try the title to an office, may require two sureties to the bond required by law to be filed to indemnify the state against costs and expenses, and require such sureties to justify, and may require such proof and evidence of the solvency of the sureties as is satisfactory to him.

Rev., s. 829; 1901, c. 595, s. 2.

476. Leave withdrawn and action dismissed for insufficient bond. When the attorney general has granted leave to a private relator to bring an action in the name of the state to try the title to an office, and it afterwards is shown to the satisfaction of the attorney general that the bond filed by the private relator is insufficient, or that the sureties are insolvent, the attorney general may recall and revoke such leave, and upon a certificate of the withdrawal and revocation by the attorney general to the clerk of the court of the county where the action is pending, it is the duty of the presiding judge, upon motion of the defendant, to dismiss the action.

Rev., s. 830; 1891, c. 595.

477. Arrest and bail of defendant usurping office. When action is brought against a person for usurping an office, the attorney general, in addition to the statement of the cause of action, may set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to, and by means of his usurpation of the office, an order shall be granted by a judge of the superior court for the arrest of the defendant, and holding him to bail; and thereupon he shall be arrested and held to bail in the manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Rev., s. 831; Code, s. 609; C. C. P., s. 369; 1883, c. 102.

478. Several claims tried in one action. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all of them, in order to try their respective rights to the office or franchise.

Rev., s. 832; Code, s. 614; C. C. P., s. 374.

479. Trials expedited. All actions to try the title or right to any state, county or municipal office stand for trial at the return term of the summons, if a copy of the complaint was served with the summons at least thirty days before the return day thereof; and it is the duty of the judges to expedite the trial of these actions, and to give them precedence over all others, civil or criminal. It is

unlawful to appropriate any public funds to the payment of counsel fees in any such action.

Rev., s. 833; Code, s. 616; 1901, c. 42; 1874-5, c. 173.

480. Time for bringing action. All actions brought by a private relator, upon the leave of the attorney general, to try the title to an office must be brought, and a copy of the complaint served on the defendant, within ninety days after his induction into the office to which the title is to be tried; and when it appears from the papers in the cause, or is otherwise shown to the satisfaction of the court that the summons and complaint have not been served within ninety days, it is the duty of the judge upon motion of defendant to dismiss the action at any time before the trial at the cost of the plaintiff.

Rev., s. 834; 1901, c. 519; 1903, c. 556.

481. Defendant's undertaking before answer. Before the defendant may answer or demur to the complaint he must execute and file in the superior court clerk's office of the county wherein the suit is pending, an undertaking, with good and sufficient surety, in the sum of two hundred dollars, which may be increased from time to time in the discretion of the judge, to be void upon condition that the defendant pays to the plaintiff all such costs and damages, including damages for the loss of such fees and emoluments as may or ought to have come into the hands of the defendant, as the plaintiff may recover.

Rev., s. 835; 1895, c. 105.

482. Possession of office not disturbed pending trial. In any civil action pending in any of the courts of this state in which the title to an office is involved, the defendant being in the possession of the office and discharging the duties thereof shall continue therein pending the action, and no judge shall make a restraining order interfering with or enjoining such officer in the premises. The officer shall, notwithstanding any such order, continue to exercise the duties of the office pending the litigation, and receive the emoluments thereof.

Rev., s. 836; 1899, c. 33.

483. Judgment by default and inquiry on failure of defendant to give bond. At any time after a duly verified complaint is filed alleging facts sufficient to entitle plaintiff to the office, whether this complaint is filed at the beginning of the action or later, the plaintiff may, upon ten days notice to the defendant or his attorney of record, move before the judge resident in or riding the district at chambers, to require the defendant to give the undertaking specified in second section preceding. It is the duty of the judge to require the defendant to give the undertaking within ten days, and if it is not so given, the judge shall render judgment in favor of plaintiff and against defendant for the recovery of the office and the costs, and a judgment by default and inquiry to be executed at a term for damages, including loss of fees and salary. Upon the filing of the judgment for the recovery of such office with the clerk, it is his duty to issue and the sheriff's duty to serve the necessary process to put the plaintiff into possession of the office. If the defendant shall give the undertaking, the court, if judgment is rendered for plaintiff shall render judgment against the defendant and his sureties for costs and damages, including loss of fees and salary. Nothing herein

prevents the judge's extending, for cause, the time in which to give the undertaking.

Rev., s. 837; 1899, c. 49; 1895, c. 105, s. 2.

484. Service of summons and complaint. The service of the summons and complaint as hereinbefore provided may be made by leaving a copy at the last residence or business office of the defendant or defendants, and service so made shall be deemed a legal service.

Rev., s. 838; 1899, c. 126.

485. Judgment in such actions. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice requires. When the defendant, whether a natural person or a corporation, against whom the action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that the defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against him. The court may also, in its discretion, fine the defendant a sum not exceeding two thousand dollars.

Rev., ss. 839, 840; Code, ss. 610, 615; R. C., c. 95; C. C. P., ss., 370, 375; Const., Art IX, s. 5.

486. Mandamus to aid relator. In any civil action brought to try the title or right to hold any office, when the judgment of the court is in favor of the relator in the action, it is the duty of the court to issue a writ of mandamus or such other process as is necessary and proper to carry the judgment into effect, and to induct the party entitled into office.

Rev., s. 841; 1885, c. 406, s. 1.

487. Appeal; bonds of parties. No appeal by the defendant to the supreme court from the judgment of the superior court in such action shall stay the execution of the judgment, unless a justified undertaking is executed on the part of the appellant by one or more sureties, in a sum to be fixed by the court, conditioned that the appellant will pay to the party entitled to the same the salary, fees, emoluments and all moneys whatsoever received by the appellant by virtue or under color of the office. In no event shall the judgment be executed pending appeal, unless a justified undertaking is executed on the part of the appellee by one or more persons in a sum to be fixed by the court, conditioned that the appellee will pay to the party entitled to the same the salary, fees, emoluments and all moneys whatsoever received by the appellee by virtue or under color of office during his occupancy thereof.

Rev., s. 842; 1885, c. 406, s. 2.

488. Relator inducted into office; duty and damages. If the judgment is rendered in favor of the person alleged to be entitled, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office. It is his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he has been excluded. He may then recover by action the damages which he has sustained by reason of the usurpation by the defendant of the office.

Rev., ss. 843, 844; Code, ss. 611, 613; C. C. P., ss. 371, 373.

488a. Refusal to surrender official papers misdemeanor. If a person against whom a judgment has been rendered in an action brought to recover a public office shall fail or refuse to turn over, on demand, to the person adjudged to be entitled to such office, all papers, documents and books belonging to such office, he shall be guilty of a misdemeanor.

Rev., s. 3601; Code, s. 612; C. C. P., 372.

489. Action to recover property forfeited for state. When any property, real or personal, is 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.

Rev., s. 845; Code, s. 621; C. C. P., s. 381.

ART. 41. WASTE

490. Remedy and judgment. Wrongs, remediable by the old action of waste, are subjects of action as other wrongs; and the judgment may be for damages, forfeiture of the estate of the party offending, and eviction from the premises.

Rev., s. 853; Code, s. 624; C. C. P., s. 383.

491. For and against whom action lies. In all cases of waste, an action lies in the superior court at the instance of him in whom the right is, against all persons committing the waste, as well tenant for term of life as tenant for term of years and guardians.

Rev., s. 854; Code, s. 625; R. C., c. 116; s. 1; 52 Hen. III, c. 23; 6 Edw. I, c. 5; 20 Edw. I, st. 2; 11 Hen. VI, c. 5.

492. Tenant in possession liable. Where a tenant for life or years grants his estate to another, and still continues in the possession of the lands, tenements, or hereditaments, an action lies against the said tenant for life or years.

Rev., s. 855; Code, s. 626; R. C., c. 116, s. 2; 11 Hen. VI, c. 5.

493. Action by tenant against cotenant. Where a joint tenant or a tenant in common commits waste, an action lies against him at the instance of his cotenant or joint tenant.

Rev., s. 856; Code, s. 627; R. C., c. 116, s. 4; 13 Edw. I, c. 22.

494. Action by heirs. Every heir may bring action for waste committed on lands, tenements, or hereditaments of his own inheritance, as well in the time of his ancestor as in his own.

Rev., s. 857; Code, s. 628; R. C., c. 116, s. 5; 6 Edw. I, c. 5; 11 Hen. VI, c. 5; 20 Edw. I, st. 2.

495. Judgment for treble damages and possession. In all cases of waste, when judgment is against the defendant, the court may give judgment for treble the amount of the damages assessed by the jury, and also that the plaintiff recover the place wasted, if the damages are not paid on or before a day to be named in the judgment.

Rev., s. 858; Code, s. 629; R. C., c. 116, s. 3; 6 Edw. I, c. 5; 20 Edw. I, st. 2.

ART. 42. NUISANCE

496. Remedy for nuisance. Injuries remediable by the old writ of nuisance are subjects of action as other injuries; and in such action there may be judgment for damages, or for the removal of the nuisance, or both.

Rev., s. 825; Code, s. 630; C. C. P., s. 387.

SUBCHAPTER 15. INCIDENTAL PROCEDURE IN CIVIL ACTIONS

ART. 43. COMPROMISE

497. By agreement receipt after sum is discharge. In all claims, or money demands, of whatever kind, and howsoever due, where an agreement is made and accepted for a less amount than that demanded or claimed to be due, in satisfaction thereof, the payment of the less amount according to such agreement in compromise of the whole, is a full and complete discharge of the same.

Rev., s. 859; Code, s. 574; 1874-5, c. 178.

498. Tender of judgment. The defendant, at any time before the trial or verdict, may serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer, and gives notice thereof in writing within ten days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance is not given, the offer is deemed withdrawn, and cannot be given in evidence; and if the plaintiff fails to obtain a more favorable judgment he cannot recover costs, but must pay the defendant's costs from the time of the offer. If the defendant sets up a counterclaim in his answer to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing, to allow judgment to be taken against him for the amount specified, or to allow the counterclaim to the amount specified with costs. If the defendant accepts the offer, and gives notice thereof in writing within ten days, he may enter judgment as above for the amount specified, if the offer entitles him to judgment, or if the amount specified in the offer is allowed him in the trial of the action. If the notice of acceptance is not given, the offer is deemed withdrawn, and cannot be given in evidence; and if the defendant fails to recover a more favorable judgment, or to establish his counterclaim for a greater amount than is specified in the offer, he cannot recover costs, but must pay the plaintiff's costs from the time of the offer.

Rev., s. 860; Code, s. 573; C. C. P., s. 328.

499. Conditional tender of judgment for damages. In an action arising on contract, the defendant may, with his answer, serve upon the plaintiff an offer in writing, that if he fails in his defense, the damages be assessed at a specified sum; and if the plaintiff signifies his acceptance thereof in writing, ten days before the trial, and on the trial has a verdict, the damages shall be assessed accordingly. If the plaintiff does not accept the offer, he must prove his damages, as if it had not been made, and may not introduce it in evidence. If the damages assessed in his favor do not exceed the sum mentioned in the offer, the defendant

shall recover his expenses incurred in consequence of any necessary preparation or defense in respect to the question of damages. This expense shall be ascertained at the trial.

Rev., ss. 861, 862; Code, ss. 575, 576; C. C. P., ss. 329, 330.

500. Disclaimer of title in trespass; tender of judgment. In actions of trespass upon real estate, the defendant in his answer may disclaim any title or claim to the lands on which the trespass is alleged by the complaint to be done, may allege that the trespass was by negligence or involuntary, and may make a tender or offer of sufficient amends for the trespass. If the plaintiff controverts such answer or a part thereof, and at the trial verdict is found for the defendant, or if the plaintiff is nonsuited, he is barred from the said action and all other suits concerning the same.

Rev., s. 863; Code, s. 577; Rev. Code, c. 31, s. 79; 1715, c. 2, s. 7.

ART. 44. EXAMINATION OF PARTIES

501. Action for discovery abolished. No action to obtain discovery under oath, in aid of the prosecution or defense of another action, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this article.

Rev., s. 864; Code, s. 579; C. C. P., s. 332.

502. Adverse party examined. A party to an action may be examined as a witness at the instance of any adverse party, and for that purpose may be compelled, in the same manner and subject to the same rules of examination as any other witness to testify, either at the trial or conditionally or upon commission. Where a corporation is a party to the action, this examination may be made of any of its officers or agents.

Rev., s. 865; Code, s. 580; C. C. P., s. 333; 1907, c. 799.

503. Before trial in his own county. The examination, instead of being had at the trial, as provided in the preceding section, may be had at any time before the trial, at the option of the party claiming it, before a judge, commissioner duly appointed to take depositions, or clerk of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless for good cause shown, the judge or court orders otherwise.

Rev., s. 866; Code, s. 581; 1893, c. 114; C. C. P., s. 334; 1899, c. 65, s. 1.

504. Compelling attendance of party for examination before trial. The party to be examined, as provided in the preceding section, may be compelled to attend in the same manner as a witness who is to be examined conditionally; but he shall not be compelled to attend in any county other than that of his residence or where he may be served with a summons for his attendance. The examination shall be taken and filed by the judge, clerk or commissioner, as in case of witnesses examined conditionally, and may be read by either party on the trial.

Rev., ss. 866, 867; Code, ss. 581, 582; C. C. P., ss. 334, 335; 1899, c. 65, s. 2.

505. Party's refusal to testify; penalty. If a party refuses to attend and testify, as provided in the preceding sections, he may be punished as for a contempt, and his pleadings may be stricken out.

Rev., s. 869; Code, s. 584; C. C. P., s. 337.

506. Rebuttal of party's testimony. The examination of the party thus taken may be rebutted by adverse testimony.

Rev., s. 868; Code, s. 583; C. C. P., s. 336.

507. Irresponsive answers may be met by party's own testimony. A party examined by an adverse party, as provided in this article, may be examined in his own behalf, subject to the same rules of examination as other witnesses. But if he testifies to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answers thereto or to discharge himself when his answers would charge himself, the adverse party may offer himself and must be received as a witness in his own behalf in respect to the new matter, subject to the same rules of examination as other witnesses.

Rev., ss. 868, 870; Code, ss. 583, 585; C. C. P., ss. 336, 338.

508. Real party in interest examined. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness, in the same manner, and subject to the same rules of examination, as if he was named as a party.

Rev., s. 871; Code, s. 586; C. C. P., s. 339.

509. Examination of coplaintiff or codefendant. A party may be examined on behalf of his coplaintiff or codefendant as to any matter in which he is not jointly interested or liable with such coplaintiff or codefendant, and as to which a separate and not joint verdict or judgment can be rendered. He may be compelled to attend in the same manner as at the instance of an adverse party; but the examination thus taken cannot be used in behalf of the party examined. When one of several plaintiffs or defendants who are joint contractors, or are united in interest, is examined by the adverse party, the other of such plaintiffs or defendants may offer himself, and must be received, as a witness to the same cause of action or defense.

Rev., s. 872; Code, s. 587; C. C. P., s. 340.

ART. 45. MOTIONS AND ORDERS

510. Definition of order. Every direction of a court or judge, made or entered in writing, and not included in a judgment, is an order.

Rev., s. 873; Code, s. 594; C. C. P., ss. 344, 345.

511. Motions; when and where made. An application for an order is a motion. Motions may be made to a clerk of a superior court, or to a judge out of court, except for a new trial on the merits. Motions must be made within the district in which the action is triable. A motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provisional remedy, have preference over all other motions.

Rev., s. 874; Code, s. 594; C. C. P., ss. 344, 345.

512. Affidavit for or against, compelled. When a party intends to make or oppose a motion in a court of record, and it is necessary for him to have the affidavit of any person who has refused to make it, the court may, by order, appoint a referee to take the affidavit or deposition of such person. The person

may be subpoenaed and compelled to attend and make an affidavit before such referee, as before a referee to whom an issue is referred for trial.

Rev., s. 875; Code, s. 594; C. C. P., ss. 344, 345.

513. Motions determined in ten days. When a motion is made in a cause or proceeding in any of the courts, to obtain an injunction order, order of arrest, or warrant of attachment, granted in any such case or proceeding, or to vacate or modify the same, it is the duty of the judge before whom the motion is made, to render his decision within ten days after the day on which the motion was submitted to him for decision.

Rev., s. 876; Code, s. 594; C. C. P., ss. 344, 345.

514. Notice of motion. When notice of a motion is necessary, it must be served ten days before the time appointed for the hearing; but the court or judge may, by an order to show cause, prescribe a shorter time.

Rev., s. 877; Code, s. 595; C. C. P., s. 346.

515. Orders without notice, vacated. An order made out of court, without notice to the adverse party, may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Rev., s. 514; Code, s. 546; C. C. P., s. 297.

ART. 46. NOTICES

516. Formal service. All notices must be in writing, and notices and other papers may be served on the party or his attorney personally, where not otherwise provided in this chapter.

Rev., ss. 878, 879; Code, s. 597; C. C. P., ss. 349, 353.

NOTE. For statute against service on Sunday, see Sundays and Holidays, s. 3.

517. Service upon attorney. Notice upon an attorney may be served during his absence from his office, by leaving a copy of the paper with his clerk, or a person having charge of the office; or, when there is no person in the office, by leaving it, between the hours of six a. m. and nine p. m., in a conspicuous place in the office; or, if it is not open so as to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

Rev., s. 880; Code, s. 597; C. C. P., ss. 349, 353.

518. Service upon a party. Notice upon a party may be served by leaving a copy of the paper at his residence, between the hours of six a. m. and nine p. m., with some person of suitable age and discretion.

Rev., s. 881; Code, s. 597; C. C. P., ss. 349, 353.

519. Service by publication. Notice upon a person who cannot be found after due diligence, or who is not a resident of this state, may be served by its publication once a week for four successive weeks in a newspaper published in the county from which the notice is issued; and if no newspaper is published therein, then in some newspaper published within the judicial district; and the proof

of service is the same as is required by law in the case of service of summons by publication.

Rev., s. 882; Code, s. 597; C. C. P., ss. 349, 353.

NOTE. In Buncombe County, orders directing publication of notices, orders or proceedings in that county must specify the newspaper in which publication is to be made, and publication in any other paper is not legal and sufficient. See Rev., s. 883; 1905, c. 438.

520. Service by telephone on witnesses and jurors. Sheriffs, constables and other officers charged with the service of such process may serve subpœnas and summonses for jurors by telephone, and such service shall be valid and binding on the person served. When such process is served by telephone, the return of the officer serving it shall state it is served by telephone.

1915, c. 48.

521. Subpœna, service and signature. Service of a subpœna for witnesses may be made by a sheriff, coroner or constable, and proved by the return of such officer, or the service may be made by any person not a party to the action, and proved by his oath. A subpœna for witnesses need not be signed by the clerk of the court and is sufficient if subscribed by the party or by his attorney.

Rev., s. 884; Code, s. 597; C. C. P., ss. 349, 353.

NOTE. For issuance of subpœnas by clerk, see Evidence, s. 53.

522. Application of this article. This article does not apply to the service of a summons, or other process (except summonses for jurors, as provided in the second section preceding), or of any paper to bring a party into contempt.

Rev., s. 885; Code, s. 597; C. C. P., ss. 349, 353.

523. Officer's return evidence of service. When a notice issues to the sheriff, his return thereon that the same has been executed is sufficient evidence of its service.

Rev., ss. 886, 1527; Code, s. 940; R. C., c. 31, s. 123; 1799, c. 537.

ART. 47. TIME

524. How computed. The time within which an act is to be done, as provided by law, shall be computed by excluding the first and including the last day. If the last day is Sunday, it must be excluded.

Rev., s. 887; Code, s. 596; C. C. P., s. 348.

525. Computation in publication. The time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event of which notice is given is to happen, or which completes the full period required for publication.

Rev., s. 888; Code, s. 602; C. C. P., s. 359.

526. Advertisement of public sales. When a statute or written instrument stipulates that an advertisement of a sale shall be made for any certain number of weeks, a publication once a week for the number of weeks so indicated is a sufficient compliance with the requirement, unless contrary provision is expressly made by the terms of the instrument.

1909, cc. 794, 875.

CHAPTER 13

CLERK OF SUPERIOR COURT

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ART. 1. THE OFFICE

1. Judge of probate abolished; clerk acts as judge. The office of probate judge is abolished, and the duties heretofore pertaining to clerks of the superior court as judges of probate shall be performed by the clerks of the superior court as clerks of said court, and all matters pending before said judges of probate shall be deemed transferred to the clerks of the superior court.

Rev., s. 889; Code, s. 102.

2. Election; term of office. A clerk of the superior court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the general assembly. Clerks of the superior court shall hold office for four years.

Rev., s. 890; Const., Art. IV, ss. 16, 17.

2a. Clerk's bond. At the first meeting of the board of commissioners of each county after the election or appointment of any clerk of a superior court it is the duty of the clerk to deliver to such commissioners a bond with sufficient sureties, to be approved by them, in a penalty of not less than ten thousand dollars, and not more than fifteen thousand dollars, payable to the state of North Carolina, and with a condition to be void if he shall account for, and pay over, according to law, all moneys and effects which have come or may come into his hands, by virtue or color of his office, or under an order or decree of a judge, even though such order or decree be void for want of jurisdiction or other irregularities, and shall diligently preserve and take care of all books, records, papers and property, which have come, or may come into his possession, by virtue or color of his office, and shall in all things faithfully perform the duties of his office as they are, or thereafter shall be prescribed by law.

Rev., s. 295; Code, s. 72; 1899, c. 54, s. 52; 1903, c. 747; 1889, c. 7; 1891, c. 385; 1901, c. 32; C. C. P., s. 137; 1895, cc. 270, 271.

NOTE. Amounts left with clerk for care of graves under provision of chapter Cemeteries, must be covered by clerk's bond in a surety company, see chapter Cemeteries.

2b. Clerk's bond; approval, acknowledgment and custody. The approval of said bond by the board of commissioners, or a majority of them, shall be recorded by their clerk. The said bond shall be acknowledged by the parties thereto, or proved by a subscribing witness, before the clerk of said board of commissioners, or their presiding officer, registered in the register's office in a separate book to be kept by him for the registration of official bonds; and the original, with the approval thereof endorsed, deposited with the register for safe keeping. The like remedies shall be had upon said bond as are or may be given by law on official bonds.

Rev., s. 296; Code, s. 73; C. C. P., s. 138.

2c. Local modifications as to clerk's bond. The bonds of the clerks of the superior court of Carteret and Pamlico counties may be fixed at an amount not less than five thousand dollars, in the discretion of the county commissioners.

The clerk of the superior court of Currituck County shall not be required to give bond in a larger penalty than the sum of five thousand dollars, unless the money or funds coming into his hands by order of the court or otherwise, by virtue of his office as clerk, at any time exceed in the aggregate one-half the penalty of his bond. In that case he shall, within twenty days, file with the clerk of the board of commissioners a good and sufficient bond duly executed and justified as required by law of like condition as already prescribed, and in a penalty double the amount of said funds, though not exceeding ten thousand dollars. This shall not be construed to modify or repeal any provisions of law whereby the county commissioners are authorized at any time to require said clerk to justify or renew his bond whenever necessary.

Rev., s. 295; 1907, c. 103; 1907, c. 990.

3. Oath of office. The clerks of the superior court, before entering on the duties of their office, shall take and subscribe before some officer authorized by law to administer an oath, the oaths prescribed by law, and file such oaths with the register of deeds for the county.

Rev., s. 891; Code, s. 74; C. C. P., s. 139.

4. Vacancy; judge of district fills. *1. Otherwise than by expiration.* In case the office of clerk of a superior court for a county becomes vacant otherwise than by the expiration of the term, and in case of a failure by the people to elect, the judge of the superior court for the county shall appoint to fill the vacancy until an election can be regularly held.

2. Failure to qualify. In case any clerk fails to give bond and qualify as required by law, the presiding officer of the board of commissioners of his county shall immediately inform the resident judge of the judicial district thereof, who shall thereupon declare the office vacant and fill the same, and the appointee shall give bond and qualify.

3. Resignations. Any clerk of the superior court may resign his office to the judge of the superior court, residing in the district in which is situated the county of which he is clerk, and said judge shall fill the vacancy.

Rev., ss. 892, 893, 895; Const., Art. IV, s. 29; Code, ss. 76, 78; C. C. P., s. 140.

5. Removal for cause. Upon the conviction of any clerk of the superior court of an infamous crime, or of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this state.

Rev., s. 894; Code, s. 123; 1868-9, c. 201, s. 53.

6. Office and equipment furnished. The requisite stationery, records, furniture and filing cases and devices for official use must be furnished to the clerk by the board of commissioners; and to each of such books there must be attached an alphabetical index securely bound in the volume, referring to the entries therein by the page of the book, unless there is a cross-index of such book required by law to be kept. These books must, at all proper times, be open to the inspection of any person.

Rev., s. 896; Code, ss. 82, 84, 113; C. C. P., s. 428.

7. Solicitor to examine and report on office. At every regular term of the superior court for the trial of criminal cases, the solicitor for the judicial district shall inspect the office of the clerk and report to the court in writing. If any solicitor fails or neglects to perform the duty hereby imposed on him, he is liable to a penalty of one hundred dollars to any person who sues for the same.

Rev., s. 897; Code, s. 88; C. C. P., s. 147; 1917, c. 81, s. 1.

ART. 2. DEPUTIES

8. Appointment. Clerks of the superior court may appoint deputies, who shall take and subscribe the oath prescribed for clerks.

Rev., s. 898; Code, s. 75; R. C., c. 19, s. 15; 1777, c. 115, s. 86.

9. Record of appointment and discharge copies. Each clerk of a superior court shall make a record of the appointment of each deputy he may appoint, on the special proceedings docket of his court, giving the name of such appointee and the date of such appointment, and make a cross-index of the same, and shall furnish to the register of deeds of his county a transcript of such record; and such register of deeds shall record the same in the records of deeds in his office and make a cross-index thereof on the general index in his office. When any such deputy clerk is removed from his office the clerk of the superior court by whom he was appointed shall write on the margin of the record of such appointment in his office, and on the margin of the record of such appointment in the office of the register of deeds, the word "revoked" and the date of such revocation, and sign his name thereto. A duly certified copy of such appointment and of such revocation, under the hand and official seal of the register of deeds, shall be deemed prima facie evidence of the regularity of such appointment and revocation, and shall be admitted as evidence in all the courts.

Rev., s. 899; 1899, c. 235, s. 3.

10. Responsibility of clerk for deputy's acts. The several clerks of the superior court shall be held responsible for the acts of their deputies. Deputies shall be subject in all respects to all laws which apply to the clerks.

Rev., s. 900; 1899, c. 235, s. 2.

ART. 3. POWERS AND DUTIES

11. Powers enumerated. Every clerk has power—

1. To issue subpoenas to compel the attendance of any witness residing or being in the state, or to compel the production of any bond or paper, material to any inquiry pending in his court.

2. To administer oaths and take acknowledgments, whenever necessary, in the exercise of the powers and duties of his office.

3. To issue commissions to take the testimony of any witness within or without this state.

4. To issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties.

5. To enforce all lawful orders and decrees by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the clerk, to be executed in any county of the state, and to be returned before him.

6. To exemplify, under seal of his court, all transcripts of deeds, papers or proceedings therein, which shall be received in evidence in all the courts of the state.

7. To preserve order in his court and to punish contempts.

8. To adjourn any proceeding pending before him from time to time.

9. To open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court, in the same manner as courts of general jurisdiction.

10. To award costs and disbursements as prescribed by law, to be paid personally, or out of the estate or fund, in any proceeding before him.

11. To compel the return to his office by each justice of the peace, on the expiration of the term of office of such justice, or, if the justice be dead, by his

personal representative, of all records, papers, dockets and books held by such justice by virtue or color of his office, and to deliver the same to the successor in office of such justice.

12. To take proof of deeds, bills of sale, official bonds, letters of attorney, or other instruments permitted or required by law to be registered.

13. To take proof of wills and grant letters testamentary and of administration.

14. To revoke letters testamentary and of administration.

15. To appoint and remove guardians of infants, idiots, inebriates and lunatics.

16. To bind out apprentices and to cancel the indentures in such cases.

17. To audit the accounts of executors, administrators, collectors, receivers, commissioners and guardians.

18. To exercise jurisdiction conferred on him in every other case prescribed by law.

Rev., s. 901; Code, ss. 103, 108; C. C. P., ss. 417, 418, 442; 1901, c. 614, s. 2.

12. Disqualification to act. No clerk can act as such in relation to any estate or proceeding—

1. If he has, or claims to have, an interest by distribution, by will, or as creditor, or otherwise.

2. If he is so related to any person having or claiming such interest, that he would, by reason of such relationship, be disqualified as a juror; but the disqualification on this ground ceases, unless the objection is made at the first hearing of the matter before him.

3. If he or his wife is a party or a subscribing witness to any deed of conveyance, testamentary paper or nuncupative will; but this disqualification ceases when such deed, testamentary paper, or will has been finally admitted to or refused probate by another clerk, or before the judge of the superior court.

4. If he or his wife is named as executor or trustee in any testamentary or other paper; but this disqualification ceases when the will or other paper is finally admitted to or refused probate by another clerk, or before the judge of the superior court.

5. If he shall renounce the executorship and endorse the same on the will or on some paper attached thereto, before it is propounded for probate, in which case the renunciation must be recorded with the will if admitted to probate.

Rev., s. 902; Code, s. 104; C. C. P., s. 419; 1871-2, c. 196.

NOTE. Clerk cannot appoint himself or deputy commissioner to sell land, see Partition, s. ----

13. Waiver of disqualification. The parties may waive the disqualification specified in subdivisions one, two, three and five of the preceding section, and upon filing in the office such waiver in writing, the clerk shall act as in other cases.

Rev., s. 903; Code, s. 105; C. C. P., s. 420.

14. Disqualification unwaived; cause removed or judge acts. When any of the disqualifications specified in this chapter exists, and there is no waiver thereof, or when the disqualification does not permit of waiver, any party in interest may apply to the judge of the district or to the judge holding the courts of such district for an order to remove the proceedings to the clerk of the superior court of an adjoining county in the same district; or may apply to the

judge to make and render either in vacation or term time all necessary orders and judgments in any proceeding where the clerk is disqualified, and the judge in such cases is hereby authorized and empowered to make and render any and all necessary orders and judgments as if he had the same original jurisdiction as the clerk over such proceeding.

Rev., s. 904; Code, s. 106; C. C. P., s. 421; 1913, c. 70, s. 1.

15. Disqualification at time of election; judge acts. In all cases where the clerk of the superior court is executor, administrator, collector or guardian of any estate at the time of his election to office, in order to enable him to settle such estate, the judge of the superior court mentioned in the preceding section is empowered to make such orders as may be necessary in the settlement of the estate; may audit the accounts or appoint a commissioner to audit the accounts of such executor or administrator, and report to either of said judges for his approval, and when the accounts are so approved, it is his duty to order the proper record to be made by the clerk, and the accounts to be filed in court.

Rev., s. 905; Code, s. 107; 1871-2, c. 197.

16. Custody of records and property of office. *1. Receipt from predecessor.* Immediately after he has given bond and qualified, the clerk shall receive from the late clerk of the superior court all the records, books, papers, moncy and property of his office, and give receipts for the same, and if any clerk refuses or fails within a reasonable time after demand to deliver such records, books, papers, moneys and property, he is liable on his official bond for the value thereof.

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

Rev., ss. 906, 907; Code, ss. 81, 124; R. C., c. 19, s. 14; C. C. P., s. 142.

17. Unperformed duties of outgoing clerk. *1. Performance secured.* When, upon the death or resignation, removal from office, or at the expiration of his term of office, any clerk has 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.

2. Liability on outgoing clerk's bond. Such portion thereof as may be paid by the county, may be recovered 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.

Rev., s. 908; Code, s. 87; R. C., c. 19, s. 19; 1844, c. 5, s. 6.

18. Location of and attendance at office. The clerk shall have an office in the courthouse or other place provided by the board of commissioners, in the county town of his county. He shall give due attendance, in person or by deputy, at his office daily, Sundays and holidays excepted, from nine o'clock a.m. to three o'clock p.m., and longer when necessary for the dispatch of business; and personally every Monday for the transaction of probate business, and on each succeeding day till such matters are disposed of; and upon his failure to do so, unless caused by sickness or other urgent necessity or unless leave of absence is obtained by law, he shall forfeit his office.

Rev., s. 909; Code, ss. 80, 114, 115; C. C. P., s. 141; 1871-2, c. 136.

19. Obtaining leave of absence from office. Upon application of any clerk of the superior court to the judge of the superior court, residing in the district in which the clerk resides, showing good and sufficient reason for clerk to absent himself from his office, the judge may issue an order allowing him to absent himself from his office for such time as the judge may deem proper. But he shall at all times leave a competent deputy in charge of his office during his absence. The order of the judge granting leave of absence shall be filed and recorded in the office of the clerk of the county in which the clerk resides.

Rev., s. 910; 1903, c. 467.

19a. To keep fee bill posted. Every clerk shall keep posted in his office in some conspicuous place the fee bill, for public inspection and reference, under a penalty of one hundred dollars for such neglect, to be paid to any person who will sue for same.

Rev., s. 2774; Code, s. 3740.

20. To furnish blank process, bonds and undertakings. Clerks of courts shall furnish to parties printed copies of the formal parts of all process required to be issued by them, with convenient blank spaces for the insertion of written matter; and also the blank forms of such bonds and undertakings as are required to be taken by them.

Rev., s. 911; Code, s. 3761; C. C. P., s. 559; 1868-9, c. 279, s. 558.

21. To file papers in proceedings. The clerk must file and preserve all papers in proceedings before him, or belonging to the court; and shall keep the papers in each action in a separate roll or bundle, and at its termination attach them together, properly labeled, and file them in the order of the date of the final judgment. All such papers and the books kept by him belong to, and appertain to, his office, and must be delivered to his successor.

Rev., s. 912; Code, ss. 86, 111; C. C. P., ss. 146, 426.

22. To keep records of his office; obtaining originals or copies. He shall keep in bound volumes a complete and faithful record of all his official acts, and give copies thereof to all persons desiring them, on payment of the legal fees. He shall be answerable for all records belonging to his office, and all papers filed in the court, and they shall not be taken from his custody, unless by special order of the court, or on the written consent of the attorneys of record of all the parties; but parties may at all times have copies upon paying the clerk therefor.

Rev., s. 913; Code, s. 82; C. C. P., s. 143; 1868-9, c. 159, s. 4.

23. To endorse date of issuance on process. The clerk shall note on all precepts, process and executions the day on which the same shall be issued; and the sheriff or other officer receiving the same for execution shall in like manner note thereon the day on which he shall have received it, and the day of the execution; and every clerk, sheriff or other officer neglecting so to do shall forfeit and pay one hundred dollars.

Rev., s. 914; Code, s. 100.

24. To keep books; enumeration. Each clerk shall keep the following books, which shall be open to the inspection of the public during regular office hours:

1. *Summons docket*, which shall contain a docket of all writs, summonses or other original process issued by him, or returned to his office, which are made returnable to a regular term of the superior court; this docket shall contain a brief note of every proceeding whatever in each action, up to the final judgment inclusive.

2. *Judgment docket*, which shall contain a note of the substance of every judgment and every proceeding subsequent thereto.

3. *Civil issue docket*, which shall contain a docket of all issues of fact joined upon the pleadings, and of all other matters for hearing before the judge at a regular term of the court, a copy of which shall be furnished to the judge at the commencement of each term.

4. *Cross-index to judgments*, which shall contain a direct and reverse alphabetical index of all final judgments in civil actions rendered in the court, with the dates and numbers thereof, and also of all final judgments rendered in other courts and authorized by law to be entered on his judgment docket.

5. *Criminal docket*, which shall contain a note of every proceeding in each criminal action.

6. *Minute docket of superior court*, which shall contain a record of all proceedings had in the court during term, in the order in which they occur, and such other entries as the judge may direct to be made therein.

7. *Special proceedings docket*, which shall contain a docket of all writs, summonses, petitions, or other original process issued by him, or returnable to his office, and not returnable to a regular term; this docket shall contain a brief note of every proceeding, up to the final judgment inclusive.

8. *Minute docket of proceedings before clerk*, which shall contain a record of all proceedings had before the clerk, in actions or proceedings not returnable to a regular term of the court.

9. *Record of wills*, which shall contain a record of all wills, with the certificates of probate thereof.

10. *Record of appointments*, which shall contain a record of appointments of executors, administrators, guardians, collectors and masters of apprentices, with revocations of all such appointments; and on which shall be noted all subsequent proceedings relating thereto.

11. *Record of orders and decrees*, which shall contain a record of all orders and decrees passed in his office, which he is required to make in writing, and not required to be recorded in some other book.

12. *Record of accounts*, which shall contain a record of accounts, in which must be recorded inventories and annual accounts of executors, administrators,

collectors, trustees under assignments for creditors, and guardians, as audited by him from time to time.

13. *Record of settlements*, which shall contain a record of settlements, in which must be entered the final settlements of executors, administrators, collectors, commissioners, trustees under assignments for creditors, and guardians.

14. *Record of jurors*, which shall contain a list of all persons who serve as grand, petit, and tales jurors in his court; which shall be properly indexed.

15. *Record of justices of the peace*, which shall contain a complete list of the justices of the peace of the county, by townships, giving the date of election or appointment, qualification, and expiration of term of office of each; and whenever a vacancy occurs it shall be noted therein. These books shall at all times show a complete list of the justices of the peace of the county and who was the predecessor of each justice and the succession in office.

16. *Record of books*, which shall contain the date of delivery to each justice of the peace of any dockets, records, and books; and the date of the receipt by him to any justice of the peace, or to the personal representative of a deceased justice of the peace, for any dockets, records and books returned to him.

17. *Cross-index of wills*, which shall contain a general alphabetical cross-index of all wills filed or recorded in the office of the clerk of the superior court, and devising real estate or any interest therein, whether such devise appears on the face of said will or not, showing the full name of each devisor, and all devisees as they are given in the will, together with the date of the probate of such will.

18. *Cross-index of executors and administrators*, which shall contain a general alphabetical cross-index of the appointment of all executors and administrators made by the courts of their county, showing the name of the appointee, the name of the decedent, and date of appointment.

19. *Cross-index of guardians*, which shall contain a general alphabetical cross-index of the appointment of all guardians made by the courts of their county, showing the name of the guardian, the names of the wards, and date of appointment.

20. *Record of fines and penalties*, which shall contain an itemized and detailed statement of the respective amounts received by him in the way of fines, penalties and forfeitures, and paid over to the county treasurer.

21. *Lien docket*, which shall contain a record of all notices of liens filed in his office, properly indexed, showing the names of the lienor and lienee.

22. *Record of appointment of receivers*, which shall contain a record of all appointments of receivers, and all inventories, reports, and accounts filed by them; which shall be properly indexed.

23. *Record of corporations*, which shall contain a record of the certificate of incorporation of all corporations chartered under general law, with principal office or place of business in his county.

24. *Accounts of indigent orphans*, which shall contain a record of all receipts from persons for money paid for indigent children.

25. *Register of physicians and surgeons*, which shall contain a list of the names and places of residence with date of registration of all persons registered by him as physicians and surgeons.

26. *Register of dentists*, which shall contain a registration of certificates of all persons entitled to practice dentistry in his county.

27. *Register of trained nurses*, which shall contain the name, residence and date of registration of all trained nurses duly licensed in his county.

28. *Permanent roll of registered voters*, which shall contain an alphabetical list by townships of all persons entitled to permanent registration, giving the name and age of each, the name of the person from whom he was descended, unless he himself was a voter on July 1, 1867, or prior thereto, the state in which he was such voter and the date he applied for registration.

29. *Record of payment of poll tax*, which shall contain a list by townships of all persons certified to him by sheriff or tax collector as having paid their poll tax by May first.

30. *Lunacy docket*, which shall contain a record of all examinations of persons to be insane, a brief summary of the proceedings, and his findings, and a record of all proceedings in lunacy transmitted to him by justices of the peace.

31. *Record of county treasurer's report*, which shall contain an itemized statement of all fines and penalties paid to the county treasurer; which said itemized statement of fines and penalties received by the county treasurer shall be by him reported to the clerk on the first day of January, April, July and October, respectively, of each and every year.

32. *Nol. pros. with leave record*, which shall contain a record of all cases in which a nolle prosequi with leave is entered in criminal actions, with the term of court at which the order is made, and which shall be cross-indexed.

Rev., s. 915; Code, ss. 83, 95, 96, 97, 112, 1789; 1893, c. 52; 1899, c. 110; 1903, c. 51; 1901, c. 2, s. 9; 1899, c. 82; 1889, c. 181, s. 4; 1887, c. 178, s. 2; 1903, c. 359, s. 6; 1901, c. 550, s. 3; 1901, c. 89, s. 13; 1899, c. 1, s. 17; 1905, c. 360, s. 2.

24a. To notify commissioners of insolvency of surety company in which county officer bonded. Every clerk of the superior court shall furnish the chairman of the board of county commissioners with all notifications furnished him, in accordance with the article Fidelity Insurance of the chapter Insurance, by the insurance commissioner that any surety company in which any officer of the county is bonded is insolvent or in imminent danger of insolvency.

Rev., 295.

ART. 4. REPORTS

25. List of justices to secretary of state. The clerk of the superior court of each county in which justices of the peace are not elected by the qualified voters thereof on the first Monday in January preceding each regular session of the general assembly shall certify to the secretary of state a correct list of all justices of the peace in office in his county, the township in which each resides, the term of office of each, time of election or appointment, and when the respective terms of office of each expires. He shall also report the names of those elected or appointed justices of the peace, but who have failed to qualify, and when their terms of office began and the length thereof.

Rev., s. 916; Code, s. 89; 1901, c. 37, s. 2; 1881, c. 326.

26. Criminal statistics to attorney general. Within twenty days after the adjournment of any term of the superior court at which criminal causes were triable, the clerk thereof shall transmit to the office of the attorney general of the state a duly certified statement of the number of indictments finally disposed

of at such court, specifying the number for each separate offense, the number on which convictions were had and on which defendants were acquitted, and of indictments against persons who were convicted on confession, and against persons who were discharged without trial, and also the name, age, occupation, sex, race and offense of every person convicted at such court, or pleading guilty of any offense, together with such other items of information in relation to such convicts and their offenses as the attorney general shall require, on a form prescribed by him. For every neglect of any clerk of said court he shall forfeit the sum of fifty dollars, to be adjudged in the superior court of Wake County on the motion of the attorney general, whose duty it is hereby made to make such motion at the first term of said court held after such neglect of any clerk.

Rev., s. 917; 1889, c. 341, ss. 1, 2, 3.

ART. 5. MONEY IN HAND

27. Public funds to be reported to county commissioners. On the first Monday in December of each and every year, or oftener, if required by order of the board of commissioners or any other lawful authority, clerks of the superior courts shall make an annual report of all public funds which may be in their hands. The report shall be made to the board of county commissioners and addressed to the chairman thereof. It shall give an itemized statement of said funds so held, the date and source from which they were received, the person to whom due, how invested and where, in whose name deposited, the date of any certificate of deposit, the rate of interest the same is drawing, and other evidence of investment of said fund; and it shall include a statement of all funds in their hands by virtue or color of their office, and which may belong to persons or corporations. The report shall be subscribed and verified by the oath of the party making it before any person allowed to administer oaths.

Rev., s. 918; 1891, c. 580.

28. Approval, registration, and publication of report. The board of commissioners shall refer all itemized statements made by the clerks of the superior courts to a special committee of their board, who shall compare the same with the records of the clerk's office from which the report is made and certify the same to the board as correct, and if approved the board shall cause the same to be registered in the office of the register of deeds, in a book to be furnished to said register by the board of county commissioners, which book shall be styled Record of Official Reports, with a proper index of all reports recorded therein, and each original report shall, if approved by the chairman of the board, be endorsed with the word "approved," the date of approval and the endorsement signed by the chairman, and when recorded by the register of deeds he shall endorse 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. The register shall also cause a copy of the report to be published one time in some newspaper of general circulation published in the county of the register and also posted at the courthouse door within twenty days after filing the reports; and if no newspaper is published in the county the posting of the report at the courthouse door shall be a sufficient publication. The cost of publishing the report shall be paid by the county.

Rev., s. 919; Code, s. 90; 1891, c. 580, s. 3; 1893, c. 14, s. 3; 1874-5, c. 151; 1876-7, c. 276.

29. Report compelled by commissioners. If any clerk fails to report, or if after a report has been made, the board of county commissioners have reason to believe that any report is incorrect, the board shall take legal steps to compel a proper report to be made by suit on the bond of such clerk, or by reporting the fact to the solicitor of the district to which the county of said board may belong for his action.

Rev., s. 920; Code, s. 92; 1891, c. 580, s. 2; 1874-5, c. 151, s. 3; 1876-7, c. 276.

30. Payment to persons entitled. The said clerks shall, on or before the first day of January in every year after the statements required in the foregoing sections are made, account with and pay to the persons entitled to receive the same all such balances reported as aforesaid to be in their hands.

Rev., s. 921; Code, s. 1865; R. C., c. 73, s. 2; 1823, c. 1186, s. 2; 1831, c. 3, ss. 1, 3; 1893, c. 14, s. 1.

31. Unclaimed fees of jurors and witnesses paid to school fund. All moneys due jurors and witnesses which remain in the hands of any clerk of the superior court on the first day of January after the publication of a third annual report of the said clerk showing the same shall be turned over to the county treasurer for the use of the school fund of the county, and it is the duty of said clerk to indicate in his report any moneys so held by him for a period embracing the two annual reports.

Rev., s. 922; 1891, c. 580, s. 4; 1893, c. 14, s. 3.

32. Use by public until claimed. The money aforesaid, while held by the clerks, shall be paid on application, to the persons entitled thereto; and after it ceases to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner.

Rev., s. 923; Code, s. 1869; R. C., c. 73, s. 6; 1828, c. 41, s. 1.

33. Payment of money for indigent children. When any moneys, in the amount of one hundred dollars or less, are paid into court for indigent or needy children for whom no one will become guardian, upon satisfactory proof of the necessities of such children the clerk may, upon his own motion or order, pay out the same in such sum or sums at such time or times as in his judgment is for the best interests of said children, to the mother or other person who has charge of said children, or to some discreet and solvent neighbor of said minor, to be used and faithfully applied by them for the sole benefit and maintenance of such indigent and needy children. The clerk shall take a receipt from the person to whom any such sum is paid, and may require such person to render an account of the expenditure of the sum or sums so paid, and shall record the receipt and the accounts, if any are rendered by order of the clerk, in a book entitled Record of Amounts Paid for Indigent Children, and such receipt shall be a valid acquittance for the clerk.

Rev., s. 924; 1899, c. 82; 1911, c. 29, s. 1.

CHAPTER 14

COMMISSIONERS OF AFFIDAVITS AND DEEDS

1. Appointment by governor; term; oath.
2. Record of appointments; certified copies evidence.
3. List of appointments prepared and published by secretary of state.
4. Published list conclusive.
5. Power of such commissioners.
6. Powers of clerks of courts in other states.
7. Clerks and notaries to take affidavits.

1. Appointment by governor; term; oath. The governor is 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, colonies or dependencies 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. Before such commissioner proceeds to perform any duty by virtue of this chapter, he shall take and subscribe an oath before a justice of the peace in the city or county in which he resides well and faithfully to execute and perform all the duties of such commissioner, according to the laws of North Carolina; which oath shall be filed in the office of the secretary of state.

Rev., ss. 926, 927; Code, ss. 632, 633.

2. Record of appointments; certified copies evidence. It is the duty of the governor to cause to be recorded by the secretary of state the names of the persons who are appointed and qualified as commissioners, and for what state, territory, county, city, or town; and the secretary of state, when the oath of the commissioner is filed in his office, shall forthwith certify the appointment to the several clerks of the superior courts of the state, who shall record the certificate of the secretary at length. All removals of commissioners by the governor, and the names of all commissioners whose commissions have expired by law, and which have not been renewed, shall be recorded and certified in like manner. A certified copy thereof from the clerk, or a certificate of the appointment or removal aforesaid from the secretary of state, shall be sufficient evidence of the appointment or removal of such commissioner.

Rev., s. 928; Code, s. 634.

3. List of appointments prepared and published by secretary of state. The secretary of state shall prepare and cause to be printed in each volume of the public laws a list of all persons who since the preceding publication in the public laws have been appointed commissioners of affidavits and to take the probate of deeds in any foreign country and in the several states and territories of the United States and in the District of Columbia, under this chapter, setting forth the state, territory or district or foreign country for which such persons were appointed and the dates of their respective appointments and term of office; and he shall add to each of said lists a list of all those persons whose appointments have been renewed, revoked, or have resigned, removed or died since the

date of the list previously published, as far as the same may be known to him, with the dates of such revocation, resignation, removal or death.

Rev., s. 929; Code, ss. 635, 636, 637, 639.

4. Published list conclusive. The list of commissioners so published in any volume of the public laws shall be conclusive evidence in all courts of the appointments therein stated, and of the dates thereof.

Rev., s. 930; Code, s. 638.

5. Powers of such commissioners. The commissioners 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. 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 made or taken before any competent authority in this state. The commissioners also have full power and authority to administer an oath or affirmation to any person willing or desirous to make it before him, to take depositions, and to examine the witnesses under any commission emanating from the courts of this state, relating to any cause depending, or to be brought in said courts. Every deposition, affidavit, or affirmation made before him is as valid as if taken before any proper officer in this state.

Rev., ss. 926, 927; Code, ss. 632, 633.

6. Powers of clerks of courts in other states. Every clerk of a court of record in any other state has full power as a commissioner of affidavits and deeds as is vested in regularly appointed commissioners of affidavits and deeds for this state.

Rev., s. 931; Code, s. 640.

NOTE. For powers as to probate of deeds, see chapter Probate and Registration.

7. Clerks and notaries to take 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 where taken, also under the seal of the court of which they are respectively clerks, and, if by a notary, under his notarial seal.

Rev., s. 925; Code, s. 631.

CHAPTER 15

COMMON LAW

1. Common law declared to be in force. All such parts of the common law as were heretofore in force and use within this state, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this state and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this state.

Rev., s. 932; Code. s. 641; R. C., c. 22; 1715, c. 5, ss. 2, 3; 1778, c. 133.

CHAPTER 16

CONSTABLES

1. Election and term.
2. Oaths to be taken.
- 2a. Bond; where registered; how fees paid.
3. Special constables.
4. Vacancies in office.
5. Powers and duties.
6. To execute notices within justice's jurisdiction.

1. Election and term. In each township there shall be a constable, elected by the voters thereof, who shall hold his office for two years.

Rev., s. 933; Const., Art. IV, s. 24.

2. Oaths to be taken. All constables, before they shall be qualified to act, shall take before the board of county commissioners the oaths prescribed for public officers, and also an oath of office.

Rev., s. 934; Code, s. 642; R. C., c. 24, s. 8.

2a. Bond; where registered; how fees paid. The board of commissioners of each county shall require of each constable, elected or appointed for a township, on entering upon the duties of his office, to give a bond with good surety, payable to the state of North Carolina, in a sum not exceeding one thousand dollars, conditioned as well for the faithful discharge of his duty as constable, as for his diligently endeavoring to collect all claims put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same may be due. Said bond shall be duly proved and registered, and after registration, filed in the office of the register of deeds; and certified copies of the same from the register's office shall be received and read in evidence in all actions and proceedings where the original might be. The fees for proving and registering the bond of constable shall be paid by the constable. In Stanly County the fees shall be paid by the county.

Rev., s. 302; Code, s. 647; R. C., c. 24, s. 7; 1818, c. 980; 1820, c. 1045, s. 2; 1833, c. 17; 1869-70, c. 185; 1899, c. 54, s. 52; 1891, c. 229.

3. Special constables. For the better executing any precept or mandate in extraordinary cases, any justice of the peace may direct the same in the absence of, or for want of a constable, to any person not being a party, who shall be obliged to execute the same, under like penalty that any constable would be liable to.

Rev., s. 935; Code, s. 645.

4. Vacancies in office. Upon the death, failure to qualify or removal of any constable out of the township in which he was elected or appointed constable, the board of commissioners may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables.

Rev., s. 936; Code, s. 646; R. C., c. 24, s. 6.

5. Powers and duties. Constables are hereby invested with, and may execute the same power and authority as they have been by law heretofore vested

with, and have executed; and, in discharge of their duties, they shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and processes shall be returned to the magistrate, or other proper authority.

Rev., s. 937; Code, s. 643; R. C., c. 24, s. 9.

6. To execute notices within justice's jurisdiction. Constables shall likewise execute, within the places aforesaid, all notices tendered to them, which are required by law to be given for the commencement, or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified or by leaving a copy at his usual place of abode, if in the jurisdiction of the constable, which service, with the time thereof, he shall return on the notice, and such return shall be evidence of its service. On demand they shall deliver the notice to the party at whose instance it was issued.

Rev., s. 938; Code, s. 644; R. C., c. 24, s. 10.

CHAPTER 17

CONTEMPT

1. Contempts enumerated; common law repealed.
2. Appeal from judgment of guilty.
3. Solicitor or attorney-general to appear for the court.
4. Punishment.
5. Summary punishment for direct contempt.
6. Courts and officers empowered to punish.
7. Indirect contempt; order to show cause.
8. Acts punishable as for contempt.
9. Trial of proceedings in contempt.

1. Contempts enumerated; common law repealed. Any person guilty of any of the following acts may be punished for contempt:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character committed in the presence of any referee or referees, while actually engaged in any trial or hearing pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law.

3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness, or when so sworn, the like refusal to answer any legal and proper interrogatory.

7. The publication of grossly inaccurate reports of the proceedings in any court, about any trial, or other matter pending before said court, made with intent to misrepresent or to bring into contempt the said court; but no person can be punished as for a contempt in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court.

8. Misbehavior of any officer of the court in any official transaction.

The several acts, neglects and omissions of duty, malfeasances, misfeasances, and nonfeasances, above specified and described, shall be the only acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances which shall be the subject of contempt of court. And if there are any parts of the common law now in force in this state which recognized other acts, neglects, omissions of duty, malfeasances, misfeasances and nonfeasances besides those specified and described above, the same are hereby repealed and annulled.

Rev., s. 939; Code, s. 648; 1905, c. 449.

2. Appeal from judgment of guilty. Any person adjudged guilty of contempt under the preceding section has the right to appeal to the supreme court in the same manner as is provided for appeals in criminal actions, except for the contempts described and defined in subsections one, two, three, and six. Nor

shall the right of appeal lie under subsections four and five if such contempt is committed in the presence of the court.

Rev., s. 939; Code, s. 648; 1905, c. 449.

3. Solicitor or attorney general to appear for the court. In all cases where a rule for contempt is issued by any court, referee, or other officer, the solicitor shall appear for the court or other officer issuing the rule, and in case of appeal to the supreme court, the attorney general shall appear for the court or other officer by whom the rule was issued.

Rev., s. 939; Code, s. 648; 1905, c. 449.

4. Punishment. Punishment for contempt for matters set forth in the preceding sections shall be by fine not to exceed two hundred and fifty dollars, or imprisonment not to exceed thirty days, or both, in the discretion of the court.

Rev., s. 940; Code, s. 649.

5. Summary punishment for direct contempt. Contempt committed in the immediate view and presence of the court may be punished summarily, but the court shall cause the particulars of the offense to be specified on the record, and a copy of the same to be attached to every committal, attachment or process in the nature of an execution founded on such judgment or order.

Rev., s. 941; Code, s. 650.

6. Courts and officers empowered to punish. Every justice of the peace, referee, commissioner, clerk of the superior court, inferior court, criminal court, or judge of the superior court, or justice of the supreme court, or board of commissioners of each county, or corporation commissioner, has power to punish for contempt while sitting for the trial of causes or engaged in official duties.

Rev., s. 942; Code, ss. 651, 652.

7. Indirect contempt; order to show cause. When the contempt is not committed in the immediate presence of the court, or so near as to interrupt its business, proceedings thereupon shall be by an order directing the offender to appear, within reasonable time, and show cause why he should not be attached for contempt. At the time specified in the order, the person charged with the contempt may appear and answer, and, if he fail to appear and show good cause why he should not be attached for the contempt charged, he shall be punished as provided in this chapter.

Rev., s. 943; Code, s. 653.

8. Acts punishable as for contempt. Every court of record has power to punish as for contempt, when the act complained of was such as tended to defeat, impair, impede, or prejudice the rights or remedies of a party to an action then pending in court—

1. Any clerk, sheriff, register, solicitor, attorney, counselor, 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 pending in such court may be defeated, impaired, delayed or prejudiced for disobedience of any lawful order of any court or judge, or any deceit or abuse of any process or order of any such court or judge.

2. Parties to suits, attorneys, and all other persons for the nonpayment 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.

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.

Rev., s. 944; Code, ss. 654, 656.

NOTE. Disobedience of order of court is punishable as for contempt, see Civil Procedure, (No. 331).

9. Trial of proceedings in contempt. Proceedings as for contempt shall be prosecuted and carried on as provided in provisional remedies. In all proceedings for contempt and in proceedings as for contempt, the judge or other judicial officer who issues the rule or notice to the respondent may make the same returnable before some other judge or judicial officer. When the personal conduct of the judge or other judicial officer or his fitness to hold his judicial position is involved, it is his duty to make the rule or notice returnable before some other judge or officer. Nothing herein contained shall apply to any act or conduct committed in the presence of the court and tending to hinder or delay the due administration of the law, nor to proceedings for the disobedience of a judicial order rendered in any pending action.

Rev., s. 945; Code, s. 655; 1915, c. 4.

CHAPTER 18

CONTRACTS REQUIRING WRITING

1. Contracts charging representative personally; promise to answer for debt of another.
2. Contracts for sale of land; leases.
3. Contracts with Cherokee Indians.
4. Promise to revive debt of bankrupt.

1. Contracts charging representative personally; promise to answer for debt of another. No action shall be brought whereby to charge an executor, administrator or collector upon a special promise to answer damages out of his own estate or to charge any defendant upon a special promise to answer the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum, or note thereof shall be in writing, and signed by the party charged therewith or some other person thereunto by him lawfully authorized.

Rev., s. 974; Code, s. 1552; R. C., c. 50, s. 15; 1826, c. 10; 29 Charles II, c. 3, s. 4.

2. Contracts for sale of land; leases. All contracts to sell or convey any lands, tenements or hereditaments or any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for 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 said contract, or some memorandum or note thereof be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

Rev., s. 976; Code, ss. 1554, 1743; R. C., c. 50, s. 11; 29 Ch. II, c. 3, ss. 1, 2, 3; 1819, c. 1016; 1844, c. 44; 1868, c. 156, ss. 2, 33.

3. Contracts with Cherokee Indians. All contracts and agreements of every description made with any Cherokee Indian, or any person of Cherokee Indian blood within the second degree, for an amount equal to ten dollars or more, shall be void, unless some note or memorandum thereof be made in writing and signed by such Indian or person of Indian blood, or some other person by him authorized, in the presence of two witnesses, who shall also subscribe the same: Provided, that this section shall not apply to any person of Cherokee Indian blood or any Cherokee Indian who understands the English language and who can speak and write the same intelligently.

Rev., s. 975; Code, s. 1553; R. C., c. 50, s. 16; 1907, c. 1004, s. 1.

4. Promise to revive debt of bankrupt. No promise to pay a debt discharged by any decree of a court of competent jurisdiction, in any proceeding in bankruptcy, shall be received in evidence unless such promise is in writing and signed by the party to be charged therewith.

Rev., s. 978; 1899, c. 57.

NOTE. Contracts in restraint of trade are required to be in writing, see *Monopolies and Trusts*.

Promises to repel the statute of limitations must be in writing, see *Civil Procedure*, s. 26.

CHAPTER 19

CONVEYANCES

ART. 1. CONSTRUCTION AND SUFFICIENCY.

1. Fee presumed, though word "heirs" omitted.
2. Vagueness of description not to invalidate.
3. Conveyances to slaves.
4. Conveyances by infant trustees.
5. Official deed, when official selling or empowered to sell is not in office.
6. Revocation of deeds of future interests made to persons not in esse.

ART. 2. CONVEYANCES BY HUSBAND AND WIFE.

7. Instruments affecting married woman's title; husband to execute; privy examination.
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23. Sales in bulk presumed fraudulent.

ART. 1. CONSTRUCTION AND SUFFICIENCY

1. Fee presumed, though word "heirs" omitted. When real estate is conveyed to any person, the same shall be held and construed to be a conveyance in fee, whether the word "heirs" is used or not, unless such conveyance in plain and express words, shows, or it is plainly intended by the conveyance or some part thereof, that the grantor meant to convey an estate of less dignity.

Rev., s. 946; Code, s. 1280; 1879, c. 148.

NOTE. Deed and registry of conveyance destroyed, presumed to convey fee simple, see Evidence, s. 17.

2. Vagueness of description not to invalidate. No deed or other writing purporting to convey land or an interest in land shall be declared void for vagueness in the description of the thing intended to be granted by reason of the use of the word "adjoining" instead of the words "bounded by," or for the reason that the boundaries given do not go entirely around the land described: Provided, it can be made to appear to the satisfaction of the jury that the grantor owned at the time of the execution of such deed or paper-writing no other land which at all corresponded to the description contained in such deed or paper-writing.

Rev., s. 948; 1891, c. 465, s. 2.

NOTE. For vagueness of description in pleadings, see Evidence, s. 34.

3. Conveyances to slaves. When it is made to appear that any gift or conveyance has been made to any person, while a slave, of any lands or tenements, whether the same was conveyed by deed or parol, and the bargainee or donee has been placed in actual possession of the same, such gift or conveyance shall have the force and effect of transferring the legal title to the lands and tenements to such bargainee or donee: Provided, such possession shall have continued for the term of ten years prior to the ninth day of March, one thousand eight hundred and seventy: Provided further, that any absence from the premises from the first day of May, one thousand eight hundred and sixty-one, to the first day of January, one thousand eight hundred and sixty-six, shall not be held as an abandonment or discontinuance of the possession: Provided also, that this section shall not affect the interest of a bona fide purchaser for value from the grantor or bargainor of the lands or tenements in dispute.

Rev., s. 949; Code, s. 1278; 1869-70, c. 77.

4. Conveyances by infanttrustees. When an infant is seized or possessed of any estate in trust, whether by way of mortgage or otherwise, for another person who may be entitled in law to have a conveyance of such estate, or may be declared to be seized or possessed, in the course of any proceeding in the superior court, the court may decree that the infant shall convey and assure such estate, in such manner as it may direct, to such other person; and every conveyance and assurance made in pursuance of such decree shall be as effectual in law as if made by a person of full age.

Rev., s. 1036; Code, s. 1265; R. C., c. 37, s. 27; 1821, c. 1116, ss. 1, 2.

5. Official deed, when official selling or empowered to sell is not in office. When a sheriff, coroner, constable or tax collector, in virtue of his office, sells any real or personal property and goes out of office before executing a proper deed therefor, he may execute the same after his term of office has expired; and when he dies or removes from the state before executing the deed, his successor in office shall execute it. When a sheriff or tax collector dies having a tax list in his hands for collection, and his personal representative or surety, in collecting the taxes, makes sale according to law, his successor in office shall execute the conveyance for the property to the person entitled.

Rev., ss. 950, 951; Code, s. 1267; R. C., c. 37, s. 30; 1891, c. 242.

6. Revocation of deeds of future interests made to persons not in esse. The grantor in any voluntary conveyance in which some future interest in real estate is conveyed or limited to a person not in esse, may at any time before he comes into being, revoke by deed such interest so conveyed or limited. This deed of revocation shall be registered as other deeds; and the grantor of like interests for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner.

Rev., s. 1045; 1893, c. 498.

ART. 2. CONVEYANCES BY HUSBAND AND WIFE

7. Instruments affecting married woman's title; husband to execute; privy examination. 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 due acknowledgment thereof must be made by the wife, and her private examination, touching her voluntary assent to such instrument, shall be taken separate and apart from her husband, and such acknowledgment or proof as to the execution by the husband and such acknowledgment by the wife and her private examination shall be taken and certified as provided by law. Any conveyance, power of attorney, contract to convey, mortgage, deed of trust or other instrument executed by any married woman in the manner by this chapter provided and executed by her husband also, shall be valid in law to pass, bind or charge the estate, right, title and interest of such married woman in and to all such lands, tenements and hereditaments or other estate, real or personal, as shall constitute the subject matter or be embraced within the terms and conditions of such instrument or purport to be passed, bound, charged or conveyed thereby.

Rev., s. 952; Code, s. 1256; 1899, c. 235, s. 9; C. C. P., s. 429, subsec. 6; 1868-9, c. 277, s. 15.

8. Acknowledgment at different times and places; before different officers; order immaterial. In all cases of deeds or other instruments executed by husband and wife and requiring registration, the probate of such instruments as to the husband and acknowledgment and private examination of the wife may be taken before different officers authorized by law to take probate of deeds, and at different times and places, whether both of said officials reside in this state or only one in this state and the other in another state or country. And in taking the probate of such instruments executed by husband and wife, including the private examination of the wife, it is immaterial whether the execution of the instrument was proven as to or acknowledged by the husband before or after the acknowledgment and private examination of the wife.

Rev., s. 953; 1899, c. 235, s. 9; 1895, c. 136.

9. Absence of wife's examination does not affect deed as to husband. When an instrument purports to be signed by a husband and wife the instrument may be ordered registered, if the acknowledgment of the husband is duly taken, whether the private examination of the wife is properly taken or not, but no such instrument shall be the act or deed of the wife, unless her private examination is taken according to law.

Rev., s. 954; 1899, c. 235, s. 8; 1901, c. 637.

10. Officers authorized to take privy examination. The officials authorized by law to take proofs and acknowledgments of the execution of any instrument are empowered to take the private examination of any married woman, when her private examination is necessary, touching her free and voluntary assent to the execution of any instrument to which her assent is or may be necessary, and to certify the fact of such private examination.

Rev., s. 955; 1899, c. 235, s. 6.

11. Innocent purchaser not affected by fraud in treaty, if privy examination regular. No deed conveying lands nor any instrument required or allowed by law to be registered, executed by husband and wife, since the eleventh of March, one thousand eight hundred and eighty-nine, if the private examination of the wife is thereto certified as prescribed by law, shall be invalid because its execution or acknowledgment was procured by fraud, duress or undue influence,

unless it is shown that the grantee or person to whom the instrument was made participated in the fraud, duress or undue influence, or had notice thereof before the delivery of the instrument. Where such participation or notice is shown, an innocent purchaser for value under the grantee or person to whom the instrument was made shall not be affected by such fraud, duress or undue influence.

Rev., s. 956; 1889, c. 389; 1899, c. 235, s. 10.

12. Power of attorney of married woman. All conveyances which may be made by any person under a power of attorney from any feme covert freely executed by her with her husband, shall be valid to all intents and purposes to pass the estate, right and title which said feme covert may have in such lands, tenements and hereditaments as are mentioned or included in such power of attorney.

Rev., s. 957; Code, s. 1257; R. C., c. 37, s. 11; 1798, c. 510.

13. Wife need not join in purchase-money mortgage. 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 or deed of trust 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 or deed of trust.

Rev., s. 958; Code, s. 1272; 1868-9, c. 204; 1907, c. 12.

14. Wife insane, husband's deed transfers her interest. A man whose wife is insane and is confined in an asylum for the insane in this state may convey his real estate, except his homestead, without the wife's signature and privy examination, and such deed shall pass all his interest in the property free from the dower rights of the wife: Provided, the superintendent of the asylum in which the wife is confined shall certify that she is confined therein, and that she is of insane mind and memory. The certificate shall be subscribed and sworn to before the clerk of the superior court of the county in which the asylum is situated, and together with the certificate of the clerk, under his hand and official seal, shall be attached to the deed.

Rev., s. 959; 1905, c. 138, ss. 1, 3.

ART. 3. FRAUDULENT CONVEYANCES

15. Conveyance with intent to defraud creditors void. For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised of fraud, to the purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed or defrauded), to be

utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and in all actions by creditors to set aside gifts, grants, alienations and conveyances of lands and tenements and judgments purporting to be liens on the same on the ground that such gifts, grants, alienations, conveyances and judgments are feigned, covinous and fraudulent hereunder, it shall be no defense to the action to allege and prove that the lands and tenements alleged to be so conveyed or encumbered do not exceed in value the homestead allowed by law as an exemption: Provided, that nothing in this section shall be construed to authorize the sale under execution or other final process obtained on any debt during the continuance of the homestead, of any interest in such land as may be exempt as a homestead.

Rev., s. 960; Code, s. 1545; 1893, c. 78; R. C., c. 50, s. 1; 50 Edw. III, c. 6; 13 Eliz., c. 5, s. 2; 1715. c. 7, s. 4.

16. Conveyance with intent to defraud purchasers void. Every conveyance, charge, lease or encumbrance of any lands or hereditaments, goods and chattels, if the same be made with the actual intent in fact to defraud such person who has purchased or shall purchase in fee simple or for lives or years the same lands or hereditaments, goods and chattels, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed utterly void against such person and others claiming under him who shall purchase for the full value thereof the same lands or hereditaments, goods and chattels, or rents or profits out of the same, without notice before and at the time of his purchase of the conveyance, charge, lease or encumbrance, by him alleged to have been made with intent to defraud; and possession taken or held by or for the person claiming under such alleged fraudulent conveyance, charge, lease or encumbrance shall be always deemed and taken as notice in law of the same.

Rev., s. 961; Code, s. 1546; R. C., c. 50, s. 2; 27 Eliz., c. 4, s. 2; 1840, c. 28, ss. 1, 2.

17. Voluntary conveyance evidence of fraud as to existing creditors. No voluntary gift or settlement of property by one indebted shall be deemed or taken to be void in law, as to creditors of the donor or settler prior to such gift or settlement, by reason merely of such indebtedness, if property, at the time of making such gift or settlement, fully sufficient and available for the satisfaction of his then creditors, be retained by such donor or settler; but the indebtedness of the donor or settler at such time shall be held and taken, as well with respect to creditors prior as creditors subsequent to such gift or settlement, to be evidence only from which an intent to delay, hinder or defraud creditors may be inferred; and in any trial shall, as such, be submitted by the court to the jury, with such observations as may be right and proper.

Rev., s. 962; Code, s. 1547; R. C., c. 50, s. 3; 1840, c. 28, ss. 3, 4.

18. Marriage settlements void as to existing creditors. Every contract and settlement of property made by any man and woman in consideration of a marriage between them, for the benefit of such man or woman, or of their issue, whether the same be made before or after marriage, shall be void as against creditors of the parties making the same respectively, existing at the time of such

marriage, if the same is antenuptial, or at the time of making such contract or settlement, if the same is postnuptial.

Rev., s. 963; Code, ss. 1270, 1820; 1871-2, c. 193, s. 11; R. C., c. 37, s. 25; 1785, c. 238, s. 2. NOTE. See also, Married Women.

19. Purchasers for value and without notice protected. Nothing contained in the preceding sections shall be construed to impeach or make void any conveyance, interest, limitation of use or uses, of or in any lands or tenements, goods or chattels, bona fide made, upon and for good consideration, to any person not having notice of such fraud.

Rev., s. 964; Code, s. 1548; R. C., c. 50, s. 4; 13 Eliz., c. 5, s. 6; 1785, c. 7, s. 6.

20. Bona fide purchaser of mortgaged property not affected by illegal consideration of note secured. No conveyance or mortgage, made to secure the payment of any debt or the performance of any contract or agreement, shall be deemed void as against any purchaser for valuable or other good consideration of the estate or property conveyed, sold, mortgaged or assigned, by reason that the consideration of such debt, contract or agreement is forbidden by law, if such purchaser, at the time of his purchase, did not have notice of the unlawful consideration of such debt, contract or agreement.

Rev., s. 965; Code, s. 1549; R. C., c. 50, s. 5; 1842, c. 70.

21. Bona fide purchaser of fraudulently conveyed property treated as creditor. Purchasers of estate previously conveyed in fraud of creditors or purchasers shall have like remedy and relief as creditors might have had before the sale and purchase.

Rev., s. 966; Code, s. 1550; R. C., c. 50, s. 6.

22. Persons aiding debtor to remove to defraud creditors liable for debts. If any person removes or aids and assists in removing any debtor out of any county in which he has resided for the space of six months, or more, with the intent, by such removing, aiding or assisting, to delay, hinder or defraud the creditors, or any of them, of such debtor, the person so removing, aiding or assisting therein, and his executors or administrators, shall be liable to pay all the debts which the debtor removed may justly owe in the county from which he was so removed; and the same may be recovered by the creditors, their executors or administrators, by a civil action.

Rev., s. 1939; Code, s. 1551; R. C., c. 50, s. 14; 1820, c. 1063.

23. Sales in bulk presumed fraudulent. The sale in bulk of a large part or the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in regular and usual prosecution of the seller's business, shall be prima facie evidence of fraud, and void as against the creditors of the seller, unless the seller, at least seven days before the sale, make an inventory showing the quantity and, so far as possible, the cost price to the seller of such articles included in the sale, and shall within said time notify the creditors of the proposed sale, and the price, terms and conditions thereof. If the owner of said stock of goods shall at any time before the sale execute a good and sufficient bond, to a trustee therein named, in an amount equal to the actual cash value of the stock of goods, and conditioned that the seller will apply the proceeds of the sale,

subject to the right of the owner or owners to retain therefrom the personal property exemption or exemptions as are allowed by law, so far as it will go in payment of debts actually owing by the owner or owners, then the provisions of this section shall not apply. Such sale of merchandise in bulk shall not be presumed to be a fraud as against any creditor or creditors who shall not present his or their claim or make demand upon the purchaser in good faith of such stock of goods and merchandise, or to the trustee named in any bond given as provided herein, within twelve months from the date of maturity of his claim, and any creditor who does not present his claim or make demand either upon the purchaser in good faith or on the trustee named in a bond within twelve months from the date of its maturity shall be barred from recovering on his claim on such bond, or as against the purchaser, in good faith, of such stock of goods in bulk. Nothing in this section shall prevent voluntary assignments or deeds of trust for the benefit of creditors as now allowed by law, or apply to sales by executors, administrators, receivers or assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or by any public officers under judicial process.

1907, c. 623 ; 1913, c. 30, s. 1 ; Ex. Sess. 1913, c. 66, s. 1.

CHAPTER 20

CORONERS

1. Election; appointment by clerk in special cases.
2. Oaths to be taken.
- 2a. Coroner's bond.
- 2b. Coroner's bonds registered; certified copies evidence.
3. In case of vacancy, clerk appoints special.
4. Powers, penalties and liabilities of special coroner.
5. To hold inquests; duties thereat.
6. Acts as sheriff in certain cases; special coroner.
7. Compensation of jurors at inquests.

1. Election; appointment by clerk in special cases. In each county a coroner shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold his office for two years. When there is no coroner in a county, the clerk of the superior court for the county may appoint one for special cases.

Rev., s. 1047; Const., Art. IV, s. 24.

NOTE. County commissioners fill vacancies in the office.

2. Oaths to be taken. Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office.

Rev., s. 1048; Code, s. 661.

2a. Coroner's bond. Every coroner shall execute an undertaking for the faithful discharge of the duties of his office with good surety, in the sum of two thousand dollars, payable to the state of North Carolina and approved by the board of county commissioners.

Rev., s. 299; Code, s. 661; R. C., c. 25, s. 2; 1791, c. 342, ss. 1, 2; 1820, c. 1047, ss. 1, 2; 1899, c. 54, s. 52.

2b. Coroners' bonds registered; certified copies evidence. All official bonds of coroners shall be duly proved, certified, registered and filed as sheriffs' bonds are required to be; and certified copies of the same, from the register's office, shall be received and read in evidence in the like cases, and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence.

Rev., s. 300; Code, s. 662; 1860-1, c. 18.

3. In case of vacancy clerk appoints special. When there is a vacancy existing in the office of coroner in any county, and it is made to appear by the affidavit of some responsible person that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk of the superior court of such county to appoint some suitable person as special coroner to hold an inquest over the body of the deceased.

Rev., s. 1049; 1903, c. 661.

4. Powers, penalties and liabilities of special coroner. The special coroner appointed under the provisions of the preceding section shall be invested with all the powers and duties conferred upon the several coroners in respect to hold-

ing inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners.

Rev., s. 1050; 1903, c. 661, s. 2.

5. To hold inquests; duties thereat. It is the duty of the several coroners, when it is made to appear, by the affidavit of some responsible person, that the deceased probably came to his death by the criminal act or default of some person or persons, or at the request of the solicitor, to go to the place where the body of such deceased person is and forthwith to summon a jury of six good and lawful men: whereupon the coroner, upon oath of the jury at the said place, shall make inquiry when, how and by what means such deceased person came to his death, and his name if it was known, together with all the material circumstances attending his death; and if it appears that the deceased was slain, then who was guilty either as principal or accessory, if known, or in any manner the cause of his death. As many persons as are found culpable, by inquisition in manner aforesaid, shall be taken and delivered to the sheriff and committed to jail; and such persons as are found to know anything of the matters aforesaid and are not culpable themselves, shall be bound in a recognizance with sufficient surety to appear at the next superior court to give evidence; of all which matters and things the coroner must make a record of his inquisition signed by the jurors, and return the same to the next superior court of his proper county. It is the duty of every coroner, when the jury investigating the case requires it, to summon a physician or surgeon.

Rev., s. 1051; Code, s. 657; 1899, c. 478; 1905, c. 628; 1909, c. 707, s. 1.

NOTE. In Buncombe County, when the coroner is a physician or surgeon, he shall make the investigation, if requested by one or more of the jurors. Rev., s. 1051; 1903, c. 586.

6. Acts as sheriff in certain cases; special coroner. If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law, for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations and penalties as hereinabove provided for.

Rev., s. 1052; Code, s. 658; 1891, c. 173.

7. Compensation of jurors at inquest. All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the superior courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so acting and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the superior courts.

Rev., s. 1053; Code, ss. 659, 660.

CHAPTER 21

CORPORATION COMMISSION

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4. Vacancy.
5. Qualifications of commissioners.
6. Oath of office.
7. Place of meeting.
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13. Corporations and businesses within control of commission.

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25. To regulate crossings and to require grade crossings.
26. To require installation and maintenance of automatic signals at railroad inter-
sections, etc.
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28. To consent to abandonment or relocation of depots.
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- 88. Action for penalty; when and how brought.
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ART. 1. ORGANIZATION

1. Court of record. There shall be a court of record, known as the Corporation Commission. Such court shall adopt a seal and shall have all of the powers and jurisdiction of a court of general jurisdiction as to all subjects embraced in this chapter. The members and clerk thereof may administer oaths.

Rev., s. 1054; 1899, c. 164, ss. 1, 31.

2. Number of commissioners. The court shall consist of three commissioners, who shall be elected by the qualified voters of the state, in the same manner as other state officers are elected. The court shall organize by the election of one of the commissioners as chairman.

Rev., s. 1055; 1899, c. 164, s. 1.

3. Term of office. The term of office of the commissioners shall begin on the first day of January next after their election, and shall continue for six years and until their successors are elected and qualified. One member of the court shall be elected at each general election.

Rev., s. 1056; 1899, c. 164.

4. Vacancy. If for any cause there shall be a vacancy in the commission, the governor shall appoint to such vacancy. Such appointee shall hold until the election and qualification of his successor, who shall be elected at the next general election, after the vacancy occurred. The person so elected shall hold office for the unexpired term.

Rev., s. 1057; 1899, c. 164; 1901, c. 194.

5. Qualifications of commissioners. It shall be unlawful for any member or official of said court to jointly, severally, or in any other way, either directly or indirectly, hold any stock or bond, or be the agent, attorney or employee, or have any interest in any way, in any steamboat, railroad, canal, navigation, express, telegraph, telephone, bank or building and loan company, or association. If any member or official of said court shall, during the term of his office as distributee or legatee, or in any other way, have or become entitled to any stock or bonds or interest therein of any such company he shall at once dispose of the same, and upon failure to do so shall forfeit his office, and may be suspended by the governor.

Rev., s. 1058; 1899, c. 164.

6. Oath of office. The members of the court, in addition to the oath to support the constitution and laws of the United States and the constitution and laws of the state of North Carolina, shall take, to be administered by one of the judges of the supreme court, the following oath of office, which oath shall be signed by such commissioners and attested by said judge and recorded in the office of the secretary of state: "I do solemnly swear (or affirm) that I am not the owner of any steamboat or of any stock or bond of any railroad, navigation or canal company, express, telegraph or telephone company, or of any bank or building and loan association, or the agent or attorney or employee of any such company or association; that I have no interest in any way in any such company or association, and that I will well and faithfully execute the duties of my office as a member of the corporation commission and as state tax commissioner to the best of my knowledge and ability, without fear, favor, malice, reward or the hope of reward. So help me, God."

Rev., s. 1059; 1899, c. 164, s. 1; 1903, c. 251, s. 3.

7. Place of meeting. The court shall be held in the city of Raleigh. Special sessions may be held at any place, in the state, when in the judgment of the commission the convenience of all parties is best subserved and expense is thereby saved.

Rev., s. 1060; 1899, c. 164, ss. 30, 31; 1901, c. 679, s. 4.

8. Open at all times. The court shall be open at all times for the transaction of business, and each member shall devote his whole time to the discharge of the duties of his office; and it shall be his duty to remain in the office of the

commission at least fifteen days in each month, unless detained therefrom on official business.

Rev., s. 1061; 1899, c. 164, s. 30; 1903, c. 251, s. 3.

9. Quorum. Any two members of the court shall constitute a quorum for the transaction of business. The chairman is hereby authorized and empowered to perform the duties and exercise the powers conferred by law upon the corporation commission as to or over banks and building and loan associations, but this shall not prevent, as to banking and building and loan associations, the other members of the court from acting with the chairman in all of such matters.

Rev., s. 1062; 1899, c. 164, s. 29.

10. Clerk and assistants. The court shall appoint a clerk, who shall be an expert accountant, experienced in railroad statistics and transportation rates. His term of office shall be two years. He shall take and subscribe to oaths of office similar to those prescribed for the commissioners, but he may nevertheless hold stock in state or national banks.

The commission, by and with the approval of the governor, is authorized to appoint an additional clerk, who shall be an expert accountant, well versed and experienced in railroad and transportation rates; and also such other clerical help as in the opinion of the commission and the governor is necessary for a proper discharge of the duties of the commission in dealing with public service corporations operating in this state. The amount annually expended for this purpose shall not exceed six thousand dollars.

The commission is authorized to employ such rate experts as it may deem advisable to assist in the preparation and prosecution of the cases it has instituted or may institute before the interstate commerce commission for the reduction of freight rates into and out of North Carolina.

Rev., s. 1063; 1899, c. 164, ss. 9, 31; 1907, c. 999; 1913, c. 22, s. 1; Ex. Sess. 1913, c. 58, s. 1.

11. Counsel. The commission has authority to employ counsel whenever and for such period of time as in their judgment is necessary, and counsel so employed shall be paid such fee and compensation as shall be agreed upon by them. The governor is authorized and empowered to employ from time to time, at the expense of the state, such special counsel as he and the corporation commission deem wise, to assist the attorney general in enforcing and making effective the jurisdiction and promulgations of the commission with reference to freight and other transportation rates, at a cost not exceeding one thousand dollars in any one year.

1907, c. 469, s. 5; Ex. Sess. 1913, c. 58, s. 2.

12. Expenses. All the expenses of the commission, except as otherwise provided by law, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation, or upon official business, or for any other purposes necessary for carrying out the provisions of this chapter, and necessary furniture, stationery, postage, lights and heat, shall be allowed, and the auditor shall issue his warrant upon presentation of itemized vouchers therefor approved by the chairman of the commission: Provided, that the expenses allowed under this section shall not exceed three thousand six hundred dollars annually.

Rev., s. 1118; 1899, c. 164, s. 32; 1899, c. 68.

ART. 2. CORPORATIONS AND BUSINESSES WITHIN CONTROL OF COMMISSION

13. Corporations and businesses within control of commission. The corporation commission shall have such general control and supervision as is necessary to carry into effect the provisions of this chapter and the laws regulating the companies, corporations, copartnerships and individuals specified herein, over—

1. Railroad, street railway, steamboat, canal, express and sleeping car companies, and all other companies or corporations engaged in the carrying of freight or passengers, and all copartnerships or individuals engaged in the business of common carriers.

Rev., s. 1066; 1899, c. 164, s. 1; 1901, c. 679.

2. Telegraph and telephone companies and all other companies engaged in the transmission of messages; over persons and individuals owning and operating telegraph or telephone lines in North Carolina and who rent phones and wires to persons generally.

Rev., ss. 1066, 1096; 1899, c. 164, ss. 1, 2; 1907, c. 966.

3. Electric light, power, water and gas companies and corporations, other than such as are municipally owned or conducted, and over all persons, companies and corporations, other than municipal corporations, now or hereafter engaged in furnishing electricity, electric light, current or power and gas.

1913, c. 127, s. 1.

4. All water power, hydro-electric power and water companies now doing business in this state, or which may hereafter engage in doing business in this state, whether organized under the general or private laws of this state, or under the laws of any other state or country. Such companies are deemed to be public service companies and subject to the laws of this state regulating public service corporations.

1913, c. 133, s. 1.

5. Flume companies which avail themselves of the power of eminent domain as provided in the chapter Eminent Domain.

1907, c. 39.

6. Corporations, other than municipal corporations, or individuals, owning and operating a public sewerage system in North Carolina.

1917, c. 194.

7. Public and private banks, and all loan and trust companies or corporations.

Rev., s. 1066; 1899, c. 164, s. 1; 1901, c. 679.

The power of control and supervision vested in the corporation commission under this section with respect to the various classes of public service corporations and individuals engaged in furnishing the public utilities mentioned shall be the same as that vested in it in respect to railroads and other transportation companies.

1913, c. 127, s. 7.

ART. 3. POWERS AND DUTIES

14. To be Board of State Tax Commissioners. The corporation commissioners constitute the Board of State Tax Commissioners with the powers and duties prescribed by article four of the chapter entitled Taxation.

Rev., s. 1119.

15. To make and enforce rules for public service corporations. The corporation commission has power to make any necessary and proper rules, orders and regulations for the safety, comfort and convenience of passengers, shippers or patrons of any public service corporation, and to require the observance of and to enforce the same by the company and its employees, such power being the same as that provided in this chapter in respect to railroads and other transportation companies.

1907, c. 469, s. 1a; 1913, c. 127, s. 2.

16. To require transportation and transmission companies to maintain facilities. The corporation commission has power to require all transportation and transmission companies to establish and maintain all such public service facilities and conveniences as may be reasonable and just. It may require steamboat companies to provide such wharf and warehouse facilities as may be reasonable and just.

1907, c. 469, s. 2; Ex. Sess. 1913, c. 52, s. 1.

16a. To authorize lumber companies to transport commodities. The corporation commission has power to authorize lumber companies, having logging roads, to transport of all kinds of commodities other than their own, and to charge therefor reasonable rates to be approved by the commission.

1915, c. 160, s. 1.

17. To establish and regulate stations for freight and passengers. The commission is empowered and directed to require, where the public necessity demands, and it is demonstrated that the revenue received will be sufficient to justify it, the establishment of stations by any company or corporation engaged in the transportation of freight and passengers in this state, and to require the erection of depot accommodations commensurate with such business and revenue, and to require the erection of accommodations for loading and unloading livestock and for feeding, sheltering and protecting the same in transportation. The commissioners shall not require any company or corporation to establish any station nearer to another station than five miles.

Rev., s. 1097; 1899, c. 164, s. 2, subsec. 12; 1913, c. 155.

18. To require change, repair and additions to stations. The commission is empowered and directed to require a change of any station or the repairing, addition to, or change of any station house by any railroad or other transportation company in order to promote the security, convenience and accommodation of the public, and to require the raising or lowering of the track at any crossing when deemed necessary.

Rev., s. 1097; 1899, c. 164, s. 2, subsec. 13.

19. To provide for union depots. The commission is empowered and directed to require, when practicable, and when the necessities of the case, in their

judgment, require any two or more railroads which now or hereafter may enter any city or town to have one common or union passenger depot for the security, accommodation and convenience of traveling public, and to unite in the joint undertaking and expense of erecting, constructing and maintaining such union passenger depot, commensurate with the business and revenue of such railroad companies or corporations, on such terms, regulations, provisions and conditions as the commission shall prescribe. The railroads so ordered to construct a union depot shall have power to condemn land for such purpose, as in case of locating and constructing a line of railroad: Provided, that nothing in this section shall be construed to authorize the commission to require the construction of such union depot should the railroad companies at the time of application for said order have separate depots, which, in the opinion of the commission, are adequate and convenient and offer suitable accommodations for the traveling public.

Rev., s. 1097; 1903, c. 126.

20. To provide for separate waiting rooms for races. The commission is empowered and directed to require the establishment of separate waiting rooms at all stations for the white and colored races.

Rev., s. 1097; 1899, c. 64, s. 2, subsec. 14.

21. To require construction of sidetracks. The commission is empowered and directed to require the construction of sidetracks by any railroad company to industries already established or to be established: Provided, it is shown that the proportion of such revenue accruing to such sidetrack is sufficient within five years to pay the expenses of its construction. This shall not be construed to give the commission authority to require railroad companies to construct sidetracks more than five hundred feet in length.

Rev., s. 1097; 1899, c. 164, s. 2, subsec. 15.

22. To require trains to be run over railroads and connections at intersections. The commission is empowered and directed to require, when practicable and when the necessities of the traveling public, in the judgment of the corporation commission, demand, that any railroad in this state shall install and operate one or more passenger or freight trains over its road, and also require any two or more railroads having intersecting points to make close connection at such points: Provided, that no order under this section shall be made unless the business of the railroad justifies it.

1907, c. 469, s. 3.

23. To inspect railroads as to equipment and facilities, and to require repair. The commission is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the public's safety and convenience; and if any are found by them to be unsafe, they shall at once notify and require the railroad company to put the same in repair.

1907, c. 469, s. 3.

24. To require installation and maintenance of block system and safety devices. The commission is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any

part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road upon which is not operated as many as or more than eight trains each way per day.

1907, c. 469, s. 1b.

25. To regulate crossings and to require grade crossings. The commission is empowered and directed to require the raising or lowering of any tracks or highway at any highway or railroad crossing, and to designate who shall pay for the same; and when they think proper, partition the cost of abolishing grade crossings and the raising or lowering of said track or highway among the railroads and municipalities interested.

1907, c. 469, s. 1(c); 1911, c. 197, s. 1.

26. To require installation and maintenance of automatic signals at railroad intersections, etc. The commission is empowered and directed to require, when public safety demands, when and in case two or more railroads now cross or may hereafter cross each other, at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper.

1911, c. 197, s. 2; Ex. Sess. 1913, c. 63, s. 1.

27. To require railroads to enter towns and maintain depots in certain cases. Where two or more railroads may maintain freight depots and a union passenger depot within one mile of a town of two thousand population for the convenience of the inhabitants thereof, and do not enter the corporate limits of the town, it is the duty of the corporation commission, upon the petition of a majority of the qualified voters of the said town, which petition shall be properly sworn to by the signers thereof, to require and compel, where practicable, the said railroads to run their lines into or through the corporate limits of the said town, and construct, equip, and maintain suitable passenger and freight depots at some convenient place or places therein, and the passenger depot shall be a union station and be built and maintained by the several railroads according to a plan and in such a manner as shall be approved by the commission.

When a petition is filed with the corporation commission as aforesaid, the commission shall set a day for the hearing thereof, which day shall be not more than twenty days from the filing of said petition, and shall immediately cause a notice to issue to the railroads interested in the matter set out in the petition, and after the hearing of the matter on the day named in the notice, the commission, if a majority of its members deem it practicable, shall thereupon cause an order to be made requiring the said railroads to build, equip, and maintain in a suitable manner, road-beds, yards and depots, and any other necessary buildings or equipment, at convenient places within the limits of said town, as to a majority of them seems proper for the needs and growth of the business and inhabitants of the said town.

The order of the corporation commission to the railroads shall name a time within which all the necessary work of entering the said town and construction of depots and other buildings shall be completed and opened to the public for

the transaction of business, and the said railroads, for every day beyond the said time that they shall not be in operation according to the said order, shall pay the sum of fifty dollars for each and every day for such failure and neglect, to the board of commissioners or aldermen of said town, which shall be for the benefit of the said town, this amount to be recovered as in other actions.

This section shall also apply to any railroad that may hereafter enter into or run within one mile of the corporate limits of said town, and the corporation commission shall have the power to require such railroads to unite with the other railroads in maintaining the depots, tracks, and other structures, and also pay such part of the cost thereof as to the said corporation commission may seem proper.

The railroads have the power to condemn such quantity of lands, including gardens, yards, residences and the premises pertaining thereto, as are necessary for the purposes of this section, the condemnation proceedings to be had in the same manner as now provided by this Revisal.

1907, c. 465.

28. To consent to abandonment or relocation of depots. A railroad corporation which has established and maintained for a year a passenger station or freight depot at a point upon its road shall not abandon such station or depot, nor substantially diminish the accommodation furnished by the stopping of trains except by consent of the commission. Freight or passenger depots may be relocated upon the written approval of the commission.

Rev., s. 1098; 1899, c. 164, ss. 19, 20.

29. To regulate crossings of telephone, telegraph and electric power lines. Power is conferred on the corporation commission whenever any telephone, telegraph or electric power lines cross, to require such crossings to be constructed and maintained in a safe manner, so that the wires of one line will not fall upon the other; to prescribe the manner in which this shall be done; to discontinue or prohibit such crossings where they are unnecessary and can reasonably be avoided; and to apportion the cost of proper changing and construction of such crossings among the lines interested, as to said commissioners may seem just: Provided, that in all crossings made dangerous by the presence of high tension wire or wires of any power or light company, the cost shall be paid by such power or light company.

1913, c. 130, s. 1.

30. To regulate delivery of freight, express and baggage. The corporation commission shall make reasonable and just rules—

1. For the handling of freight and baggage at stations.

2. As to charges by any company or corporation engaged in the carriage of freight or express for the necessary handling and delivery of the same at all stations.

Rev., s. 1094; 1899, c. 164, s. 2, subsecs. 2, 7.

31. To prevent discriminations. The corporation commission shall make reasonable and just rules and regulations—

1. To prevent discrimination in the transportation of freight or passengers, or in furnishing electricity, electric light, current, power or gas.

2. To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or the misleading or deceiving the public in any manner as to real rates charged for freight, express or passengers, or in furnishing electricity, electric light, current, power or gas.

Rev., s. 1095; 1899, c. 164, s. 2, subsecs. 3, 5; 1913, c. 127, s. 6.

32. To regulate shipment of inflammable substances. The corporation commission is authorized and empowered to adopt and promulgate rules for the shipment of inflammable and explosive articles; cotton which has been partially consumed by fire, and such other like articles as in its opinion may be apt to render transportation dangerous. And after the promulgation of such rules, no common carrier shall be required to receive or transport any such articles except when tendered in accordance with the said rules; nor shall such common carrier be liable for any penalty for refusal to receive such article for shipment until all the rules prescribed by the corporation commission in regard to the shipments of the same shall be complied with.

1907, c. 471, s. 1.

33. To regulate demurrage, storage, placing and loading of cars. The commission shall make rules, regulations and rates governing demurrage and storage charges by railroad companies and other transportation companies; and shall make rules governing railroad companies in the placing of cars for loading and unloading and in fixing time limit for delivery of freights after the same have been received by the transportation companies for shipment.

Rev., s. 1100; 1903, c. 342.

34. To fix rate of speed through towns; procedure. If a railroad company is of the opinion that an ordinance of a city or town through which a line of its railroad passes, except in the counties of Cumberland, Rockingham, Union and Wayne, regulating the speed at which trains may run while passing through said city or town, is unreasonable or oppressive, such railroad company may file its petition before the corporation commission, setting forth all the facts, and asking relief against such ordinance, and that the corporation commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, in a registered letter, to the mayor or chief officer of the town or municipality, together with a notice from the corporation commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the city or town named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the corporation commission shall hear the petition, but any hearing granted by the corporation commission shall be had at the town, city or locality where the conditions complained of are alleged to exist, or some member of the said commission shall take evidence both for the petition and against it, at such city, town or locality, and report to the full commission before any decision is made by the commission.

Either party, petitioner or respondent, has the right to introduce testimony and to be heard by counsel, and the corporation commission, after hearing the petition, answer, evidence and argument, shall render judgment thereon. If the commission finds that such ordinance is reasonable and just the petition shall be dismissed, and the petitioner shall pay all the costs to be taxed by the clerk

to the corporation commission. If the commission is of the opinion that the ordinance is unreasonable, it shall so adjudge; and in addition thereto it shall prescribe the maximum rates of speed for passing through such town. And thereafter the railroad company may run its trains through such town or city at speeds not greater than those prescribed by the corporation commission, and the ordinance adjudged to be unreasonable shall not be enforced against such railroad company.

If the judgment of the corporation commission is in favor of the petitioner, it shall be lawful for the corporation commission to make such order as to the payment of the costs as shall seem just. It may require either party to pay the same or it may divide the same. The costs in such proceeding shall be the same as are fixed by law for similar services in the superior court.

Rev., ss. 1101, 1102, 1103; 1903, c. 552.

35. To hear and determine controversies submitted. When a company or corporation embraced in this chapter has a controversy with another corporation or person and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators, the commission shall act as such, and after due notice to all parties interested shall proceed to hear the same, and their award shall be final. Such award in cases where land or an interest in land is concerned shall immediately be certified to the clerk of the superior court of the county in which said land is situated and shall by such clerk be docketed in the judgment docket for such county, and from such docketing shall be a judgment of the superior court for such county. Parties may appear in person or by attorney before such arbitrators.

Rev., s. 1073; 1899, c. 164, s. 25.

36. To investigate companies and businesses under its control. The commissioners shall from time to time visit the places of business, and investigate the books and papers of all corporations, firms or individuals engaged in the transportation of freight or passengers, the transmission of messages either by telegraph or telephone, or in the furnishing of other public utilities the supervision and control of which is vested in the corporation commission, all public or private banks, loan and trust companies, to ascertain if all the orders, rules and regulations of the corporation commission have been complied with, and shall have full power and authority to examine all officers, agents and employees of such companies, individuals, firms or corporations, and all other persons under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this chapter, and the chapter entitled Banks.

Rev., s. 1064; 1913, c. 127, ss. 1, 2, 7; 1917, c. 194; 1899, c. 164, s. 1.

37. To investigate accidents. The commission may investigate the causes of any accident on a railroad or steamboat which it may deem to require investigation, and any evidence taken upon such investigation shall be reduced to writing, filed in the office of the commission, and be subject to public inspection.

Rev., s. 1065; 1899, c. 164, s. 24.

38. To notify of violation of rules and institute suit. The commission, whenever in its judgment any corporation has violated any law, shall give notice

thereof in writing to such corporation, and, if the violation or neglect is continued after such notice, shall forthwith present the facts to the attorney-general who shall take such proceedings thereon as he may deem expedient.

Rev., s. 1113; 1899, c. 164, s. 8.

39. To keep record of receipts and disbursements. The commission shall keep a record showing in detail all receipts and disbursements.

Rev., s. 1115; 1899, c. 164, s. 34.

40. To pay fees and money into treasury. All license fees and seal tax and all other fees paid into the office of the corporation commission shall be turned into the state treasury; also all moneys received from fines and penalties.

Rev., s. 1114; 1899, c. 164, ss. 33, 26.

41. To report annually to governor. It shall be the duty of the commission to make to the governor annual reports of its transactions, and recommend from time to time such legislation as it may deem advisable under the provisions of this chapter, and the governor shall have one thousand copies of such report printed for distribution.

Rev., s. 1117; 1899, c. 164, s. 27; 1911, c. 211, s. 9; 1913, c. 10, s. 1.

ART. 4. RATE REGULATION

42. Commission to fix rates for public utilities. Subject to the provisions as to passenger rates in the chapter, Railroads, and as to railroad freight rates in this chapter, the commission shall make reasonable and just rates and charges, in intrastate traffic, and regulate the same, of and for—

1. Freight, passenger and express tariffs for railroads, street railways, steamboats, canal and express companies or corporations, and all other transportation companies or corporations engaged in the carriage of freight, express or passengers.

2. The transmission and delivery of messages by any telegraph company, and for the rental of telephone and furnishing telephonic communication by any telephone company or corporation.

3. Persons, companies and corporations, other than municipal corporations, engaged in furnishing electricity, electric light, current power or gas, or owning or operating a public sewerage system in North Carolina.

4. The through transportation of freight, express or passengers.

5. The use of railway cars carrying freight or passengers.

6. And shall make rules and regulations as to contracts entered into by any railroad company or corporation to carry over its line or any part thereof the car or cars of any other company or corporation.

7. And shall make, require or approve what is known as "milling-in-transit" rates on grain; or lumber to be dressed or shipped over the line of the railroad company on which such freight originated.

8. And, conjointly with such railroad companies, shall have authority to make special rates for the purpose of developing all manufacturing, mining, milling and internal improvements in the state.

Nothing in this chapter shall prohibit railroad or steamboat companies from making special passenger rates with excursion or other parties, also rates on

such freights as are necessary for the comfort of such parties, subject to the approval of the commission.

The powers vested in the commission by this section over the several subjects enumerated shall be the same as that vested in it in respect to railroads and other transportation companies.

Rev., ss. 1096, 1099; 1899, c. 164, ss. 2, 14; 1903, c. 683; 1907, c. 469, s. 4; 1913, c. 127, s. 2; 1917, c. 194.

NOTE. For railroad passenger rates, see Railroads, Art. 10.

42a. Rates established deemed just and reasonable. The rates or charges established by the commission shall be deemed just and reasonable, and any rate or charge made by any corporation, company, copartnership or individual engaged in the businesses enumerated in the preceding section other than those so established shall be deemed unjust and unreasonable.

1913, c. 127, s. 3.

43. How maximum rates fixed. In fixing any maximum rate or charge, or tariff of rates or charges for any common carrier, person or corporation subject to the provisions of this chapter the commission shall take into consideration if proved, or may require proof of, the value of the property of such carrier, person or corporation used for the public in the consideration of such rate or charge or the fair value of the service rendered in determining the value of the property so being used for the convenience of the public. It shall furthermore consider the original cost of the construction thereof and the amount expended in permanent improvements thereon and the present compared with the original cost of construction of all its property within the state; the probable earning capacity of such property under the particular rates proposed and the sum required to meet the operating expenses of such carrier, person or corporation, and all other facts that will enable them to determine what are reasonable and just rates, charges and tariffs.

Rev., s. 1104; 1899, c. 164, s. 2, subsec. 1.

44. Commissioners entitled to free carriage. The commissioners and their clerks shall be transported free of charge over all railroads and transportation lines which are under the supervision of the commission; and when traveling on official business, they may take with them experts or other agents whose services they may deem temporarily of public importance.

Rev., s. 1105.

45. Free carriage. Nothing in this chapter shall prevent or prohibit—

1. The carriage, storage, or handling of property free or at reduced rates for the United States, state or municipal governments, or for charitable or educational purposes; or for any corporation or association incorporated for the preservation and adornment of any historic spot, or to the employees or officers of such company or association while traveling in the performance of their duties, provided they shall not travel further than ten miles one way on any one trip free of charge or to or from fairs or exhibitions for exhibition thereat.

2. The free carriage of destitute or homeless persons transported by charitable societies, and the necessary agents employed in such transportation; or the free transportation of persons traveling in the interest of orphan asylums or homes for the aged or infirm, or any department thereof, or traveling secretaries of

Railroad Young Men's Christian Associations, or ex-Confederate soldiers attending annual reunions.

3. The use of passes for journeys wholly within this state which have been or may be issued for interstate journeys under the authority of the United States interstate commerce commission.

4. The issuance of mileage, excursion or commutation passenger tickets.

5. Common carriers from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' orphan homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes.

6. Common carriers from giving free carriage to their own officers and employees and members of their families, or furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of such common carrier, and the remains of a person killed in the employment of a common carrier, and employees traveling for the purpose of entering the service of such common carrier, and the families of those persons named; also the families of persons killed, and the widows during widowhood, and minor children during minority of persons who died while in the service of such common carrier.

7. The principal officers of any common carrier from exchanging passes, franks or tickets with other common carriers for their officers or employees, and members of their families.

8. Transportation companies from contracting with newspapers for advertising space in exchange for transportation over their lines to such an extent as may be agreed upon between the parties for said consideration.

9. Transportation companies, if they so desire, from furnishing transportation to such agricultural extension and demonstration workers as are engaged in work in the field in efforts to increase production on the farm and to improve the farm home, when such workers are actually engaged in the performance of duties requiring travel.

10. Any common carrier that is operating under lease a railroad in this state, in which the state owns a majority of the capital stock, from giving free carriage, according to the contract of lease, to the officers and their families and the committees of the lessor owning such leased railroad, nor prevent such operating common carrier from issuing annually free transportation to ex-presidents of such lessor owning companies and their families in compliance with the contract of lease entered into by them or according to and for such period of time as may have been prescribed by any by-laws of the lessor which was in force at the time such lease was made.

Rev., s. 1105; 1899, c. 164, s. 22; 1899, c. 642; 1901, c. 679, s. 2; 1901, c. 652; 1905, c. 312; 1911, cc. 49, 148; 1913, c. 100; 1915, c. 215; 1917, cc. 56, 160.

NOTE. See further, Railroads, s. 74.

46. Revision of rates. The commission shall from time to time, and as often as circumstances may require, change and revise or cause to be changed and revised any schedules of rates fixed by the commission, or allowed to be charged by any carrier of freight, passengers, or express, or by any telegraph or telephone company.

Rev., s. 1106; 1899, c. 164, s. 7.

47. Long and short hauls. It shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this chapter to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, that upon application to the commission, such common carrier may in special cases be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: Provided, that nothing in this chapter contained shall be taken as in any manner abridging or controlling the rates of freight charged by any railroad in this state for conveying freight which comes from or goes beyond the boundaries of the state and on which freight less than local rates on any railroad carrying the same are charged by such railroads.

Rev., s. 1107; 1899, c. 164, s. 14; Ex. Sess. 1913, c. 20, s. 9; 1915, c. 17, s. 1.

48. Contracts as to rates. All contracts and agreements between railroad companies as to rates of freight and passenger tariffs shall be submitted to the commission for inspection and correction, that it may be seen whether or not they are a violation of law or of the rules and regulations of said commission, and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies shall be submitted to the commission for inspection and approval in so far as they affect the rules and regulations made by the commission to secure to all persons doing business with such companies just and reasonable rates of freight and passenger tariffs, and the commission may make such rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreements not approved by the commission, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of this chapter and shall be illegal and void.

Rev., s. 1108; 1899, c. 164, s. 6.

49. Rates to be published. All carriers shall, whenever required by the commission, file with it a schedule of their rates of charges for freight and passengers, and the commission is authorized and required to publish the rates, or a summary thereof, in some convenient form for the information of the public, and quarterly thereafter the changes made in such schedules if they deem it advisable.

Rev., s. 1109; 1899, c. 164, s. 7; 1907, c. 217, s. 5.

50. Interstate commerce. Upon the complaint of any person or community to the commission of any unjust discrimination or unjust or unreasonable rate in carrying freight which comes from or goes beyond the boundaries of the state by any railroad company, whether organized under the laws of this state or of another state and doing business in this state, the commission shall investigate such complaint, and if the same be sustained it shall be the duty of the commission to bring such complaint before the interstate commerce commission for

redress in accordance with the provisions of the act of Congress establishing the interstate commerce commission. They shall receive upon application the services of the attorney general of the state and he shall represent them before the interstate commerce commission.

Rev., s. 1110; 1899, c. 164, s. 14; 1907, c. 469, s. 5.

51. Duplicate freight receipts; charges stated; freight delivered on payment of charges. All railroad companies shall on demand issue duplicate freight receipts to shippers in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over the roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight such agent shall deliver the articles shipped upon payment of the rate charged for the class of freight mentioned in the receipt.

Rev., s. 1111; 1899, c. 164, s. 17.

52. Schedule of rates to be evidence. The schedule of rates fixed by statute or under this article shall, in suits brought against any company wherein is involved the charges of any company for the transportation of any passenger or freight or cars or unjust discrimination in relation thereto, be taken in all courts as prima facie evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads. All such schedules shall be received and held in all suits as prima facie evidence, the schedules of the commission without further proof than the production of the schedules desired to be used as evidence, with a certificate of the clerk of the commission that the same is a true copy of the schedule prepared or approved by it for the railroad company or corporation therein named.

Rev., s. 1112; 1899, c. 164, s. 7.

NOTE. For further legislation as to rates, see Railroads, Arts. 10, 11.

ART. 5. RAILROAD FREIGHT RATES

53. Classification of articles, commodities and property. For the purposes of this article all articles, commodities, and property are classified as now provided and specified by law, or by order or orders of the North Carolina corporation commission, in numbered and lettered classes and as commodities, subject to change in classification in the manner which is now or which may be provided by law.

EX. SESS. 1913, c. 20, s. 1.

NOTE. For further provisions on freight rates, see Railroads, Art. 11.

54. Changes in classification. The corporation commission, or such other commission as may have conferred upon it by law the powers and duties now exercised by the North Carolina corporation commission with reference to public service companies, has the power to establish a different classification of freight than that referred to in the preceding section if thereby a more systematic or uniform method can be secured, in the opinion of such commission; but shall not, except as provided in this article, increase the rates fixed herein as maxima. Such commission has the power, if in their judgment it seems just to do so, to change the percentage relation of other classes of freight than the first class, to the first class: Provided, it shall not thereby raise the rate on any class, except in the manner and upon the conditions specified in this article.

EX. SESS. 1913, c. 20, s. 2.

55. Maximum rates established. After the twelfth day of December nineteen hundred and thirteen, the following specified rates are declared to be reasonable maximum rates to be charged by railroad companies, as common carriers in the state of North Carolina, for transporting freight wholly within the state, subject to exceptions or increase only in the manner provided in this article, or in the manner which may hereafter be allowed by law.

Said maximum rates herein established are on first, second, third, fourth, fifth, and sixth classes, and on Classes A, B, C, D, E, F, H, K, L, M, N, O, and P, and also on molasses in barrels and on rough logs of forty thousand pounds per car, and on cotton in bales per one hundred pounds, and on fertilizers per ton.

The relation of the rates on all classes other than first class are as follows:

The rate on second-class freight shall be eighty-one per cent of the first-class rate; the rate on third-class freight shall be sixty-eight per cent of the first class; the rate of fourth-class freight shall be fifty-two per cent of the first class; the rate on fifth-class freight shall be forty-four per cent of first class; the rate on sixth-class freight shall be thirty-five per cent of the first class.

The rate on Class A shall be twenty-nine per cent of the first class; the rate on Class B shall be thirty-five per cent of first class; the rate on Class C shall be thirty-one per cent of first class; the rate on Class D shall be twenty-five per cent of the first class; the rate on Class E shall be forty-four per cent of the first class; the rate on Class H shall be fifty-two per cent of the first class; the rate on Class K shall be twenty-one per cent of first class; all calculations to be carried to the nearest half cent; the rate on Classes F, L, M, N, O, and P shall be as specified in the following table:

TABLE OF CLASSES AND RATES

Miles	Classes						Molasses in Bbls. or Hds., Cts. per 100 Lbs.	Rough Logs, 40,000 Lbs. Min., Excess in Proportion, \$ per Car.	Cotton in Bales, Cts. per 100 Lbs.	Fertilizers, C. L., in Cts. per Ton	Miles
	I Cts per 100 Lbs.	F Cts per 100 Lbs	L Cts per Ton	M Cts. per Ton.	N \$ per Car	O \$ per Car					
5	12	7.5	40	45	7.00	5.00	4.20	-----	7	60	5
10	13.5	8.5	45	55	7.75	6.00	4.75	5.00	7	65	10
15	15	9	50	60	8.50	6.50	5.00	-----	7.5	70	15
20	16	10	50	60	9.00	7.00	5.50	6.00	8	75	20
25	17	10.5	55	65	9.75	7.25	5.75	-----	8	80	25
30	18.5	11	60	70	10.50	7.75	6.25	7.00	8.5	85	30
35	19.5	12	65	75	11.00	8.50	6.50	-----	10	90	35
40	20.5	12.5	65	80	11.50	9.00	7.00	8.00	10	100	40
45	22	13.5	70	80	12.25	9.50	7.25	-----	11	105	45
50	23	14	75	85	13.00	10.00	7.75	9.00	11	110	50
55	24	14.5	80	90	13.50	10.50	8.15	-----	12	115	55
60	25	15.5	80	95	14.00	10.75	8.40	10.00	12.5	120	60
65	26	16	85	100	14.75	11.25	8.95	-----	13	125	65
70	27	16.5	85	100	15.25	11.75	9.35	11.00	13.5	130	70
75	28.5	17	90	105	16.00	12.00	9.75	-----	14	135	75
80	29.5	18	95	110	16.50	12.50	10.15	12.00	14.5	140	80
85	30.5	18.5	95	115	17.00	13.00	10.45	-----	15	145	85
90	31.5	19	100	115	17.75	13.50	10.85	13.00	15.5	150	90
95	32.5	20	105	120	18.25	14.25	11.15	-----	16	155	95
100	33.5	20.5	105	125	19.00	14.75	11.45	14.00	16.5	160	100
105	34.5	21	110	130	19.50	15.00	11.85	-----	17	165	105
110	35.5	21.5	115	130	20.00	15.50	12.25	15.00	17.5	170	110
115	36.5	22.5	115	135	20.50	15.75	12.65	-----	18	175	115
120	37.5	23	120	140	21.00	16.25	12.95	16.00	18.5	180	120
125	38.5	23.5	125	140	21.75	16.75	13.25	-----	19	185	125
130	39.5	24	125	145	22.25	17.00	13.55	17.00	19.5	190	130
135	40.5	25	125	150	22.50	17.50	13.85	-----	20	195	135
140	41.5	25.5	130	150	23.00	18.00	14.15	18.00	20.5	200	140
145	42.5	26	135	155	24.00	18.50	14.45	-----	21	205	145
150	43.5	26.5	135	165	24.50	19.00	14.75	19.00	21.5	210	150

TABLE OF CLASSES AND RATES—CONTINUED

Miles	CLASSES.						Molasses in Bbls., or Hhds., Cts. per 100 Lbs.	Rough Logs, 40,000 Lbs. Min., Excess in Proportion, \$ per Car.	Cotton in Bales, Cts. per 100 Lbs.	Fertilizers, C. L., in Cts. per Ton	Miles
	I Cts. per 100 Lbs.	F Cts. per 100 Lbs.	L Cts. per Ton.	M Cts. per Ton.	N \$ per Car.	O \$ per Car.					
155	44.5	27	140	170	25.00	19.25	15.10	---	22	215	155
160	45.5	28	145	170	25.50	19.75	15.45	20.00	22.5	220	160
165	46.5	28.5	145	175	26.25	20.25	15.80	---	23	225	165
170	47.5	29	150	180	26.75	20.50	16.15	---	23.5	225	170
175	48.5	29.5	150	180	27.25	21.00	16.50	---	24	---	175
180	49.5	30	160	185	28.00	21.50	16.80	21.00	24.5	235	180
185	50.5	31	165	190	28.50	21.75	17.10	---	25	---	185
190	51.5	31.5	165	195	29.00	22.25	17.40	---	25.5	245	190
195	52.5	32	165	195	29.50	22.50	17.70	---	26	---	195
200	53.5	32.5	170	200	30.00	23.00	18.00	22.00	26.5	255	200
210	54.5	33.5	170	205	30.50	23.50	18.50	---	27.5	260	210
220	55.5	34	175	205	31.00	24.00	19.00	20.00	28.5	265	220
230	56.5	34.5	175	210	31.50	24.25	19.50	---	29.5	270	230
240	57.5	35	180	210	32.00	24.75	20.00	24.00	30.5	275	240
250	58.5	35.5	180	215	32.50	25.00	20.50	---	31.5	280	250
260	59	36	185	220	33.00	25.50	21.00	25.00	32	285	260
270	60	36.5	185	220	33.50	25.75	21.50	---	32.5	290	270
280	61	37.5	190	225	34.00	26.00	22.00	26.00	33	295	280
290	62	38	190	230	34.50	26.50	22.50	---	33.5	300	290
300	63	38.5	200	230	35.00	27.00	23.00	27.00	34	300	300
310	64	39	200	235	35.50	27.25	23.25	---	---	300	310
320	65	39.5	205	240	36.00	27.50	23.50	27.50	34.5	310	320
330	66	40	205	245	36.50	27.75	23.75	---	---	310	330
340	67	40.5	210	245	37.00	28.00	24.00	28.00	35	320	340
350	68	41.5	210	250	37.50	28.25	24.25	---	---	320	350
360	68.5	42	215	255	38.00	28.50	24.50	28.50	35.5	330	360
370	69.5	42.5	215	255	38.50	28.75	24.75	---	---	330	370
380	70.5	43	220	260	39.00	29.00	25.00	29.00	36	340	380
390	71.5	43.5	225	265	39.50	29.25	25.25	---	---	340	390
400	72.5	44	230	270	40.00	29.50	25.50	30.00	36.5	350	400

410	73.5	44.5	235	275	40.50	29.75	25.75	----	----	----	350	410
420	74	45	235	275	41.00	30.00	26.00	24.5	30.50	37	350	420
430	75	46	240	280	41.50	30.25	26.25	25	----	----	360	430
440	76	46.5	240	285	42.00	30.50	26.50	----	31.00	38	360	440
450	76.5	47	245	285	42.50	30.75	26.75	25.5	----	----	370	450
460	77.5	47.5	245	290	43.00	31.00	27.00	----	31.50	38.5	370	460
470	78.5	48	250	295	43.50	31.25	27.25	26	----	----	370	470
480	79	48.5	250	295	44.00	31.50	27.50	----	32.00	39.5	380	480
490	80	49	255	300	44.50	31.75	27.75	26.5	----	----	380	490
500	81	49.5	260	300	45.00	32.00	28.00	27	32.50	40.5	380	500
520	82	50	260	305	46.00	32.50	28.50	27.5	----	41	390	520
540	83	50.5	265	310	47.00	33.00	28.50	28	33.00	41.5	400	540
560	84	51	265	315	48.00	33.50	29.00	28.5	----	42	410	560
580	85	52	270	315	49.00	34.00	29.00	29	34.50	42.5	410	580
600	86	52.5	270	320	50.00	34.50	29.00	29	----	43	420	600

EX. SESS. 1913, C. 20, S. 3.

The rates so fixed are for the number of miles indicated in the first column, and for the amount of charge indicated for the respective classes and commodities opposite the number of miles stated in the first column, and the rates so indicated for the respective classes are in cents per hundred pounds except where otherwise indicated by “\$” at the head of the column or at the amount of the rate indicated.

The table of rates so fixed as hereinbefore provided and indicated in Exhibit A.
Ex. Sess. 1913, c. 20, s. 3.

56. Charge based on nearest distance. When the exact distance which property is transported is not specified in the foregoing schedule, any common carrier subject to the provisions of this article shall charge not exceeding the rate specified in said schedule for the nearest distance.

Ex. Sess. 1913, c. 20, s. 4.

57. Charging or receiving greater rates forbidden. No railroad company being engaged in the business of common carrier of property within the state of North Carolina shall charge, take, or receive any sum for carrying property entirely within the state of North Carolina between initial and terminal points which are within the state, greater than the amount specified in this article for the respective classes and commodities, and for the respective distances mentioned in said schedule, except in the manner and to the extent and on the conditions mentioned in this article.

Ex. Sess. 1913, c. 20, s. 5.

58. Changes in rates, railroads under and over 75 miles. The corporation commission, or such other commission or body which may be established by the laws of the state of North Carolina and upon which the power and jurisdiction to deal with and make freight rates to be charged by common carriers in the state of North Carolina may be conferred by law, may at any time that it may appear to its satisfaction that the maximum rates fixed by this article are unreasonable, fix by order of such commission or body such maximum rates, higher or lower than the maximum rates specified and fixed herein on the line or lines of any railroad company within the state of North Carolina which does not own, operate, control, or maintain as much as seventy-five miles of railroad, and such corporation commission or other commission or body so having jurisdiction and power conferred upon it by the general assembly of North Carolina to fix rates may as to any railroad company which does own, maintain, control, or operate as much as seventy-five miles of railroad fix maximum rates higher or lower than the maximum rates specified in this article after a period of six months from the time the rates so specified are put into effect by such railroad company: Provided, in either of such cases it shall be made to appear to the satisfaction of such commission or body that the rates so fixed by this article are unreasonable and unjust.

Ex. Sess. 1913, c. 20, s. 6.

59. Application for investigation of rates; appeal; rates pending appeal. The corporation commission, or such other commission or body upon which jurisdiction and power may be conferred to fix rates for the transportation of property to be charged by the railroads doing business in North Carolina, may, and upon request of any person directly interested in such change shall, under

rules and regulations fixed by law or prescribed and established by such commission, hear evidence as to the reasonableness of the maximum rates fixed by law, or by such commission or body, and establish such rates, in the manner prescribed and allowed by law, as may, in the judgment of said commission, be just, subject to the limitations fixed by this article; and from such an order of such commission any shipper or railroad company directly affected by such order may, under rules and regulations prescribed by law, or under reasonable rules and regulations prescribed by such commission, appeal to the superior court of North Carolina: Provided, that pending the appeal of any railroad company from an order of such commission fixing maximum rates, there shall be no suspension of such order of such commission.

Ex. Sess. 1913, c. 20, s. 7.

60. Rates lower than maximum prescribed to be maintained. When any commodity or particular kind of property is at the time of the ratification of this article allowed to be shipped at a rate to be charged by any railroad company, which rate is lower than the maximum rate specified in this article for the shipment of such article, or for the class in which such article is assigned, by lawful classification at the time of the ratification of this article, or when such article is not assigned to any class, such rate so charged for the shipment of such commodity or property shall be the maximum rate which shall lawfully be charged, unless the same be raised in the manner and under the circumstances contemplated, provided for and allowed by the provisions of this article for an increase in the maximum rate fixed herein.

Ex. Sess. 1913, c. 20, s. 8.

61. Joint hauls. Where the shipment of freight is over the line or lines of two or more independently owned or independently controlled and operated railroad companies, and where such shipment originates and stops within the state of North Carolina, and where the entire haul is within the state of North Carolina, the maximum rates fixed under the provisions of this article or by order of such commission as herein provided shall be the maximum rates charged for such haul, except that in case of shipments of freight in less than carload lots, and in the event of shipment of any class of freights in carload lots, the North Carolina corporation commission, or such commission having conferred upon it power and jurisdiction to fix freight rates within North Carolina, may upon the application of such company or companies fix as per the maximum amount for the transfer of such freight from the line of one company to that of another, the following charges:

On less than carload lots, not exceeding the following amounts where there exists or shall be established physical connections between such connecting lines:

On Class One, five cents per hundredweight; Class Two, five cents per hundredweight; Class Three, four cents per hundredweight; Class Four, three cents per hundredweight; Class Five, two and one-half cents per hundredweight; on Class Six, two and one-half cents per hundredweight; on Class A, two cents per hundredweight; on Class B, two and one-half cents per hundredweight; on Class C, two cents per hundredweight; on Class D, two cents per hundredweight; on Class E, two and one-half cents per hundredweight; on Class F, four cents per barrel; on Class H, three cents per hundredweight; on Class K, one and

one-half cents per hundredweight; on Class L, ten cents per ton; on Class M, ten cents per ton; on all carload shipments, fifty cents per car: Provided, that in no event shall the difference of terminal or transfer charges be an amount sufficient to make the charge greater than the sum of local charges fixed by law or by the lawful order of such commission to and from such junction points, and such commission shall have the power to fix charges for transferring freight from one line to another where such roads do not connect.

Ex. Sess. 1913, c. 20, s. 10.

62. Rates between points connected by more than one route. When there is more than one railroad route between given points in North Carolina, and freight is routed or directed by the shipper or consignee to be transported over a shorter route, and it is in fact shipped by a longer route between such points, the rate fixed by law or by such commission for the shorter route shall be the maximum rate which may be charged, and it shall be unlawful to charge more for transporting such freight over the longer route than the lawful charge for the shorter route.

Ex. Sess. 1913, c. 20, s. 11.

63. Action for double of overcharge; penalty. Any railroad company in the state of North Carolina which shall charge a rate for transporting property wholly within the state of North Carolina, between terminals within the state, in excess of that fixed by law or by the lawful order of such commission or board, and which shall omit to refund the same within thirty days after written notice and demand of the person or corporation overcharged, shall be liable to an action for double the amount of such overcharge, and to a penalty of ten dollars per day for each day's delay after thirty days from such notice, in case of shipments of less than carload lots, and to a penalty of twenty dollars per day in the event of shipments of carload lots.

Ex. Sess. 1913, c. 20, s. 12.

64. Double penalty. Any such railroad company so doing business in the state of North Carolina that shall knowingly charge a rate in excess of that fixed by law or by such board or commission, for shipments wholly within the state, shall be subject to a penalty and shall pay double the penalty above prescribed.

Ex. Sess. 1913, c. 20, s. 13.

65. Persons to receive penalties; accounts and receipts kept separate. The penalties herein provided for shall be payable to the person or corporation who pays the freight or against whom the freight is charged, and such person or corporation may sue such railroad company and recover such penalty and the amount of such overcharge. The commission shall require the railroad companies, and may require all other such public service companies as are mentioned in this act, to keep separate the cost of doing interstate and intrastate business in North Carolina, and to keep separate receipts from the respective classes, and to direct the manner of keeping the accounts, and to enforce by penalties, contempt or otherwise as the law provides, obedience to their orders.

Ex. Sess., 1913, c. 20, s. 14.

66. Minimum carload. In no event shall the minimum carload freight of any kind be less than is now allowed by law, unless such commission shall allow it, and it is authorized to fix such minimum weight.

Ex. Sess. 1913, c. 20, s. 15.

67. Complaint that rates are confiscatory; special commission. Should any one or more of the common carriers affected by the rates prescribed in this act make representation to the governor of the state that the rates herein provided are or would be confiscatory or unreasonable, and the governor should be of the opinion that such complaint is in good faith and that there is good and sufficient reason for investigating the facts, then the governor shall be and he is hereby empowered to appoint a special commission of not more than three persons to immediately investigate the facts and make report of their findings to him. Pending such investigation and report, the governor is hereby authorized to suspend the operation of this act for a period of not exceeding sixty days upon recommendation of the special commission herein provided for; and, upon similar recommendation made, in order to allow time for proper investigation, make additional suspension for such time as the special commission may recommend as reasonable and necessary for the completion of the investigation.

Should the special commission herein provided for find that the rates prescribed herein are or would be confiscatory or unreasonable, then said commission so appointed is hereby authorized and empowered to raise or lower and fix the rates so as to make them just and reasonable; and, if said commission is of opinion that it is wise to do so, to change the classification, and the relationship of the several classes as established herein, and the rates so fixed shall be promulgated by the governor filing same with the corporation commission and become effective and operative from and after sixty days from their promulgation.

A sum not exceeding ten thousand dollars be and the same is hereby appropriated as compensation for the special commission herein authorized and the expenses incident thereto. The governor shall fix the compensation of the commission and the commission shall fix the compensation of the assistants.

Ex. Sess. 1913, c. 20, ss. 4a, 4b, 4c.

ART. 6. POWERS IN RESPECT TO PROCEDURE

68. Witnesses; production of papers; contempt. The corporation commission shall have the same power to compel the attendance of witnesses, require the examination of persons and parties, and compel the production of books and papers, and punish for contempt, as by law is conferred upon the superior courts.

Rev., s. 1067; 1899, c. 164, ss. 1, 9, 10.

68a. Witnesses before corporation commission. If any person duly summoned to appear and testify before the corporation commission shall fail or refuse to testify without lawful excuse or shall refuse to answer any proper question propounded to him by said commission in the discharge of duty or shall conduct himself in a rude, disrespectful or disorderly manner before said commission, or any of them deliberating in the discharge of duty, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars.

Rev., s. 3691; 1899, c. 164, s. 10.

69. Rules of practice. The corporation commission shall prescribe rules of practice and procedure in all matters before it and in all examinations necessary to be made under this chapter.

Rev., s. 1068; 1899, c. 164, s. 2, subsec. 24.

70. Rules of evidence. In all cases under the provisions of this chapter the rules of evidence shall be the same as in civil actions, except as provided by this chapter.

Rev., s. 1069; 1899, c. 164, s. 26.

71. Subpœnas; issuance; service. All subpœnas for witnesses to appear before the commission or before any one or more of the commissioners, and notice to persons or corporations, shall be issued by one of the commissioners or its clerk and be directed to any sheriff, constable or to the marshal of any city or town, who shall execute the same and make due return thereof as directed therein under the penalties prescribed by law for a failure to execute and return the process of any court.

Rev., s. 1070; 1899, c. 164, s. 10.

72. Service of orders. The clerk of the commission may serve any notice issued by it and his return thereof shall be evidence of said service; and it shall be the duty of the sheriffs and other officers to serve any process, subpœnas and notices issued by the commissioners, and they shall be entitled therefor to the same fees as are prescribed by law for serving similar papers issuing from the superior court.

Rev., s. 1071; 1899, c. 164, s. 9.

73. Undertakings. All bonds or undertakings required to be given by any of the provisions of this chapter shall be payable to the state of North Carolina, and may be sued on as are other undertakings which are payable to the state.

Rev., s. 1072; 1899, c. 164, s. 7.

74. Right of appeal; how taken. From all decisions or determinations made by the corporation commission any party affected thereby shall be entitled to an appeal. Before such party shall be allowed to appeal, he shall, within ten days after notice of such decision or determination, file with the commission exceptions to the decision or determination of the commission, which exceptions shall state the grounds of objection to such decision or determination. If any one of such exceptions shall be overruled, then such party may appeal from the order overruling the exception, and shall, within ten days after the decision overruling the exception, give notice of his appeal. When an exception is made to the facts as found by the commission, the appeal shall be to the superior court in term time; otherwise to the judge of the superior court at chambers. The party appealing shall, within ten days after the notice of appeal has been served, file with the commission exceptions to the decision or determination overruling the exception, which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the commission shall, within ten days, transmit all the papers and evidence considered by it, together with the assignment of errors filed by the appellant, to a judge of the superior court holding court or residing in some district in which such company operates or the

party resides. If there be no exceptions to any facts as found by the commission, it shall be heard by the judge at chambers at some place in the district, of which all parties shall have ten days notice.

Rev., s. 1074; 1899, c. 164, ss. 7, 28; 1903, c. 126; 1907, c. 469, s. 6; 1913, c. 127, s. 4.

75. Appeal docketed; priority of trial; burden. The cause shall be entitled "State of North Carolina on relation of the Corporation Commission against (here insert name of appellant)," and if there are exceptions to any facts found by the commission, it shall be placed on the civil issue docket of such court and shall have precedence of other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes, except that the rates fixed or the decision or determination made by the commission shall be *prima facie* just and reasonable.

Rev., s. 1075; 1899, c. 164, s. 7.

NOTE See this chapter, ss. 42a, 52.

76. Appeal heard at chambers by consent. By consent of all parties the appeal may be heard and determined at chambers before any judge of a district through or into which the railroad may extend, or any judge holding court therein, or in which the person or company does business.

Rev., s. 1076; 1899, c. 164, s. 7.

77. Appeal to supreme court. Either party may appeal to the supreme court from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that the state of North Carolina if it shall appeal shall not be required to give any undertaking or make any deposit to secure the cost of such appeal, and such court may advance the cause on its docket so as to give the same a speedy hearing.

Rev., s. 1077; 1899, c. 164, s. 7.

78. Judgment of superior court not vacated by appeal. Any freight or passenger rates fixed by the commission, when approved or confirmed by the judgment of the superior court, shall be and remain the established rates and shall be so observed and regarded by an appealing corporation until the same shall be changed, revised or modified by the final judgment of the supreme court, if there shall be an appeal thereto, and until changed by the corporation commission.

Rev., s. 1079; 1899, c. 164, s. 7. *

79. Judgment on appeal enforced by mandamus. In all cases in which, upon appeal, a judgment of the corporation commission is affirmed, in whole or in part, the appellate court shall embrace in its decree a mandamus to the appellant to put said order in force, or so much thereof as shall be affirmed.

Rev., s. 1080; 1905, c. 107, s. 2.

80. Peremptory mandamus to enforce order, when no appeal. If no appeal is taken from an order or judgment of the corporation commission within the time prescribed by law, but the corporation affected thereby fails to put said order in operation, the corporation commission may apply to the judge riding the superior court district which embraces Wake County, or to the resident judge of said district at chambers, upon ten days notice, for a peremptory mandamus upon said corporation for the putting in force of said judgment or order; and

if said judge shall find that the order of said commission was valid and within the scope of its powers, he shall issue such peremptory mandamus. An appeal shall lie to the supreme court in behalf of the corporation commission, or the defendant corporation, from the refusal or the granting of such peremptory mandamus.

Rev., s. 1081; 1905, c. 107.

81. Fiscal year. The fiscal year for which all reports shall be made which may be required of any railroad or transportation company by the commission under this chapter shall end on the thirtieth of June.

Rev., s. 1116; 1899, c. 164, s. 28.

ART. 7. PENALTIES AND ACTIONS

82. For violating rules. If any railroad company doing business in this state by its agents or employees shall be guilty of a violation of the rules and regulations provided and prescribed by the commission, and if after due notice of such violation given to the principal officer thereof, if residing in the state, or, if not, to the manager or superintendent or secretary or treasurer if residing in the state, or if not then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation as may be directed by the commission shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of five hundred dollars.

Rev., s. 1086; 1899, c. 164, s. 15.

83. Refusing to obey orders of commission. Any railroad or other corporation which violates any of the provisions of this chapter or refuses to conform to or obey any rule, order or regulation of the corporation commission shall, in addition to the other penalties prescribed in this chapter, forfeit and pay the sum of five hundred dollars for each offense, to be recovered in an action to be instituted in the superior court of Wake County, in the name of the state of North Carolina on the relation of the corporation commission; and each day such company continues to violate any provision of this chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the corporation commission shall be a separate offense.

Rev., s. 1087; 1899, c. 164, s. 23.

84. Discrimination between connecting lines. All common carriers subject to the provisions of this chapter shall according to their powers afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freights to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges against such connecting lines, and shall be required to make as close connection as practicable for the convenience of the traveling public. And common carriers shall obey all rules and regulations made by the commission relating to trackage.

Rev., s. 1088; 1899, c. 164, s. 21.

85. Failure to make reports. Every officer, agent or employee of any railroad company, express or telegraph company who shall willfully neglect or

refuse to make and furnish any report required by the commission for the purposes of this chapter, or who shall willfully or unlawfully hinder, delay or obstruct the commission in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars for each offense, to be recovered in an action in the name of the state. A delay of ten days to make and furnish such report shall raise the presumption that the same was willful.

Rev., s. 1089; 1899, c. 164, s. 18.

86. Offenses by railroads, not otherwise provided for. If any railroad company shall violate the provisions of this chapter not otherwise provided for, such railroad company shall incur a penalty of one hundred dollars for each violation, to be recovered by the party injured.

Rev., s. 1090; 1899, c. 164, s. 17.

87. Violation of rules, causing injury; damages; limitation. If any railroad company doing business in this state shall, in violation of any rule or regulation provided by the commission, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between individuals, except that in case of willful violation of law such railroad company shall be liable to exemplary damages: Provided, that all suits under this chapter shall be brought within one year after the commission of the alleged wrong or injury.

Rev., s. 1091; 1899, c. 164, s. 16.

88. Action for penalty; when and how brought. An action for the recovery of any penalty under this chapter shall be instituted in the county in which the penalty has been incurred, and shall be instituted in the name of the state of North Carolina on the relation of the corporation commission against the company incurring such penalty; or whenever such action is upon the complaint of any injured person or corporation, it shall be instituted in the name of the state of North Carolina on the relation of the corporation commission upon the complaint of such injured person or corporation against the company incurring such penalty. Such action shall be instituted and prosecuted by the attorney general or the solicitor of the judicial district in which such penalty has been incurred, and the judge before whom the same is tried shall determine the amount of compensation to be allowed the attorney general or such solicitor prosecuting said action for his services, and such compensation so determined shall be taxed as part of the cost. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as are now provided by law in other civil actions.

Rev., s. 1092; 1899, c. 164, s. 15.

89. Remedies cumulative. The remedies given by this chapter to persons injured shall be regarded as cumulative to the remedies now given or which may be given by law against railroad corporations, and this chapter shall not be construed as repealing any statute giving such remedies.

Rev., s. 1093; 1899, c. 164, s. 26.

CHAPTER 22

CORPORATIONS

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ART. 1. DEFINITIONS

1. Definitions. The following words and phrases where used in this chapter, unless differently defined or described, have the meanings and references stated below:

- 1. "Corporation" refers to a corporation which may be created and organized under this chapter, or under any other general or any special act.
- 2. "Certificate of incorporation" is the instrument filed by the incorporators and by which the corporation is formed.
- 3. The words "special act" refer to the act of the legislature enacted for the purpose of creating the corporation.
- 4. The word "charter" means either "certificate of incorporation" or "special act," together with all appropriate parts of this chapter and its amendments.
- 5. "Court," "superior court," or "judge of the superior court" means the judge of the superior court resident in the district or holding the courts of the district in which the corporation affected has its principal place of business.
- 6. "Receiver" as used in this chapter includes receivers and trustees appointed by the court, as herein provided.

Rev., ss. 1136, 1222, 1247; Code, s. 668: 1901, c. 2, ss. 7, 74, 111.

ART. 2. FORMATION

2. How created. Three or more persons who desire to engage in any business, or to form any company, society, or association, not unlawful, except railroads, other than street railways, or banking or insurance, or building and loan associations, may be incorporated in the following manner only (except in those cases where, in the judgment of the legislature, the object of the corporation cannot be attained under the general law, and in all such cases the act creating the corporation shall contain a preamble, in which shall be set forth specifically and definitely the particular object of the corporation, or provision in the proposed charter, which cannot be attained under the general law): Such persons shall, by a certificate of incorporation, under their hands and seals, set forth—

- 1. The name of the corporation. No name can be assumed already in use by another domestic corporation, or so similar as to cause uncertainty or confusion, and the name adopted must end with the word "company," "corporation," or "incorporated."
- 2. The location of its principal office in the state.
- 3. The object or objects for which the corporation is to be formed.

4. The amount of the total authorized capital stock, the number of shares into which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes, with the terms on which the respective classes of stock are created. The provisions of this subsection shall not apply to religious, charitable, or literary corporations, unless they desire to have a capital stock. If they desire to have no capital stock, that fact and the conditions of membership shall be stated.

5. The names and postoffice addresses of the subscribers for stock and the number of shares subscribed for by each; the aggregate of the subscriptions shall be the amount of capital with which the corporation will commence business. If there is to be no capital stock, the certificate must contain the names and postoffice addresses of the incorporators.

6. The period, if any, limited for the duration of the corporation.

7. The certificate of incorporation may also contain any provision, consistent with the laws of this state, for the regulation of the affairs of the corporation, or creating, defining, limiting and regulating its powers, directors, and stockholders, or any class or classes of the latter.

Rev., s. 1137; Code, s. 677; 1885, cc. 19, 190; 1889, c. 170; 1891, c. 257; 1893, cc. 244, 318; 1897, c. 204; 1899, c. 618; 1901, c. 2, s. 8, cc. 6, 41, 47; 1903, c. 453; 1911, c. 213, s. 1; 1913, c. 5, s. 1.

3. Requirements as to certificate of incorporation. The certificate of incorporation shall be signed by the original stock subscribers, or a majority of them, and must be acknowledged before an officer duly authorized under the laws of this state to take the proof or acknowledgment of deeds. The certificate shall then be filed in the office of the secretary of state, and there remain of record, and he shall, if it is in accordance with law, cause it to be recorded in his office in a book to be kept for that purpose and known as the Corporation Book. Upon the payment of the organization tax and fees, the secretary of state shall certify under his official seal a copy of the certificate of incorporation and probates, which certified copy shall be forthwith recorded in the office of the clerk of the superior court of the county where the principal office of the corporation in this state is, or is to be, established, in a book to be known as the Record of Incorporations. The certificate, or a copy thereof, duly certified by the secretary of state, or by the clerk of the superior court of the county in which it is recorded, is evidence in all courts and places, and in all judicial proceedings is *prima facie* evidence of the complete incorporation and organization of the corporation purporting thereby to have been established.

Rev., s. 1139; Code, ss. 678, 679, 682; 1901, c. 2, s. 9; 1903, c. 343.

4. When incorporators become corporation. From the date the certificate of incorporation is filed in the office of the secretary of state, the stock subscribers, their successors and assigns, are a body corporate by the name specified in the certificate, subject to amendment and dissolution as provided in this chapter.

Rev., s. 1140; 1901, c. 2, s. 10.

5. Incorporators act until directors elected. Until directors are elected the signers of the certificate of incorporation shall have the direction of the

affairs of the corporation, and may take proper steps to obtain the necessary subscription to stock and to perfect the organization of the corporation.

Rev., s. 1141; 1901. c. 2, s. 11.

6. First meeting; notice. The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place, and purpose of the meeting, which notice shall be published at least two weeks before the meeting, in a newspaper of the county where the corporation is established; or the meeting may be called without publication, if two days notice is personally served on all the incorporators; or if all the incorporators in writing waive notice and fix a time and place of meeting, no notice or publication is required.

Rev., s. 1142; Code, s. 665; 1901, c. 2, s. 18.

7. Death of incorporators; vacancy filled. When one or more of the incorporators of any corporation die before the corporation has been organized pursuant to law, the survivor or survivors may, in writing, designate others who may take the place and act instead of the deceased, in the organization; and the organization so effected by their aid is as effectual in law as if it had been effected by all the original incorporators.

Rev., s. 1143; 1901. c. 2, s. 36.

8. Errors or omissions in certificate of incorporation. Whenever in the certificate of incorporation under any general law there is an error or omission in the recital of the act under which the corporation is created or an error or omission of any matter required to be stated therein, it is lawful for the corporation to correct the error or supply the omission in the following manner: The board of directors shall pass a resolution declaring that the error or omission exists and that the corporation desires to correct it, and shall call a meeting of the stockholders to take action upon the resolution. The stockholders meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision upon ten days notice, given personally or by mail. If two-thirds in interest of all the stockholders vote in favor of the correction of the error or omission, a certificate of their action shall be made and signed by the president and secretary under the corporate seal; which certificate shall be acknowledged as in the case of deeds of real estate, and, together with the written consent in person or by proxy of two-thirds in interest of all the stockholders of the corporation, shall be filed in the office of the secretary of state. Upon the filing thereof, in conformity with this section, the certificate of incorporation has the same force and effect as if it had been originally drafted in conformity with the amendment so made.

Rev., s. 1144; 1901, c. 2, s. 109.

9. Street railways. Corporations may be organized under the provisions of this chapter for the purpose of building, maintaining or operating street railways. The term street railways, wherever used in this chapter, includes railways operated either by steam or electricity, or other motive power, used and operated as means of communication between different points in the same municipality, or between points in municipalities lying adjacent or near to each other, or between the municipality in which is the home office of the company and the

territory contiguous thereto, and such railways may carry and deliver freights. No such railway may operate a line extending in any direction more than one hundred miles from the municipality in which is located its home office, or in any city or town without the consent of the municipal authorities thereof.

Rev., s. 1138; 1901, cc. 6, 41; 1903, c. 350; Ex. Sess. 1913, c. 70, s. 1.

10. Security selling companies. Corporations may be formed under the provisions of this chapter, to conduct the business of selling securitis and bonds of any kind, including its own bonds and choses in action, on the partial payment, installment, or other plan of payment, and to loan money on mortgage, personal, or other security, and to collect interest in advance on the same, and to charge a fee of \$1 for investigating the loan, but no fee shall be charged for a renewal of the loan. A corporation chartered by another state or by a foreign state, kingdom, or government, having in its charter the power to conduct the business described in this section, may become domesticated in this state in the manner and upon the terms and conditions provided in section 68 of this chapter; but such company must also file with the secretary of state a statement, verified by its president and secretary, showing that its paid-up cash capital is at least \$100,000 and that it has complied with all the requirements of the laws of the state of its creation. The business of such corporation in this state is restricted to the business described in this section. Such corporation is liable to pay the franchise tax imposed by section 84 of the chapter entitled Taxation, and also an ad valorem tax on all of its real and personal property situate in this state. No foreign corporation domesticated under this section is required to pay any other taxes or license fees than those named herein.

1909, c. 502; 1915, c. 180.

11. Public parks and drives. Three or more persons may be incorporated under this chapter for the purpose of creating and maintaining public parks and drives. It is not necessary, however, to set forth in the certificate of incorporation of any corporation created for such purpose the amount of authorized capital stock, the number of shares into which the same is divided, the par value of such stock, or the amount of capital stock with which it will commence business. Any corporation created hereunder shall have full power and authority to lay out, manage, and control parks and drives within the state, under such rules and regulations as the corporation may prescribe, and shall have power to purchase and hold property and take gifts or donations for such purpose. It may hold property and exercise such powers in trust for any town, city, township, or county, in connection with which said parks and drives shall be maintained. Any city, town, township, or county, holding such property, may vest and transfer the same to any such corporation for the purpose of controlling and maintaining the same as public parks and drives under such regulations and subject to such conditions as may be determined upon by such city, town, township, or county. All such lands as the corporation may acquire shall be held in trust as public parks and drives, and shall be held open to the public under such rules, laws, and regulations as the corporation may adopt through its board of directors; and it shall have power and authority to make and adopt all such laws and regulations as it may determine upon for the reasonable management of such parks and drives. All property owned by it and appropriated exclu-

sively for public parks and drives shall not be subject to taxation, and no such corporation shall be liable in damages on account of the construction or maintenance of any such parks or drives.

1911, c. 155, ss. 1, 2, 3, 4.

12. Word "trust" in corporate name. No corporation may be chartered under the laws of North Carolina with the word "trust" as a part of its name, except those reporting to and under the supervision of the corporation commission; nor may any corporate name be amended to include the word "trust" unless the corporation is under such supervision.

1915, c. 196, s. 2.

ART. 3. POWERS AND RESTRICTIONS

13. Express powers. Every corporation has power—

1. To have succession, by its corporate name, for the period limited in its charter, and when the charter contains no time limit, for a period of sixty years.

2. To sue and be sued in any court.

3. To make, use, and alter a common seal.

4. To purchase, acquire by devise or bequest, hold and convey real and personal property in or out of the state, and to mortgage the same and its franchises.

5. To elect and appoint in such manner as it determines to be proper, all necessary officers and agents, fix their compensation, and define their duties and obligations. And when there devolves upon an officer or agent of a corporation such duties and responsibilities that a financial loss would result to the corporation from the death and consequent loss of the services of such officer or agent, the corporation has an insurable interest in, and the power to insure the life of, the officer or agent for its benefit.

6. To conduct business in this state, other states, the District of Columbia, the territories, dependencies and colonies of the United States, and in foreign countries, and have offices in or out of the state.

7. To make by-laws and regulations, consistent with its charter and the laws of the state, for its own government, and for the due and orderly conduct of its affairs and management of its property.

8. To wind up and dissolve itself, or be wound up and dissolved, in the manner hereafter mentioned.

Rev., s. 1128; Code, ss. 663, 666, 691, 692, 693; 1893, c. 159; 1901, c. 2, s. 1; 1909, c. 507, s. 1.

14. By-laws. A corporation may, by its by-laws, when consistent with its charter, determine the manner of calling and conducting all meetings; the number of members that constitutes a quorum, but in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum, and if the quorum is not so determined by the corporation, a majority in interest of the stockholders, represented either in person, or by proxy, constitutes a quorum; the number of shares that will entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the nonpayment of assessments; the tenure of office of the several officers, and the manner in which vacancies in any of the offices shall be filled till a regular election, and they may annex suitable penalties

to such by-laws, not exceeding in any case the sum of twenty dollars for any one offense. The power to make and alter by-laws is in the stockholders, but a corporation may, in the certificate of incorporation, confer that power upon the directors. By-laws made by the directors under power so conferred may be altered or repealed by the stockholders.

Rev., ss. 1145, 1146; Code, s. 664; 1901, c. 2, ss. 12, 13.

15. Implied powers. In addition to the powers enumerated in the two preceding sections, and the powers specified in its charter, every corporation, its officers, directors and stockholders, possess all the powers and privileges contained in this chapter so far as they are necessary or convenient to the attainment of the objects set forth in such charter, and shall be governed by the provisions, and be subject to the restrictions and liabilities in this chapter contained, so far as they are applicable to and not inconsistent with such charter; and no corporation may possess or exercise any other corporate powers, except such incidental powers as are necessary to the exercise of the powers so given. Nothing in this chapter shall authorize or empower corporations organized under this chapter to lease, operate, maintain, manage or control any railroad except street railways.

Rev., s. 1129; Code, s. 701; 1897, c. 204; 1901, c. 2, s. 4; 1901, c. 6.

16. Banking powers not conferred by this act. No corporation created under the provisions of this chapter shall have the power to carry on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold or silver bullion or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan, or for circulation as money; but in the transaction of its business it may make and take and indorse, when necessary, all such bonds, notes and bills of exchange as the business may require.

Rev., s. 1134; Code, s. 684; 1901, c. 2, s. 5.

17. Amendments before payment of stock. The incorporators of a corporation, before the payment of any part of its capital, may file with the secretary of state an amended certificate of incorporation, duly signed and acknowledged by the incorporators named in the original certificate, changing the original certificate of incorporation in whole, or in part, which amended certificate takes the place of the original one, and when recorded in the proper county is deemed to have been filed and recorded on the date of filing and recording the original certificate. The officers are entitled to the same fees for filing and recording the amended certificate of incorporation as if it were original; but there shall be charged no additional organization tax, except when the certificate is amended by increasing the capital stock, in which event such tax shall be paid upon the increase.

Rev., s. 1174; 1901, c. 2, s. 28.

18. Amendments, generally. A corporation, whether organized under a special act or general laws, and which might now be created under the provisions of this chapter, may, in the manner set out below:

1. Change the nature or relinquish one or more branches of its business, or extend its business to such other branches as might have been inserted in its original certificate of incorporation.

2. Change its name.

3. Extend its corporate existence, but if such corporation possesses powers, franchises, privileges or immunities, which could not be obtained under this chapter, such extension does not continue, renew or extend any of the same, but they are waived and abandoned by the filing of the certificate of extension.

4. Increase or decrease its capital stock.

5. Change the par value of the shares of its capital stock.

6. Create one or more classes of preferred stock.

7. Make any other desired amendment. In all cases the certificate of amendment can contain only such provisions as could be lawfully and properly inserted in an original certificate of incorporation filed at the time of making the amendment.

The board of directors shall pass a resolution declaring that the amendment is advisable, and call a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision upon ten days notice, given personally or by mail; if two-thirds in interest of each class of the stockholders with voting powers vote in favor of the amendment, a certificate thereof shall be signed by the president and secretary, under the corporate seal, acknowledged as in the case of deeds to real estate, and this certificate, together with the written assent, in person or by proxy, of said stockholders, shall be filed and recorded in the office of the secretary of state. Upon such filing the secretary of state shall issue a certified copy thereof which shall be recorded in the office of the clerk of the superior court of the county in which the original certificate of incorporation is recorded, and thereupon the certificate of incorporation is amended accordingly. The certificate of the secretary of state, under his official seal that such certificate of amendment and assent have been filed in his office is evidence of the amendment in all courts and places. A corporation which cannot now be created under the provisions of this chapter may in like manner increase or decrease its capital stock, or change its name.

Rev., ss. 1175, 1178; 1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 29, 30, 37; 1903, c. 516.

19. Amendments by charitable, educational, penal or reformatory corporations. A charitable, educational, penal, or reformatory corporation not under the patronage or control of the state, whether organized under a special act or general laws, may change its name, extend its corporate existence, change the manner in which its directors, trustees or managers are elected or appointed, abolish its present method of electing such officers and create a different method of election, and generally reorganize the manner of conducting such corporation, and make any other amendment of its charter desired in the following manner: The board of directors, trustees, or managers shall pass a resolution declaring that the amendment is advisable, and call a meeting of trustees, managers, and directors to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice given personally or by mail. If two-thirds of the directors, trustees, or managers of the corporation vote in favor of the amendment, a certificate thereof shall be signed by the president and secretary under the corporate seal acknowledged as provided in the case of deeds to real estate, and such certificate, together with the written assent in person or proxy of two-thirds of the directors, trustees or managers, shall be filed and recorded in the office of the secretary of state, and

upon filing it, he shall issue a certified copy thereof, which shall be recorded in the office of the clerk of the superior court of the county in which the original certificate of incorporation is recorded, or in which the corporation is doing business, and thereupon the certificate of incorporation shall be deemed amended accordingly. Such certificate of amendment may contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making the amendment, and the certificate of the secretary of state, under his official seal, that such certificate and assent has been filed in his office shall be taken and accepted as evidence of such amendment in all courts.

1917, c. 62, s. 1.

20. Change of location of principal office. The board of directors of a corporation organized under the laws of this state may, by resolution adopted at a regular or special meeting by a two-thirds vote of its members, change the location of the principal office of the corporation in the state. A copy of the resolution, signed by the president and secretary of the corporation and sealed with the corporate seal, shall be filed in the office of the secretary of state. No certificate need be filed of the removal of an office from one point to another in the same town, city, or township.

Rev., s. 1176; 1901, c. 2, s. 31.

21. Curative act; amendments prior to 1901. All amendments to the plan of incorporation of any corporation organized under the provisions of the general laws of North Carolina prior to the passage of the act entitled "An act to revise the corporation law of North Carolina," being chapter two, public laws of nineteen hundred and one, are declared to be valid in all respects, whether such amendments were made in accordance with the provisions of chapter three hundred and eighty of the public laws of eighteen hundred and ninety-three or in accordance with the provisions of chapter two of the public laws of nineteen hundred and one; but no amendment shall be validated by this section unless it is an amendment of such nature as is authorized to be made under the provisions of chapter two of the public laws of nineteen hundred and one.

Rev. s. 1248; 1905, c. 316.

22. Amendment or repeal of this chapter; a part of all charters. This chapter may be amended or repealed by the legislature, and every corporation is bound thereby; but such amendment or repeal shall not take away or impair any remedy against the corporation, or its officers, for any liability which has been previously incurred. This chapter and all amendments are a part of the charter of every corporation formed hereunder, so far as the same are applicable and appropriate to the objects of the corporation.

Rev., s. 1136; 1901, c. 2, s. 7.

23. Name must be displayed. The name of every corporation must be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof for sixty days the corporation is liable to a penalty of one hundred dollars, to be recovered with costs, by the state, in an action to be prosecuted by or under the direction of the attorney general.

Rev., s. 1242; 1901, c. 2, s. 50.

24. Resident process agent. Every corporation having property or doing business in this state, whether incorporated under its laws or not, shall have an officer or agent in the state upon whom process in all actions or proceedings against it can be served. A corporation failing to comply with the provisions of this section is liable to a forfeiture of its charter, or to the revocation of its license to do business in this state. In the latter event, process in an action or proceeding against the corporation, may be served upon the secretary of state by leaving a true copy thereof with him, and he shall mail the copy to the president, secretary or other officer of the corporation, upon whom, if residing in this state, service could be made. For this service to be performed by the secretary, he shall receive a fee of fifty cents, to be paid by the party at whose instance the service was made.

Rev., s. 1243; 1901, c. 5.

25. Corporate conveyances; when void as to torts. Any corporation may convey lands, and other property which is transferable by deed, by deed sealed with the common seal and signed in its name by the president, a vice president, presiding member or trustee, and two other members of the corporation, and attested by a witness or by deed sealed with the common seal and signed in its name by the president, a vice president, presiding member or trustee, and attested by the secretary or assistant secretary of the company. But any conveyance of its property, whether absolutely or upon condition, executed by a corporation, is void as to torts committed by such corporation prior to the execution of said deed, if persons injured, or their representatives, commence proceedings or actions to enforce their claims against said corporation within sixty days after the registration of said deed as required by law.

Rev., s. 1130; Code, s. 685; 1891, c. 118; 1893, c. 95, s. 2; 1899, c. 235, s. 17; 1901, c. 2, s. 2; 1903, c. 660, s. 1; 1905, c. 114.

NOTE. For forms of acknowledgments by corporations, see Probate and Registration, s. 34.

26. Conditional sale contracts. Contracts, in writing, for the purchase of personal property by corporations, providing for a lien on the property or the retention of the title thereof by the vendor as a security for the purchase price, or any part thereof, are sufficiently executed if signed in the name of the corporation by the president, secretary or treasurer in his official capacity, and may be acknowledged and ordered to registration as is provided by law for the execution, acknowledgment and registration of deeds by natural persons.

1909, c. 335, s. 1.

27. Mortgaged property subject to execution for labor, clerical services and torts. Mortgages of corporations upon their property or earnings cannot exempt said property or earnings from execution for the satisfaction of any judgment obtained in courts of the state against such corporations for labor and clerical services performed, or torts committed whereby any person is killed or any person or property injured.

Rev., s. 1131; Code, s. 1255; 1897, c. 334; 1901, c. 2, s. 3; 1915, c. 201, s. 1.

28. Gas and electric power companies. Gas and electric light and power companies have power to lay, extend, construct, erect, maintain, repair and remove all necessary or convenient towers, poles, cable wires, conductors, lamps, fixtures, appliances, and appurtenances upon, through and over any roads,

streets, avenues, lanes, alleys and bridges within and near any city, town or village where said company is located; and all such roads, streets, lanes, alleys and bridges shall be left in as good condition as they were in at the time of using them as aforesaid: Provided, that the rights and privileges conferred in this section shall not be exercised unless the authorities of such city, town or village first give their consent, and afterwards the said authorities shall have full power to control the location of all towers, poles, wires, conductors and all other fixtures, appliances and appurtenances belonging to or operated by any of said companies.

Rev., s. 1133; 1889 (Pr.), c. 35, s. 2.

29. Trust companies and word "trust." No person, firm, association or corporation domiciled in the state of North Carolina, except corporations reporting to and under the supervision of the corporation commission of this state may therein advertise any sign as a trust company or in any way solicit or receive deposits or transact business as a trust company, or use the word "trust" as a part of his or its name or title. This section shall not prevent any individual as such, from acting in any trust capacity as heretofore. A violation of this section is a misdemeanor and on conviction the offender shall be fined not exceeding five hundred dollars for each offense.

1915, c. 196, s. 3.

30. Actions by attorney-general to prevent ultra vires acts, etc. In the following cases the attorney-general may, in the name of the state, upon his own information, or upon the complaint of a private party, bring an action against the offending parties for the purpose of—

1. Restraining by injunction a corporation from assuming or exercising any franchise or transacting any business not allowed by its charter.
2. Restraining any person from exercising corporate franchises not granted.
3. Bringing directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care.
4. Removing such officers or trustees upon proof of gross misconduct.
5. Securing, for the benefit of all interested, the said property or funds.
6. Setting aside and restraining improper alienations of the said property or funds.
7. Generally compelling the faithful performance of duty and preventing all fraudulent practices, embezzlement, and waste.

Revisal, s. 1197; Code, ss. 607, 686; 1901, c. 2, s. 107.

ART. 4. DIRECTORS AND OFFICERS

31. Directors. The business of every corporation shall be managed by its directors, who must be at least three in number, and at all times bona fide stockholders in case the corporation is one issuing stock. A corporation may, by its certificate of incorporation or by-laws, determine the number of shares a stockholder must own to qualify him as a director. The directors shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, a corporation may classify its directors in respect to the time for which they will severally hold

office, the several classes to be elected for different terms, but no class may be elected for a shorter period than one year, or for a longer period than five years, and the term of office of at least one class must expire in each year. A corporation which has more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of such class, to the exclusion of the others. One director of every corporation of this state shall be, and only one need be, an actual resident of the state, notwithstanding the provisions of the charter or any other act.

Revisal, ss. 1147, 1148; 1901, c. 2, ss. 14, 44.

32. Officers, agents, and vacancies. Every corporation organized under this chapter shall have a president, secretary, and treasurer, to be chosen either by the directors or stockholders, as the by-laws direct, and they shall hold office until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as are assigned to him; the treasurer may be required to give bond for the faithful discharge of his duty in such sum, and with such surety, or sureties, as are required by the by-laws. Any two of these offices may be held by the same person, if the body electing so determine. The corporation may have such other officers and agents, who shall be chosen in the manner and hold office for the terms, and upon the conditions prescribed by the by-laws or determined by the board of directors. Any vacancy occurring among the directors, or in the office of president, secretary or treasurer, shall be filled in the manner provided for in the by-laws; in the absence of such provision the vacancy shall be filled by the board of directors.

Rev., ss. 1149, 1150, 1151; 1901, c. 2, ss. 15, 16, 17.

33. Books to be audited on request of stockholders. Upon request of twenty-five per cent of the stockholders, or of any stockholder or stockholders owning twenty-five per cent of the capital stock, of a private corporation organized under the laws of North Carolina and doing business in this state, it is the duty of the officers of the corporation to have all of its books audited by a competent accountant, so that its financial status may be ascertained. Upon refusal or failure of the corporation to commence the auditing of its books within thirty days after such request, the requesting stockholder or stockholders, after ten days notice to the corporation, may apply to the judge of the district, or to the judge holding the courts of the district, in which the corporation has its residence, either at chambers or term time, at any place in the district, and the judge shall appoint an auditor and require the books to be audited at the expense of the corporation. The officers of the corporation shall render to the auditor any assistance or information they can, and give him access to all of the assets, books, papers, etc., relating to the affairs of the corporation, in order that a proper audit may be made. Upon completion of the audit the auditor shall render a statement to the corporation, and to the petitioning stockholder or stockholders.

1911, c. 174, s. 1; 1913, c. 76, s. 1.

34. Loans to stockholders. No loan of money may be made to a stockholder or officer of a corporation, and if any is made, the officers who made it or assented

thereto, are jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum loaned.

Rev., s. 1160; 1901, c. 2, s. 53.

35. Reports to corporation commission. In addition to the information required to be given in the annual report of corporations to the corporation commission under the provisions of the Revenue and Machinery Acts, spaces shall be provided in such manner as the corporation commission deem proper so that each corporation, whether stock or nonstock, shall report whether the stock, if any, issued by it was issued for cash or for purchase of property, designating what property, the names of all the directors and officers, with the date of the election or appointment, terms of office, residence and postoffice address of each, the character of its business, and the name of the agent in charge thereof upon whom process against the corporation may be served; but this shall not prevent service of process on other agents authorized by law. This information, together with the amount of stock issued and outstanding by the corporation, shall be available to the public upon application to the corporation commission. After these reports have been made to the corporation commission and the excess tax thereon has been computed and determined, it is the duty of the corporation commission to certify a list of such corporations, showing amount of stock issued by each, whether owing an excess tax or not, to the state treasurer, who shall add to such excess tax, if any, the amount due by the corporation on account of franchise tax, and forward a statement of such indebtedness to the corporation for payment, under the penalties provided by law. Every corporation failing to comply with the provisions of this section shall forfeit to the state \$100, to be collected by the sheriff of the county where the principal office of the corporation is situated, in a civil action to be brought before a justice of the peace, and when collected shall be remitted by the sheriff to the corporation commission, after deducting his cost as allowed by law, which he shall collect in addition to the penalty.

1913, c. 198, ss. 1, 2, 3.

36. Secretary of state may call for special reports. The secretary of state has power to call for special reports from corporations, of the same character as their regular reports, at such times as he may deem the public interest requires, but no fees shall be charged for filing these special reports.

Rev., s. 1153.

37. Secretary of state to publish list of corporations created. The secretary of state shall annually compile and publish from the records of his office a complete alphabetical list of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of authorized capital stock, the amount with which business is to be commenced, the amount issued, the date of filing the certificate, and the period for which the corporation is to continue; but the secretary of state and the corporation commission shall confer and arrange the statistics so as to prevent the same facts being embodied in the reports of both departments.

Rev., s. 1244; 1901, c. 2, s. 104; 1911, c. 211, s. 10; 1913, c. 198, s. 5.

38. Liability of officers failing to make reports or making false reports. If any of the officers neglect or refuse to make any report required of them by law for thirty days after written request so to do by a creditor or stockholder of the corporation, they are jointly and severally liable to the person demanding such report, for the amount of his debt if he is a creditor, or for the amount of his loss if he is a stockholder. If any report or certificate made, or any public notice given, by the officers in pursuance of the provisions of this chapter, is false in any material representation, all the officers who signed the same, knowing it to be false, are jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.

Rev., ss. 1154, 1163; 1901, c. 2, ss. 27, 56.

39. Liability for fraud. In case of fraud by the president, directors, managers, or stockholders, in a corporation, the court shall adjudge personally liable to creditors and others injured thereby the directors and stockholders who were concerned in the fraud.

Rev., s. 1155; Code, s. 686; 1901, c. 2, s. 107.

40. Joint and several liability of officers, etc.; contribution. When the officers, directors or stockholders of a corporation are liable to pay its debts, or any part thereof, any person to whom they are liable has a right of action against any one or more of them. And any such officer, director or stockholder has the right of equitable contribution in any action for that purpose against any other officer, director or stockholder who is liable with him for any amount which he has been compelled to pay as provided in this section.

Rev., s. 1156; 1901, c. 2, s. 90.

41. Officers paying may enforce exoneration against corporation. An officer, director or stockholder who pays a debt of a corporation for which he is made liable by the provisions of this chapter, may recover the amount paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation is liable to be taken, and not the property of any stockholder, except as provided in the preceding section.

Rev., s. 1157; 1901, c. 2, s. 91.

42. Assets of corporation first exhausted. No sale or other satisfaction shall be had of the property of a director or stockholder for a debt of the corporation of which he is director or stockholder until judgment be obtained therefor against the corporation and execution thereon returned unsatisfied, or until it is shown to the court that the corporation has no property available for the satisfaction of the indebtedness.

Rev., s. 1158; 1901, c. 2, s. 92.

ART. 5. CAPITAL STOCK

43. Classes of stock. Every corporation has power to create two or more kinds of stock of such classes, with such designations, preferences, and voting powers or restriction or qualification thereof as are prescribed by those holding two-thirds of its outstanding capital stock; and the power to increase or decrease

the stock as herein elsewhere provided, applies to all or any of the classes of stock; and the preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof are entitled to receive, and the corporation is bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, payable quarterly, half yearly or yearly, before any dividend is set apart or paid on the common stock, and such dividends may be made cumulative. In case of insolvency, its debts or other liabilities shall be paid in preference to the preferred stock. No corporation shall create preferred stock, except by authority given to the boards of directors, by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose. The terms "general stock" and "common stock" are synonymous.

Rev., s. 1159; 1901, c. 2, s. 19; 1903, c. 660, ss. 2, 3.

44. Stock to be paid in money or money's worth; issue for labor or property.

Nothing but money shall be considered as payment for any part of the capital stock of any corporation organized under this chapter, except as herein provided in case of the purchase of property or labor performed. Any corporation may issue stock for labor done or personal property or real estate, or leases thereof, and, in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

Rev., ss. 1159, 1160; 1901, c. 2, ss. 19, 53; 1903, c. 660, ss. 2, 3.

45. Stock issued for property; how value ascertained; how stock reported.

Any corporation formed under this chapter may purchase any property necessary for its business, and issue stock to the amount of the value thereof in payment therefor. The stock so issued shall be full-paid stock, and not liable to any further call, nor shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of actual fraud the judgment of the directors as to the value of the property shall be conclusive. In all statements and reports of the corporation to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the facts.

Rev., s. 1161; 1901, c. 2, s. 54.

46. Construction companies building railroads, etc., may take stock therein; how issued, valued, and reported. Corporations having for their object the building or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any like works of internal improvement or public use, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed, or materials furnished to, or for, such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock, in full or partial performance of the whole, or any part of such subscription or purchase, and the

stock so issued shall be full-paid stock, and not liable to any further call, nor shall the holder thereof be liable for any further payments. And in all statements and reports of the corporation to be published or filed, this stock shall not be stated, or reported, as being issued for cash paid to the corporation, but shall be reported and published in this respect according to the fact.

Rev., s. 1172; 1901, c. 2, s. 55.

47. Liability for unpaid stock. Where the capital stock of a corporation has not been paid in and the assets are insufficient to satisfy its debts and obligations, each stockholder is bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter, or such proportion of that sum as is required to satisfy such debts and obligations; but no person holding stock in any corporation in this state as executor, administrator, guardian, or trustee, or as collateral security is personally subject to any liability as a stockholder of the corporation; but the person pledging the stock is considered as holding the same, and is liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, is liable in like manner, and to the same extent, as the testator or intestate, or the ward, or the person interested in such fund, would have been, had he been living and competent to act and hold the stock in his own name.

Rev., s. 1162; 1893, c. 471; 1901, c. 2, s. 22.

48. Decrease of capital stock. The decrease of capital stock may be effected by—

1. Retiring or reducing any class of the stock.
2. Drawing the necessary number of shares by lot for retirement.
3. The surrender by every stockholder of his shares and the issue to him in place thereof of a decreased number of shares.
4. The purchase at not above par of certain shares for retirement.
5. Retiring shares owned by the corporation.
6. Reducing the par value of shares.

When a corporation decreases the amount of its capital stock as above provided, the certificate decreasing the same shall be published at least once a week for three successive weeks in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of the certificate. In default of such publication the directors of the corporation are jointly and severally liable for all debts of the corporation contracted before the filing of the certificate, and the stockholders are also liable for such sums as they respectively receive of the amount so reduced. No such decrease of capital stock decreases the liability of any stockholder whose shares have not been fully paid, for debts of the corporation theretofore contracted.

Rev., s. 1164; 1901, c. 2, s. 32.

49. Certificates and duplicate. Every stockholder shall have a certificate signed by the president and treasurer, or secretary, certifying the number of shares owned by him. A corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may

require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as an indemnity against any claim that may be made against the corporation. A new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper to do so.

Rev., ss. 1165, 1166; 1885, c. 265; 1901, c. 2, s. 94.

50. Action to compel issuance of duplicate certificate. When a corporation has refused to issue a new certificate of stock in place of one theretofore issued by it, or by a corporation of which it is a successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives may maintain a civil action in the superior court of the county in which the principal office of the corporation is located to compel the corporation to issue a duplicate certificate in the place of the one alleged to have been lost or destroyed; and if the issues of fact arising upon the pleadings are found in favor of the plaintiff, the court shall make an order requiring the corporation or other party, within such time as it designates, to issue and deliver to the plaintiff a new certificate for the number of shares of the capital stock of the corporation which have been found to be owned by the plaintiff. In making the order the court shall direct that the plaintiff deposit such security as to the court appears sufficient to indemnify any person other than the plaintiff, who shall thereafter appear to be the lawful owner of such certificate stated to be lost or destroyed; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it deems proper. Any person who thereafter claims any rights under the certificate so lost or destroyed shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order.

Rev., s. 1167; 1901, c. 2, s. 95.

51. Transfer of shares. The shares of stock in a corporation are personal property, and are transferable on the books of the corporation in the manner and under the regulations provided by the by-laws. Whenever a transfer is made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

Rev., s. 1168; Code, s. 689; 1901, c. 2, s. 21.

52. Assessments, sale and notice. The directors of a corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof, remaining unpaid; and the sums assessed shall be paid to the treasurer at such times and by such installments as the directors direct, the directors having given thirty days notice of the assessment and of the time and place of payment, either personally, by mail, or by publication in a newspaper published in the county where the corporation is established. If the owner of any share or shares neglects to pay a sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such share or shares of the delinquent owner as will pay any assessment due from him, with interest, and all necessary incidental charges, and shall transfer the share or shares sold to the purchaser, who is entitled to a certificate therefor. The treasurer shall give notice of the time and place appointed for the sale,

and of the sum due on each share, by advertising the same once a week for three successive weeks, before the sale, in a newspaper published in the county where the principal office of the corporation is located, at the courthouse door, and by mailing a notice thereof to the last known postoffice address of the delinquent stockholder.

Rev., ss. 1169, 1170, 1171; 1901, c. 2, ss. 23, 24, 25.

53. One corporation may purchase stock, etc., of another. A corporation may purchase stock, securities or other evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such may exercise all the rights, powers and privileges of ownership.

Rev., s. 1173; 1903, c. 660, s. 3.

54. Mutual corporations may create stock. A mutual corporation, upon the consent in writing of all its members, may provide for and create a capital stock and may provide for the payment of the stock, and fix and prescribe the rights and privileges of the stockholders therein not inconsistent with law.

Rev., s. 1245; 1901, c. 2, s. 105.

ART. 6. MEETINGS, ELECTIONS AND DIVIDENDS

55. Place of stockholders and directors meetings. The meetings of the stockholders of every corporation of this state shall be held at the principal office in this state. The directors may hold their meetings, and have an office and keep the books of the corporation (except the stock and transfer books) outside the state. Every corporation shall maintain a principal office in this state, and have an agent in charge thereof.

Rev., s. 1179; 1901, c. 2, s. 49.

56. Meeting called by three stockholders. When, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three stockholders with voting power may call such meeting by publishing in a newspaper published in the county in which the principal office in this state is located ten days notice of the time, place and purposes of the meeting, and mailing this notice to all stockholders whose postoffice address is known, or can be ascertained. A meeting so called is a legal meeting of the corporation, and if there are no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the minute book of the corporation.

Rev., s. 1190; 1901, c. 2, s. 51.

57. Transfer and stock books. Every corporation shall keep at its principal and registered office in this state the transfer books, in which the transfer of stock shall be registered, and the stock books, which shall contain the names and addresses of the stockholders, and the number of shares held by them respectively, and shall at all times during the usual hours for business be open to the examination of every stockholder. These books shall be the only evidence as to who are the stockholders entitled to examine them, and to vote at elections. In case the right to vote upon any share of stock is questioned, the stock books of the corporation shall be referred to, to ascertain who are the stockholders,

and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.

Rev., ss. 1180, 1181; 1901, c. 2, ss. 38, 45.

58. Directors to produce books at election. The board of directors shall produce at the time and place of elections the transfer books and the stock books, there to remain during the election, and the neglect or refusal of the directors to produce the same after a demand therefor shall render them ineligible to any office at such election. All elections of directors held under this chapter prior to February 28, 1913, where these books were not produced, and no demand was made therefor, are ratified and confirmed and given full legal force and effect, but this ratification does not affect litigation pending on the above date.

Rev., s. 1180; 1901, c. 2, s. 38; 1913, c. 14.

59. Superior court may require production. The superior court may, upon proper cause shown, order any or all of the books of the corporation to be forthwith brought within this state, and kept therein at such place and for such time as is designated in such order. The charter of any corporation failing to comply with such order may be declared forfeited by the court making the order, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of the order.

Rev., s. 1179; 1901, c. 2, s. 49.

60. Votes stockholders entitled to; cumulative voting. Unless otherwise provided in the charter or by-laws of a corporation, at every election each stockholder is entitled to one vote in person, or by proxy duly authorized in writing, for each share of the capital stock held by him, but no proxy may be voted after three years from its date; nor may there be voted at any election a share of stock which has been transferred on the books of the corporation within twenty days prior to the election. The certificate of incorporation of any corporation authorized to issue shares of capital stock, may provide that at all elections of directors, managers, or trustees, each stockholder is entitled to as many votes as equal the number of his shares of stock multiplied by the number of directors, managers, or trustees to be elected, and that he may cast all of his votes for a single director, manager, or trustee, or may distribute them among the number to be voted for, or any two or more of them, as he sees fit. This right of cumulative voting may be exercised in the absence of charter provision when at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that more than one-fourth of the capital stock of the corporation is owned or controlled by one person. A stockholder owning or controlling more than twenty-five per cent of the stock has the same right to vote cumulatively as any other stockholder; and no amendment of the charter or by-laws of a corporation can abrogate or abridge any right herein conferred. The right to vote cumulatively cannot be exercised unless some stockholder announces in open meeting, before the voting for directors, trustees, or managers begins, his purpose to exercise such right, and then every other stockholder may likewise vote cumulatively.

Rev., ss. 1183, 1184; 1907, c. 457, s. 1; 1909, c. 827, s. 1.

61. Stock held by fiduciary, pledgor, life tenant, or corporation. Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent it at all meetings of the corporation, and may vote it as a stockholder, with the same effect as if the absolute owner thereof, unless the instrument creating the trust provides to the contrary. Every person who has pledged his stock as collateral security may represent it at all such meetings, and may vote it as a stockholder, unless in the transfer to the pledgee on the books of the corporation he has expressly empowered the pledgee to vote it, in which case only the pledgee or his proxy may represent and vote said stock. Where stock is owned by, or has been transferred on its record books to, one for life and remainder over, the life tenant at all meetings of the corporation may represent and vote the stock in person or by proxy, in the same manner and with the same effect as if he were the absolute owner thereof. Shares of stock of a corporation belonging to the corporation cannot be voted directly or indirectly.

Rev., ss. 1185, 1186, 1187; 1901, c. 2, ss. 42, 43; 1901, c. 474, ss. 1, 2.

62. Election of directors. All elections for directors shall be by ballot, unless otherwise provided in the charter, or by-laws, and a majority of the issued and outstanding stock must be present in person or by proxy; the polls must remain open one hour, unless all the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors.

Rev., s. 1182; 1901, c. 2, s. 39.

63. Failure to hold election. If the election for directors of a corporation is not held on the day designated by the charter or by-laws, the directors shall cause the election to be held as soon thereafter as is convenient. No failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation; and if the directors fail or refuse for thirty days after receiving a written request for such election from those owning one-tenth of the outstanding stock, to call a meeting for the election, the judge of the district, or the judge presiding in the courts of the district, in which the principal office of the corporation is located, may, upon the application of any stockholder, and on notice to the directors, order an election or make such other order as justice requires. The proceedings governing the issuance and hearing of injunctions shall, as far as applicable, govern such hearing.

Rev., s. 1188; 1901, c. 2, s. 46.

64. Jurisdiction of superior court over elections. The superior court judge, upon application of any person who may complain of any election, or any proceeding, act or matter pertaining to the same, ten days notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, at chambers, in any county in the district in which the principal office of the corporation is situated, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election complained of, or order a new election, or make any order and give any relief in the premises as right and justice requires. The proceedings shall, as far as applicable, be the same as in injunctions.

Rev., s. 1189; 1901, c. 2, s. 47.

65. When dividend declared. The directors of every corporation created under this chapter shall, in January of each year, unless some specific time for that purpose is fixed in its charter, or by-laws, and in that case at the time so fixed, after reserving, over and above its capital stock paid in, as a working capital for the corporation, whatever sum has been filed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount reserved, and pay it to the stockholders on demand. The corporation may, in its certificate of incorporation or by-laws, give the directors power to fix the amount to be reserved as a working capital.

Rev., s. 1191; 1901, c. 2, s. 52.

66. Dividends from profits only; directors' liability for impairing capital. No corporation may declare and pay dividends, except from the surplus or net profits arising from its business, or when its debts, whether due or not, exceed two-thirds of its assets, nor may it reduce, divide, withdraw, or in any way pay to any stockholder any part of its capital stock except according to this chapter. In case of a violation of any provision of this section, the directors under whose administration the same occurs are jointly and severally liable, at any time within six years after paying such dividend, to the corporation and its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend paid, or capital stock reduced, divided, withdrawn, or paid out, with interest on the same from the time such liability accrued. Any director who was absent when the violation occurred, or who dissented from the act or resolution by which it was effected, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors at the time the action was taken or immediately after he has had notice of it.

Rev., s. 1192; Code, s. 681; 1901, c. 2, ss. 33, 52.

ART. 7. FOREIGN CORPORATIONS

67. Powers existing independently of permission to do business. A corporation created by another state of the United States, or by any foreign state, kingdom, or government may acquire by devise or otherwise, and may hold, mortgage, lease, and convey real estate in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts due to it, but is not eligible or entitled to qualify in this state as executor, administrator, guardian, or trustee under the will of any person domiciled in this state at the time of his death. The right to acquire, hold and convey real estate exists only where at the time of the acquisition, the foreign state, government, or kingdom, under whose laws the corporation was created is not at war with the United States.

Rev., s. 1193; 1901, c. 2, s. 93; 1915, c. 196, s. 1.

68. Requisites for permission to do business. Every foreign corporation before being permitted to do business in this state, insurance companies excepted, shall file in the office of the secretary of state a copy of its charter or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this state, the name of the agent in charge of such office, the character of the business which it transacts,

and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the secretary of state, for the use of the state, twenty cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than twenty-five dollars nor more than two hundred and fifty dollars; and also a filing fee of five dollars. Such corporation may withdraw from the state upon filing in the office of the secretary of state a statement signed by its president and secretary and attested by its corporate seal, setting forth the fact that such corporation desires to withdraw, and upon payment to the secretary of state of a fee of five dollars. Every corporation failing to comply with the provisions of this section shall forfeit to the state five hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it appears that this section has been violated. This section does not apply to railroad, banking, express or telegraph companies which, prior to March 9, 1915, had been licensed to do business in this state, or were engaged in business in this state, having a regularly appointed agent upon whom service of process could be made located in this state.

Rev., s. 1194; 1901, c. 2, s. 57; 1903, c. 76; 1915, c. 263.

NOTE. AS to foreign insurance companies, see Insurance, Art. 16.

ART. 8. DISSOLUTION

69. Voluntary, generally. When in the judgment of the board of directors, it is deemed advisable and for the benefit of a corporation that it be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board, at a meeting called for that purpose, of which meeting every director shall have received three days notice, shall cause notice of adoption of such resolution to be mailed to each stockholder residing in the United States, to his last known postoffice address, and also, beginning within said ten days, cause a like notice to be published in a newspaper published in the county wherein the corporation has its principal office, at least once a week for four successive weeks, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution. The stockholders meeting thus called may, on the day appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at one time, of which adjourned meeting notice by advertisement in said newspaper shall be given. If at such meeting two-thirds in interest of all the stockholders consent in writing that a dissolution take place, their consent, together with the list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that the consent has been filed and the board of directors shall cause this certificate to be recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and published once a week for four successive weeks in a newspaper published in said county. Upon the filing in the office of the secretary of state of an affidavit of the manager or publisher of such newspaper that the certificate has been so published, the corporation is dissolved, and the board shall proceed to settle up and adjust its business and

affairs. Whenever all the stockholders consent in writing to a dissolution, no meeting or notice thereof is necessary, but on filing the consent in the office of the secretary of state he shall forthwith issue a certificate of dissolution, which shall be published as above provided, and recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located.

Rev., s. 1195; 1901, c. 2, s. 34.

70. Liability of stockholders. The stockholders of a corporation chartered under the laws of this state are individually liable for all taxes, costs and fees for the dissolution of the corporation, and the attorney-general is authorized to enforce the provisions of this section by suit before a justice of the peace or in the superior court in the county where such corporation had its principal place of business, whenever it appears upon report from the secretary of state that the corporation has ceased to transact business and fails to pay the taxes due the state or to file annual statements or to dissolve itself as provided by law. If a nonresident stockholder of the corporation refuses to sign the certificate of dissolution the resident stockholders shall make affidavit to that effect, and the written assent of such resident stockholders, accompanied by such affidavit, is sufficient to dissolve the corporation. If no stockholder of such corporation is found within the state the secretary of state has authority to declare the charter of the corporation forfeited, and shall publish annually in his corporation report a list of the corporations whose charters have been so forfeited.

1909, c. 730, s. 1.

71. Voluntary, before payment of stock. The incorporators named in a certificate of incorporation, before the payment of any part of the capital stock, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate verified by oath, that no part of the capital stock has been paid and such business has not been begun, and surrendering all rights and franchises. Thereupon the corporation is dissolved.

Rev., s. 1177; 1901, c. 2, s. 35.

72. Involuntary, at instance of private persons. Corporations may be dissolved by civil action, instituted by the corporation, a stockholder, or creditor, or by authority of the attorney-general in the name of the state, in the following cases:

1. For any abuse of its powers to the injury of the public or of its stockholders, creditors, or debtors.

2. For nonuser of its powers for two or more consecutive years.

3. When it is insolvent, or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate rights.

4. Upon any conviction of the company of a persistent criminal offense.

Rev., s. 1196; Code, s. 694; 1901, c. 2, s. 73.

NOTE. For obtaining leave of attorney-general, see Civil Procedure, s. 474.

73. Involuntary, by stockholders. When stockholders owning one-fifth or more in amount of the paid-up stock of any corporation organized under the laws of and doing business in this state, except corporations organized for religious, charitable, fraternal, and educational purposes, and except banking and public

service corporations, apply in term or vacation to the judge of the superior court holding the courts for the county in which the principal place of business of the corporation is situated, by petition containing a statement that for the years next preceding the filing of the petition, which time shall begin to run from three years after it has begun business, the net earnings of the corporation have not been sufficient to pay in good faith an annual dividend of four per cent upon the paid stock of the corporation, over and above the salaries and expenses authorized by its by-laws and regulations, or that the corporation has paid no dividend for six years preceding said application; or whenever stockholders owning one-tenth or more in amount of the paid-up common stock of any such corporation apply to the judge of the superior court as aforesaid by petition containing a statement that the corporation has paid no dividend on the common stock for ten years preceding said application, and that they desire a dissolution of the corporation, the judge shall make an order requiring the officers of the corporation to file in court, within a reasonable time, inventories showing all the real and personal estate of the corporation, a true account of its capital stock, the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in upon said shares and the amount still due thereon, and a statement of all the encumbrances on the property of the corporation and all its contracts which have not been fully satisfied and canceled, specifying the place and residence of each creditor, the sum owing to each, the nature of the debt or demand, and the consideration therefor, and the books and papers of the corporation. Upon the filing of the inventories, accounts and statements, the court shall enter an order requiring all persons interested in the corporation to appear before a referee to be appointed by the court, at a time and place named in the order, service of which may be made by publication for such time as may be deemed proper by the court, and show cause why the corporation should not be dissolved. If it appears to the court that the statements contained in the petition are true, the court may adjudge a dissolution of the corporation and shall appoint one or more receivers, who shall have all powers of receivers conferred by this chapter for the winding up the affairs and distribution of the assets of the corporation. If it appears to the court that the corporation is insolvent or in imminent danger of insolvency, the court may appoint a temporary receiver of the corporation pending dissolution. No suit shall be brought for the dissolution of a corporation under the provisions of this section, until each and all of the petitioners have owned their stock for the term of two years prior to the institution of the action; nor shall any such suit be brought for the period of three years after a final judgment upon a prior petition as herein provided.

1913, c. 147; 1915, c. 137, s. 1.

74. Involuntary, by attorney-general. An action may be brought by the attorney-general in the name of the state against a corporation for the purpose of annulling its charter upon the ground that it was procured upon a fraudulent suggestion, or concealment of a material fact, by the persons incorporated or by some of them, or with their knowledge or consent, or for the purpose of annulling the existence of a corporation, other than municipal, when such corporation—

1. Offends against the act creating, altering, or renewing it.

2. Violates any law by which it has forfeited its charter by abuse of its power.
3. Has forfeited its privileges or franchises by failure to exercise its power.
4. Has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.
5. Has exercised a franchise or privilege not conferred upon it by law.
6. Has failed to use its powers for two or more consecutive years.
7. Has become insolvent as manifested by the return of an execution unsatisfied upon a judgment against the corporation docketed in the superior court of the county where it has its principal place of business.

It is the duty of the attorney-general, whenever he has reason to believe that any of these acts or omissions can be established by proof, to bring an action in every case of public interest, and also in every other case in which satisfactory security is given to indemnify the state against the costs and expenses to be incurred thereby.

Rev., s. 1198; Code, ss. 604, 605; 1889, c. 533.

75. Forfeiture or dissolution for failure to organize or act. When a charter has been granted creating a corporation and the incorporators for two years neglect to organize and carry into effect the intent of the charter, or when organized, if they for two consecutive years cease to act, then this disuse of their corporate privileges and powers is a forfeiture of the charter. If, after thirty days notice by the secretary of state, the corporation fails to surrender its corporate rights or to dissolve, in the manner provided in this chapter, the secretary of state shall report it to the attorney-general, who shall institute an appropriate action for its dissolution.

Rev., s. 1246; Code, s. 688; 1901, c. 2, s. 106.

75a. Forfeiture for nonuser by hydro-electric companies. All waterpower, hydro-electric power, and water companies or corporations organized in this state shall be required to begin active work in making their proposed development within two years after their organization and diligently to prosecute their work on the same until it has been completed; and a failure to begin the work or development within the time, and to diligently prosecute work on the same until its completion, as herein provided, shall be legal grounds for declaring their charter rights, privileges and franchises forfeited, by the state, acting through its attorney-general, upon the recommendation of the corporation commission of this state: Provided, this section shall not apply to any company which is supplying the public and is meeting the demands of the public for its services.

1913, c. 133, s. 2.

76. Involuntary, by bankruptcy. When a corporation chartered under the laws of this state, is adjudged bankrupt under the laws of the United States, the charter of the corporation is forfeited without further action, unless the stockholders determine by appropriate resolutions to continue the corporate existence of the corporation after the adjudication in bankruptcy, and furnish the secretary of state with a duly certified copy of the resolutions, all within six months after the adjudication. The stockholders of a bankrupt corporation whose existence is continued by the foregoing procedure, must pay all privilege taxes which have accrued against the corporation since the adjudication,

together with a fee of one dollar allowed the secretary of state for recording and filing the certificate provided for in this section.

1915, c. 134, ss. 2, 3.

77. When franchises forfeited by neglect, etc., corporation dissolved; costs. If it is adjudged that a corporation against which an action has been brought, has forfeited by neglect, abuse, or surrender, its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such rights, privileges and franchises, and that it be dissolved. If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons making the claim, or by attachment or process against the directors or other officers of the corporation.

Rev., ss. 1209, 1210; Code, ss. 617, 618.

78. Service of summons in action for dissolution. In an action for the dissolution of a corporation, or for the appointment of a receiver thereof, the summons must be served on the corporation by service on an officer or agent upon whom other process can be served, and shall be served on the stockholders, creditors, dealers and others interested in the affairs of the company by publishing a copy at least weekly for two successive weeks in some newspaper printed in the county in which the corporation has its principal place of business, or if there is no such newspaper published, by posting a copy of the summons at the door of the courthouse of such county, and publishing a copy for the time and in the manner aforesaid in a newspaper published nearest the county seat of the county in which the corporation has its principal place of business or in a newspaper published in the city of Raleigh. This publication is sufficient service on all the stockholders, creditors of, or dealers with, the corporation, and upon the corporation, if no officer can after due diligence be found in the state and it has no process agent in the state; and all such stockholders, creditors or dealers or other parties interested may intervene in said proceedings and become parties thereto for themselves, or for others in like interest, under such rules as the court for the purpose of justice prescribes.

Rev., s. 1199; Code, s. 695; 1911, c. 173, s. 1.

79. Corporate existence continued three years. All corporations whose characters expire by their own limitation, or are annulled by forfeiture or otherwise, shall continue to be bodies corporate for 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 their property, and to divide their assets; but not for the purpose of continuing the business for which the corporation was established. In any pending action the court, in its discretion, may extend the time for winding up the affairs of such corporation.

Rev., s. 1200; Code, s. 667; 1901, c. 2, s. 58.

80. Directors to be trustees; powers and duties. On the dissolution in any manner of a corporation, unless otherwise directed by an order of the court, the directors are trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and, after paying its debts,

divide any surplus money and other property among the stockholders. The trustees have power to meet and act under the by-laws of the corporation, and under regulations to be made by a majority, to prescribe the terms and conditions of the sale of such property, and they may sell all or any part for cash, or partly on credit, or take mortgages or bonds for part of the purchase price for all or any part of the property. They have power to sue for and recover the said debts and property in the name of the corporation, and are suable in the same name for the debts owing by it, and are jointly and severally responsible for such debts only to the amount of property of the corporation which comes into their possession as trustees.

Rev., ss. 1201, 1202; Code, s. 687; 1901, c. 2, ss. 59, 60.

81. Jurisdiction of superior court. When a corporation is dissolved, in any manner whatsoever, the superior court, on application of a creditor or stockholder, may either continue the directors as trustees or appoint one or more persons receivers of the corporation. The court has jurisdiction of the application, and of all questions arising in the proceedings thereon, and may make, at any place in the district, any orders, injunctions, or decrees therein as justice and equity require. The powers of such trustees or receivers are as elsewhere given in this chapter and may be continued as long as the court thinks necessary.

Rev., ss. 1203, 1204; Code, ss. 619, 668, 669; 1901, c. 2, ss. 61, 62.

82. Injunction; notice and undertaking. An injunction to suspend the general and ordinary business of a corporation or to appoint a receiver shall not be granted without due notice of the application therefor to the corporation, except where the state is a party to the proceeding, unless the plaintiff gives a written undertaking, executed by two sufficient sureties to be approved by the judge, to the effect that the plaintiff will pay all damages, not exceeding the sum mentioned in the undertaking, which the corporation may sustain by reason of the injunction, or the appointment of the receiver, if the court finally decides that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court directs.

Rev., s. 1205; Code, s. 343; C. C. P., s. 194.

83. Wages for two months lien on assets. In case of the insolvency of a corporation all persons doing labor or service of whatever character in its regular employment, have a lien upon the assets thereof for the amount of wages due to them for all labor, work, and services rendered within two months next preceding the date when proceedings in insolvency were actually instituted and begun against the corporation, which lien is prior to all other liens that can be acquired against such assets.

Rev., s. 1206; 1901, c. 2, s. 87.

84. Distribution of funds. After payment of all allowances, expenses and costs; and the satisfaction of all general and special liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, and shall be entitled to distribution on debts not due, making in such case a rebate of interest when interest is not accruing on the same. Any surplus funds, after payment of the

creditors and costs, expenses and allowances, shall be paid to the preferred stockholders according to their respective shares, and if there still be a surplus, it shall be divided and paid to the general stockholders proportionately, according to their respective shares. Upon the distribution of the assets of an insolvent corporation, judgment of dissolution shall be entered and a certified copy of the judgment filed in the office of the secretary of state, and also in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and the same shall be recorded in the Corporation Book and in the Record of Incorporations in these offices respectively. Thereupon the corporation is dissolved without being required to comply with section 69 of this chapter.

Rev., s. 1207; Code, s. 670; 1901, c. 2, ss. 63, 89; 1909, c. 15, s. 1.

85. Debts not extinguished nor actions abated. In case of the dissolution of a corporation, the debts due to and from it are not thereby extinguished, nor do actions against a corporation which is dissolved before final judgment abate by reason thereof, but no judgment shall be entered therein without notice to the trustees or receivers of the corporation.

Rev., ss. 1201, 1208; Code, s. 687; 1901, c. 2, ss. 59, 64.

86. Copy of judgment to be filed with secretary of state; costs. A copy of every judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation and in the index thereof, and be published by him in the annual report hereinafter provided for, the cost of which shall be taxed by the clerk of the superior court in the action wherein the corporation is dissolved.

Rev., s. 1211; 1901, c. 2, s. 65.

ART. 9. EXECUTION

87. How issued; property subject to execution. If a judgment is rendered against a corporation, the plaintiff may sue out such executions against its property as is provided by law to be issued against the property of natural persons, which executions may be levied as well on the current money as on the goods, chattels, lands and tenements of such corporation.

Rev., s. 1212; 1901, c. 2, s. 66.

88. Agent must furnish information as to property to officer. Every agent or person having charge or control of any property of the corporation, on request of a public officer having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, so far as he has knowledge of the same.

Rev., s. 1213; 1901, c. 2, s. 67.

89. Shares of stock subject to; agent must furnish information. Any share or interest in any bank, insurance company, or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution in the same

manner as goods and chattels. The clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company shall, upon being shown the writ of execution, give to the officer having it a certificate of the number of shares or amount of the interest held by the defendant in the company; and if he neglects or refuses to do so, or if he willfully gives a false certificate, he shall be liable to the plaintiff for the amount due on the execution, with costs.

Rev., ss. 1214, 1215; 1901, c. 2, ss. 69, 70.

90. Debts due corporation subject to; duty and liability of agent. If an officer holding an execution is unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution in whole or in part out of any debts due the corporation; and it is the duty of any agent or person having custody of any evidence of such debt, to deliver it to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor shall be a valid assignment thereof; and the creditor may sue for and collect the same in the name of the corporation, subject to such equitable setoffs on the part of the debtor as in other assignments. Every agent or person who neglects or refuses to comply with the provisions of this and the last preceding section is liable to pay to the execution creditor the amount due on the execution, with costs.

Rev., s. 1216; 1901, c. 2, s. 68.

90a. Violations of three preceding sections misdemeanor. If any agent or person having charge or control of any property of a corporation, or any clerk, cashier, or other officer of a corporation, who has at the time the custody of the books of the company, or if any agent or person having custody of any evidence of debt due to a corporation, shall, on request of a public officer having in his hands for service an execution against the said corporation, willfully refuse to give to such officer the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, or shall willfully refuse to give to such officer a certificate of the number of shares, or amount of interest held by such corporation in any other corporation, or shall willfully refuse to deliver to such officer any evidences of indebtedness due or to become due to such corporation, he shall be guilty of a misdemeanor.

Rev., s. 3690; 1901, c. 2, ss. 67, 68, 70.

91. Proceedings when custodian of corporate books is a nonresident. When the clerk, cashier, or other officer of any corporation incorporated under the laws of this state, who has the custody of the stock-registry books is a nonresident of the state, it is the duty of the sheriff receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company to send by mail a notice in writing, directed to the nonresident clerk, cashier, or other officer at the postoffice nearest his reputed place of residence, stating in the notice that he, the sheriff, holds the writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels the writ has been issued, and that by virtue of such writ he seizes and levies upon all the shares of stock of the company held by the defendant in execution on the day of the date of such written notice. It

is also the duty of the sheriff on the day of mailing the notice to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of the company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode. The sending, setting up, and serving of such notices in the manner aforesaid constitutes a valid levy of the writ upon all shares of stock in such company held by the defendant in execution, which have not at the time of the receipt of the notice by the clerk, cashier, or other officer, who has custody of the stock-registry books, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution is void as against the plaintiff in the execution, or any purchaser of such stock at any sale thereunder.

Rev., s. 1217; 1901, c. 2, s. 71.

92. Duty and liability of nonresident custodian. The nonresident clerk, cashier, or other officer in such corporation, to whom notice in writing is sent as prescribed in the preceding section, shall send forthwith to the officer having the writ, a statement of the time when he received the notice and a certificate of the number of shares held by the defendant in the corporation at the time of the receipt, not actually transferred on the books of the corporation; and the sheriff, or other officer, on receipt by him of this certificate, shall insert the number of shares in the inventory attached to the writ. If the clerk, cashier, or other officer in such corporation neglects to send the certificate as aforesaid or willfully sends a false one, he is liable to the plaintiff for double the amount of damages occasioned by his neglect, or false certificate, to be recovered in an action against him; but the neglect to send, or miscarriage of the certificate, does not impair the validity of the levy upon the stock.

Rev., s. 1218; 1901, c. 2, s. 72.

ART. 10. RECEIVERS

93. Appointment and removal. When a corporation becomes insolvent or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate rights, or its corporate existence has expired by limitation, a receiver may be appointed by the court under the same regulations that are provided by law for the appointment of receivers in other cases; and the court may remove a receiver or trustee and appoint another in his place, or fill any vacancy. Everything required to be done by receivers or trustees is valid if performed by a majority of them.

Rev., ss. 1219, 1223; Code, s. 668; 1901, c. 2, ss. 73, 79.

94. Powers and bond. The receiver has power and authority to—

1. Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation.

2. Foreclose mortgages, deeds of trust, and other liens executed to the corporation.

3. Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the corporation, and he shall, upon application by him, be

substituted as party plaintiff in the place of the corporation in any suit or proceeding pending at the time of his appointment.

4. Sell, convey, and assign all of the said estate, rights, and interest.

5. Appoint agents under him.

6. Examine persons and papers, and pass on claims as elsewhere provided in this article.

7. Do all other acts which might be done by the corporation, if in being, that are necessary for the final settlement of its unfinished business.

The powers of the receiver may be continued as long as the court thinks necessary, and the receiver shall hold and dispose of the proceeds of all sales of property under the direction of the court, and, before acting, must enter into such bond and comply with such terms as the court prescribes.

Rev., ss. 1222, 1231; Code, s. 668; 1901, c. 2, ss. 74, 84.

95. Title and inventory. All of the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects, upon the appointment of a receiver, forthwith vest in him, and the corporation is divested of the title thereto. Within thirty days after his appointment he shall lay before the court a full and complete inventory of all estate, property, and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and shall make a report of his proceedings to the superior court at every civil term during the continuance of the trust.

Rev., ss. 1224, 1225; 1901, c. 2, ss. 75, 80.

96. May send for persons and papers; penalty for refusing to answer. The receiver has power to send for persons and papers, and to examine any persons, including the creditors, claimants, president, directors, and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills, choses in action, real and personal estate and effects of every kind; and also respecting its debts, obligations, contracts, and liabilities, and the claims against it; and if any person refuses to be sworn or affirmed, or to make answers to such questions as may be put to him, or refuse to declare the whole truth touching the subject matter of the examination, the court may, on report of the receiver, commit such person as for contempt.

Rev., s. 1227; 1901, c. 2, s. 78.

97. Proof of claims; time limit. All claims against an insolvent corporation must be presented to the receiver in writing; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver directs, and shall produce such books and papers relating to the claim as shall be required. The receiver has power to examine under oath or affirmation all witnesses produced before him touching the claim, and shall pass upon and allow or disallow the claims or any part thereof, and notify the claimants of his determination. The court may limit the time within which creditors may present and prove to the receiver their respective claims against the corporation, and may bar all creditors and claimants failing to do so within the time limited from participating in the distribution of the assets of the corporation. The court

may also prescribe what notice, by publication or otherwise, must be given to creditors of such limitation of time.

Rev., ss. 1228, 1229; 1901, c. 2, ss. 81, 82.

98. Report on claims to court; exceptions and jury trial. It is the duty of the receiver to report to the term of the superior court subsequent to a finding by him as to any claim against the corporation, and exceptions thereto may be filed by any person interested, within ten days after notice of the finding by the receiver, and not later than within the first three days of the said term; and, if, on an exception so filed, a jury trial is demanded, it is the duty of the court to prepare a proper issue and submit it to a jury; and if the demand is not made in the exceptions to the report the right to a jury trial is waived. The judge may, in his discretion, extend the time for filing such exceptions.

Rev., s. 1230; 1901, c. 2, s. 83.

99. Property sold pending litigation. When the property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court may order the receiver to sell the same, clear of incumbrance, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court directs.

Rev., s. 1232; 1901, c. 2, s. 86.

100. Compensation and expenses. Before distribution of the assets of an insolvent corporation among the creditors or stockholders, the court shall allow a reasonable compensation to the receiver for his services, not to exceed five per cent upon receipts and disbursements, and the costs and expenses of administration of his trust and of the proceedings in said court, to be first paid out of said assets.

Rev., s. 1226; 1901, c. 2, s. 88.

101. Debts provided for, receiver discharged. When a receiver has been appointed, and it afterwards appears that the debts of the corporation have been paid, or provided for, and that there remains, or can be obtained by further contributions, sufficient capital to enable it to resume its business, the court may, in its discretion, a proper case being shown, discharge the receiver, and decree that the property, rights, and franchises of the corporation revert to it, and thereafter the corporation may resume control of the same, as fully as if the receiver had never been appointed.

Rev., s. 1220; 1901, c. 2, s. 76.

102. Reorganization. When a majority in interest of the stockholders of the corporation have agreed upon a plan for its reorganization and a resumption by it of the management and control of its property and business, the corporation may, with the consent of the court, upon the reconveyance to it of its property and franchises, either by deed or decree of the court, mortgage the same for an amount necessary for the purposes of the reorganization; and may issue bonds

or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

Rev., s. 1221; 1901. c. 2, s. 77.

ART. 11. FEES AND TAXES

103. Filing fees. For filing a certificate or other paper in the office of the secretary of state, for the corporate purposes named below, the following fees shall be paid to the state treasurer for the use of the state:

1. Certificate of incorporation, or extension or renewal of corporate existence, 20 cents for each \$1,000 of the total amount of capital stock authorized, but in no case less than \$25.

2. Increase of capital stock, 20 cents for each \$1,000 of the total increase authorized, but in no case less than \$20.

3. Change of name or nature of business, amended certificate of incorporation (other than those otherwise provided for in this section), decrease of capital stock, increase or decrease of par value or number of shares, \$20.

4. List of officers and directors, \$1.

5. Dissolution or change of principal place of business, \$5.

The above fees are not cumulative, but when two or more are incurred at the same time, the largest single fee applicable shall apply. No such fees need be paid by a benevolent, religious, educational, or charitable organization with no capital stock, or by a corporation created by virtue of section 11 of this chapter for public parks and drives.

Rev., s. 1233; 1901. c. 2, s. 96; 1911. c. 155, s. 5.

104. Fees to secretary of state and clerk of superior court. The secretary of state shall collect and retain the following fees: For recording the certificate of incorporation, one dollar for the first three copy sheets and ten cents for each copy sheet in excess thereof, and for official seal fifty cents; for copying, the same fees as for recording. There shall be paid the clerk of the superior court for recording the certificate of incorporation a fee of three dollars.

Rev., s. 1234; Code, s. 680; 1893, c. 318, s. 4; 1901, c. 2, s. 96.

105. Corporate property in receiver's hands liable for taxes. When listed or unlisted taxes are duly assessed and charged against and are due and unpaid by a corporation with chartered rights, doing business or with property in this state, or against a person residing in, doing business, or having property in this state, it is competent for an officer or tax collector who has the tax list, to levy upon, seize, and take possession of that part of the property belonging to the corporation necessary to pay such taxes, even though the property is in the hands of a receiver duly appointed, and the officer or collector need not apply to the court appointing the receiver or with jurisdiction of the property or the receiver, for an order for the payment of said taxes. This section applies to all taxes, whether state, county, town or municipal, and shall be liberally construed in favor of and in furtherance of the collection of such taxes.

Rev., ss. 1236, 1237; Code, ss. 699, 670.

ART. 12. REORGANIZATION

106. Corporations whose property and franchises sold under order of court or execution. When the property and franchises of a corporation are sold under a judgment or decree of a court of this state, or of the district court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale vests in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchise, subject to all the conditions, limitations and restrictions of the corporation; and the purchaser and his associates, not less than three in number, thereupon become a new corporation, by such name as they select, and they are the stockholders in the ratio of the purchase money by them contributed; and are entitled to all the rights and franchises and subject to all the conditions, limitations and penalties of the corporation whose property and franchises have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of the sale succeeds to all the franchises, rights and privileges of the original corporation only when the sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when the railroad is sold as an entirety. If a purchaser at any such sale is a corporation, such purchasing corporation shall succeed to all the properties, franchises, powers, rights, and privileges of the original corporation: Provided, that this shall not affect vested rights and shall not be construed to alter in any manner the public policy of the state now or hereafter established with reference to trusts and contracts in restraint of trade.

Rev., s. 1238; Code, ss. 697, 698; 1897, c. 305; 1901, c. 2, s. 99; 1913, c. 25, s. 1.

107. New owners to meet and organize. The persons for whom the property and franchises have been purchased, shall meet within thirty days after the delivery of the conveyance made by virtue of said process or decree, and organize the new corporation, ten days written notice of the time and place of the meeting having been given to each of the said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary.

Rev., ss. 1239, 1240; 1901, c. 2, ss. 100, 101, 102.

108. Certificate to be filed with secretary of state. It is the duty of the new corporation, within one month after its organization to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the secretary of state, to be filed and recorded in his office, and there remain of record. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation.

Rev., s. 1241; 1901, c. 2, s. 103.

109. Effect on liens and other rights. Nothing contained in this article in any manner impairs the lien of a prior mortgage, or other encumbrance, upon the property or franchises conveyed under the sale, when by the terms of the process or decree under which the sale was made, or by operation of law, the sale was made subject to the lien of any such prior mortgage or other encumbrance. No such sale and conveyance or organization of such new corporation in any way affects the rights of any person, body politic, or corporate, not a party to the action in which the decree was made, nor of the said party except as determined by the decree. When a trustee has been made a party to such action and his cestui que trust, for reason satisfactory to the court, has not been made a party thereto, the rights and interest of the cestui que trust are concluded by the decree.

Rev., s. 1241; 1901, c. 2, s. 103.

CHAPTER 23

COSTS

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- 53a. Local modifications as to counties paying state's witnesses.
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- 59. Liability for criminal costs before justice.
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ART. 1. GENERALLY

1. Items allowed as costs. To either party for whom judgment is given there shall be allowed as costs his actual disbursements for fees to the officers, witnesses, and other persons entitled to receive the same.

Rev., s. 1249; Code, s. 528.

2. Summary judgment for official fees. If any officer, to whom fees are payable by any person, fails to receive them at the time the service is performed, he may have judgment therefor on motion to the court in which the action is or was pending, upon twenty days notice to the person to be charged, at any time within one year after the termination of the action in which the same was performed. If the motion for judgment be in behalf of the clerk of the superior court, it shall be made to the judge of the court in or out of term.

Rev., s. 1250; Code, s. 3760; 1868-9, c. 279, s. 561.

3. Sureties on prosecution or appeal bonds liable for costs. When an action is brought in any court in which security is given for the prosecution thereof, or when any case is brought up to a court by an appeal or otherwise, in which security for the prosecution of the suit has been given, and judgment is rendered against the plaintiff for the costs of the defendant, the appellate court, shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety.

Rev., s. 1251; Code, s. 543; R. C., c. 31, s. 126; 1831, c. 46; 1913, c. 189, s. 1.

4. Execution for unpaid fees; itemized bill of costs to be annexed. The clerks of the supreme, superior and criminal courts, where suits are determined and the fees are not paid by the party from whom they are due, shall sue out executions, directed to the sheriff of any county in the state, who shall levy them as in other cases; and to the said execution shall be annexed a bill of costs, written in words, so as plainly to show each item of costs, and on what account it is taxed; and all executions for costs, issuing without such a bill annexed, shall be deemed

irregular, and may be set aside as to the costs, at the return term, at the instance of him against whom it is issued.

Rev., s. 1252; Code, s. 3762; R. C., c. 102, s. 24.

5. Jurors' tax fees. On every indictment or criminal proceeding, tried or otherwise disposed of in the superior, or criminal courts, the party convicted, or adjudged to pay the costs, shall pay a tax of two dollars. In every civil action in any court of record, the party adjudged to pay the costs shall pay a tax of three dollars; but this tax shall not be charged unless a jury shall be impaneled. Said tax fees shall be charged by the clerk in the bill of costs, and collected by the sheriff, and by him paid into the county treasury. And the fund thus raised in any county shall be set apart for the payment of the jurors attending the courts thereof.

Rev., s. 1253; Code, s. 732; R. C., c. 28; 1830, c. 1; 1879, c. 325; 1881, c. 249; 1905, c. 348; 1909, c. 1.

6. In criminal cases, not demandable in advance. In all cases of criminal complaints before justices of the supreme court, judges of the superior and criminal courts, justices of the peace and other magistrates having jurisdiction of such complaints, the officers entitled by law to receive fees for issuing or executing process are not entitled to demand them in advance. Such officers shall indorse the amounts of their respective fees on every process issued or executed by them, and return the same to the court to which it is returnable.

Rev., s. 1254; Code, s. 1173; 1868-9, c. 178, subch. 3, s. 40.

7. Clerk to state in detail in entry of judgment. The clerk shall insert in the entry of judgment the allowances for costs allowed by law, and the necessary disbursements, including the fees of officers and witnesses, and the reasonable compensation of referees and commissioners in taking depositions. The disbursements shall be stated in detail. When it is necessary to adjust costs in any interlocutory proceedings, or in any special proceedings, the same shall be adjusted by the clerk of the court to which the proceedings were returned, except in those matters in which the allowance is required to be made by the judge.

Rev., s. 1255; Code, s. 532.

8. Clerk to itemize bills of criminal costs; approval of solicitor. It is the duty of the clerks of the several courts of record, at each term of the court, to make up an itemized statement of the bill of costs in every criminal action tried or otherwise disposed of at said term, which shall be signed by the clerk, and approved by the solicitor.

Rev., s. 1256; Code, s. 733; 1873-4, c. 116; 1879, c. 264.

9. Justices required to itemize costs. In all trials before justices of the peace any party, plaintiff or defendant, may demand of the justice of the peace before whom the trial is held an itemized statement of the costs of the action. Upon such demand it shall be the duty of the justice to furnish the statement demanded. No person shall be compelled to pay any cost in any trial before a justice of the peace until an itemized statement of the costs has been made out and given to the party charged. It shall be the duty of the justice to insert in the entry of the judgment in every criminal action tried or otherwise disposed of by him a detailed statement of the different items of cost, and to whom due.

Rev., ss. 1257, 2789; Code, s. 734; 1887, c. 297.

9a. Justice of the peace refusing to furnish bill of costs. If any justice of the peace before whom any trial is held shall refuse to furnish an itemized bill of costs, when demanded by the plaintiff or defendant, he shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court.

Rev., s. 3588; Code, s. 734; 1887, c. 297.

10. Bills of costs open to the public. Every bill of costs shall at all times be open to the inspection of any person interested therein.

Rev., s. 1258; Code, s. 735; 1873-4, c. 116.

ART. 2. WHEN STATE LIABLE FOR COSTS

11. Civil actions by the state; joinder of private party. 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.

Rev., s. 1259; Code, s. 536.

12. Civil actions by and against state officers. In all civil actions depending, or which may be instituted, by any of the officers of the state, or which have been, or shall be instituted against them, when any such action is brought or defended pursuant to the advice of the attorney-general, and the same is decided against such officers, the costs thereof shall be paid by the state treasurer upon the warrant of the auditor for the amount thereof as taxed.

Rev., s. 1260; Code, s. 3373; 1874-5, c. 154.

13. Actions by state for private persons, etc. 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.

Rev., s. 1261; Code, s. 537.

14. Costs of county in certain bribery prosecutions to be a charge against state. The expenses incurred by any county in investigating and prosecuting any charge of bribery or attempt to bribe any state officer or member of the general assembly within said county, and of receiving bribes by any state officer or member of the general assembly in said county, shall be a charge against the state, and the properly attested claim of the county commissioners shall be paid by the treasurer of the state.

Rev., s. 1262; Code, s. 742; 1868-9, c. 176, s. 6; 1874-5, c. 5.

15. On appeal by state to supreme court of United States. In all cases, whether civil or criminal, to which the state of North Carolina is a party, and which are carried from the courts of this state, or from the district court of the United States, by appeal or writ of error, to the United States circuit court of appeals, or to the supreme court of the United States, and the state is adjudged to pay the costs, it is the duty of the attorney-general to certify the amount of such

costs to the auditor, who shall thereupon issue a warrant for the same, directed to the treasurer, who shall pay the same out of any moneys in the treasury not otherwise appropriated.

Rev., s. 1263; Code, s. 538; 1871-2, c. 26.

ART. 3. CIVIL ACTIONS AND PROCEEDINGS

16. Costs allowed plaintiff; limited by recovery; several suits on one instrument. Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases:

1. In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial.

2. In an action to recover the possession of personal property.

3. In actions of which a court of a justice of the peace has no jurisdiction unless otherwise provided by law.

4. In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs than damages.

5. When several actions are brought on one bond, recognizance, promissory note, bill of exchange or instrument in writing, or in any other case, for the same cause of action against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election, provided the party or parties proceeded against in such other action or actions were within the state and not sequestered at the commencement of the previous action or actions.

Rev., s. 1264; Code, s. 525; 1874-5, c. 119; R. C., c. 31, s. 78.

17. Costs allowed to defendant. Costs shall be allowed as of course to the defendant, in the actions mentioned in the preceding section, unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them.

Rev., s. 1266; Code, ss. 526, 527; C. C. P., s. 277.

18. Costs allowed or not in discretion of court. In other actions, costs may be allowed or not, in the discretion of the court, unless otherwise provided by law.

Rev., s. 1267; Code, s. 527.

19. Costs allowed either party or apportioned in discretion of court. Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

1. Application for year's support, for widow or children.

2. Caveats to wills.

3. Habeas corpus; and the court shall direct what officer shall tax the costs thereof.

4. In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payment of such costs as may be incurred by the wife, either by the husband or by her from her separate estate as may be just.

5. Application for the establishment, alteration or discontinuance of a public road, cartway or ferry. The board of road supervisors or board of county commissioners may order the costs incurred before them paid in their discretion.

6. The compensation of referees and commissioners to take depositions.

7. All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the chapter entitled Partition.

8. In all proceedings under the chapter entitled Drainage, except as therein otherwise provided.

9. In proceedings for reallocation of homestead for increase in value, as provided in the chapter, Civil Procedure.

Rev., s. 1268; Code, ss. 2134, 2161, 1660, 1294, 2039, 2056, 533, 1422, 1323; 1889, c. 37; 1893, c. 149, s. 6.

20. Petitioner to pay costs in certain cases. The petitioner shall pay the costs in the following proceedings:

1. In petitions for draining or damming lowlands.

2. In petitions for condemnation of water mill-sites when the petitioner is allowed to erect the mill; but when he is not allowed to erect the mill, the costs shall be paid by the person who is allowed to do so.

3. In petitions for condemnation of land for railroads, street railways, telegraph, telephone or electric power or light companies, or for water supplies for public institutions, or for the use of other quasi-public or municipal corporations; unless in the opinion of the superior court the defendant improperly refused the privilege, use or easement demanded, in which case the costs must be adjudged as to the court may appear equitable and just.

4. When the petition is refused.

Rev., s. 1269; Code, ss. 1299, 1855, 2013; 1893, c. 63; 1903, c. 562.

21. Defendant unreasonably defending after notice of no personal claim to pay costs. In case of a defendant, against whom no personal claim is made, the plaintiff may deliver to such defendant with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects real or personal property, and that no personal claim is made against such defendant. If a defendant on whom such notice is served unreasonably defends the action, he shall pay costs to the plaintiff.

Rev., s. 1270; Code, s. 216.

22. Suits in forma pauperis, no costs unless recovery. When any person sues as a pauper, no officer shall require of him any fee, and he shall recover no costs, except in case of recovery by him.

Rev., s. 1265; Code, s. 212; 1895, c. 149; 1868-9, c. 96, s. 3.

23. Party seeking recovery on usurious contract, no costs. No costs shall be recovered by any party, whether plaintiff or defendant, who may endeavor to recover upon any usurious contract.

Rev., s. 1271; 1895, c. 69.

24. Costs in special proceedings. The costs in special proceedings shall be as allowed in civil actions, unless otherwise specially provided.

Rev., s. 1272; Code, s. 541.

25. Fees and disbursements in supplemental proceedings. The court or judge may allow to the judgment creditor, or to any party examined in proceedings supplemental to execution, whether a party to the action or not, witnesses' fees and disbursements.

Rev., s. 1273; Code, s. 499; C. C. P., s. 273.

26. Costs of laying off homestead and exemption. The costs and expenses of appraising and laying off the homestead or personal property exemptions, when the same is made under execution, shall be charged and included in the officer's bill of fees upon such execution or other final process; and when made upon the petition of the owner, they shall be paid by such owner, and the latter costs shall be a lien on said homestead.

Rev., s. 1274; Code, s. 510.

27. Costs of reassessment of homestead. If the superior court at term shall confirm the appraisal or assessment, or shall increase the exemption allowed the debtor or claimant, the levy shall stand only upon the excess remaining, and the creditor shall pay all the costs of the proceeding in court. If the amount allowed the debtor or claimant is reduced, the costs of the proceeding in court shall be paid by the debtor or claimant, and the levy shall cover the excess then remaining.

Rev., s. 1275; Code, s. 521.

28. Costs against infant plaintiff; guardian responsible. When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor.

Rev., s. 1276; Code, s. 534.

29. Costs where executor, administrator, trustee of express trust, or person authorized by statute a party. 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 directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in such action or defense. And when any claim against a deceased person is referred, the prevailing party shall be entitled to recover the fees of referees and witnesses, and other necessary disbursements, to be taxed according to law.

Rev., s. 1277; Code, s. 535.

30. Costs against assignee after action brought. In actions in which the cause of action becomes 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.

Rev., s. 1278; Code; s. 539.

ART. 4. COSTS ON APPEAL

31. Costs on appeal generally. On an appeal from a justice of the peace to a superior court, or from a superior court or a judge thereof, to the supreme court, if the appellant recovers 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 has paid under the erroneous judgment of such court. If in any court of appeal there is judgment for a new trial, or for a new jury, or if the judgment appealed from is not wholly reversed, but partly affirmed and partly disaffirmed, the costs shall be in the discretion of the appellate court.

Rev., s. 1279; Code, s. 540.

32. Costs of transcript on appeal taxed in supreme court. When an appeal is taken from the superior court to the supreme court, the clerk of the superior court, when he sends up the transcript, shall send therewith an itemized statement of the costs of making up the transcript on appeal, and the costs thereof shall be taxed as a part of the costs of the supreme court.

Rev., s. 1280; 1905, c. 456.

33. Costs on appeal from justices of the peace. 1. After an appeal from the judgment of a justice of the peace is 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.

Rev., s. 1281; Code, s. 542.

2. If, on appeal from a justice of the peace, judgment is 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.

Rev., s. 1282; Code, s. 566; R. C., c. 31, s. 106; 1794, c. 414, s. 17.

ART. 5. LIABILITY OF COUNTIES IN CRIMINAL ACTIONS

34. County to pay costs in certain cases; if approved, audited and adjudged. If there is no prosecutor in a criminal action, and the defendant is acquitted, or convicted and unable to pay the costs, or a nolle prosequi is entered, or judgment arrested, the county shall pay the clerks, sheriffs, constables, justices and witnesses one-half their lawful fees; except in capital cases and in prosecutions for forgery, perjury, or conspiracy, when they shall receive full fees. No county shall pay any such costs, unless the same is approved, audited and adjudged against the county as provided in this chapter.

34a. Local modification as to counties paying costs. In the following counties the county shall pay one-half the fees specified when "not a true bill" is found: Alexander, Alleghany, Ashe, Bertie, Brunswick, Burke, Caldwell, Caswell, Catawba, Chatham, Clay, Craven, Davie, Duplin, Gaston, Granville, Greene, Henderson, Iredell, Jackson, Johnston, Jones, Lenoir, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Northampton, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Richmond, Robeson, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Wake, Watauga, Wilkes, Yadkin, Yancey.

Rev., s. 1283; Code, ss. 733, 739; 1907, cc. 94, 162, 208, 606, 627, 695; 1909, cc. 50, 107; P. L., 1911, cc. 76, 167; P. L., 1915, c. 22.

In Bladen County, where in a criminal proceeding before the grand jury, a "true bill" is not found, the county shall pay one-half fees to clerks, sheriffs, officers, or constables who served any process in such proceeding.

1909, c. 183.

In Brunswick and Catawba counties the county shall not be liable for any part of the costs of justices of the peace, when "not a true bill" is found.

Rev., s. 1283; 1905, c. 598; 1909, c. 107.

In Montgomery County, in criminal cases, where the defendant is convicted in superior court, justices of the peace are entitled to full fees, if any are legally taxed in the bill of costs.

1909, c. 223.

In New Hanover County, in a criminal action, if there is no prosecutor, and the defendant is convicted and serves out his sentence on the public roads of the county, the county shall pay one-half fees as provided in the first sentence of this section.

Rev., s. 1283; 1905, c. 511.

NOTE. See this chapter, s. 53a.

35. Liability of county when defendant acquitted in supreme court. If, on appeal to the supreme court in criminal actions, the defendant is successful, the county from which the appeal was taken shall pay one-half the costs of the appeal, and all such sums as have been properly expended by the defendant for the transcript of the record and printing done under the rules of the court.

Rev., s. 1284.

36. County where offense committed liable for costs. In all cases where the county is liable to pay costs, that county wherein the offense is alleged to have been committed shall be adjudged to pay them.

Rev., s. 1285; 1889, c. 354.

37. Liability of counties, where trial removed from one county to another. The costs taxed in any case removed from another county for trial shall include the fees and expenses allowed for summoning the special venire, if one is ordered in the case, and the per diem and mileage of jurors who are empaneled to try the case, together with all other costs and expenses of the trial of the case, the amount of which, if not provided for by law, to be fixed by the presiding judge, so as to fully relieve the county in which the trial is had of all costs and expenses thereof.

All fines, forfeitures, penalties and amercements imposed or levied in the case shall belong to the county from which the case was removed and be paid to the treasurer of said county. When a prisoner is sent from one county to another to be held for trial, or for any other cause or purpose, the county from which he is sent shall pay his prison expenses, unless the same is collected from him on or before the first Monday in each month, and upon a failure to do so, it shall be the duty of the county to which he is sent to pay the same to the sheriff or jailer entitled to receive it at the same rate and under the same regulations as its own prison expenses are paid; and the county liable shall repay the same within thirty days after demand, and upon failing to do so the county to which the money is due shall be entitled to recover in the superior court, or, if the amount be within its jurisdiction, the court of justices of the peace of its own county, the amount due, with ten per cent additional, together with eight per cent interest on the sum due; and said courts of said county shall have full jurisdiction to hear, try and determine all actions and proceedings that may be brought for the purpose of enforcing the collection of the same. When the county to which such prisoner has been sent has paid the prison expenses and has made demand therefor upon the county liable as above provided and such demand be not complied with within ten days, the sheriff or jailer shall at once return such prisoner to the county from which such prisoner was sent, and deliver him to the sheriff or jailer thereof.

Rev., s. 1285; 1889, c. 354; 1901, c. 718.

38. Statement of costs against county to be filed with commissioners. In all criminal actions where the county is liable in whole or in part for costs, it is the duty of the clerks of the courts to make out a statement of such costs from the record or docket, within thirty days after the hearing, trial, determination, or other disposition thereof, and file the same with the board of commissioners of the county.

Rev., s. 1286; Code, s. 736; 1873-4, c. 116, s. 3.

39. Expenses in conveying prisoner to another county; provision for payment. When a sheriff or other officer arrests a person under a *capias* or other legal process, which requires him to have the person arrested before a court or judge of another county, and such sheriff or other officer is obliged to incur expense in the safe delivery of such person by reason of his failing to give bond for his appearance, or if the sheriff or other officer of the county to which the prisoner is to be carried incurs any expense in going for and conveying said prisoner to his county, then in either case, the sheriff or other officer shall file with the court or judge issuing the *capias* or other legal process and with the register of deeds an itemized and sworn account of such expenses, which shall be presented by the register to the board of commissioners at their next regular meeting to be audited by them. Such sworn statement shall be received by the said board as *prima facie* correct. Upon such auditing the board of commissioners shall cause to be issued to such sheriff or other officer an order on the county treasurer for the amount so audited and allowed by them, and shall notify the court or judge of their action, to the end that the amount so allowed shall be taxed in the costs to the use of the county.

Rev., s. 1287; 1885, c. 262; 1901, c. 64.

40. Cost of investigating lynchings. In all cases of investigation and trial of the crime of lynching, the entire cost incurred in the prosecution, unless paid by the person or persons convicted, shall be paid by the county wherein the crime shall have been committed. And whenever any solicitor goes to a county to investigate a crime of breaking or entering a jail for the purpose of lynching, the county where such crime is committed shall pay the solicitor the sum of one hundred dollars for making the investigation.

Rev., s. 1288; 1893, c. 461, s. 6.

ART. 6. LIABILITY OF DEFENDANT IN CRIMINAL ACTIONS

41. Costs against defendant convicted, confessing, or submitting. Every person convicted of an offense, or confessing himself guilty, or submitting to the court, shall pay the costs of prosecution.

Rev., s. 1291; Code, s. 1211; R. C., c. 35, s. 46.

42. Defendant imprisoned not discharged until costs paid. 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.

Rev., s. 1292; Code, s. 905; 1868-9, c. 178.

43. Judgment confessed or bond given to secure fine and costs. In cases where a court, mayor, or a justice of the peace permits a defendant convicted of any criminal offense, to give bond or confess judgment, with sureties to secure the fine and costs which may be imposed, the acceptance of such security shall be upon the condition that it shall not operate as a discharge of the original judgment against the defendant nor as a discharge of his person from the custody of the law until the fine and costs are paid.

Rev., s. 1293; Code, s. 749; 1885, c. 364; 1879, c. 264.

44. Arrest for nonpayment of fine and costs. In default of payment of such fine and costs, it is the duty of the court at any subsequent term thereof on motion of the solicitor of the state to order a *capias* to issue to the end that such defendant may be again arrested and held for the fine and costs until discharged according to law; and a justice of the peace or mayor may at any subsequent time arrest the defendant and hold him for the fine and costs until discharged according to law.

Rev., s. 1294; Code, s. 750; 1885, c. 364; 1879, c. 264.

ART. 7. LIABILITY OF PROSECUTOR FOR COSTS

45. Prosecutor liable for costs in certain cases; court determines prosecutor. In all criminal actions, if the defendant is acquitted, *nolle prosequi* entered, judgment against him arrested, or if the defendant is discharged from arrest for want of probable cause, 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 defense, shall be paid by the prosecutor, whether marked on the bill or warrant or not, whenever the judge,

court or justice is 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 has been found, or the defendant acquitted: Provided, 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.

Rev., s. 1295; Code, s. 737; 1889, c. 34; R. C., c. 35, s. 37; 1799, c. 4, s. 19; 1800, c. 558; 1868-9, c. 277; 1874-5, c. 151; 1879, c. 49.

46. Imprisonment of prosecutor for nonpayment of costs, if prosecution frivolous. Every such prosecutor may be adjudged not only to pay the costs, but he shall also be imprisoned for the nonpayment 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.

Rev., s. 1297; Code, s. 738; R. C., c. 35, s. 37; 1800, c. 558; 1879, c. 49; 1881, c. 176.

ART. 8. FEES OF WITNESSES

47. Not entitled to 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.

Rev., s. 1298; Code, s. 1368; 1868-9, c. 279, subsec. 11, s. 3.

48. Witness to prove attendance; action for fees. 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 ferriage, which shall be certified by the clerk; and on failure of the party, at whose instance such witness was summoned (witnesses for the state and municipal corporations 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. 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.

Rev., s. 1299; Code, s. 1369; R. C., c. 31, s. 73; 1777, c. 115, s. 46; 1796, c. 458; 1868-9, c. 279, subch. 11, ss. 2, 4.

49. Witness tickets to be filed; only two witnesses for single fact. At the court where the cause is finally determined the party recovering judgment shall file in the clerk's office the witness tickets; the amount whereof shall be taxed in the bill of costs, to be levied and recovered for the benefit of said party. The party cast shall not be obliged to pay for more than two witnesses to prove a single fact.

Rev., s. 1300; Code, s. 1370; R. C., c. 31, s. 74; 1783, c. 189, s. 3; 1796, c. 458, s. 2.

50. Fees of witnesses before jury of view, commissioner, etc. Witnesses summoned to appear at any survey, or before any jury of view, or before any commissioner, arbitrator, referee, or other person authorized to require their attendance, shall be entitled to the same fees as for similar attendance at the court of the county, and may prove, by their own oath, their attendance, mileage, and ferriage before such person, who is hereby authorized to administer the oath; and when they shall attend on any commission issuing from without the state, they may recover the fees for attendance against the party summoning them; or his agent or attorney directing them to be summoned; and when they shall attend under a commission or authority from any court in this state, the fees for attendance shall be proved as aforesaid, and be certified to the proper court and taxed among the costs of the cause, as if the witness had attended the court; but nevertheless, such fees may be immediately recovered against the party summoning.

Rev., s. 1301; Code, s. 1365; R. C., c. 31, s. 67; 1805, c. 685; 1848, c. 66; 1850, c. 188, s. 3.

51. Fees of witnesses before grand jury. No witness shall receive pay for attendance in a criminal case before a grand jury, unless such witness has been summoned by direction in writing of the foreman of the grand jury, or of the solicitor prosecuting, addressed to the clerk of the court, commanding him to summon such witness, stating the name of the parties against whom his testimony may be needed, or unless he has been bound or recognized by some justice of the peace to appear before the grand jury.

Rev., s. 1302; Code, s. 743; 1879, c. 264.

51a. Local modifications as to fees of witnesses before grand jury. In Martin County all witnesses who are subpoenaed by the court's order to appear before the grand jury and do attend, and all other witnesses who testify for the state in open court may prove attendance and collect one-half fees.

Rev., s. 1283; 1905, c. 134.

In Moore County all persons subpoenaed as witnesses before the grand jury in any criminal prosecution, or subpoenaed to appear before the judge in any criminal prosecution shall receive one dollar per day for each day attending, and five cents per mile for each mile traveled to and from court one time, whether a true bill be found or not. The county commissioners shall not have power or authority to allow any less sum than the face of the juror's or witness's tickets provided herein.

1907, c. 93, ss. 4, 5.

In Wayne County witnesses subpoenaed by the state before the grand jury shall receive one-half fees, if the grand jury fails to find "a true bill."

1907, c. 40.

NOTE. In Cherokee County, the law is on the same general lines as in Moore. See 1907, c. 156, ss. 4, 5.

As to Brunswick County, see P. L. 1913, c. 248.

52. Pay of witnesses in criminal 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, con-

fession or submission; and if the defendant is 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 appears to have been frivolous or malicious; but if the court is 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.

Rev., s. 1296; Code, s. 1204; R. C., c. 35, s. 37; 1800, c. 558, s. 1; 1879, c. 49; 1879, c. 92, s. 3; 1881, c. 176.

53. County to pay state's witnesses in certain cases. Witnesses summoned or recognized on behalf of the state to attend on any criminal prosecution in the superior or criminal courts where the defendant is insolvent, or by law is not 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 the prosecution was commenced. And in all cases wherein witnesses may be summoned or recognized to attend any such court to give evidence on behalf of the state, and the defendant is discharged, and in cases where the defendant breaks jail and is not afterwards retaken, the court shall order the witnesses to be paid.

Rev., s. 1289; Code, s. 740; R. C., c. 28, s. 9; 1804, c. 665; 1819, c. 1008; 1824, c. 1253.

53a. Local modifications as to counties paying state's witnesses:

In Durham County, when on the trial of a criminal action, the costs, or any part thereof, are taxed against the county, the witness fees of a salaried officer or salaried employee of the county of Durham or the city of Durham shall not be taxed against the county in the bill of costs.

1909, c. 485.

In Wake County, in all criminal cases and proceedings in the superior court where there is a verdict of acquittal, nolle prosequi, arrest of judgment, the return by a grand jury of "not a true bill," the county shall be liable for one-half fees to state's witnesses. Where the defendant is convicted and judgment is suspended, or the defendant is imprisoned, the county shall be liable for full fees to state's witnesses. The clerk of the superior court, immediately upon the determination of the case or proceeding, in any one of the ways provided above, shall make out and sign a statement showing the amount of fees and mileage to which each and every state witness duly subpoenaed to attend court in that case or proceeding is entitled, which, when endorsed by the solicitor holding said court, and a certificate made thereon by the sheriff of the county that the witness has paid all taxes for which he is liable, shall be presented to the treasurer of the county, who shall immediately pay the same out of the general county fund. In all cases where judgment is suspended, or the imprisoned defendant is taxed with the costs, the costs, when collected, shall be paid by the clerk to the treasurer of the county and placed in the general county fund.

1907, c. 204; Ex. Sess. 1908, c. 25.

At least thirty days before each criminal term of the superior court of Wilkes County the clerk shall file with the board of county commissioners an estimate of the amount of money necessary to pay witnesses for the state fifty cents on

the dollar of the amount due. Upon the filing of such estimate it is the duty of the commissioners to order the county treasurer to pay to the clerk an amount of money sufficient to pay state's witnesses fifty per cent of their witness fee and take receipt for same. At each term of the court, when witnesses who have been duly subpoenaed on behalf of the state are discharged upon filing their ticket with the clerk and assigning the ticket to the county, the clerk shall pay the witness fifty per cent of the face value of the ticket. The ticket shall be preserved by the clerk till the case is finally disposed of, and at the termination of the case, if the defendant is adjudged to pay the cost, the same shall be taxed in the bill of cost which, when collected, shall be paid over to the county treasurer, who shall pay the balance to the witness. Within thirty days after each criminal term of court the clerk shall pay over to the treasurer all the money so collected from defendants on witness fees, and file a sworn statement of all money so collected. It is the duty of the solicitor as each witness is discharged to give him a certificate showing the number of days he is entitled to prove as a witness, which certificate shall be filed with the clerk. If any individual purchases any witness ticket from any witness, the county shall not be liable to pay said witness, unless it shows upon the ticket the amount so paid by the purchaser, and then no greater amount than the amount paid, and in no case to exceed fifty per cent of the face value thereof.

1909, c. 38.

54. County to pay defendant's witnesses in certain cases. When the defendant is acquitted, a nolle prosequi entered, or judgment against him arrested, and it is made to appear to the court, by certificate of counsel or otherwise, that said defendant had witnesses, duly subpoenaed, bound or recognized, in attendance, and that they were necessary for his defense, it is the duty of the court, unless the prosecutor is adjudged to pay the costs, to make and file an order in the cause directing that said witness be paid by the county in such manner and to such extent as is authorized by law for the payment of state's witnesses in like cases.

Rev., s. 1290; Code, s. 747; 1879, c. 264; 1881, c. 312.

55. Fees of state witnesses; two only in misdemeanors; one fee for day's attendance. No person shall receive pay as a witness for the state on the trial of any criminal action unless such person was summoned by the clerk under the direction of the solicitor prosecuting in the court in which the action originated, or in which it shall be tried if removed; and no solicitor shall direct that more than two witnesses shall be summoned for the state in any prosecution for a misdemeanor, nor shall any county or defendant in any such prosecution be liable for or taxed with the fees of more than two witnesses, unless the court, upon satisfactory reasons appearing, otherwise directs. And no witness summoned in a criminal action or proceeding shall be paid by the county for attendance in more than one case for any one day; nor shall the county be required to pay any such witness if his attendance shall be taxed in more than one case on the same day.

Rev., s. 1303; Code, s. 744; 1871-2, c. 186; 1879, c. 264.

56. On appeal from justice only two witnesses bound over. When the defendant appeals from the judgment of the justice of the peace, in any criminal action,

it is the duty of such justice of the peace to select and bind over on behalf of the state not more than two witnesses, and neither the county nor the defendant shall be liable for the fees of more than two witnesses on such appeal, unless additional witnesses are summoned by order of the appellate court as provided in the preceding section.

Rev., s. 1304; Code, s. 745; 1879, c. 264.

57. Discharge of witnesses for state; certificate of attendance by solicitor. It is the duty of all solicitors prosecuting in the several courts, as each criminal prosecution is disposed of by trial, removal, continuance or otherwise, to call and discharge the witnesses for the state, either finally or otherwise, as the disposition of the case may require; and he shall thereupon file with the clerk of the court a certificate giving the names of the witnesses entitled to prove their attendance, with the date of their discharge. The said certificate shall be in the following or similar form, and blanks thereof shall be furnished to the solicitor by the clerk at the county expense, viz.:

North Carolina, _____ County.
 _____ Court, _____ Term, 19____
 State v. _____
 Witness _____
 discharged _____ day of _____, 19____, _____ Solicitor.
 Rev., s. 1305; Code, s. 746; 1879, c. 264; 1881, c. 312.

58. Witness not paid without certificate; court's discretion. No county, prosecutor or defendant shall be liable to pay any witness, nor shall his fees be embraced in the bill of costs to be made up as hereinbefore provided, unless his name is certified to the clerk by the solicitor, or included in the order of the court. And the judge or justice may, in his discretion, for satisfactory cause appearing, direct that the witnesses, or any of them, shall receive no pay, or only a portion of the compensation authorized by law. The court, at any time within one year after judgment, may order that any witness may be paid, who for any good reason satisfactory to the court failed to have his fees included in the original bill of costs.

Rev., s. 1306; Code, ss. 733, 748; 1879, c. 264; 1881, c. 312.

NOTE. As to amount of witness fees, see Salaries and Fees.

ART. 9. CRIMINAL COSTS BEFORE JUSTICES

59. Liability for criminal costs before justice. The party convicted in a criminal action, or proceeding before a justice, shall always be adjudged to pay the costs; and if the party charged be acquitted, the complainant shall be adjudged to pay the costs, and may be imprisoned for the nonpayment thereof, if the justice shall adjudge that the prosecution was frivolous or malicious. But in no action or proceeding of which he has final jurisdiction, commenced or tried in a court of a justice of the peace, shall the county be liable to pay any costs.

Rev., s. 1307; Code, s. 895; 1868-9, c. 178; 1879, c. 92, s. 3; 1881, c. 176.

60. Imprisonment of defendant for nonpayment of fine and costs. If the justice sentences the party found by him to be guilty to pay a fine and costs, and the same are not immediately paid, the justice shall commit the guilty person to

the county jail until the same are paid, or until he is otherwise discharged according to law.

Rev., s. 1308; Code, s. 904; 1868-9, c. 178, subchap. 4, s. 15.

NOTE. For costs in taking depositions to be used in another state, see Evidence.

For costs of advertising for creditors of deceased person, see Administration.

For fees to clerk superior court for issuing orders, etc., in guardianship matters, see Guardian and Ward.

For security for costs, see Civil Procedure.

For costs in bastardy cases, see Bastardy; in actions against guardians, see Guardian and Ward; in habeas corpus proceedings, see Habeas Corpus; in foreclosing liens, see Liens; in draining lowlands, see Drainage; when plaintiff refuses to accept tender of judgment, and fails to recover more, see Civil Procedure; in pauper suits, see Civil Procedure; in actions between landlord and tenant, see Landlord and Tenant; in actions to establish public mills, see Mills; in partition proceedings, see Partition; in actions for forfeiture of corporate charter, see Corporation.

CHAPTER 24

COUNTIES AND COUNTY COMMISSIONERS

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ART. 1. CORPORATE EXISTENCE AND POWERS OF COUNTIES

1. **County as corporation; acts through commissioners.** Every county is a body politic and corporate, and has the powers prescribed by statute, and those necessarily implied by law, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them.

Rev., s. 1309; Code, ss. 702, 703; 1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1.

2. **Corporate powers of counties.** A county is authorized—

1. To sue and be sued in the name of the county.

2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the general assembly.

3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its powers.

4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.

Rev., s. 1310; Code, s. 704; 1868, c. 20, s. 3.

ART. 2. COUNTY COMMISSIONERS

3. **Election and number of commissioners.** There shall be elected in each county of the state, at the general election to be held in the year one thousand eight hundred and ninety-six, and every two years thereafter, by the duly qualified voters thereof, three persons to be chosen from the body of the county, who shall be styled “the board of commissioners for the county of-----” and shall hold their office for two years from date of their qualification and until their successors are elected and qualified.

Rev., s. 1311.

4. **Local modifications as to term and number.** The number of commissioners shall be five instead of three in the counties of Alamance, Beaufort, Bertie, Buncombe, Cabarrus, Carteret, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, Mecklenburg, Nash, New Hanover, Pasquotank, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rowan, Tyrrell, Vance, Warren, Wayne and Wilson.

In Gaston County six persons shall be elected, one of whom must be a resident of Gastonia Township, one a resident of River Bend Township, one a resident of South Point Township, one a resident of Crowders Mountain Township, one a resident of Cherryville Township, and one a resident of Dallas Township. If at any time the board of commissioners of Gaston County are equally divided upon any question pending before them and there is a tie vote, then the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.

In Wake County five persons shall be elected, three of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and ten, and two of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and twelve.

Rev., ss. 1311, 1312; Code, s. 716; 1876-7, c. 141, s. 5; 1887, c. 307; 1895, c. 135; 1899, cc. 103, 147, 153, 187, 297, 301, 346, 450, 467, 488, 609; 1901, cc. 14, 60, 328, 330, 581; 1903, cc. 4, 7, 14, 36, 46, 59, 137, 191, 203, 206, 207, 228, 265, 446, 515, 700; 1905, cc. 37, 44, 58, 73, 148, 338, 340, 346, 397, 422, 553; 1907, cc. 2, 16, 55, 61, 125, 178, 291, 350; 1909, cc. 12, 53, 213, 302, 625, 729; P. L. 1917, cc. 32, 175, 381.

5. **Vacancies in board; how filled.** In case of a vacancy occurring in the board of commissioners of a county, the clerk of the superior court for the county shall appoint to said office for the unexpired term.

Rev., s. 1314; Code, s. 719; 1895, c. 135, s. 7; 1909, c. 490, s. 1.

6. When to qualify; oath to be filed. The board of commissioners shall qualify and enter upon the duties of their office on the first Monday of December next succeeding their election, and they may take the oaths of office before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths. The oaths of office severally taken and subscribed by them shall be deposited with the clerk of the superior court.

Rev., s. 1316; Code, s. 708; 1895, c. 135, s. 4.

7. Meetings of the board of commissioners. The board of commissioners in each county shall hold a regular meeting at the courthouse, 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 courthouse 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 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.

Rev., s. 1317; Code, s. 706.

NOTE. Meetings in certain counties are governed by special laws as follows: Ashe, P. L. 1911, c. 94; Buncombe, P. L. 1913, c. 392; Clay, 1889, c. 184; Dare, 1909, c. 68; Durham, 1901, c. 309; Edgecombe, 1901, c. 429; Forsyth, 1897, c. 437; Gaston, 1903, c. 34; Mecklenburg, 1893, c. 199; Union, 1907, c. 347; Wake, 1899, c. 297.

8. Powers of board. The boards of commissioners of the several counties have power—

TAXATION AND FINANCE

1. To exempt from capitation tax. To exempt from capitation tax in special cases, on account of poverty and infirmity.

Rev., s. 1318; Code, s. 907; 1868, c. 20, s. 8.

2. To levy county taxes. 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 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 beyond the first day of May next after the taxes were levied.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

3. To borrow money for necessary expenses, provide for payment by taxation. To borrow money for the necessary expenses of the county, and to provide for its payment, with interest, in periodical installments, by taxation.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

4. *To provide for payment existing debts by taxation or otherwise.* To provide by taxation or otherwise for the prompt and regular payment, with interest, of any existing debt owing by the county.

5. *To submit proposition to contract debt to vote.* To submit to a vote of the qualified electors in the county, after having obtained the approval of the general assembly, any proposition to contract a debt, or loan the credit of the county, under section seven, article seven, of the Constitution; to order the time for voting upon such proposition, which shall be upon public notice thereof at one or more places in each township in the county, and publication in one or more county newspapers, if there are any, for three months next immediately preceding the time fixed on; and such election shall take place and be conducted under the laws as prescribed for the election of members of the general assembly; and the commissioners shall provide for giving effect, in case of the adoption of the proposition, to the expressed will of a majority of the qualified voters in such election.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

NOTE. For special law as to Durham, see 1907, c. 982.

6. *To purchase county indebtedness.* To purchase if they desire, at any price, not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county.

Rev., s. 1320; Code, s. 718; 1868-9, c. 269, s. 2.

7. *To levy taxes for interest and sinking funds for outstanding bonds not provided for.* (a) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of bonds issued and sold for the purpose of meeting necessary expenses of the county, where no other provision for such levy has been specially provided for. In making such levy the constitutional equation must be preserved, and the levy shall not exceed any constitutional limitation.

(b) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of township road improvement bonds, issued either by vote of the people or by act of the general assembly, where the amount of levy provided by the act under which the vote is held or tax levied is inadequate to pay the interest on bonds heretofore issued or authorized by acts now in force, but the constitutional equation must be observed, and the levy shall not exceed any constitutional limitation.

1917, c. 121, ss. 1, 2.

COUNTY BUILDINGS

8. *To erect and repair county buildings.* To erect and repair the necessary county buildings, and to raise, by taxation, the moneys therefor.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

NOTE. For special law as to Tyrrell, see 1909, c. 413.

9. *To designate site for county buildings.* To remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by an unanimous vote of all the members of the board at the regular December meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in

a newspaper printed in the county, if there is one, and posted in one or more public places in every township in the county for three months, next immediately the annual meeting at which the final vote on the proposed change is to be taken. Such new site shall not be more than one mile distant from the old, except upon the special approval of the general assembly.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

NOTE. Special law as to Lincoln, see 1909, c. 182, s. 12.

COUNTY OFFICERS

10. To require officers to report. To require from any county officer, or other person employed and paid by the county, a report under oath at any time on any matters connected with his duties.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

11. To approve bonds of county officers and induct into office. To qualify and induct into office at the meeting of the board, on the first Monday in the month next succeeding their election or appointment, the following named county officers, to wit: clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable; and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safekeeping.

If the board declares the official bonds of any of said county officers to be insufficient, or declines to receive the same, the officers may appeal to the superior court judge riding the district in which the county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district he designates, within ten days after notice by him of the same, and if, upon the hearing of the appeal, the judge is of the opinion that the bond is sufficient, he shall issue an order to the board of commissioners to induct the officer into office, or that he shall be retained in office, as the case may be. If, upon the hearing of the appeal, the judge is of the opinion that the bond is insufficient, he shall give the appellant ten days in which to file before him an additional bond, and if the appellant within the ten days files before the judge a good and sufficient bond, in the opinion of the judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him as the case may be. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the commissioners, who shall notify the clerk of the superior court, who shall appoint to fill the vacancy, except in cases of the clerk of the superior court, which vacancy shall be filled by the resident judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1874-5, c. 237, s. 3.

12. To fill vacancies. To fill by appointment a vacancy in the offices of sheriff, constable, coroner, register of deeds, county treasurer, or county surveyor.

Rev., s. 1321; Code, s. 720.

COUNTY PROPERTY

13. *To make orders respecting county property.* To make such orders respecting the corporate property of the county as may be deemed expedient.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

14. *To sell or lease real property.* To sell or lease any real property of the county and to make deeds or leases for the same to any purchaser or lessee.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

COUNTY PURCHASES

15. *To purchase for public buildings, and at execution sale.* To purchase real property necessary for any public county building, and for the support of the poor, and to determine the site thereof, where it has not already been located; and to purchase land at any execution sale, when it is deemed expedient to do so, to secure a debt due the county. The deed shall be made to the county, and the board may, in its discretion, sell any lands so purchased.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1879, c. 144, s. 1.

16. *To purchase or lease a county farm, and work convicts thereon.* To lease or purchase a county farm, and where proper provisions are made for securing and caring for convicts, such of them as are subject to road duty may be worked on said farm, and, in the discretion of the board, such farms may be made experimental farms. The court, in its discretion, may sentence convicted prisoners either to said farm or to the roads. Where a farm is purchased or leased in those counties having a road system, the board may work the convicts on such farms.

1915, c. 140.

HIGHWAYS AND BRIDGES

17. *Laying out, alteration and discontinuance of highways.* To exercise authority in laying out, altering, repairing and discontinuing highways; in establishing and settling ferries; in building and keeping up bridges; in laying off or discontinuing cartways; in providing draws in all bridges, where the same may be necessary for the convenient passage of vessels; in appointing overseers of highways; in excusing persons from working on the highways; in allowing and contracting for the building of toll-bridges, and taking bond from the builders thereof; and in licensing the erection of gates across highways. This authority shall be exercised under the rules, regulations, restrictions and penalties in all respects prescribed and imposed in the chapter entitled Roads and Highways.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

NOTE. See Roads and Highways for statutes authorizing county and local road commissions.

18. *To raise money for highways.* To raise by tax the necessary highway moneys, in such manner as may be prescribed by law.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

19. *To appoint an inspector of highways and bridges.* To appoint an inspector of highways and bridges for the county, if deemed necessary; to fix and provide for his compensation and regulate his duties, not inconsistent with the laws of the state. The commissioners of two or more counties may unite in employing

an inspector of highways and bridges, and apportioning his compensation between the respective counties as may be agreed upon.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

20. To regulate speed of automobiles. To regulate the speed of automobiles, motorcycles and other like vehicles on the public roads and bridges, and make such ordinances as they may deem necessary governing the same. This subsection shall not apply to the counties of Mecklenburg and New Hanover.

Rev., 1318; 1905, c. 331.

21. To construct and repair bridges. To construct and repair bridges in the county, and to raise by tax the money necessary therefor, and when a bridge is necessary over a stream which divides one county from another, the board of commissioners of each county shall join in constructing or repairing such bridge; and the charge thereof shall be defrayed by the counties concerned, in proportion to the number of taxable polls in each.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

22. To appoint commissioners to open rivers and creeks. To appoint a commissioner to open and clear the rivers and creeks within the county, or where such river or creek forms a county line or a part thereof. For this purpose the board is authorized to withdraw from the public roads such lands as may be deemed necessary, and allot them to such work under overseers and the direction of the commissioner. The board may impose the duties of this subsection on the inspector of highways and bridges when appointed; and shall, in all respects conduct the opening and clearing of such rivers and creeks as prescribed by law.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

INSPECTION AND LICENSES

23. To license peddlers. To license peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

24. To license auctioneers. To license for the term of one year any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

25. To establish public landings, places of inspection, and inspectors. To establish such public landings and places of inspection as the board may think proper; and to appoint such inspectors in any town or city as may be authorized by law.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

POOR AND HOSPITALS

26. To provide for the maintenance of the poor. To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, some competent person as overseer of the poor, to institute proceedings by the warrant

of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county all the charges and expenses incurred for the maintenance or removal of such poor person.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

27. *To establish public hospitals and tuberculosis dispensaries.* To establish public hospitals for the county in cases of necessity, and to establish and maintain wholly or in part one or more tuberculosis dispensaries or sanatoria, and to make rules, regulations and by-laws for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the state; and to raise by taxation the necessary moneys to defray the charges and expenses so incurred.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

PRISONS AND PRISONERS

28. *To provide for a house of correction.* To make provision for the erection in each county of a house of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a superintendent thereof, and such assistants as are deemed necessary, and to fix their compensation.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

29. *To provide for employment of prisoners.* To provide for the employment on the highways or public works in the county of all persons condemned to imprisonment with hard labor, and not sent to the penitentiary.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

TOWNSHIPS

30. *To divide county into townships.* To divide each county into convenient districts, called townships, and to determine the boundaries and prescribe the names of said townships. A map and survey of said townships shall be filed in the office of the clerk of the board of commissioners, and also in the office of the secretary of state.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

31. *To erect, divide and alter townships.* To erect, divide, change the names of, or alter townships in the manner following: In any county, any three freeholders of each township to be affected, may, after the notice presently to be mentioned, apply by petition to the board of commissioners to erect a new township, or divide an existing township, or change the name of or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such townships, and published in a newspaper printed in the county, if there is one, for at least four weeks preceding the meeting at which the application is made to the board. No township shall have or exercise any corporate powers whatsoever, unless authorized by an act of the general assembly, to be exercised under the supervision of the board of commissioners.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1876-7, c. 141, ss. 3, 5.

32. To apportion funds between altered townships. When a township has been altered, erected, or divided, to apportion, in its discretion, the public funds of such township, between the new township divisions or subdivisions, and the warrant of the board upon the treasurer for the apportionment shall constitute a valid voucher for the payment thereof. In those counties where the township public roads are under the control of road trustees, the board shall appoint the requisite number of trustees to perform the duties of the office until the regular date for the appointment or election of such trustees and until their successors are elected and qualified, but this shall not apply where another method of election has been provided.

Ex. Sess., 1913, c. 44.

MISCELLANEOUS

33. To authorize chairman to issue subpoenas. To authorize the chairman to issue subpoena to compel the attendance before the board of persons, and the production of books and papers relating to the affairs of the county for the purpose of examination, on any matter within the jurisdiction of the board. The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question shall be guilty of contempt and punishable therefor by the board. A witness is bound in such cases to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination. The chairman of the board of county commissioners for each county is authorized in his official capacity to administer oaths in any matter coming before either of such boards. Any member of such board while temporarily acting as such chairman has and may exercise like authority.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

34. To audit accounts. To audit accounts against the county, and direct the raising of the moneys necessary to defray them.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

35. To appoint proxies. To appoint proxies to represent in any annual or other meetings the shares or other interest held by any county in a railroad company, or other corporation, under the charter of such corporation, or under any special acts of the general assembly, authorizing county subscriptions in such cases.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

NOTE. For special law as to Cherokee, see P. L. Ex. Sess. 1913, c. 115.

36. To procure weights and measures. To procure for each county sealed weights and measures, according to the standard prescribed by Congress; and to elect a standard keeper, who shall qualify before the board and give bond approved by the board, as prescribed by law.

Rev., s. 1318; Code, s. 707; R. C., c. 117, s. 4; 1868, c. 20, s. 26.

37. *To adopt a county seal.* To adopt a seal for the county, a description and impression of which shall be filed in the office of superior court clerk and of the secretary of state.

Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8.

38. *To promote farmers coöperative demonstration work.* To coöperate with the state and national departments of agriculture to promote the farmers cooperative demonstration work, and to appropriate such sum as they may agree upon for the purpose.

1911, c. 1.

39. *To appropriate for the National Guard.* To appropriate such sums of money to the various organizations of the National Guard, and at such times, as the board may deem proper.

1915, c. 259.

40. *To make appropriations for libraries.* Together with the county board of education of any county in which there is a public city or town library, in their discretion, to cooperate with the trustees of said library in extending the service of such library to the rural communities of the county, and to appropriate out of the funds under their control an amount sufficient to pay the expense of such library extension service.

1917, c. 149.

8a. *Levy of additional taxes for deficiency in necessary expenses.* The board of the county commissioners of the several counties are authorized and empowered to levy a special tax in excess of the constitutional limitation, not exceeding five cents on the one hundred dollars valuation of all property listed for taxation in their respective counties, to provide for any deficiency in the necessary expenses and revenue of their respective counties, which may be caused by the appropriation of taxes authorized under the chapter Education, article 16, entitled, Funds for Six Months Schools.

1913, c. 33, s. 9; 1913, c. 88; 1917, c. 109.

In order to meet any further deficiency arising from the cause stated, the board of county commissioners in the several counties in the state are directed, on or before the first Monday in August in each year to examine the tax abstracts for the current year, and if, upon such examination, it shall appear, and the board of county commissioners shall find as a fact, that the taxes which the board is authorized to levy, after deducting from the sixty-six and two-thirds cents on the one hundred dollars worth of property, the taxes levied by the state for general state purposes, for pensions and for schools, will not be sufficient to meet the current necessary expenses of the county for the current year, then the board of county commissioners shall spread upon the minutes of the board a record of said finding of fact; and thereupon the said board of county commissioners shall be and is hereby authorized to levy a special tax to meet the current necessary expenses of the county, not exceeding the increase in the levy made by the general assembly of nineteen hundred and thirteen for state purposes over and above the levy made by the general assembly of on thousand nine hundred and eleven. The tax so levied shall be collected in the same manner as other taxes.

Rev., s. 3573; Code, s. 1880; 1869-70, c. 169, s. 7.

9. To settle disputed county lines. When there is any dispute concerning the dividing line between counties, the board of commissioners of each county interested in the adjustment of said line, a majority of the board consenting thereto, may appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the commissioners in each county, is conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the secretary of state.

Rev., s. 1322; Code, s. 721; R. C., c. 27; 1836, c. 3.

10. How commissioners sworn and paid. Such commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors.

Rev., s. 1323; Code, s. 722.

10a. Approving insufficient bond misdemeanor. If any county commissioner shall approve any official bond which he knows or believes to be insufficient in the penal sum, or in the security thereof, he shall be guilty of a misdemeanor, and on conviction shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the state.

10b. Neglect of duty misdemeanor. If any county commissioner shall neglect to perform any duty required of him by law as a member of the board, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of two hundred dollars for each offense, to be paid to any person who shall sue for the same.

ART. 3. STATE ASSOCIATION OF COUNTY COMMISSIONERS

11. Membership of Association. The State Association of County Commissioners consists of the boards of county commissioners of the several counties, and any member of the board of any county may be a member of the association, but it is not mandatory for any county to become a member.

1909, c. 870, ss. 1, 2.

12. Purposes of association. The purpose of the association is to promote and cultivate more intimate association and more friendly relations among the county commissioners of the state; to secure as far as possible a uniform valuation of property for taxation; to promote the cause of good roads; to propose laws for the best interests of county governments; to secure uniformity in the handling of county affairs; to propose laws for the protection of county finances, and preservation of resources and assets; and to promote the general welfare of the state.

1909, c. 870, s. 1.

13. Powers of association. The association has power to adopt by-laws, rules and regulations for the government of its members, for the collection of fees and dues, for the number and election of its officers and the duties thereof, for the safekeeping of its property, and the general management of its affairs, and has power to alter, modify or amend such by-laws, rules and regulations, from time to time, as it deems best.

1909, c. 870, s. 3.

14. Officers of association. The officers shall be a president, a vice president at large and ten other vice presidents, or one from each congressional district, a secretary and treasurer, and an executive committee. The duties of the officers shall be prescribed by the by-laws, rules and regulations.

1909, c. 870, s. 4.

15. Dues and expenses of members. There shall be assessed against each county an annual membership fee of five dollars, which shall be paid by the county treasurer upon the order of the board of county commissioners, but the executive committee of the association may increase the annual membership fee to a sum not to exceed ten dollars. The various boards of commissioners are authorized to pay out of the county treasury the expenses of one of its members attending the meetings of the association.

1909, c. 870, ss. 5, 7.

16. Meetings of association. The annual meeting of the association shall be held on Wednesday after the second Monday in August of each year, and the place of meeting shall be designated by the executive committee. Upon ten days notice, the president or a majority of the executive committee may call a called meeting, and the time and place shall be designated together with a short statement of the object of the meeting.

1909, c. 870, s. 6.

ART. 4. CLERK TO BOARD OF COMMISSIONERS

17. Register clerk ex officio to board; compensation. The register of deeds is ex officio clerk of, and his compensation shall be fixed by, the board of commissioners.

Rev., s. 1324; Code, s. 710; 1895, c. 135, s. 4.

18. Duties of clerk. It is the clerk's duty—

1. To record in a book to be provided for the purpose all the proceedings of the board.

2. To enter every resolution or decision concerning the payment of money.

3. To record the vote of each commissioner on any question submitted to the board, if required by any member present.

4. To preserve and file in alphabetical, or other due order, all accounts presented or acted on by the board, and to designate upon every account audited the amount allowed and the charges for which it was allowed.

5. To keep the books and papers of the board free for the examination of all persons.

6. To administer oaths to all persons presenting claims against the county, but he shall receive no fee therefor.

Rev., s. 1325; Code, s. 712; 1905, c. 530.

19. Clerk to publish annual statement. The clerk shall annually on or within five days next before the first Monday of December, make out and certify, and cause to be posted at the courthouse, and published in a newspaper printed in the county, if there is one, for at least four weeks, a statement for the preceding year, showing—

1. The amount, items and nature of all compensation audited by the board to the members thereof severally.

2. The number of days the board was in session, and the distance traveled by the members respectively in attending the same.

3. Whether any unverified accounts were audited, and if any, how much and for what.

Rev., s. 1326; Code, s. 713.

ART. 5. FINANCE COMMITTEE

20. Election and duties of finance committee. The board of commissioners may elect by ballot three discreet, intelligent tax-paying citizens, to be known as the "finance committee," whose duty it is to inquire into, investigate and report by public advertisement, at the courthouse and one public place in each township of the county, or in a newspaper, at their option, if one is published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriation of county funds, or any malfeasance in office by any county officers.

Rev., s. 1389; Code, s. 758; 1897, c. 513; R. C., c. 28, s. 17; 1838, c. 31, s. 1; 1871-2, c. 71, s. 1.

21. Oath of members. The members of the finance committee before entering upon their duties shall, before the clerk of the superior court, subscribe to the following oath or affirmation:

I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality. So help me, God.

Rev., s. 1390; Code, s. 762; 1871-2, c. 71, s. 4.

22. Powers of finance committee. The finance committee has power and authority to send for persons and papers, and to administer oaths; and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, is guilty of a misdemeanor, and on conviction in the superior court, shall be fined and imprisoned at the discretion of the court.

Rev., s. 1391; Code, s. 759; 1831, c. 31; 1871-2, c. 71, s. 2; R. C., c. 28, s. 17; 1883, c. 252.

23. Penalty on officer failing to settle. If any clerk, sheriff, constable, county treasurer, register of deeds, justice of the peace, or other officer or commissioner, who holds any county money, fails duly to account for the same, the finance committee shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make a settlement; and every officer receiving notice and failing to make settlement as required by this chapter shall forfeit the sum of five hundred dollars, to be sued for in the name of the state and prosecuted for the use and at the expense of the county, unless the court releases the officers from the forfeiture.

Rev., s. 1392; Code, s. 760; R. C., c. 28, s. 19; 1831, c. 31, s. 3.

24. Annual report of finance committee. It is the duty of the finance committee to make and publish their report as hereinbefore directed on or before the first Monday of December in each year.

Rev., s. 1393; Code, s. 761; 1871-2, c. 71, s. 3.

NOTE. For criminal costs for which county is liable, see Costs.

For finance committee of Robeson, see 1907, c. 488.

ART. 6. COURTHOUSE AND JAIL BUILDINGS

25. Built and repaired by commissioners. There shall be kept and maintained in good and sufficient repair in every county, a courthouse and common jail, at the expense of the county, wherein the same are situated. The boards of commissioners of the several counties respectively shall lay and collect taxes, from year to year, as long as may be necessary, for the purpose of building, repairing and furnishing their several courthouses and jails, in such manner as they think proper; and from time to time shall order and establish such rules and regulations for the preservation of the courthouse, and for the government and management of the prisons, as may be conducive to the interests of the public, and the security and comfort of the persons confined.

Rev., s. 1335; Code, s. 782; R. C., c. 30, s. 1; 1741, c. 33, ss. 1, 2; 1795, c. 433, s. 1; 1816, c. 911, s. 1.

26. Jail to have five apartments. The common jails of the several counties shall be provided with at least five separate and suitable apartments, one for the confinement of white male criminals; one for white female criminals; one for colored male criminals; one for colored female criminals; and one for other prisoners.

Rev., s. 1336; Code, s. 783; R. C., c. 30, s. 2; 1795, c. 433, s. 4; 1816, c. 911.

27. To be heated. It is the duty of the board of commissioners in every county to have the common jails so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable. A failure to discharge the duty herein specified shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court.

Rev., s. 1337; Code, s. 784; 1879, c. 25.

28. Bedding to be furnished. The board of county commissioners, from time to time, as may be necessary, shall order the sheriff of the county to purchase, for the use of their jail, a certain number of good, warm blankets or other suitable bedclothing, which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the board of commissioners the condition and number of such blankets and bedclothing.

Rev., s. 1338; Code, s. 3465; R. C., c. 87, s. 10; 1822, c. 1136.

29. Prison bounds. For the preservation of the health of persons committed to jail, the board of commissioners of each county shall mark out such a parcel of the land as they 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. In order 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.

Rev., s. 1339; Code, s. 3466; R. C., c. 87, s. 11; 1741, c. 33, s. 3.

ART. 7. COUNTY REVENUE

30. Taxes collected by sheriff. The county taxes shall be collected by the sheriff of the county. He is entitled to the same commissions and is subject to the same rules and regulations in respect to his settlement of the said taxes with the county treasurer as he is in his settlement of the public taxes with the treasurer of the state; and he shall also settle with the county treasurer or board of commissioners for the taxes on the unlisted property in his county, under the same rules and regulations as he accounts with the auditor of the state.

Rev., s. 1376; Code, s. 723; R. C., c. 28, s. 2; 1798, c. 509, s. 2; 1811, c. 823.

31. Statement of fines kept by clerk. It is the duty of the clerks of the several courts, and of the several justices of the peace, to enter in a book, to be supplied by the county, an itemized and detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public.

Rev., s. 1377; Code, s. 725; 1873-4, c. 116, s. 4; 1879, c. 96, s. 1.

32. Fines paid to treasurer for schools; annual report. All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise, shall be accounted for and paid to the county treasurer by the officials receiving them within sixty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners.

Rev., s. 1378; Const., Art. IX, s. 5; Code, ss. 724, 726; R. C., c. 28, s. 3; 1879, c. 96, ss. 2, 5.

33. Expenditures of county fund directed by commissioners. The board of commissioners is invested with full power to direct the application of all moneys arising by virtue of this chapter for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county.

Rev., s. 1379; Code, s. 753; R. C., c. 28, s. 16; 1777, c. 129, s. 4.

34. County officers receiving funds to report annually. 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. It 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.

Rev., s. 1380; Code, s. 728; 1874-5, c. 151, s. 1; 1876-7, c. 276, s. 1.

35. Board to enforce duty to report. If any person required to make any of the reports herein provided for fails to do so, or if, after a report has been made, the board of commissioners 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.

Rev., s. 1381; Code, s. 730; 1874-5, c. 151, s. 3; 1876-7, c. 276, s. 3.

36. Reports to be recorded in register's office. If the board of commissioners approves of any of the said reports, it 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 official 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.

Rev., s. 1382; Code, s. 729; 1874-5, c. 151, s. 2; 1876-7, c. 276, s. 2.

37. Penalty for failure to report. If any clerk, sheriff, justice of the peace, or other officer, fails or neglects to account for and pay over as required by law any taxes on suits, or any fines, forfeitures and amercements as required by this chapter, or fails to make the returns herein specified, he shall forfeit and pay five hundred dollars, to be recovered in the name of the board of commissioners for the use of the public schools of the county.

Rev., s. 1383; Code, s. 764; R. C., c. 28, s. 7; 1808, c. 756; 1809, c. 769; 1813, c. 864; 1830, c. 1, ss. 11-13.

38. Demand before suit against municipality; complaint. No person shall sue any city, county, town, or other municipal corporation for any debt or demand whatsoever unless the claimant has made a demand upon the proper municipal authorities. And every such action shall be dismissed unless the complaint is verified and contains the following allegations: (1) That the claimant presented his claim to the lawful municipal authorities to be audited and allowed, and that they had neglected to act upon it, or had disallowed it; or (2) that he had presented to the treasurer of said municipal corporation the claim sued on, which had been so allowed and audited, and that such treasurer had notwithstanding neglected to pay it.

Rev., s. 1384; Code, s. 757.

39. Accounts to be itemized, verified and audited. No account shall be audited by the board for any services or disbursements, unless it is first made out in items and has attached to and filed with it the affidavit of the claimant that the services therein charged have been in fact made and rendered, and that no part thereof has been paid or satisfied. Each account shall state the nature of the services, and where no specific compensation is provided by law, it shall also state the time necessarily devoted to the performance thereof. The board may disallow or require further evidence of the account, notwithstanding the verification. All county commissioners acting on January the twenty-seventh, one thousand nine hundred and five, or elected theretofore, are released, whether as individuals or in their corporate capacity, from any and all penalties incurred by reason of failure to comply with the provisions of this section, prior to said date.

Rev., s. 1385; Code, s. 754; 1905, c. 55; 1868, c. 20, s. 10.

40. Accounts to be numbered as presented. All accounts presented in any year, beginning at each regular meeting in December, shall be numbered from one upwards, in the order in which they are presented, and the time of presentation, the names of the persons in whose favor they are made out, and by whom presented, shall be carefully entered on the minutes of the board; and no such account shall be withdrawn from the custody of the board or its clerk, except to be used as evidence in a judicial proceeding, and after being so used it shall be promptly returned.

Rev., s. 1386; Code, s. 755; 1868, c. 20, s. 12.

41. Claims to be numbered as allowed; copy to board annually. The clerk of the board of commissioners, if so ordered by the board, shall number all claims, orders and certificates that may be allowed by the board in a book kept for that purpose, and he shall annually, the day before the board proceeds to lay a county tax for the ensuing year, furnish the chairman of the board with a copy of the same.

Rev., s. 1387; Code, s. 751; R. C., c. 28, s. 12; 1793, c. 387.

42. Annual statement of claims and revenues to be published. The board shall cause to be posted at the courthouse within five days after each regular December meeting and for at least four successive weeks, or after each regular monthly meeting, if they deem it advisable, and for one week, the name of every individual whose account has been audited, the amount claimed and the amount allowed; and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county: Provided, the cost of such publication shall not exceed one-half of a cent a word.

Rev., s. 1388; Code, s. 752; 1901, c. 196; 1905, c. 227.

ART. 8. COUNTY POOR

43. Support of poor; superintendent of county home; paupers removing to county. The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person.

Rev., s. 1327; Code, s. 3540; 1891, c. 138.

44. County home for aged and infirm. All persons who become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the board of commissioners select or agree upon.

Rev., s. 1328; Code, s. 3541; 1891, c. 138.

NOTE. For local laws as to Lincoln, Robeson, and Vance, see 1915, c. 558.

45. Support of county home. The board of commissioners may provide for the support of the persons admitted by them to the home for the aged and infirm by employing a superintendent at a certain sum, or by paying a specified sum for the support of such persons to any one who will take charge of the county home for the aged and infirm, as said board may deem for the best interest of the county and the cause of humanity.

Rev., s. 1329; Code, s. 3543; 1876-7, c. 277, s. 3.

46. Property of indigent to be sold or rented. When any indigent person who becomes chargeable to a county for maintenance and support in accordance with the provisions of this article, owns any estate, it is the duty of the board of commissioners of any county liable to pay the expenses of such indigent person, to cause the same to be sold for its indemnity or reimbursement in the manner provided in the chapter entitled Insane Persons and Incompetents, or they may take possession thereof and rent the same out and apply the rent toward the support of such indigent person.

Rev., s. 1330; Code, s. 3547; 1866, c. 49.

47. Families of indigent militiamen to be supported. When any citizen of the state is absent on service as a militiaman or member of the state guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable.

Rev., s. 1331; Code, s. 3546; R. C., c. 86, s. 14; 1779, c. 152.

48. Paupers not to be hired out at auction. No pauper 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 home for the aged and infirm, as may be deemed best.

Rev., s. 1332; Code, s. 3542; 1876-7, c. 277, s. 2.

49. Legal settlements; how acquired. Legal settlements may be acquired in any county, so as to entitle the party to be supported by such county, in the manner following, and not otherwise:

1. *By one year's residence.* Every person who has resided continuously in any county for one year shall be deemed legally settled in that county.

2. *Married women to have settlement of their husbands.* A married woman shall always follow and have the settlement of her husband, if he have any in the state; otherwise, her own at the time of her marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

3. *Legitimate children to have settlement of father.* Legitimate children shall follow and have the settlement of their father, if he has any in the state, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

4. *Illegitimate children to have settlement of mother.* Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the state. But neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein.

5. *Settlement to continue until new one acquired.* Every legal settlement shall continue till it is lost or defeated by acquiring a new one, within or without the state; and upon acquiring such new settlement, all former settlements shall be defeated and lost.

Rev., s. 1333; Code, s. 3544; R. C., c. 86, s. 12; 1777, c. 117, s. 16.

50. Removal of indigent to county of settlement; maintenance; penalties. Upon complaint made by the chairman of the board of county commissioners, before a justice of the peace, that any person has come into the county, who is likely to become chargeable thereto, the justice by his warrant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person is sick or disabled, and cannot be removed without danger of life, the board of commissioners shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal. The county, wherein he was last legally settled, shall repay all charges occasioned by his sickness, maintenance, cure and removal, and all charges and expenses whatever, if such person die before removal. If the board of commissioners of the county to which such poor person belongs refuses to receive and provide for him when removed as aforesaid, every commissioner so refusing shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the board of commissioners of the county, where such person was legally settled, refuses to pay the charges and expenses aforesaid, they shall be liable for the same. If any housekeeper entertains such poor person without giving notice thereof to the board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars.

Rev., s. 1334; Code, s. 3545; R. C., c. 86, s. 13; 1777, c. 117, s. 17; 1834, c. 21.

ART. 9. COUNTY PRISONERS

51. Bonds of prisoner in criminal case returned to court. Every bond taken of any person confined for an offense, 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. On breach thereof it shall be forfeited and collected as a forfeiture in the name and for the use of the state, and applied as other forfeited recognizances.

Rev., s. 1340; Code, s. 3467; R. C., c. 87, s. 12.

52. Bond of prisoner committed on *capias* in civil action. Every bond given by any person committed in arrest and bail, 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. If any person, who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment; and no person committed to jail on such execution shall be allowed the rules of

prison: Provided, the obligors have ten days previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea.

Rev., s. 1341; Code, s. 3469; R. C., c. 87, s. 14; 1759, c. 65, ss. 2, 3.

53. Jailer to cleanse jail, furnish food and water. The sheriff or keeper of any jail shall, every day, cleanse the room of the prison in which any prisoner is confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner plenty of good and wholesome water, three times in every day; and shall furnish each prisoner fuel, not less than one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance.

Rev., s. 1343; Code, s. 3464; R. C., c. 87, s. 9; 1816, c. 911, s. 2.

54. Prisoner to pay charges and prison fees. Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county.

Rev., s. 1346; Code, s. 3461; R. C., c. 87, s. 6; 1795, c. 433, s. 7.

55. Prisoner may furnish necessities. Prisoners shall be allowed to purchase and procure such necessities, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence.

Rev., s. 1344; Code, s. 3463; R. C., c. 87, s. 8; 1795, c. 433, s. 6.

56. United States prisoners to be kept. When a prisoner is delivered to the keeper of any jail by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid, shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the state. The allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the state.

Rev., s. 1342; Code, s. 3456; R. C., c. 87, s. 1; 1790, c. 322, ss. 1, 2.

57. Guard when escape apprehended; compensation. When the sheriff of the county, or keeper of the jail, apprehends that there is danger of a prisoner escaping, through the insufficiency of the jail or other cause, it is his duty, without delay, to make information thereof to a judge of the superior court, the attorney-general, or a solicitor, if any of those officers is in the county, and if not, then to three justices of the peace, and they are authorized, if they deem it advisable, to furnish the sheriff or keeper of the jail with an order in writing, addressed to the commanding officer of the militia of the county, setting forth the danger, and requiring him forthwith to furnish such guard as to him may appear to be suitable for the occasion. For which service the persons ordered on guard shall receive such compensation as militiamen in actual service for defense of the

state; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same.

Rev., s. 1345; Code, s. 3460; R. C., c. 87, s. 5; 1795, c. 433, s. 8.

58. What counties liable for guarding and removing prisoners. The expense for guarding prisons shall be paid by the county where the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed.

Rev., s. 1347; Code, s. 3462; R. C., c. 87, s. 7; 1808, c. 757, s. 2.

59. Transfer of prisoners to succeeding sheriff. The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen.

Rev., s. 1348; Code, s. 3470; R. C., c. 87, s. 15; 1777, c. 118, s. 12.

60. Where no jail, sheriff may imprison in jail of adjoining county. The sheriffs, constables, and other ministerial officers of any county, in which there is no jail, have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this chapter, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county.

Rev., s. 1349; Code, s. 3459; R. C., c. 87, s. 4; 1835, c. 2, s. 3.

61. Where no jail, courts may commit to jail of adjoining county. Whenever, there happens to be no jail, or when there is an unfit or insecure jail, in any county, the superior court judges, justices of the peace, and all judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes, and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs, constables, and other officers of such county, in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor.

Rev., s. 1350; Code, s. 3458; R. C., c. 87, s. 3; 1835, c. 2, s. 2.

62. When jail destroyed, transfer of prisoners provided for. When the jail of any county is destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process, under which any prisoner was confined, shall order his commitment to the jail of any adjacent county; and the sheriff, constable or other officer of the county, deputed for that purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent

county shall receive such prisoners upon the order aforesaid. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor.

Rev., s. 1351; Code, s. 3457; R. C., c. 87, s. 2; 1835, c. 2, s. 1.

63. Counties and towns may hire out certain prisoners. The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intend-ant of the several cities and towns of the state, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the fine and bill of costs in all cases of conviction. It is unlawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had shall in its judgment so authorize.

Rev., s. 1352; Code, s. 3448; 1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218.

64. Person hiring may prevent escape. The party in whose service said convicts may be, may use the necessary means to hold and keep them in custody, and to prevent their escape.

Rev., s. 1353; Code, s. 3454; 1876-7, c. 196, s. 3.

65. Sheriff to have control of prisoners hired out. All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a state officer for the purpose of this section.

Rev., s. 1354; Code, s. 3453; 1876-7, c. 196, s. 2.

66. Convicts who may be sentenced to or worked on roads. When any county has made provision for the working of convicts upon the public roads, or when any number of counties have jointly made provision for working convicts upon the public roads, it is lawful for, and the duty of the judge holding court in such counties, to sentence to imprisonment at hard labor on the public roads for such terms as are now prescribed by law for their imprisonment in the county jail or in the state's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise wholly or in part be imprisonment in the state's prison for a term not exceeding ten years.

In such counties there may also be worked on the public roads, in like manner, all persons sentenced to imprisonment in jail by any magistrate; and also, all

insolvents imprisoned by any court in said counties for nonpayment of costs in criminal causes may be retained in imprisonment and worked on the public roads until they repay the county to the extent of the half fees charged up against the county for each person taking the insolvent oath. The rate of compensation to be allowed each insolvent for work on the public roads shall be fixed by the county commissioners at a just and fair compensation, regard being had to the amount of work of which each insolvent is capable.

Rev., s. 1355; 1887, c. 355; 1889, c. 419.

NOTE. For special law as to Mecklenburg and Wake counties, see P. L. 1915, c. 792.

67. Deductions from sentence allowed for good behavior. When a convict has been sentenced to work upon the public roads of a county, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged from the county roads when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape he shall forfeit and lose any deduction he may have been entitled to prior to that time. This section shall apply also to women sentenced to a county farm or county home.

1913, c. 167, s. 1.

68. Convicts sentenced to roads to be under county control. The convicts sentenced to hard labor upon the public roads, under second section preceding, shall be under the control of the county authorities, and the county authorities have power to enact all needful rules and regulations for the successful working of convicts upon the public roads. The county commissioners may work such convicts on the public roads or in canalizing the main drains and swamps or on other public work of the county.

Rev., s. 1356; 1887, c. 355, s. 2; 1891, c. 164.

69. When sentenced to state's prison in lieu of roads. In all cases where the judge presiding is satisfied that there is good reason to fear that an attempt might be made to release or to injure any person convicted of any of the offenses mentioned in the second class, it is lawful for the judge to sentence such convicts to imprisonment in the state's prison, as is now provided by law: Provided, that no person who has been convicted and sentenced on a charge of murder, manslaughter, rape, attempt to commit rape, or arson, shall be assigned to county roads under this chapter.

Rev., s. 1357; 1887, c. 355, s. 4.

70. State's prison to furnish convicts to county roads. In addition to the convicts mentioned in s. 66, above, the board of directors of the state's prison is authorized and directed to furnish to the authorities of any county within the state, convicts, not exceeding twenty-five in number during any one year, for the purpose of working the public roads in said county. The said convicts shall be at all times under the supervision and control as to their government and discipline of the board of directors of the state's prison as in case of hiring convicts to railroad companies. Any county applying for convicts under this article

shall erect suitable stockades for their safekeeping and protection, and shall pay the expense of their transportation from and to the state's prison.

Rev., s. 1358; 1887, c. 355, s. 5.

71. Taxes may be levied for expenses of convicts. The board of county commissioners of the several counties in the state taking advantage of this chapter shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties taking advantage of this article.

Rev., s. 1359; 1887, c. 355, s. 6.

ART. 10. HOUSES OF CORRECTION

72. Commissioners may establish houses of correction. The board of commissioners may, when they deem it necessary, establish within their respective counties, one or more convenient houses of correction, with work shops and other suitable buildings for the safekeeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said houses, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid, shall vest in the directors hereinafter provided for, and their successors in office. The said board also has power to make, from time to time, such rules and regulations as it may deem proper, for the kind and mode of labor, and the general management of the said houses.

Rev., s. 1360; Code, s. 786; 1866, c. 35, s. 1.

73. Levy of taxes authorized; to be paid to manager. The board of commissioners, in addition to the ordinary county taxes, shall also, at the time said taxes are laid, lay such tax as may be necessary to carry into effect this article, which shall be collected and paid to the manager at the same time as other county taxes are to be paid; for which, and such other funds as may come into his hands as manager, he shall be accountable; and he shall disburse the same under the authority of the directors.

Rev., s. 1361; Code, s. 790; 1866, c. 35, s. 5.

74. Bonds may be issued. The board of commissioners may, if deemed advisable by them, issue county bonds to raise money to establish the houses and farms herein provided for.

Rev., s. 1362; Code, s. 796; 1866, c. 35, s. 11.

75. Governor to be notified of establishment. When any workhouse or house of correction is established in pursuance of this article, it is the duty of the chairman of the board of commissioners of the county wherein the same is established, to certify the fact to the governor, who shall cause it to be noted in a book kept for that purpose.

Rev., s. 1363; Code, s. 797; 1866, c. 35, s. 12.

76. Directors to be appointed; duties. The board of commissioners shall annually, appoint not less than five nor more than nine directors for each house of correction established, whose duty it is to superintend and direct the manager hereinafter named in the discharge of his duties; to visit said houses at least

once in every three months; to see that the laws, rules and regulations relating thereto are duly executed and enforced, and that the persons committed to his charge are properly cared for, and not abused or oppressed. The directors shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such by-laws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said commissioners. The directors shall be paid for the services rendered by the county treasurer, each director first making it appear to the satisfaction of the board of county commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated.

Rev., s. 1364; Code, s. 787; 1866, c. 35, s. 2.

77. Term of office of directors. The directors shall continue in office until others are appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors.

Rev., s. 1365; Code, s. 795; 1866, c. 35, s. 10.

78. Manager to be appointed; bond; duties. The board of commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more solvent sureties, in such sum as may be required, payable to the state of North Carolina, conditioned for the faithful discharge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager is appointed by the board of commissioners. It is the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures.

Rev., s. 1366; Code, s. 788; 1866, c. 35, s. 3.

79. Manager to assign employment to inmates. The manager shall assign to each person sent to the workhouse the kind of work in which such person is to be employed.

Rev., s. 1367; Code, s. 794; 1866, c. 35, s. 9.

80. Compensation of officers. The said board of commissioners shall direct what compensation the manager and such subordinate officers, assistants and servants, as shall be appointed, shall receive, and shall provide the payment thereof.

Rev., s. 1368; Code, s. 789; 1866, c. 35, s. 4.

81. Sheriff to convey persons committed. When a person is sentenced to a workhouse, he shall forthwith be committed by the court to the custody of the

sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the workhouse, and deliver him to the manager with the certified copy aforesaid, and take 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.

Rev., s. 1369; Code, s. 793; 1866, c. 35, s. 8.

82. Absconding offenders punished. If any offender absconds, escapes, or departs from any house of correction without license, the manager has 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 submits 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.

Rev., s. 1370; Code, s. 791; 1866, c. 35, s. 6.

83. Release of vagrants. If a person committed as a vagrant behaves well and reforms, he may, on the certificate of the manager, be released by the directors. But if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors, upon such conditions as they may deem proper.

Rev., s. 1371; Code, s. 792; 1866, c. 35, s. 7.

84. Suits in name of county. All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the county, to the use of the directors of the workhouse, without designating such directors by name.

Rev., s. 1372; Code, s. 798; 1866, c. 35, s. 13.

85. Counties may establish joint house of correction. 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.

Rev., s. 1373; Code, s. 799; 1866-7, c. 130, s. 1.

86. Directors of joint house of correction. 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.

Rev., s. 1374; Code, s. 800; 1866-7, c. 130, s. 2.

87. Directors to appoint manager; bond; term; duties. 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 sum as may be required, payable to the state of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chapter.

Rev., s. 1375; Code, s. 801; 1866-7, c. 130, s. 3.

88. Compensation of manager and other officers. The compensation of the manager and such subordinate officers, assistants and servants as may be appointed by the general board shall be fixed by said general board.

Rev., s. 1375; Code, s. 801; 1866-7, c. 130, s. 3.

CHAPTER 25

COUNTY SURVEYOR

1. Election and term of office.
2. Bond required.
3. May appoint deputies.
4. Power to administer oaths.

1. Election and term of office. There shall be elected in each county, by the qualified voters thereof, as provided for the election of members of the general assembly, a county surveyor, who shall hold office for the term of two years.

Cons., Art. 7, s. 1; Rev., s. 4296.

NOTE. For vacancies in office and method of filling, see Counties and County Commissioners, Art. 2, sec. 8.

2. Bond required. The county surveyor of each county shall enter into bond in the sum of one thousand dollars payable to the state of North Carolina, with sufficient surety, for the faithful discharge of the duties of his office.

Rev., s. 303; Code, s. 2762; R. C., c. 42, s. 5; 1777, c. 114, s. 13.

3. May appoint deputies. Every surveyor may appoint deputies, who shall, previous to entering on the duties of their office, be qualified in a similar manner with the surveyor; and the surveyor making such appointment shall be liable for the conduct of such deputies, as for his own conduct in office.

Rev., s. 1720; Code, s. 2763; R. C., c. 42, s. 6; 1779, c. 140, s. 5.

4. Power to administer oaths. The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants.

Rev., s. 2361; Code, s. 3314; 1881, c. 144.

NOTE. For vacancies filled, see Counties and County Commissioners, Art. 2. For duties as to Entries and Grants, see State Lands, subchapter 1, Art. 4.

CHAPTER 26

COUNTY TREASURER

1. Election of county treasurer.
2. Bond; penalty; when renewed.
3. Office may be abolished or restored by justice of peace.
- 3a. Commissioners may abolish office and appoint bank.
4. Office includes person acting as treasurer.
5. Is treasurer of county board of education.
6. Sheriff acting as treasurer; bond liable.
7. Duties of county treasurer.
8. Treasurer not to speculate in county claims; penalty.
9. Treasurer administers property held in trust for county.
10. Treasurer to take charge of county trust funds; additional bond.
11. Commissioners to keep record of trust funds.
12. Treasurer to exhibit separate statement as to trust funds.
13. Treasurer to pay no claim unless audited.
14. Treasurer to deliver books, etc., to successor.
15. Action on treasurer's bond to be by commissioners.
16. Officers failing to account to treasurer sued by commissioners.

1. Election of county treasurer. In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, a treasurer.

Rev., s. 1394; Const., Art. VII, s. 1.

2. Bond; penalty; when renewed. The county treasurer, before entering upon the duties of his office, shall give bond with 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 shall 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 a sum not exceeding the amount of the county and local taxes assessed during the previous year, and the board of commissioners at any time, by an order, may require him to renew, increase or strengthen 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: Provided, the board of commissioners may fix the bond of the treasurer of Forsyth County at such sum as they may deem best, not less than twenty thousand dollars, and may increase it at any time; and in Craven County the bond of the treasurer shall be equal to the county funds during the preceding year, but not to exceed forty thousand dollars.

Rev., s. 297; Code, s. 766; 1868-9, c. 157, s. 4; 1895, c. 270, s. 2; 1899, c. 132; 1899, c. 207, s. 4; 1903, c. 12, s. 2; 1901, c. 536; 1899, c. 54, s. 52.

3. Office may be abolished or restored. 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 devolve upon the sheriff, who shall be ex officio county treasurer. And in any county where the office of treasurer is abolished, the justices of the peace may also, if they deem it expedient to do so, restore the office of treasurer.

Rev., s. 1395; Code, s. 768; R. C., c. 29, s. 10; 1852, c. 6; 1876-7, c. 141; 1881, c. 362.

3a. Local: Commissioners may abolish office and appoint bank. In the counties of Bladen, Carteret, Chatham, Cherokee, Chowan, Edgecombe, Granville, Hyde, Madison, Mitchell, Montgomery, Martin, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Tyrrell, and Union, the board of county commissioners is hereby authorized and empowered, in its discretion, to abolish the office of county treasurer in the county; but the board shall, before abolishing the office of treasurer, pass a resolution to that effect at least sixty days before any primary or convention is held for the purpose of nominating county treasurer. When the office is so abolished, the board is authorized in lieu of a county treasurer, to appoint one or more solvent banks or trust companies located in its county as financial agent for the county, which bank or trust company shall perform the duties now performed by the treasurer or the sheriff as ex officio treasurer of the county. Such bank or trust company shall not charge nor receive any compensation for its services, other than such advantages and benefit as may accrue from the deposit of the county funds in the regular course of banking.

The bank or trust company, appointed and acting as the financial agent of its county, shall be appointed for a term of two years, and shall be required to execute the same bonds for the safekeeping and proper accounting of such funds as may come into its possession and belonging to such county and for the faithful discharge of its duties, as are now required by law of county treasurers.

1913, c. 142; Ex. Sess. 1913, c. 35; P. L. 1915, cc. 67, 268, 458, 481.

4. Office includes person acting as treasurer. The office of county treasurer shall always be construed to refer to, and include, the person authorized by law to perform the duties of that office in any county, if there is no county treasurer therein.

Rev., s. 1396; Code, s. 770.

5. Is treasurer of county board of education. The county treasurer is ex officio treasurer of the county board of education.

Rev., s. 1396; Code, s. 770.

6. Sheriff acting as treasurer, bond liable. In counties where the office of county treasurer is 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 cover the trust funds coming to his hands.

Rev., s. 1397; Code, s. 769; 1879, c. 202.

7. Duties of county treasurer. It is the duty of the treasurer—

1. *To keep county moneys.* To receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, to keep them separate and apart from his own affairs, and to apply them and render account of them as required by law.

2. *To keep true accounts.* To keep a true account of the receipts and expenditures of all such moneys, taking proper vouchers in every case in books provided for that purpose at the expense of the county; which said books shall at all times show the date, amount, and from whom he has received such moneys; the date, amount and to whom he has paid out any of the said moneys, the total

amount received and the total amount paid out during the current fiscal year for school purposes, for general county purposes, for jury fund, and for each special purpose, all separately kept, so that at all times his said books shall correctly and accurately show the condition of the said several accounts. His account of expenditures for general county purposes shall also show separately the amounts expended each year on account of the county home, indigent persons, jails, workhouses, courthouse, bridges, insolvent fees, courts, and such other special accounts as the board of commissioners of the county require, the total of said accounts being the aggregate amount expended during the fiscal year for general county purposes. He shall post at the courthouse door on the first Monday in each month a correct statement of such receipts and expenditures, showing the amount received, and from what source, and the amounts paid out, and to whom, and for what purpose, and the balance in his hands belonging to the county.

3. *To call on county officers for funds in their hands.* To call on the sheriff, or the clerk of the superior court, or other officer having county moneys in his hands, at least once in each month, or oftener if necessary, to pay over to him, and to account for all such moneys.

4. *To keep accounts of fines, etc.* To enter in a book to be kept by him the exact amount of any fine, penalty or forfeiture paid over to him, giving the date of payment, the name of the clerk or other person so paying the same, the name of the party from whom such fine, penalty or forfeiture was collected, and in what case.

5. *To exhibit to the board of commissioners his books and accounts as treasurer for examination.* To exhibit his books and accounts and moneys once every three months, or oftener, if the board of commissioners of his county deem it necessary, to a committee to be composed of the chairman of the board of commissioners and one other person to be selected by the board of commissioners, who shall be an expert accountant. It is the duty of this committee to examine the books and accounts of his office, and to see that the accounts are correctly and properly kept, and to count the money in the hands of the treasurer, and to see that it corresponds with the amount shown by the books to be in his hands. At every such examination of the books and accounts of his office the county treasurer shall exhibit a full, perfect and itemized statement to said committee of the use he has made of every dollar of public funds in his hands since the last exhibition of his books to said committee, and if any part of said funds has been loaned out this statement shall state to whom loaned and on what security and the amount of interest paid on said loan, and such interest shall be covered into the county treasury by the treasurer. This statement shall be sworn to and published in a county newspaper or at the courthouse door. Nothing herein contained shall be construed to authorize the county treasurer to lend any public funds.

If at any time there is a deficit in the amount of money in the hands of the treasurer, the committee shall so report to the board of commissioners, whose duty it is to institute proceedings in the superior court against said treasurer for violation of his official duties.

Rev., s. 1398; Code, s. 96, 773; 1889, c. 242.

8. Treasurer not to speculate in county claims; penalty. No county treasurer purchasing a claim against the county at less than its face value, is entitled to charge the county a greater sum than what he actually paid for the same; and the board of commissioners may examine him as well as any other person on oath concerning the matter. Any county treasurer who is concerned or interested in any such speculation shall forfeit his office.

Rev., s. 1399; Code, s. 772; 1868-9, c. 157, s. 8.

9. Treasurer administers property held in trust for county. All real and personal property held by deed, will or otherwise by any person or officer in trust for any county, or for any charitable use to be administered in and for the benefit of such county or the citizens thereof, shall be transferred to and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator or other person in the original deed, devise or other instrument of donation.

Rev., s. 1400; Code, s. 778; 1869-70, c. 85.

10. Treasurer to take charge of county trust funds; additional bond. It is the duty of the county treasurer to take charge of all such trust funds and property; but he shall not do so, without giving a bond payable to the state, in a penalty double the estimated value of said property or funds, with three or more sureties, each of whom is worth at least the amount of the penalty of the bond, over and above all his liabilities and property exempt from execution, which bond shall be taken by the board of commissioners, and recorded and otherwise treated and dealt with as the official bond of the treasurer.

Rev., s. 1401; Code, s. 779; 1869-70, c. 85, s. 2.

11. Commissioners to keep record of trust funds. The board of commissioners shall keep a proper record of all such trust property or charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld.

Rev., s. 1402; Code, s. 780; 1869-70, c. 85, s. 3.

12. Treasurer to exhibit separate statement as to trust funds. The county treasurer, whenever he is required to exhibit to the board of commissioners the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of all such trust funds and property, how invested, secured, used, and other particulars concerning the same.

Rev., s. 1403; Code, s. 781; 1869-70, c. 85, s. 4.

13. Treasurer to pay no claim unless audited. It is unlawful for the county treasurer to pay a claim against the county, unless the same has been audited and allowed by the board of commissioners.

Rev., s. 1404; Code, s. 777; 1868, c. 19.

14. Treasurer to deliver books, etc., to successor. When 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.

Rev., s. 1405; Code, s. 767; 1868-9, c. 157.

15. Action on treasurer's bond to be by commissioners. The board of commissioners shall bring an action on the treasurer's bond, whenever they have knowledge or a reasonable belief of any breach of the bond.

Rev., s. 1406; Code, s. 771; 1868-9, c. 157.

16. Officers failing to account to treasurer sued by commissioners. In case of the failure or refusal of a sheriff, clerk, or other officer to account and pay over, when called on as directed in this article, the treasurer shall report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and the said board is also allowed to bring suit on the official bond of the clerk of the superior court of any adjoining county.

Rev., s. 1407; Code, s. 775; 1868-9, c. 157, s. 10.

CHAPTER 27

COURTS

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SUBCHAPTER I. SUPREME COURT**ART. 1. ORGANIZATION AND TERMS**

1. Number of justices. The supreme court shall consist of a chief justice and four associate justices.

Rev., s. 1532; Const., Art. 4, s. 6.

2. Election and term of office. The justices of the supreme court shall be elected by the qualified voters of the state, as is provided for the election of members of the general assembly. They shall hold their offices for eight years.

Const., Art. 4, s. 21.

3. Oath of office. The justices, before they act as such, shall, before the governor or some judicial officer, take and subscribe the oaths appointed for the qualification of public officers, and also an oath of office, which shall be certified by the officer taking the same and delivered to the secretary of state, to be safely kept.

Rev., s. 1533; Code, s. 955; R. C., c. 33, s. 3; 1818, c. 963.

4. Name of court; where records to be kept. The court bears the name and style of The Supreme Court of North Carolina, and is a court of record; and the papers and records belonging to the clerk's office thereof shall be constantly kept within the city of Raleigh.

Rev., s. 1536; Code, s. 954; R. C., c. 33, s. 2; R. S., c. 33, s. 2; 1884, c. 660; 1805, c. 674; 1818, c. 962; 1828, c. 13.

5. Quorum. Three justices constitute a quorum for the transaction of the business of the court.

Rev., s. 1534; Code, s. 956; 1889, c. 230.

6. Terms of court. There shall be held at the seat of government of the state in each year two terms of the supreme court, commencing on the first Monday in February and the last Monday in August.

The court shall sit at each term until all the business on the docket shall be determined or continued on good cause shown. In case no one of the justices shall attend the term during the first week thereof, at the end of that time the court shall stand adjourned till the next term, and the causes on the docket be continued.

Rev., ss. 1535, 1536; Code, ss. 953, 954; 1901, c. 660; 1887, c. 49; 1881, c. 178; R. C., c. 33, s. 2; R. S., c. 33, s. 2; 1804, c. 660; 1805, c. 674; 1818, c. 932; 1828, c. 13; 1842, c. 15; 1846, cc. 28, 29.

ART. 2. JURISDICTION

7. Original jurisdiction. The supreme court has original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the general assembly for its action.

Rev., s. 1537; Const., Art. IV, s. 9.

8. Procedure to enforce claims against the state. Any person having any claim against the state may file his complaint in the office of the clerk of the supreme court, setting forth the nature and grounds of his claim. He shall cause a copy of his complaint to be served on the governor, and therein request him to appear on behalf of the state and answer his claim. The copy shall be served at least twenty days before application for relief shall be made to the court. In case of an appearance for the state by the governor, or any other authorized officer, the pleadings and trial shall be conducted in such manner as the court shall direct. If an issue of fact shall be joined on the pleadings, the court shall transfer it to the superior court of some convenient county for trial by a jury, as other issues of fact are directed to be tried, and the judge of the court before whom the trial is had shall certify to the supreme court, at its next term, the verdict and the case, if any, made up and settled as prescribed in cases of appeal to the supreme court. If the state shall not appear in the action by any authorized officer, the court may make up issues and send them for trial, as aforesaid. The supreme court shall in all cases report the facts found, and their recommendation thereon, with the reasons thereof, to the general assembly at its next term.

Rev., s. 1538; Code, s. 948.

9. Appellate jurisdiction. The supreme court has 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” is the same exercised by it before the adoption of the constitution of one thousand eight hundred and sixty-eight, and the court has the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts.

Rev., s. 1539; Const., Art. IV, s. 8.

10. Power to render judgment and issue execution. In every case the court may render such sentence, judgment and decree as on inspection of the whole record it shall appear to them ought in law to be rendered thereon; and it may at its discretion make the writs of execution which it may issue returnable either to the said court, or to the superior court: Provided, that when an execution shall be made returnable as last mentioned, a certificate of the final judgment of the supreme court shall always be transmitted to the superior court aforesaid, and there be recorded: Provided further, that the said superior court may enforce obedience to the execution, and in the event of its not being executed may issue new or further execution or process thereon in the same manner as though the first execution had issued from the said superior court: Provided also, that in criminal cases the decision of the supreme court shall be certified to the superior court from which the case was transmitted, which superior court shall proceed to judgment and sentence agreeable to the decision of the supreme court and the laws of the state.

Rev., s. 1542; Code, s. 957; R. C., c. 33, s. 6; 1799, c. 520; 1818, c. 963; 1830, c. 2; 1868-9, c. 962.

11. No judgment on interlocutory order; opinion certified. When an appeal is taken to the supreme court from any interlocutory judgment, the supreme court shall not enter any judgment reversing, affirming or modifying the judgment, order or decree so appealed from, but shall cause their opinion to be certified to the court below, with instructions to proceed upon such order, judgment or decree, or to reverse or modify the same according to said opinion, and the court below shall enter upon its records the opinion at length, and proceed in the cause according to the instructions.

Rev., s. 1544; Code, s. 962.

12. Power of amendment and to require further testimony. The supreme court has power to amend any process, pleading or proceeding either in form or substance for the purpose of furthering justice, on such terms as shall be deemed just at any time before final judgment; and to amend by making proper parties to any case where the court may deem it necessary and proper for the purposes of justice and on such terms as the court may prescribe. And whenever it appears necessary for the purpose of justice, the court may allow and direct the taking of further testimony in any case which may be pending in the court, under such rules as may be prescribed, or may remand the case to the intent that amendments may be made, further testimony taken or other proceedings had in the court below.

Rev., s. 1545; Code, s. 965; R. C., c. 33, s. 17; 1777, c. 115, s. 75; 1785, c. 233; 1792, c. 360; 1831, c. 46.

13. Proof of exhibits. Exhibits or other documents relative to cases pending in the supreme court may be proved by the parol testimony of witnesses to be examined in the court in the same manner and under the same rules as such exhibits or documents may be proved in the superior court, and suitors in the court may have subpoenas to enforce the attendance of witnesses, who shall be liable to the same penalties and actions for nonattendance, and be entitled to the same pay for traveling, ferriage and attendance as witnesses in the superior court: Provided, that witnesses attending the supreme court shall be taxed in the bill of costs and paid by the party on whose behalf they may be summoned.

Rev., s. 1547; Code, s. 963; R. C., c. 33, s. 21; 1820, c. 1070; 1825, c. 1282; 1842, c. 1.

14. Opinions and judgments to be in writing. The justices shall deliver their opinions and judgments in writing, and the clerk shall make no entry upon the records of the court that any cause pending therein is decided, nor give to any person a certificate of such decision, nor issue execution in such suit, until after the opinion of the court shall have been delivered publicly in open court, and a written copy of the same opinion shall have been delivered to the clerk; which shall afterwards be filed among the records of the court and published in the reports of the decisions made by the court: Provided, that the justices shall not be required to write their opinions in full except in cases in which they deem it necessary.

Rev., s. 1548; Code, s. 964; 1893, c. 379, s. 5; R. C., c. 33, s. 16; 1810, c. 785.

15. Certificates to superior courts; execution for costs; penalty. The clerk on the first Monday in each month shall transmit by some safe hand, or by mail, to the clerks of the superior courts certificates of the decisions of the supreme court in cases sent from such courts, which shall have been on file ten days; and thereupon the 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 on 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 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.

Rev., s. 1549; Code, s. 968; 1887, c. 41; R. C., c. 33, s. 21; 1820, c. 1070; 1825, c. 1282; 1842, c. 1, s. 3.

16. Appeals dismissed. 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.

Rev., s. 1543; Code, s. 967; R. C., c. 33, s. 20; 1848, c. 28; Supm. Ct. Rules, 15, et seq.

17. Petition to rehear; execution restrained. A petition to rehear may be filed during the vacation succeeding the term of the court at which the judgment

was rendered, or within twenty days after the commencement of the succeeding term, and upon the filing of such petition the chief justice, or either of the associate justices, may, upon such terms as he sees fit, make an order restraining the issuing of an execution, or the collection and payment of the same, until the next term of said court, or until the petition to rehear shall have been determined.

Rev., s. 1346; Code, s. 966; R. C., c. 33, s. 18; Supreme Court Rules, 52, 53, 54.

18. Records to be made. The court may order the clerk to record such parts of the record of cases as it may deem necessary.

Rev., s. 1550; Code, s. 959.

19. Power to make rules of court. The justices of the supreme court shall prescribe and establish from time to time rules of practice for that court and also for the superior courts. The clerk shall certify to the judges of the superior court the rules of practice for such court, to be entered on the records thereof in each county.

Rev., s. 1541; Code, s. 961; R. C., c. 33, s. 13; 1818, c. 963.

ART. 3. OFFICERS OF COURT

20. The court may appoint acting attorney-general. 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.

Rev., s. 1551; Code, s. 960; R. C., c. 33, s. 22; 1846, c. 29.

21. Reporter. The supreme court may employ a reporter of its decisions.

Rev., s. 1552; Code, s. 3363; 1893, c. 379, s. 4; 1897, c. 429.

22. Clerk. The clerk of the supreme court shall be appointed by the court, and shall hold his office for eight years.

Rev., s. 1553; Const., Art. IV, s. 15.

22a. Clerk's bond and oath of office. Before undertaking his duties, the clerk of the supreme court shall enter into bond with sufficient surety payable to the state of North Carolina, in the sum of fifteen thousand dollars, conditioned for the faithful discharge of his duties and for the safekeeping of all records committed to his custody, which bond shall be lodged with the secretary of state; and he shall also before said justices, or one of them, take the oaths which are prescribed for clerks of the superior court, and shall keep his office in the city of Raleigh.

Rev., s. 290; Code, s. 958; R. C., c. 33, s. 9; 1812, c. 829, s. 2; 1818, c. 963, s. 5; 1846, c. 28, s. 3; 1799, c. 520, s. 2.

23. Clerk to report money on hand. The clerk of the supreme court shall, at the beginning of each fall term, produce to the court a statement on oath of all moneys remaining in his hands which have been paid into his office three years or more previous thereto, whether received directly from parties or from his predecessor in office, and is not detained in his hands by special order of the court, specifying therein the name of the person to whom the same is payable,

and his address, if known; a copy of which report shall be transmitted to the state treasurer and to the auditor.

Rev., s. 1554; Code, s. 1864; R. C., c. 73; 1823, c. 1186; 1831, c. 3.

24. Marshal appointed. The supreme court may appoint an officer to be styled Marshal of the Supreme Court, removable at will, who shall attend upon the court during its sessions.

Rev., s. 1555; Code, s. 950; 1873-4, c. 34; 1881, c. 306.

NOTE. For compensation, see s. 2770.

25. Librarian appointed. The justices of the supreme court have charge of the law library and may, in their discretion, employ a librarian, who shall perform his duties under such rules and regulations as may be prescribed by the court.

Rev., s. 5084; Code, s. 3606; 1889, c. 482; 1883, c. 100.

SUBCHAPTER II. SUPERIOR COURTS

ART. 4. ORGANIZATION .

26. Number of judges and solicitors. The state shall be divided into twenty superior court judicial districts, for each of which a judge and a solicitor shall be chosen in the manner now prescribed by law.

1913, cc. 9, 63; Const., Art. 4, s. 10.

27. Election and term of office of judges. The judges of the superior courts shall be elected in like manner as is provided for justices of the supreme court, and shall hold their offices for eight years.

Const., Art. 4, s. 21.

28. Election and term of office of solicitor. A solicitor shall be elected for each judicial district by the qualified voters thereof, as is prescribed for members of the general assembly, who shall hold office for the term of four years, and prosecute on behalf of the state in all criminal actions in the superior courts, and advise the officers of justice in his district.

Const., Art. 4, s. 23.

29. Residence and rotation of judges. Every judge of the superior court shall reside in the district for which he is elected. The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years, but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the governor may require any judge to hold one or more specified terms in said district in lieu of the judge assigned to hold the courts of the said district.

Const., Art. 4, s. 11.

30. Oath of office. Every judge before he shall act as such, shall, in open court, or before the governor, or before one of the judges of the supreme or superior courts, or before some justice of the peace, take the oath appointed for

public officers, and also an oath of office. The officer or court before whom the judge shall qualify, shall cause the judge to subscribe the oaths by him taken, and having certified the same, shall return the oaths to the secretary of state, who shall carefully preserve them; and if any judge shall act in his office before he shall have taken the oaths directed, he shall forfeit and pay two thousand dollars, one-half to the use of the state and the other half to the person who shall sue for the same.

Rev., s. 1497; Code, s. 924; R. C., c. 31, ss. 18, 19; 1777, c. 115; 1806, c. 694, s. 13; 1848, c. 45.

31. Vacancies filled. All vacancies occurring by death, resignation or otherwise in the offices of justice of the supreme or judge of the superior court of the state shall be filled for the unexpired term at the next general election for members of the general assembly held after such vacancy is created. The persons elected at such election shall be commissioned by the governor immediately after the ascertainment of the result in the manner provided by law and shall qualify and enter upon the discharge of the duties of the office within ten days after receiving such commission.

Rev., s. 1498; 1899, c. 613; Const., Art. 4, s. 25.

32. When judge may discharge solicitor. When any state solicitor, authorized by election or appointment to act as prosecuting attorney for, or in behalf of the state of North Carolina, in any of the courts of said state, shall appear at such court, in term time, drunk or intoxicated, or when it shall be brought to the knowledge of the judge presiding at such court that the solicitor, whose duty it is to represent the state at such court, is in the town in which such court is being held, drunk or intoxicated, at any time, it shall become the duty of such judge, and he is hereby directed to immediately discharge such solicitor from the duties of such court, for the term then being held, and appoint some competent attorney to act as state solicitor for the term. The appointee shall be allowed all the fees and compensation belonging to the solicitor for such term.

Rev., s. 1499; 1901, c. 717.

ART. 5. JURISDICTION

33. Original jurisdiction. The superior court has original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for thirty days; and of all such affrays as shall be committed within one mile of the place where, and during the time, such court is being held; and of all offenses whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not within twelve months after the commission of the offense proceed to take official cognizance thereof.

Rev., s. 1500; Code, s. 922; 1889, c. 504, s. 2; Const., Art. IV, ss. 12, 27; 1879, c. 92, s. 11; 1881, c. 210.

NOTE. Superior court of Beaufort County has concurrent jurisdiction with recorders courts in certain cases. Ex. Sess., 1913, c. 78.

34. Jurisdiction in vacation or at term. In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings,

they may apply for relief to the superior court in vacation, or in term time, at their election.

Rev., s. 1501; Code, c. 10, s. 230; 1871-2, c. 3.

35. Appellate jurisdiction. The superior court has appellate jurisdiction of all issues of law or of fact, determined by a clerk of the superior court or a justice of the peace, and of all appeals from inferior courts for error assigned, in matters of law, as provided by law.

Rev., s. 1502; Const., Art. IV, ss. 12, 27; Code, s. 923.

36. Cases transferred from former courts. All suits, petitions and other proceedings pending in the late courts of equity, and in the late courts of pleas and quarter sessions, and not determined by final judgment or decree, and all such cases wherein any act was decreed to be done or deed to be executed, and said act was not done or deed executed, may be transferred to the superior court of the county in which they were pending, at the instance of any person interested. And the superior court shall have power to make all orders, judgments and decrees that shall be necessary for finally adjudicating and settling the same.

Rev., s. 1503; Code, s. 944; 1871-2, c. 161; 1873-4, c. 183; 1874-5, c. 81; 1876-7, c. 9.

ART. 6. JUDICIAL DISTRICTS AND TERMS OF COURT

37. Number of districts. The state shall be divided into twenty superior court judicial districts, numbered first to twentieth, composed of the counties hereafter designated in this chapter.

1913, c. 63; 1913, c. 196.

38. Eastern and western judicial divisions. The state shall be divided into two judicial divisions, the Eastern and Western Judicial Divisions:

The counties which are now or may hereafter be included in the judicial districts from one to ten, both inclusive, shall constitute the Eastern Division, and the counties which are now or may hereafter be included in the judicial districts from eleven to twenty, both inclusive, shall constitute the Western Division. The judicial districts shall retain their numbers from one up to twenty, and all such other districts as may from time to time be added by the creation of new districts shall be numbered consecutively.

1915, c. 15.

39. Terms of court. A superior court shall be held by a judge thereof at the courthouse in each county. The twenty judicial districts of the state shall be composed of the counties designated in this section, and the superior courts in the several counties shall be opened and held in each year at the times herein set forth. Each court shall continue in session one week, and be for the trial of criminal and civil cases, except as otherwise provided, unless the business thereof shall be sooner disposed of. Each county shall have the number of regular weeks of superior court as set out in this section.

1913, cc. 63, 196.

EASTERN DIVISION

First district. The first district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Currituck—Fifth Monday before the first Monday in March, for civil cases only; first Monday in March; first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 51.

Camden—First Monday after the first Monday in March; seventh Monday before the first Monday in September, for civil cases only; and ninth Monday after the first Monday in September.

1913, c. 196.

Pasquotank—Ninth Monday before the first Monday in March, to continue for two weeks, for civil cases only; third Monday before the first Monday in March, for civil cases only; second Monday after the first Monday in March; second Monday after the first Monday in September, to continue for two weeks, the second week for civil cases only; tenth Monday after the first Monday in September, for civil cases only.

1913, c. 196; Ex. Sess. 1913, c. 51.

Perquimans—Sixth Monday before the first Monday in March; sixth Monday after the first Monday in March; eighth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 51.

Chowan—Fourth Monday after the first Monday in March; first Monday after the first Monday in September; thirteenth Monday after the first Monday in September.

1913, c. 196.

Gates—Third Monday after the first Monday in March; fifth Monday before the first Monday in September; fourteenth Monday after the first Monday in September.

1913, c. 196.

Dare—Twelfth Monday after the first Monday in March; seventh Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 51.

Tyrrell—Tuesday after the seventh Monday after the first Monday in March, to continue for two weeks, the second week for civil cases only; Tuesday after the twelfth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 51.

Hyde—Eleventh Monday after the first Monday in March; sixth Monday after the first Monday in September.

1913, c. 196.

Beaufort—Second Monday before the first Monday in March, to continue for two weeks for civil cases only; fifth Monday after the first Monday in March, for civil cases only; ninth Monday after the first Monday in March, to continue for two weeks, the second week for civil cases only; fourth Monday after the first Monday in September, to continue for two weeks for civil cases only; eleventh Monday after the first Monday in September; fifteenth Monday after the first Monday in September, for civil cases only.

1913, c. 196; Ex. Sess. 1913, c. 51.

Washington—Fourth Monday before the first Monday in September; seventh Monday before the first Monday in March; thirteenth Monday after the first Monday in March, to continue for two weeks.

1913, cc. 63, 196; Ex. Sess. 1913, c. 51.

Second district. The second district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Martin—Second Monday after the first Monday in March, to continue for two weeks; fifteenth Monday after the first Monday in March; second Monday after the first Monday in September, to continue for two weeks; fourteenth Monday after the first Monday in September.

1913, c. 196.

Edgecombe—First Monday in March; first Monday after the first Monday in September; thirteenth Monday after the first Monday in March, to continue for two weeks. Fourth Monday after the first Monday in March; eighth Monday after the first Monday in September; tenth Monday after the first Monday in September; each to continue for two weeks, and to be for civil cases only.

The grand jury drawn by the commissioners of Edgecombe County for the term of court beginning on the first Monday in March of each year shall also serve as the grand jury for the term beginning on the thirteenth Monday after the first Monday in March, and shall be charged with the same duties and clothed with the same power at each of said terms and shall receive for each term such mileage and compensation as is now provided by law.

1913, c. 196; Ex. Sess. 1913, c. 17; 1915, c. 107; 1917, c. 12.

Nash—Sixth Monday before the first Monday in March; first Monday before the first Monday in March, for civil cases only. First Monday after the first Monday in March; eighth Monday after the first Monday in March, to continue for two weeks, the first week for criminal cases only, and the second week for civil cases only; twelfth Monday after the first Monday in March, for civil cases only. First Monday before the first Monday in September; fifth Monday after the first Monday in September; twelfth Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; 1915, c. 63.

NOTE. No court held in Nash on Thanksgiving Day. P. L. 1913, c. 685.

Wilson—Seventh Monday before the first Monday in March; fourth Monday before the first Monday in March, to continue for two weeks, the second week to be for civil cases only. Tenth Monday after the first Monday in March, to continue for two weeks, the last week to be for civil cases only; sixteenth Monday after the first Monday in March, for civil cases only. First Monday in September, fourth Monday after the first Monday in September; eighth Monday after the first Monday in September, to continue for two weeks for civil cases only; tenth Monday after the first Monday in September, to continue for two weeks for civil cases only; fifteenth Monday after the first Monday in September, for criminal cases only.

1913, c. 196; 1915, c. 45; 1917, c. 12.

Third district. The third district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Hertford—First Monday before the first Monday in March; sixth Monday after the first Monday in March, to continue for two weeks; fifth Monday before the first Monday in September, for criminal cases, for civil cases not requiring a jury, and for the trial of jury cases on the civil docket by the consent of all parties; sixth Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; 1915, c. 282.

Bertie—Third Monday before the first Monday in March; ninth Monday after the first Monday in March, to continue for two weeks; first Monday before the first Monday in September, to continue for two weeks; tenth Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; Ex. Sess. 1913, c. 16; 1915, c. 78; 1917, c. 226.

Northampton—Fourth Monday after the first Monday in March; eighth Monday after the first Monday in September, each to continue two weeks; first Monday in August, for civil actions only, except jail cases on the criminal docket.

1913, c. 196.

Halifax—Fifth Monday before the first Monday in March; second Monday after the first Monday in March; thirteenth Monday after the first Monday in March; third Monday before the first Monday in September; twelfth Monday after the first Monday in September; each to continue for two weeks.

1913, c. 196; Ex. Sess. 1913, c. 2; 1915, c. 78.

Warren—Seventh Monday before the first Monday in March; eleventh Monday after the first Monday in March; second Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196; 1917, c. 256.

Vance—First Monday in March; fifteenth Monday after the first Monday in March; fourth Monday after the first Monday in September, each to continue two weeks.

1913, c. 196; 1917, c. 256.

Fourth district. The fourth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Wayne—Sixth Monday before the first Monday in March; twelfth Monday after the first Monday in March; second Monday before the first Monday in September; twelfth Monday after the first Monday in September, each to continue for two weeks; fifth Monday after the first Monday in March, and fifth Monday after the first Monday in September, each to continue for two weeks for civil cases only.

1913, c. 196.

Johnston—First Monday after the first Monday in March; third Monday before the first Monday in September, for criminal cases only; fourteenth Mon-

day after the first Monday in September, to continue for two weeks; second Monday before the first Monday in March; seventh Monday after the first Monday in March, and third Monday after the first Monday in September, each to continue for two weeks; and the last three terms for civil cases only.

1913, c. 196.

Harnett—Eighth Monday before the first Monday in March; fourth Monday before the first Monday in March, to continue for two weeks for civil cases only. Eleventh Monday after the first Monday in March; first Monday in September, to continue for two weeks, the second week for civil cases only. Tenth Monday after the first Monday in September, to continue for two weeks for civil cases only.

1913, c. 196.

Chatham—Seventh Monday before the first Monday in March; tenth Monday after the first Monday in March; seventh Monday after the first Monday in September; second Monday after the first Monday in March; and the fourth Monday before the first Monday in September; the last two terms for civil cases only.

1913, c. 196; 1917, c. 228.

Lee—Third Monday after the first Monday in March, to continue for two weeks; ninth Monday after the first Monday in March; second Monday after the first Monday in September for civil cases only; eighth Monday after the first Monday in September, to continue for two weeks, the first week for criminal and civil cases and the second for civil cases only; seventh Monday before the first Monday in September, to continue for two weeks. When any party has been duly served with summons and a copy of the complaint thirty days before the commencement of any term of the court of Lee County, the case shall stand for trial at said term in all respects as if summons had been returned to a preceding term.

1913, c. 196; Ex. Sess. 1913, c. 24; 1917, c. 228.

Fifth district. The fifth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Pitt—Sixth Monday before the first Monday in March; seventh Monday after the first Monday in March; first Monday before the first Monday in September; tenth Monday after the first Monday in September; second Monday after the first Monday in March, to continue for two weeks; second Monday after the first Monday in September; fourth Monday after the first Monday in September; seventh Monday before the first Monday in March; sixth Monday after the first Monday in March; eleventh Monday after the first Monday in March; twelfth Monday after the first Monday in March; second Monday before the first Monday in September; ninth Monday after the first Monday in September; the last six terms for civil cases only.

1913, c. 196; Ex. Sess. 1913, 25; 1915, c. 139; 1917, c. 217.

Craven—Eighth Monday before the first Monday in March; thirteenth Monday after the first Monday in March; and the first Monday in September for criminal cases only. Fifth Monday after the first Monday in March for civil cases and jail cases on the criminal docket. Fourth Monday before the first

Monday in March; fourth Monday after the first Monday in September; eleventh Monday after the first Monday in September; each to continue for two weeks, for civil cases only. Tenth Monday after the first Monday in March, and twelfth Monday after the first Monday in March, for civil cases only.

1913, c. 196; 1915, c. 111.

Pamlico—Eighth Monday after the first Monday in March, and seventh Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196.

Jones—Fourth Monday after the first Monday in March; and thirteenth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 19; P. L. 1915, c. 363.

Carteret—Fourteenth Monday after the first Monday in March, to continue for two weeks; first Monday after the first Monday in March, and sixth Monday after the first Monday in September.

1913, c. 196.

Greene—First Monday before the first Monday in March, to continue for two weeks; sixteenth Monday after the first Monday in March; fourteenth Monday after the first Monday in September, to continue for two weeks.

1913, cc. 63, 171, 196; Ex. Sess. 1913, cc. 19, 47; 1915, c. 139.

Sixth district. The sixth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Lenoir—Sixth Monday before the first Monday in March; eleventh Monday after the first Monday in March; second Monday before the first Monday in September, and fourteenth Monday after the first Monday in September, each for criminal cases only. Second Monday before the first Monday in March, two weeks, for civil cases only. Fifth Monday after the first Monday in March; fourteenth Monday after the first Monday in March, and ninth Monday after the first Monday in September, terms of two weeks each for civil cases only. Sixth Monday after the first Monday in September, two weeks.

At any term of the superior court of Lenoir County for the trial of criminal cases it shall be lawful for any order, judgment, or decree, original, mesne, or final, to be entered in any civil cause pending upon the docket of the superior court as fully and completely as the same may now be entered at the terms of court designated for the trial of civil cases, except no order, judgment, or decree shall be entered in civil matters requiring a trial by jury at such criminal terms.

1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 240; 1917, c. 13.

Duplin—Eighth Monday before the first Monday in March, two weeks, and for civil cases only. Fifth Monday before the first Monday in March, for criminal cases. Third Monday after the first Monday in March, two weeks, for civil cases only. First Monday before the first Monday in September, three weeks, for civil cases only. Eleventh Monday after the first Monday in September, two weeks, the first week for criminal and civil cases, and the second week for civil cases only. Sixth Monday before the first Monday in September, for criminal cases only.

1913, c. 196; Ex. Sess. 1913, c. 53; 1915, c. 240.

Onslow—Sixth Monday after the first Monday in March, to continue for two weeks for civil cases only; seventh Monday before the first Monday in September, for civil cases only; fifth Monday after the first Monday in September; thirteenth Monday after the first Monday in September, for civil cases only; first Monday in March.

1913, c. 196; Ex. Sess. 1913, c. 75; 1915, c. 240.

The commissioners of Onslow County, whenever in their discretion, the best interests of the county demand it, may, by order, abrogate, in any year, the holding of those terms of the courts of Onslow County, which convene on the sixth Monday after the first Monday in March, and the seventh Monday before the first Monday in September, and on the thirteenth Monday after the first Monday in September, all or either of said terms, and when said term or terms are so abrogated, thirty days notice of the same shall be given by said commissioners, in each instance by the publication of same in a newspaper published in said county, and at the courthouse door and at four other public places in said county.

1915, c. 25.

Sampson—Fourth Monday before the first Monday in March; first Monday after the first Monday in March; fourth Monday before the first Monday in September; second Monday after the first Monday in September; seventh Monday after the first Monday in September; eighth Monday after the first Monday in March, each to continue for two weeks; the September and March terms to be for civil cases only.

1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 240.

Civil process may be returnable to and pleadings filed at all the courts designated for the Sixth Judicial District, except as otherwise provided for Lenoir County, and motions and civil actions may be heard upon due notice at criminal terms, and trials in civil actions which do not require a jury may be heard at such criminal terms by consent.

1915, c. 240.

Seventh district. The seventh district shall be composed of the following counties, and the superior courts thereof shall be held at the following times. to wit:

Wake—Eighth Monday before the first Monday in March, for criminal cases only; fifth Monday before the first Monday in March, to continue for three weeks, for civil cases only; first Monday in March, for criminal cases only; first Monday after first Monday in March, to continue for two weeks, for civil cases only; fourth Monday after the first Monday in March, to continue for three weeks, for civil cases only; seventh Monday after the first Monday in March, for criminal cases only; eighth Monday after the first Monday in March, to continue for two weeks, for civil cases only; eleventh Monday after the first Monday in March, to continue for two weeks, for civil cases only; fourteenth Monday after the first Monday in March, to continue for three weeks, for civil cases only; ninth Monday before the first Monday in September, to continue for two weeks, for civil cases only; seventh Monday before the first Monday in September, for

criminal cases only; first Monday after the first Monday in September, for criminal cases only; second Monday after the first Monday in September, to continue for two weeks, for civil cases only; seventh Monday after the first Monday in September, for criminal cases only; eighth Monday after the first Monday in September, to continue for two weeks, for civil cases only; twelfth Monday after the first Monday in September, for criminal cases only; thirteenth Monday after the first Monday in September, to continue for two weeks, for civil cases only. The judge presiding may set criminal cases for trial at any of the weeks for the trial of civil cases. At the first fall and spring terms of court held each year grand juries shall be drawn and the presiding judge shall charge them as provided by law, and such grand juries shall serve during the remaining fall and spring terms respectively.

1913, c. 196; 1917, c. 116.

Franklin—Seventh Monday before the first Monday in March, to continue for two weeks; second Monday before the first Monday in March, to continue for two weeks, for civil cases only; tenth Monday after the first Monday in March; first Monday before the first Monday in September, to continue for two weeks, for civil cases only; sixth Monday after the first Monday in September, for criminal cases only; tenth Monday after the first Monday in September, to continue for two weeks, for civil cases only.

1913, c. 196; 1917, c. 116.

Eighth district. The eighth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

New Hanover—Seventh Monday before the first Monday in March, for criminal cases only; ninth Monday after the first Monday in March; first Monday after the first Monday in September, to continue two weeks for criminal cases; fourth Monday after the first Monday in March, to continue three weeks, the first week for criminal cases, and the second and third for civil cases only; sixteenth Monday after the first Monday in March, for criminal cases only; tenth Monday after the first Monday in September, for criminal cases only; fourth Monday before the first Monday in March; eleventh Monday after the first Monday in March; seventh Monday after the first Monday in September; thirteenth Monday after the first Monday in September; the last four terms each to continue for two weeks for civil cases only.

1913, c. 196; 1915, c. 60.

Brunswick—Second Monday after the first Monday in March; fifteenth Monday after the first Monday in March, for civil cases only; second Monday before the first Monday in September for civil cases only; fifth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 56; 1917, c. 18.

Columbus—Fifth Monday before the first Monday in March; second Monday before the first Monday in March, to continue for two weeks, for civil cases only; seventh Monday after the first Monday in March, to continue two weeks; first Monday before the first Monday in September, to continue two weeks; eleventh Monday after the first Monday in September, to continue two weeks, for civil

cases only; fifteenth Monday after the first Monday in September, for criminal cases only.

1913, c. 196; Ex. Sess. 1913, c. 61; 1917, c. 124, provides for a calendar for Columbus County.

Pender—Sixth Monday before the first Monday in March; first Monday in March, to continue two weeks for civil cases only; thirteenth Monday after the first Monday in March; third Monday after the first Monday in September, to continue two weeks for civil cases only; ninth Monday after the first Monday in September.

1913, c. 196.

Ninth district. The ninth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Bladen—Eighth Monday before the first Monday in March for civil cases and criminal cases where defendants are confined in jail only; the seventh Monday after the first Monday in March and the sixth Monday after the first Monday in September for civil cases only; the first Monday after the first Monday in March and the fourth Monday before the first Monday in September for criminal cases only.

1913, c. 196; 1915, c. 110.

All civil process may be returnable to and pleadings filed at all terms of the superior court of Bladen County which it now has or may be hereafter given, whether the same be designated civil or criminal terms. At all terms that are now or may be hereafter designated as criminal terms, civil trials which do not require a jury, motions and divorce cases including jury trials in divorce cases may be heard and any other civil actions may be heard by consent at such terms.

Judgments by default, both final and interlocutory and with inquiry may be rendered at such criminal terms, and at any term of the superior court of Bladen County, without further notice than that contained in the summons.

The presiding judge at any term of the superior court of Bladen County may, in his discretion, on the first day of the term, direct the sheriff of the county to summon such additional jurors for the term as may be necessary for the proper dispatch of the business before the court.

1915, c. 110.

Cumberland—Seventh Monday before the first Monday in March; twelfth Monday after the first Monday in March; first Monday before the first Monday in September; eleventh Monday after the first Monday in September, each for criminal cases only; third Monday before the first Monday in March; second Monday after the first Monday in March; eighth Monday after the first Monday in March; second Monday after the first Monday in September; seventh Monday after the first Monday in September, each to continue for two weeks for civil cases only.

1913, c. 196.

All civil processes may be returnable to and pleadings filed at all the terms of the superior court of Cumberland County, whether for the trial of civil or criminal cases, and judgments by default, both final and interlocutory with inquiry may be rendered at such criminal terms without further notice than that

contained in the summons. At all criminal terms of said court civil trials which do not require a jury may be heard by consent of the parties, and motions may be heard upon ten days notice to the adverse party, prior to said term.

Ex. Sess. 1913, c. 22.

Hoke—Sixth Monday before the first Monday in March; sixth Monday after the first Monday in March; third Monday before the first Monday in September, to continue for two weeks; and twelfth Monday after the first Monday in September.

1913, c. 196; 1917, c. 233.

Robeson—Fifth Monday before the first Monday in March; eighth Monday before the first Monday in September; ninth Monday after the first Monday in September, each for criminal cases. Fourth Monday before the first Monday in March; first Monday before the first Monday in March, two weeks; fourth Monday after the first Monday in March, two weeks; tenth Monday after the first Monday in March, two weeks; first Monday in September, two weeks; fourth Monday after the first Monday in September, two weeks; thirteenth Monday after the first Monday in September, two weeks; the last seven terms for civil cases.

1913, c. 196; 1915, c. 208.

All civil process may be returnable to and pleadings filed at all of the terms of the superior court of Robeson County which it now has or may be hereafter given, whether the same be designated as civil or criminal terms. At all terms that are now or may be hereafter designated as criminal terms, civil trials which do not require a jury, motions and divorce cases including jury trials in divorce cases may be heard and any other civil actions may be heard by consent, at such terms. Judgments by default, both final and interlocutory and with inquiry may be rendered at such criminal terms, and at any term of the superior court of Robeson County, without further notice than that contained in the summons.

1913, c. 28.

Tenth district. The tenth district shall be composed of the following counties, and the superior courts thereof shall be held in each year at the following times, to wit:

Alamance—First Monday in March; the second Monday before the first Monday in September; the twelfth Monday after the first Monday in September, each term for criminal cases only; the sixth Monday before the first Monday in March; the twelfth Monday after the first Monday in March (to continue for two weeks); the first Monday after the first Monday in September (to continue for two weeks), each of said terms for civil cases only.

1913, c. 196; 1915, c. 53.

Durham—First Monday before the first Monday in March; eleventh Monday after the first Monday in March; first Monday before the first Monday in September; and fourteenth Monday after the first Monday in September, each for criminal cases. Eighth Monday before the first Monday in March; first Monday after the first Monday in March; third Monday after the first Monday in September, each to continue for two weeks for civil cases only. Eighth Monday

after the first Monday in March; fifteenth Monday after the first Monday in March; ninth Monday after the first Monday in September, each for civil cases only.

Civil process shall be returnable to and pleadings filed at all terms of the superior court provided by law for Durham County, whether the same are designated in the act establishing them as for the trial of criminal cases or civil cases exclusively, or for both, and at all of said terms judgments may be rendered by default final or by default and inquiry; motion in civil actions may be heard upon due notice at all terms designated for the trial of criminal cases and trial of civil actions may be heard at such criminal terms by consent.

1913, c. 196; 1915, c. 68.

Granville—Third Monday before the first Monday in March; fifth Monday after the first Monday in March; tenth Monday after the first Monday in September, each to continue for two weeks; sixth Monday before the first Monday in September.

1913, c. 196; 1915, c. 7.

Orange—Ninth Monday after the first Monday in March, for civil cases only; fourth Monday after the first Monday in March; first Monday in September; thirteenth Monday after the first Monday in September.

1913, c. 196; 1915, cc. 33, 54; 1917, c. 52.

Person—Fourth Monday before the first Monday in March; seventh Monday after the first Monday in March; third Monday before the first Monday in September; sixth Monday after the first Monday in September.

1913, c. 196; 1915, c. 54.

WESTERN DIVISION

Eleventh district. The eleventh district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Ashe—Fifth Monday after the first Monday in March, and eighth Monday before the first Monday in September, each to continue for two weeks; sixth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 34.

Alleghany—Ninth Monday after the first Monday in March, and third Monday after the first Monday in September.

1913, c. 196.

Surry—Seventh Monday after the first Monday in March, and first Monday before the first Monday in September, each to continue for two weeks; fourth Monday before the first Monday in March; sixth Monday after the first Monday in September; seventh Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; Ex. Sess. 1913, c. 34.

Forsyth—Ninth Monday before the first Monday in March, and continue for three weeks, the first week for civil cases only, and the following two weeks for the trial of civil and criminal cases; and sixth Monday before the first Monday

in September, to continue for two weeks for criminal cases only; the third Monday after the first Monday in March, for criminal cases only; and the fourteenth Monday after the first Monday in September, for criminal cases only; the third Monday before the first Monday in March, to continue for two weeks for civil cases only; the first Monday after the first Monday in March, to continue for two weeks for civil cases only; the eleventh Monday after the first Monday in March, to continue for three weeks for civil cases only; the first Monday after the first Monday in September, to continue for three weeks for civil cases only; the ninth Monday after the first Monday in September, to continue for two weeks for civil cases only; the fourth Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; 1917, c. 169. P. L. 1917, c. 375, provides for a criminal calendar for Forsyth County.

Rockingham—Sixth Monday before the first Monday in March; fourth Monday before the first Monday in September, to continue for two weeks, for criminal cases only; first Monday before the first Monday in March; fifteenth Monday after the first Monday in March; and eleventh Monday after the first Monday in September, each to continue for two weeks for civil cases only; tenth Monday after the first Monday in March.

1913, c. 196; Ex. Sess. 1913, c. 49; 1917, c. 107. P. L. 1915, c. 60, provides for a calendar in Rockingham County.

Caswell—Fourth Monday after the first Monday in March; second Monday before the first Monday in September, and thirteenth Monday after the first Monday in September.

1913, c. 196.

Twelfth district. The twelfth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Guilford—Fifth Monday before the first Monday in March; eighth Monday after the first Monday in March; fifteenth Monday after the first Monday in March; second Monday after the first Monday in September; fourteenth Monday after the first Monday in September; fifteenth Monday after the first Monday in September, each for criminal cases only; seventh Monday before the first Monday in March; third Monday before the first Monday in March; first Monday after the first Monday in March; sixth Monday after the first Monday in March; tenth Monday after the first Monday in March; third Monday before the first Monday in September; first Monday in September; fifth Monday after the first Monday in September; ninth Monday after the first Monday in September, each to continue for two weeks for civil cases only; third Monday after the first Monday in March; fourteenth Monday after the first Monday in March; third Monday after the first Monday in September; thirteenth Monday after the first Monday in September, each for civil cases only.

At the first fall and spring terms of the criminal courts held for each year grand juries shall be drawn and the presiding judge shall charge them as provided by law, and such grand juries shall serve during the remaining fall and spring terms respectively.

1913, c. 196; 1917, c. 47.

Davidson—First Monday before the first Monday in March; twelfth Monday after the first Monday in March; fifth Monday before the first Monday in September; eleventh Monday after the first Monday in September, each to continue for two weeks; ninth Monday after the first Monday in March, the last two terms being for civil cases only.

1913, c. 196; Ex. Sess. 1913, c. 14.

Stokes—Fourth Monday after the first Monday in March, and seventh Monday after the first Monday in September, for criminal cases only; fifth Monday after the first Monday in March and eighth Monday after the first Monday in September, for civil cases only.

1913, c. 196; Ex. Sess. 1913, c. 1.

NOTE. 1913, c. 48, provides for carrying forward the cases from term to term in Stokes County.

Thirteenth district. The thirteenth district shall be composed of the following counties, and the superior courts shall be held at the following times, to wit:

Union—Fifth Monday before the first Monday in March; third Monday after the first Monday in March; fifth Monday before the first Monday in September, each for criminal cases; sixth Monday after the first Monday in September, to continue for two weeks, the second week for civil cases only; second Monday before the first Monday in March, and second Monday before the first Monday in September, each to continue for two weeks; ninth Monday after the first Monday in March; the last three terms for civil cases only.

In the first three terms of court for Union County for the trial of criminal cases, if it shall appear to the clerk of the superior court that the criminal docket will not be sufficient to take up the entire term, he may make or cause to be made a calendar of civil cases as is made at other terms, and such cases shall be tried at such term in the same manner as if it were a civil term.

If it shall appear to the county commissioners for the county of Union, prior to the drawing of a jury or grand jury for any criminal term of court that there is no prisoner in jail in the county or that the criminal docket at such term is not sufficient to justify the holding of the term, then the clerk is not to make or cause to be made a calendar of civil cases to be tried at said term, and the county commissioners, within their discretion, may not draw a jury or grand jury for such term, and notice shall be given immediately to the judge not to hold said court.

1913, c. 196; Ex. Sess. 1913, c. 22; 1915, c. 72; 1917, cc. 28, 117.

Anson—Seventh Monday before the first Monday in March, for criminal cases only; first Monday in March, for civil cases only; sixth Monday after the first Monday in March, to continue for two weeks, the second week to be for civil cases only; fourteenth Monday after the first Monday in March, for civil cases only; first Monday after the first Monday in September, for criminal cases only; fourth Monday after the first Monday in September, for civil cases only; tenth Monday after the first Monday in September, for civil cases only.

1913, c. 196.

All civil process may be returnable to and pleadings filed at all of the terms of the superior court of Anson County which it now has or may be hereafter

given, whether the same be designated as civil or criminal terms. At all terms that are now or may be hereafter designated as criminal terms, civil trials which do not require a jury, motions and divorce cases, including jury trials in divorce cases, may be heard, and any other civil actions may be heard, by consent, at such terms. Judgments by default, both final and interlocutory and with inquiry, may be rendered at such criminal terms, and at any term of the Superior Court of Anson County, without further notice than that contained in the summons.

1917, c. 15.

Scotland—First Monday after the first Monday in March, for civil cases only; eighth Monday after the first Monday in March; thirteenth Monday after the first Monday in March; eighth Monday after the first Monday in September, for civil cases only; twelfth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 22; 1917, c. 105.

Moore—Sixth Monday before the first Monday in March, for criminal cases only; third Monday before the first Monday in March, for civil cases only; eleventh Monday after the first Monday in March, for civil cases only; third Monday before the first Monday in September, for criminal cases only; second Monday after the first Monday in September for civil cases only; fourteenth Monday after the first Monday in September, for civil cases only. Each of the aforesaid terms designated for the trial of criminal cases shall also be a return term for civil process and for the hearing of motions in civil cases; and civil cases requiring a jury may, by consent of parties thereto, be tried at such terms.

1913, c. 196; Ex. Sess. 1913, c. 30; 1915, c. 64.

Richmond—Eighth Monday before the first Monday in March; fifth Monday after the first Monday in March; seventh Monday before the first Monday in September; third Monday after the first Monday in September, each for criminal cases only; second Monday after the first Monday in March; fifteenth Monday after the first Monday in March; twelfth Monday after the first Monday in March; ninth Monday before the first Monday in September; first Monday in September; thirteenth Monday after the first Monday in September; fifteenth Monday after the first Monday in September, each for civil cases only. Each of the terms designated for the trial of criminal cases shall also be the return term for civil process and for the hearing of motions in civil actions; and civil cases requiring a jury, may by consent of the parties thereto, be tried at such term.

1913, c. 196; 1915, c. 72; 1917, c. 117.

Stanly—Fourth Monday before the first Monday in March, for civil cases only; fourth Monday after the first Monday in March; tenth Monday after the first Monday in March, for civil cases only; eighth Monday before the first Monday in September; fifth Monday after the first Monday in September, for civil cases only; eleventh Monday after the first Monday in September.

1913, c. 196.

Fourteenth district. The fourteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Gaston—Second Monday after the first Monday in March; eleventh Monday after the first Monday in March; second Monday before the first Monday in

September; seventh Monday after the first Monday in September, each for criminal cases only; sixth Monday after the first Monday in March; second Monday after the first Monday in September; thirteenth Monday after the first Monday in September, each to continue for two weeks, for civil cases only; third Monday before the first Monday in September, for civil cases only; sixth Monday before the first Monday in March, to continue for two weeks. Provided, that the board of commissioners of Gaston County may, in their discretion, by an order at their regular meeting held on the first Monday in July in any year dispense with the term of court for the third Monday before the first Monday in September.

Judgments by default final and by default and inquiry may be taken at any of the criminal terms of the superior court of Gaston County, in the manner provided by law for such judgments. (For grand juries serving at criminal terms, see Mecklenburg.)

1913, c. 196; Ex. Sess. 1913, c. 12; 1915, cc. 114, 153.

Mecklenburg—Eighth Monday before the first Monday in March; eighth Monday before the first Monday in September, each to continue two weeks; second Monday before the first Monday in March, third Monday after the first Monday in March; tenth Monday after the first Monday in March; fourteenth Monday after the first Monday in March; first Monday before the first Monday in September; fourth Monday after the first Monday in September, and tenth Monday after the first Monday in September, which nine terms are for criminal cases only; fourth Monday before the first Monday in March; fourth Monday after the first Monday in March; eighth Monday after the first Monday in March; twelfth Monday after the first Monday in March; first Monday in September; fifth Monday after the first Monday in September; eighth Monday after the first Monday in September; eleventh Monday after the first Monday in September, each to continue for two weeks; first Monday before the first Monday in March, to continue three weeks; fifteenth Monday after the first Monday in March, which ten terms are for civil cases only.

No process nor other writ of any kind, pertaining to civil actions, shall be made returnable to, and no business pertaining to civil actions shall be transacted at, the criminal terms for Mecklenburg County. At the first fall and spring terms of the criminal courts for Mecklenburg and Gaston held for each year grand juries shall be drawn, and the presiding judge shall charge them as provided by law, and such grand juries shall serve during the remaining fall and spring terms respectively.

1913, c. 196; Ex. Sess. 1913, cc. 11, 18; 1915, c. 153.

Fifteenth district. The fifteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Davie—First Monday before the first Monday in March, to continue for two weeks; first Monday before the first Monday in September; tenth Monday after the first Monday in September.

1913, c. 196.

Iredell—Fifth Monday before the first Monday in March; eleventh Monday after the first Monday in March; fifth Monday before the first Monday in September; sixth Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196.

Randolph—Second Monday after the first Monday of March, to continue for two weeks, for civil cases only; fourth Monday after the first Monday of March, for criminal cases; seventh Monday before the first Monday of September, to continue for two weeks, for civil cases only; first Monday of September, for criminal cases; thirteenth Monday after the first Monday of September, to continue for two weeks. Each of the terms designated for the trial of criminal cases shall also be a return term for civil process and for the hearing of motions in civil cases; and civil cases requiring a jury may, by consent of parties thereto, be tried at said terms.

1913, c. 196; Ex. Sess. 1913, c. 31.

Rowan—Third Monday before the first Monday in March, to continue for two weeks; first Monday after the first Monday in March, for civil cases only; ninth Monday after the first Monday in March, to continue for two weeks; first Monday after the first Monday in September, to continue for two weeks; fifth Monday after the first Monday in September, for civil cases only; eleventh Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; Ex. Sess. 1913, c. 5.

Cabarrus—Eighth Monday before the first Monday in March; seventh Monday after the first Monday in March; third Monday before the first Monday in September; eighth Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196.

Montgomery—Sixth Monday before the first Monday in March, for criminal cases: Provided, said term shall be a return term for civil process, and for hearing motions on the civil docket, and civil cases requiring a jury may also be tried at said term by consent of the parties thereto. Fifth Monday after the first Monday in March, to continue for two weeks, for civil cases only. Eighth Monday before the first Monday in September; third Monday after the first Monday in September, for civil cases; fourth Monday after the first Monday in September.

1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 183; 1917, c. 122.

Sixteenth district. The sixteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Polk—Sixth Monday after the first Monday in March, and second Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196.

Cleveland—Third Monday after the first Monday in March; sixth Monday before the first Monday in September; eighth Monday after the first Monday in September; each to continue for two weeks.

1913, c. 196; 1915, c. 173; 1917, c. 245.

Lincoln—Fifth Monday before the first Monday in March; seventh Monday before the first Monday in September; sixth Monday after the first Monday in September; the last term to continue for two weeks, the second week for civil cases only.

1913, c. 196; P. L. 1915, c. 210.

Burke—First Monday after the first Monday in March, and fourth Monday before the first Monday in September, each to continue for two weeks; fourth Monday after the first Monday in September, and thirteenth Monday after the first Monday in September, each to continue for two weeks, the last two terms for civil cases only.

1913, c. 196; 1915, c. 67.

Caldwell—First Monday before the first Monday in March; second Monday before the first Monday in September, each to continue two weeks; eleventh Monday after the first Monday in March, to continue two weeks for civil cases only; tenth Monday after the first Monday in September to continue three weeks.

1913, c. 196; 1915, c. 35.

Seventeenth district. The seventeenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Mitchell—Fifth Monday after the first Monday in March, to continue for two weeks; sixth Monday before the first Monday in September, to continue for two weeks for civil cases only; tenth Monday after the first Monday in September, to continue for two weeks.

1913, c. 196.

Watauga—Third Monday after the first Monday in March; first Monday in September, each to continue for two weeks.

1913, c. 196.

Wilkes—First Monday after the first Monday in March, and fourth Monday before the first Monday in September, each to continue for two weeks; sixth Monday before the first Monday in March, and fourth Monday after the first Monday in September, each to continue for two weeks, the last two terms for civil cases only.

1913, c. 196.

Alexander—Second Monday before the first Monday in March; second Monday after the first Monday in September, to continue for two weeks.

1913, c. 196.

Yadkin—First Monday in March; second Monday before the first Monday in September, and twelfth Monday after the first Monday in September.

1913, c. 196.

Catawba—Fourth Monday before the first Monday in March; ninth Monday after the first Monday in March, for civil cases only; eighth Monday before the first Monday in September; eighth Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196; Ex. Sess. 1913, c. 7.

Avery—Seventh Monday after the first Monday in March, to continue for two weeks; ninth Monday before the first Monday in September, for civil cases only; sixth Monday after the first Monday in September, to continue for two weeks.

1913, c. 196; 1915, c. 169.

Eighteenth district. The eighteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Transylvania—Sixth Monday after the first Monday in March; sixth Monday before the first Monday in September; twelfth Monday after the first Monday in September; each to continue for two weeks.

The board of commissioners of Transylvania County, may, for good cause, decline to draw the grand jury for the July term of court provided for in this chapter.

1913, c. 196; 1915, c. 66.

Henderson—First Monday in March and the fourth Monday after the first Monday in September, each to continue for two weeks for criminal cases, and all uncontested civil cases whatsoever; also all contested civil cases wherein the parties thereto, in person or by counsel, shall ten days before the sitting of the court agree in writing to a trial thereof; and twelfth Monday after the first Monday in March, to continue for two weeks, and the tenth Monday after the first Monday in September, to continue for two weeks, for civil cases only.

1913, c. 196; 1917, c. 115.

Rutherford—Eighth Monday after the first Monday in March, and sixth Monday after the first Monday in September, each to continue for two weeks; fourth Monday before the first Monday in March; second Monday before the first Monday in September, each to continue for two weeks; the last two terms for civil cases only.

1913, c. 196; 1915, c. 116.

McDowell—Second Monday before the first Monday in March; eighth Monday before the first Monday in September; second Monday after the first Monday in September, each to continue for two weeks; sixth Monday before the first Monday in March, to continue for two weeks for civil cases only.

1913, c. 196.

Yancey—Third Monday after the first Monday in March, the eighth Monday after the first Monday in September, each to continue for two weeks; the second Monday in August, for civil cases only.

1913, c. 196; Ex. Sess. 1913, c. 38; 1915, c. 71.

Nineteenth district. The nineteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Buncombe—The second Monday in January, the first Monday in March, the first Monday in May, the second Monday in July, the first Monday in September, and the first Monday in November, each to continue for three weeks, for both

criminal and civil cases; the first Monday in February, the first Monday in April, the first Monday in June; the first Monday in August, the first Monday in October, and the first Monday in December, each to continue for three weeks, for civil cases only.

Madison—The fourth Monday in February, the fourth Monday in March, the fourth Monday in April, the fourth Monday in May, the fourth Monday in August, the fourth Monday in September, the fourth Monday in October, the fourth Monday in November.

1913, c. 196; 1915, c. 117; 1917, c. 79.

Twentieth district. The twentieth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Cherokee—Sixth Monday before the first Monday in March; fourth Monday after the first Monday in March; fourth Monday before the first Monday in September; ninth Monday after the first Monday in September, each to continue two weeks.

1913, c. 196; Ex. Sess. 1913, c. 21; 1917, c. 114.

Graham—Second Monday after the first Monday in March; thirteenth Monday after the first Monday in March, to be held for civil cases only; first Monday in September, each to continue for two weeks.

1913, c. 196; Ex. Sess. 1913, c. 28; 1917, c. 54.

Swain—First Monday in March; sixth Monday before the first Monday in September; seventh Monday after the first Monday in September, each to continue for two weeks: Provided, that the board of commissioners of Swain County may, when the public interest requires it, decline to draw a grand jury for the July term.

1913, c. 196.

Haywood—Eighth Monday before the first Monday in March, to continue for two weeks for civil cases only; fourth Monday before the first Monday in March, to continue for two weeks; ninth Monday after the first Monday in March, to continue for two weeks for civil cases only; eighth Monday before the first Monday in September, and second Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196; 1917, cc. 7, 114.

Jackson—Second Monday before the first Monday in March; eleventh Monday after the first Monday in March, for civil cases only; fifth Monday after the first Monday in September, each to continue for two weeks.

1913, c. 196.

Macon—Seventh Monday after the first Monday in March; second Monday before the first Monday in September, and eleventh Monday after the first Monday in September, each to continue for two weeks. The board of commissioners of Macon County may, for good cause, decline to draw a jury for more than one week for any term of court provided for in this chapter.

1913, c. 196.

Clay—Sixth Monday after the first Monday in March, and fourth Monday after the first Monday in September.

1913, c. 196.

40. Civil cases at criminal terms. Civil process shall be returnable to, and pleadings filed at, all of the courts designated as exclusively criminal; motions in civil actions may be heard upon due notice at such criminal terms; and trials in civil actions may be heard at such criminal terms by consent.

Rev., s. 1507; 1913, c. 196; 1901, c. 28.

41. No criminal business at civil terms. No grand juries shall be drawn for the terms of court designated by law as being for the trial of civil cases exclusively, and the solicitors shall not be required to attend nor be entitled to their certificates for attendance upon any exclusively civil terms, unless there are cases on the civil docket in which they officially appear, and no criminal process shall be returnable to any term designated for the trial of civil actions alone.

Rev., s. 1508; 1901, c. 28, ss. 3, 7; 1913, c. 196.

42. Rotation of judges. The judges of the superior court shall hold the courts of the several judicial districts successively, according to the following order and system: The judges resident in the Eastern Judicial Division shall hold the courts for the fall term, one thousand nine hundred and fifteen, as follows: The judge of the first district shall hold the courts of the fifth district; the judge of the second, the courts of the sixth; the judge of the third, the courts of the seventh; the judge of the fourth, the courts of the eighth; the judge of the fifth, the courts of the ninth; the judge of the sixth, the courts of the tenth; the judge of the seventh, the courts of the first; the judge of the eighth, the courts of the second; the judge of the ninth, the courts of the third; the judge of the tenth, the courts of the fourth; and the judges of the Eastern Judicial Division shall thereafter successively hold the courts of this division, but may make exchange of the courts as now provided by law.

The judges resident in the Western Judicial Division shall hold the courts for the fall term, one thousand nine hundred and fifteen, as follows: The judge of the seventeenth district shall hold the courts of the eleventh; the judge of the eighteenth, the courts of the twelfth; the judge of the nineteenth, the courts of the thirteenth; the judge of the twentieth, the courts of the fourteenth; the judge of the eleventh, the courts of the fifteenth; the judge of the twelfth, the courts of the sixteenth; the judge of the thirteenth, the courts of the seventeenth; the judge of the fourteenth, the courts of the eighteenth; the judge of the fifteenth, the courts of the nineteenth; the judge of the sixteenth, the courts of the twentieth; and the judges resident in the Western Judicial Division shall thereafter successively hold the courts of this division, subject to such exchanges of courts as are now provided by law.

The judge riding any spring circuit shall hold all the courts which fall between January and June, both inclusive, and the judge riding any fall circuit shall hold all the courts which fall between July and December, both inclusive.

Rev., s. 1509; Code, s. 911; 1913, c. 196, ss. 4, 5, 6, 9; 1915, c. 15, ss. 3, 4; 1901, c. 28, ss. 4, 9; R. C., c. 31, s. 20; 1876-7, c. 27; 1879, c. 11; 1885, c. 180; Const., Art. 4, s. 11.

43. Exchange of courts. By consent of the governor the judges may exchange the courts of a particular county or counties; and the judges resident in the

western division and the judges resident in the eastern division may exchange courts or circuits with the consent of the governor; but no judge shall hold all the courts in one district oftener than once every four years. When a judge shall die or resign, his successor shall hold the courts of the district allotted to his predecessor.

Rev., s. 1511; Code, s. 913; R. C., c. 31, s. 20; 1879, c. 11; 1915, c. 15, s. 4; Const., Art. 4, s. 11.

44. Court adjourned by sheriff when judge not present. If the judge of a superior court shall not be present to hold any term of a court at the time fixed therefor, he may order the sheriff to adjourn the court to any day certain during the term, and on failure to hear from the judge it shall be the duty of the sheriff to adjourn the court from day to day until the fourth day of the term inclusive, unless he shall be sooner informed that the judge from any cause cannot hold the term. If by sunset on the fourth day the judge shall not appear to hold the term, or if the sheriff shall be sooner advised that the judge cannot hold the term, it shall then be the duty of the sheriff to adjourn the court until the next term.

Rev., s. 1510; Code, s. 926; 1901, c. 269; 1887, c. 13.

NOTE. For term expiring pending trial, see Criminal Procedure, Art. 15, s. 125.

ART. 7. SPECIAL TERMS OF COURT

45. Governor may designate judge. The governor has the power to appoint any judge to hold special terms of the superior court in any county.

Rev., s. 1511; Code, s. 913; 1879, c. 11; Const., Art. 4, s. 11.

46. Governor may order special terms. Whenever it shall appear to the governor by the certificate of any judge, a majority of the board of county commissioners, or otherwise, that there is such an accumulation of criminal or civil actions in the superior court of any county as to require the holding of a special term for its dispatch, he shall issue an order to the judge of the judicial district, in which such county is, or to any other judge of the superior court, requiring him to hold a special term of the superior court for such county, to begin on a certain Monday, not to interfere with any of the regular terms of the courts of his district and hold for such time as he may designate, unless the business be earlier disposed of.

Rev., s. 1512; Code, s. 914; R. C., c. 31, s. 22; 1868-9, c. 273; 1876-7, c. 44.

47. Compensation of judge. The judge appointed to hold a special term of court shall attend and hold such court, and shall be paid as compensation therefor at the rate of one hundred dollars per week by the county in which the special term is held. But any judge who is in a district having fewer than twenty regular weeks of court for the six months shall hold without extra compensation, if directed by the governor, enough extra weeks of court to make out twenty weeks for the six months.

Rev., s. 1512; Code, s. 914; 1913, c. 63; 1901, c. 167; R. C., c. 31; s. 22; 1868-9, c. 273; 1876-7, c. 44; 1909, c. 85, s. 1.

48. Notice of special terms. Whenever the governor shall call a special term of the superior court for any county, he shall notify the chairman of the board

of commissioners of the county of such call, and such chairman shall take immediate steps to cause competent persons to be drawn and summoned as jurors for said term; and also to advertise the term at the courthouse and at one public place in every township of his county, or by publication of at least two weeks in some newspaper published in his county in lieu of such township advertisement.

Rev., s. 1513; Code, s. 915; 1868-9, c. 273.

49. Certificate of attendance. The clerk shall give the judge a certificate of attendance for the number of days occupied by the court, and the judge shall thereupon be entitled to receive from the commissioners of the county in which the court is held the compensation provided by law.

Rev., s. 1514; Code, s. 918; 1901, c. 167; 1868-9, c. 273; 1909, c. 85, s. 1; 1913, c. 63.

50. Grand juries at special terms. There shall be no grand jury at any special term, unless the same shall be ordered by the governor.

Rev., s. 1515; Code, s. 921; 1868-9, c. 273.

51. Jurisdiction. The special terms of the superior court held in pursuance of this chapter shall have all the jurisdiction and powers that regular terms of the superior court have.

Rev., s. 1516; Code, s. 916; 1868-9, c. 273.

52. Attendance and process at special terms. All persons and witnesses summoned at the regular or special term, and officers or others who may be bound to attend the next regular term of the court, shall attend the special term, under the same rules, forfeitures and penalties as if the term were a regular term. But no process shall be made returnable thereto except subpœnas, or other process for the attendance of witnesses.

Rev., s. 1517; Code, s. 919; R. C., c. 31, s. 23; 1844, c. 10; 1848, c. 29.

53. Subpœnas returnable. Subpœnas may issue returnable on any day of any special term.

Rev., s. 1518; Code, s. 920; 1868-9, c. 273.

ART. 8. SPECIAL REGULATIONS

54. Reading the minutes. Every morning during the term the judge presiding shall order the reading of the minutes of the court for the day preceding, and the minutes of the last day shall be read immediately preceding the final adjournment of the term.

Rev., s. 1519; Code, s. 925; 1861, c. 3.

55. Officer attending juries sworn. When any officer (except such as are appointed to attend the grand jury) shall be appointed or summoned to attend any superior court, the clerk, at the time of the first going out of a jury on the trial of any civil or criminal action, shall administer an oath to such officer, faithfully to attend the several juries that may be put under his care during that term, that shall be charged in the trial of any civil or criminal action; and after such officer shall be once so sworn, he shall be considered to all intents

and purposes as acting upon the same oath while attending every jury, that he may be called to attend during that term.

Rev., s. 1527; Code, s. 927; R. C., c. 31, s. 36; 1801, c. 592.

56. Quakers may wear hats in court. The people called Quakers may wear their hats in courts of judicature, as elsewhere, according to the custom of their sect.

Rev., s. 1528; Code, s. 943; R. C., c. 31, s. 131; 1784, c. 209.

57. Court stenographer. Upon the request of a judge holding a superior court in any county in the state, the board of county commissioners in such county shall employ a competent stenographer to take down the proceedings of the court, at a compensation not to exceed five dollars per day and actual expenses, to be paid by the county in which the court is held.

The judge is authorized to tax a reasonable fee against the losing party in every action, civil and criminal, to be turned into the county treasury towards reimbursing the county, but no fee shall be taxed against a losing party suing in forma pauperis.

Every stenographer so employed shall make three copies of the proceedings in every case appealed to the supreme court, without extra charge, and shall furnish one copy to the attorneys on each side and file one copy with the clerk of the superior court of the county in which any such case is tried, and shall obey all orders of the judge relative to the time in which any such work shall be done.

Every stenographer so employed shall, before entering upon the discharge of his duties, be duly sworn to well, truly, and correctly take down and transcribe the proceedings of the court, except the argument of counsel, and the charge of the court thus taken down and transcribed shall be held to be a compliance with the law requiring the judge to put his instructions to the jury in writing.

This section shall not apply to any county which has a court stenographer authorized by law: Provided, that the board of county commissioners of Mecklenburg County may, by resolution approving this act, bring said county within the provisions of the same: Provided further, that this act shall not apply to the following counties: Alleghany, Brunswick, Caldwell, Camden, Carteret, Caswell, Chatham, Currituck, Dare, Davidson, Davie, Forsyth, Greene, Haywood, Hoke, New Hanover, Orange, Pender, Perquimans, Person, Surry, Transylvania, Union, Watauga.

Ex. Sess. 1913. c. 69.

SUBCHAPTER III. JUSTICES OF THE PEACE

ART. 9. ELECTION AND QUALIFICATION

58. Constitution, article seven 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 article substituted in their place; subject, however, to the power of the general assembly to alter, amend or abrogate the provisions of

this article, and to substitute others in their stead, as provided in section fourteen of article seven of the constitution.

Rev., s. 1408; Code, s. 818; 1876-7, c. 141, s. 7.

59. Election and number of justices. At every general election held for members of the general assembly, there shall be elected in each township three justices of the peace, and for each township in which any city or incorporated town is situated, one justice of the peace for every one thousand inhabitants in such city or town, who shall hold office for a term of two years from and after the first Monday in December next after their election.

Rev., s. 1409; Code, s. 819; 1876-7, c. 141; 1895, c. 157; 1905, cc. 35, 44, 148; 1907, c. 225; 1909, ss. 177, 716.

60. Local modifications as to number and election of justices. In the city of Wilmington in the county of New Hanover there shall be elected five justices of the peace; in the county of Edgecombe there shall be elected one justice of the peace for every one hundred duly qualified electors in each township, and for every fraction of one hundred over fifty; and in the counties of Bertie, Caswell, Chowan, Franklin, Granville and Montgomery the justices of the peace shall be elected by the general assembly, to hold office for the term of two years as provided in the preceding section.

Rev., s. 1409; Code, s. 819; 1899, c. 392; 1903, cc. 191, 207, 790; 1905, c. 447; 1907, c. 293; P. L. 1913, c. 771.

61. Warren County, election of justices. Upon a petition of two-thirds of the qualified electors in any township in Warren County, the board of commissioners of the county shall call an election at the time and in the manner appointed for the election of members of the general assembly, for the election of not more than five nor less than three justices of the peace, as the petition shall designate, to be voted for and elected by the voters of the township in which they reside, and who shall hold their office for two years, and until their successors are elected and qualified.

Rev., s. 1410; 1905, c. 73, s. 2.

62. Vance County, election of justices. Upon petition of a majority of the qualified voters of any township in Vance County, the board of county commissioners shall call an election, at the time and in the manner appointed for the election of members of the general assembly, for the election of not more than five nor less than two justices of the peace to be voted for and elected by the voters of the township in which they reside. The justices of the peace so elected shall hold office for a term of two years and until their successors are elected and qualify.

P. L. 1915, c. 648.

63. Oath of office; vacancies filled. Every person elected or appointed a justice of the peace, before his term of office begins or within thirty days thereafter, shall take and subscribe the prescribed oath of office before the clerk of the superior court, who shall file the same. All elections of justices of the peace by the general assembly or by the people, shall be void unless the persons so elected shall qualify as herein directed. All original vacancies in the offices of justice of the peace occurring before qualification as provided in this section,

shall be filled for the term by the governor. All other vacancies shall be filled by the clerk of the superior court.

Rev., s. 1411; Code, s. 821; 1901, c. 37.

64. Governor may appoint justices. The governor may, from time to time, at his discretion, appoint one or more fit persons in every county to act as justices of the peace, who shall hold their office for four years from and after the date of their appointment; and, on exhibiting their commission to the clerk of the superior court of the county in which they are to act, shall be duly qualified by taking before said clerk an oath of office and the oaths prescribed for other officers. The governor shall issue to each justice of the peace so appointed a commission, a certificate of which shall be deposited with the clerk of the court and filed among the records, and he shall note on his minutes the qualification of the justice of the peace.

1917, c. 40.

65. Forfeiture of office. When any justice of the peace removes out of his township and does not return therein for the space of six months, he thereby forfeits and loses his office; and any such justice presuming to act thereafter, contrary to this section, unless reelected or reappointed, shall be guilty of a misdemeanor.

Rev., ss. 1412, 3589; Code, s. 822.

66. Resignation. Justices of the peace wishing to resign must deliver their letters of resignation to the clerk of the superior court, who shall file the same.

Rev., s. 1413; Code, s. 823.

67. Removal and disqualification for crime. Upon the conviction of any justice of the peace of an infamous crime, or of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this state.

Rev., s. 1414; Code, s. 826.

68. Justice may hold other office. Any justice of the peace may accept a civil office or appointment of trust or profit, under the authority of the United States, the duties of which confine him to the county where he is resident.

Rev., s. 1415; Code, s. 825; Const., Art. 14, s. 7.

ART. 10. JURISDICTION

69. Jurisdiction in actions on contract. Justices of the peace shall have exclusive original jurisdiction of all civil actions founded on contract, except—

1. Wherein the sum demanded, exclusive of interest, exceeds two hundred dollars.

2. Wherein the title to real estate is in controversy.

Rev., s. 1419; Const., Art. 4, s. 27; Code, s. 834.

70. Jurisdiction in actions not on contract. Justices of the peace shall have concurrent jurisdiction of civil actions not founded on contract, wherein the value of the property in controversy does not exceed fifty dollars.

Rev., s. 1420; Const., Art. 4, s. 27; Code, s. 887.

71. Action dismissed for want of jurisdiction; remitter. Where it appears, in any action brought before a justice, that the principal sum demanded exceeds two hundred dollars, the justice shall dismiss the action and render a judgment against the plaintiff for the costs, unless the plaintiff shall remit the excess of principal, above two hundred dollars, with the interest on said excess, and shall, at the time of filing his complaint, direct the justice to make this entry: "The plaintiff, in this action, forgives and remits to the defendant so much of the principal of this claim as is in excess of two hundred dollars, together with the interest on said excess."

Rev., s. 1421; Code, s. 835; 1868-9, c. 159, s. 3; 1876-7, c. 63.

72. Title to real estate in controversy as a defense. In every action brought in a court of a justice of the peace, where the title to real estate comes in controversy, the defendant may, either with or without other matter of defense, set forth, in his answer, any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the justice.

Rev., s. 1422; Code, s. 836.

73. Title to real estate in controversy, action dismissed. If it appears on the trial that the title to real estate is in controversy, the justice shall dismiss the action and render judgment against the plaintiff for costs.

Rev., s. 1423; Code, s. 837.

74. Another action in superior court. When an action, before a justice, is dismissed upon answer, and proof by the defendant, that the title to real estate is in controversy in the case, the plaintiff may prosecute an action for the same cause in the superior court, and the defendant shall not be admitted in that court to deny the jurisdiction by an answer contradicting his answer in the justice's court.

Rev., s. 1424; Code, s. 838.

75. Justice may act anywhere in county. A justice of the peace may issue a summons or other process anywhere in his county, but he shall not be compelled to try a cause out of the township for which he was elected or appointed.

Rev., s. 1425; Code, s. 824.

76. Punishment for contempt in certain cases. If any person shall profanely swear or curse in the hearing of a justice of the peace, holding court, the justice may commit him for contempt, or fine him not exceeding five dollars.

Rev., s. 1426; Code, s. 848; R. C., c. 115; 1741, c. 30.

77. Jurisdiction in criminal actions. Justices of the peace have exclusive original jurisdiction of all assaults, assaults and batteries, and affrays, where no deadly weapon is used and no serious damage is done, and of all criminal matters arising within their counties, where the punishment prescribed by law does not exceed a fine of fifty dollars, or imprisonment for thirty days: Provided, that justices of the peace shall have no jurisdiction over assaults with intent to kill, or assaults with intent to commit rape, except as committing magistrates: Provided further, that nothing in this section shall prevent the superior or criminal courts from finally hearing and determining such affrays as shall be

committed within one mile of the place where and during the time such court is being held; nor shall this section be construed to prevent said courts from assuming jurisdiction of all offenses whereof exclusive original jurisdiction is given to justices of the peace if some justice of the peace, within twelve months after the commission of the offense, shall not have proceeded to take official cognizance of the same.

Rev., s. 1427; Const., Art. 4, s. 27; Code, s. 892; 1889, c. 504, s. 2.

NOTE. For criminal procedure in justice's court, see Criminal Procedure.

ART. 11. DOCKETS

78. Justices shall keep docket. A civil and a criminal docket shall be furnished each justice, at the expense of the county, by the board of county commissioners, in which shall be entered a minute of every proceeding had in any action before such justice.

Rev., s. 1416; Code, s. 831.

79. Entries to be made. The justice shall enter all his proceedings in a cause tried before him in his docket. No part of such proceedings must be entered on the summons, on the pleadings or on any other paper in the cause.

Rev., s. 1470, Rule 14; Code, s. 840, Rule 13.

80. Dockets filed with clerk. Each justice of the peace, as often as he has filled his docket, shall file the same with the clerk of the superior court for his county.

Rev., s. 1417; Code, s. 827.

81. Dockets, papers and books delivered to successor. When a vacancy exists, from any cause, in the office of a justice of the peace, whose docket is not filled, or when such justice goes out of office by expiration of his term, such former justice, if living, and his personal representative, if dead, shall deliver such docket, all law and other books furnished him as a justice of the peace, and all official papers to the clerk of the superior court for his successor, who is authorized to hear and determine any unfinished action on said docket, in the same manner as if such action had been originally brought before such successor.

Rev., s. 1418; Code, s. 828; 1885, c. 372.

ART. 12. PROCESS

82. Action begun by summons. Civil actions in these courts shall be commenced by the issuing of a summons.

Rev., s. 1444; Code, s. 830; 1868-9, c. 159, s. 9.

83. Issuing and contents of summons. The summons shall be issued by the justice and signed by him. It shall run in the name of the state, and be directed to any constable or other lawful officer, commanding him to summon the defendant to appear and answer the complaint of the plaintiff at a place, within the county, to be therein specified, and at a time to be therein named, not exceeding thirty days from the date of the summons. It shall also state the sum demanded by the plaintiff or the value of the property sued for, where specific property is claimed.

Rev., s. 1445; Code, s. 832; 1874-5, c. 234.

84. Service and return of summons. The officer to whom the summons is delivered shall execute the same within five days after its receipt by him, or immediately, if required to do so by the plaintiff. Before proceeding to execute it, he is entitled to require of the plaintiff his fees for the service. When executed he shall immediately return the summons, with the date and manner of the service, to the justice who issued the same.

Rev., s. 1446; Code, s. 833.

85. Process issued to another county. No process shall be issued by any justice of the peace to any county other than his own, unless one or more bona fide defendants shall reside in, and also one or more bona fide defendants shall reside outside of, his county; in which case, only, he may issue process to any county in which any such nonresident defendant resides.

Rev., s. 1447; Code, s. 871; 1876-7, c. 287.

85a. Civil process in inferior courts. The process of any recorder's court, county court, or other court inferior to the superior courts of the state, when such court is exercising the jurisdiction of a justice of the peace in civil matters, shall run only as does the process of the court of a justice of the peace for the county in which such court is located.

1915, c. 19.

86. Indorsement of process to another county. In all civil actions in courts of justices of the peace where one or more of the defendants may reside in a county other than that of the plaintiff, it shall be lawful for any justice of the peace within the county where such defendant or defendants may reside, upon proof of the handwriting of the justice of the peace who issued the process, to indorse his name on the same, or a duplicate thereof, and such process so indorsed shall be executed in like manner as if it had been originally issued by the justice indorsing it.

Rev., s. 1449; Code, s. 872.

87. Certificate of clerk on process for another county. In all cases referred to in the preceding section, it shall be lawful for the clerk of the superior court of the county in which the action is brought, to certify, under the seal of his court, on the process or a duplicate thereof, that the justice of the peace who issued the same is an acting justice of the peace in his county. And in all such cases it shall be the duty of any sheriff or constable to whom it may be directed, to make an entry of the date of its reception, and to execute the same as provided for the service of civil process in courts of justices of the peace, and return it by mail to the justice of the peace from whose court it issued.

Rev., s. 1450; Code, s. 873; 1870-1, c. 60, s. 2.

88. Judgment against defendant in another county. No justice of the peace shall enter a judgment under the two preceding sections against any defendant who may be a nonresident of his county, unless it shall appear that the process was duly served upon him at least ten days before the return day of the same.

Rev., s. 1451; Code, s. 874; 1876-7, c. 57.

89. Service on foreign corporation. Whenever any action of which a justice of the peace has jurisdiction shall be brought against a foreign corporation, which

corporation is required to maintain a process agent in the state, the summons may be issued to the sheriff of the county in which such process agent resides, and when certified under the seal of his office by the clerk of the superior court of the county in which the justice issuing such summons resides to be under the hand of such justice, the sheriff of the county to which such summons shall be issued shall serve the same as in other cases and make due return thereof. No justice of the peace shall enter a judgment in such cases against any such foreign corporation unless it shall appear that the process was duly served upon such process agent at least twenty days before the return day of the same. The summons may be made returnable at a time to be therein named, not exceeding forty days from the date of such summons. Provided, this section shall not apply to actions commenced in a county where the defendant has an officer or agent upon whom process may be served.

Rev., s. 1448; 1907, c. 473.

90. Attendance of witnesses. The justice, on application of either party, shall, by a subpœna or by an order in writing, on the process, direct the constable or other officer to summon witnesses to appear and give testimony at the time and place appointed for the trial. Each witness, failing to appear, shall forfeit and pay eight dollars to the party at whose instance he was summoned, and shall be further liable to such party for all damage sustained by non-attendance. The fine herein imposed may be recovered, on motion, before the justice who tried the action, unless the witness on a notice of five days, by affidavit or other proof, show sufficient excuse for his failure to attend.

Rev., s. 1452; Code, s. 847.

91. Subpœna issued to another county. Justices of the peace, in all civil cases, may issue subpœnas to counties other than their own; such subpœnas shall be authenticated in the same manner as provided by law for the authentication of process. When so authenticated the sheriff, constable or other officer to whom the same is directed shall execute and return the same as provided for the return of process: Provided, that where witnesses attend in counties other than their own under such subpœna they shall receive the same per diem and mileage as witnesses who attend the superior courts: Provided further, that before issuing such subpœnas the party wanting such witness shall deposit with the justice before whom the cause is pending one day's per diem and the mileage of the witness to and returning from place of trial, which amount shall be paid to the witness on his attendance and taxed against the party cast in the trial.

Rev., s. 1453; 1893, c. 436.

92. Subpœna duces tecum in case against railroad. When any action is brought against a railroad company before a justice of the peace, the justice before whom such action is made returnable shall have power to issue a subpœna to any county within the limits of the state, commanding the president or any officer, director, agent, or any one in the employment of such company to appear before him at the time and place of trial and to produce such books, cards and other papers as the justice shall deem proper and to give evidence in said cause; and each witness summoned as aforesaid failing or refusing to appear and testify and produce the books and papers aforesaid in obedience to

such writ shall be deemed guilty of a contempt of court and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 1454; 1885, c. 221, s. 2.

ART. 13. PLEADING AND PRACTICE

93. Removal of case. In all proceedings and trials, both criminal and civil, before justices of the peace, the justice before whom the writ or summons is returnable, shall, upon written request made by either party to the action before evidence is introduced, move the same to some other justice residing in the same township, or to the justice of some neighboring township if there be no other justice in said township; but no cause shall be more than once removed.

Rev., s. 1455; Code, s. 907; 1880, c. 15; 1883, c. 66; 1917, c. 48.

94. Removal in case of death or incapacity. If any justice of the peace dies or becomes incapacitated by removal, resignation or other cause, having any action, civil or criminal, pending before him, which has not been finally determined, such action shall not abate or be discontinued, but the plaintiff in such civil action, or any one on behalf of the state in such criminal action, may remove such action for further and final determination before any other justice of the peace of the same township in which the original action was pending, or before any justice of the peace of the same county when there is no other in the township, by filing the papers in said action with the justice to whom the same is removed and by giving ten days notice to the defendant of such removal; and if the plaintiff in any civil action shall fail to give such notice of removal within ten days from the happening of the death, removal, or resignation, or incapacity of such justice then the defendant in such action may remove the same by giving like notice to the plaintiff; and if no notice is given by either party to such action within twenty days, then such action shall stand discontinued without prejudice. The justice of the peace before whom such action may be removed shall proceed to try and determine the same, but he shall demand no fees or costs which have heretofore been properly advanced by any party to such action. After such removal either party shall be entitled to all the rights given in the preceding section.

Rev., s. 1456; 1905, c. 121.

95. Rules of practice:

Rule 1, Pleadings. The pleadings in these courts are—

1. The complaint of the plaintiff.
2. The answer of the defendant.

Rev., s. 1457; Code, s. 840.

Rule 2, Complaint. The complaint must state, in a plain and direct manner, the facts constituting the cause of action.

Rev., s. 1459; Code, s. 840, Rule 3.

Rule 3, Answer. The answer may contain a denial of the complaint, or of any part thereof and also a statement, in a plain and direct manner of any facts constituting a defense or counterclaim.

Rev., s. 1460; Code, s. 840, Rule 4.

Rule 4, Demurrer. Either party may demur to a pleading of his adversary, or to any part thereof, when it is not sufficiently explicit to enable him to understand it, or contains no cause of action or defense, although it be taken as true.
Rev., s. 1461; Code, s. 840, Rule 11.

Rule 5, Order on demurrer. If the justice deem the objection well founded, he shall order the pleading to be amended on such terms as he may think just; and if the party refuse to amend, the defective pleading shall be disregarded.
Rev., s. 1462; Code, s. 840, Rule 12.

Rule 6, Pleadings, oral or written. The pleadings may be either oral or written; if oral, the substance must be entered by the justice on his docket; if written, they must be filed by the justice, and a reference to them be made on his docket.

Rev., s. 1458; Code, s. 840, Rule 2.

Rule 7, No particular form for pleadings. Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is meant.

Rev., s. 1463; Code, s. 840, Rule 5.

Rule 8, No judgment by default. Where a defendant does not appear and answer, the plaintiff must still prove his case before he can recover.

Rev., s. 1464; Code, s. 840, Rule 6.

Rule 9, Action on account or note. In an action or defense, founded on an account or an instrument for the payment of money only, it is sufficient for a party to deliver the account or instrument to the justice and state that there is due him thereon from the adverse party a specified sum, which he claims to recover or set off.

Rev., s. 1465; Code, s. 840, Rule 7.

Rule 10, Account or demand exhibited. The justice may at the joining of issue, require either party, at the request of the other at that or some other specified time to exhibit his account or demand, or state the nature thereof as far as may be in his power; and in case of his default, the justice shall preclude him from giving evidence of such parts thereof as have not been so exhibited or stated.

Rev., s. 1469; Code, s. 840, Rule 10.

Rule 11, Variance. A variance between the evidence on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court is satisfied that the adverse party has been misled to his prejudice thereby.

Rev., s. 1466; Code, s. 840, Rule 8.

Rule 12, No process quashed for want of form. No process or other proceeding begun before a justice of the peace, whether in a civil or a criminal action, shall be quashed or set aside, for the want of form, if the essential matters are set forth therein; and the court in which any such action shall be pending, shall have power to amend any warrant, process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be deemed just, at any time either before or after judgment.

Rev., s. 1467; Code, s. 908, R. C., cc. 3, 62, s. 22; 1794, c. 414.

Rule 13, Pleadings amended. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, when by such amendment substantial justice will be promoted. If the amendment be made after the joining of the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party.

Rev., s. 1468; Code, s. 840, Rule 9.

Rule 14, Tender of judgment. The defendant may, on the return of process and before answering, make an offer in writing to allow judgment to be taken against him for an amount, to be stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceeding be had in the action, determine whether he will accept or reject such offer. If he accept the offer, and give notice thereof in writing, the justice shall file the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance be not given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.

Rev., s. 1471; Code, s. 840, Rule 16.

Rule 15, Continuance. Any justice before whom an action is brought, may, on sufficient excuse therefor shown on the affidavit of either party or any person for him, continue such action from time to time for trial; but such continuance shall not exceed thirty days.

Rev., s. 1472; Code, s. 840, Rule 17.

Rule 16, Chapter on civil procedure applicable. The chapter on civil procedure, respecting forms of actions, parties to actions, the times of commencing actions, and the service of process, shall apply to justice's courts.

Rev., s. 1473; Code, s. 840, Rule 15.

Rule 17, Attachment proceedings. The chapter on civil procedure is applicable to proceedings by attachment before justices of the peace, in all cases founded on contract wherein the sum demanded does not exceed two hundred dollars, and where the title to real estate is not in controversy.

Rev., s. 1474; Code, s. 853.

Rule 18, Claim and delivery and arrest and bail. The chapter on civil procedure is applicable, except as herein otherwise provided, to proceedings in justices' courts concerning claim and delivery of personal property and arrest and bail, substituting the words, "justice of the peace" for "judge," "clerk" or "clerk of the court," and inserting the words "or constable" after "sheriff," whenever they occur.

Rev., s. 1475; Code, ss. 849, 889; 1876-7, c. 251.

NOTE. See ss. 726, 790.

Rule 10, Actions for damages and for conversion. All actions in a court of a justice of the peace for the recovery of damages to real estate, or for the conversion of personal property, or any injury thereto, shall be commenced and

prosecuted to judgment under the same rules of procedure as provided in civil actions in a justice's court.

Rev., s. 1476; Code, s. 888; 1876-7, c. 251.

Rule 20, Action on former judgment. On the trial of an action founded on a former judgment, the judgment itself shall be evidence of the debt, subject to such payments as have been made.

Rev., s. 1477; Code, s. 844.

Rule 21, Rehearing of case. When a judgment has been rendered by a justice, in the absence of either party, and when such absence was caused by the sickness, excusable mistake or neglect of the party, such absent party, his agent or attorney, may, within ten days after the date of such judgment, apply for relief to the justice who awarded the same, by affidavit, setting forth the facts, which affidavit must be filed by the justice; whereupon the justice, if he deem the affidavit sufficient, shall open the case for reconsideration; and to this end, he shall issue a summons, directed to a constable, or other lawful officer, to cause the adverse party, together with the witnesses on both sides, to appear before him at a place and at a time, not exceeding twenty days, to be specified in the summons, when the complaint shall be reheard, and the same proceedings had as if the case had never been acted on. If execution has been issued on the judgment, the justice shall direct an order to the officer having such execution in his hands, commanding him to forbear all further proceedings thereon, and to return the same to the justice forthwith.

Rev., s. 1478; Code, s. 845.

ART. 14. JURY TRIALS

96. Parties entitled to a jury trial. When an issue of fact shall be joined before a justice, on demand of either party thereto, he shall cause a jury of six men to be summoned, who shall try the same.

Const., Art. 4. s. 27.

97. Jury trial waived. A trial by jury must be demanded at the time of joining the issue of fact, and if neither party demand at such time a jury, they shall be deemed to have waived a trial by jury.

Rev., s. 1431; Code, s. 857.

98. Number constituting the jury. Six jurors shall constitute a jury in a justice's court, but, by consent of both parties, a less number may constitute it.

Rev., s. 1440; Code, s. 866.

99. Jury list furnished. The clerk of the board of commissioners shall furnish, on demand, to each justice of the peace in the county, a list of the jurors for the township for which such justice is elected or appointed.

Rev., s. 1428; Code, s. 854.

100. Names kept in jury box. Each justice shall keep a jury box, having two divisions marked respectively number one and number two, and having two locks, the key to be kept by the justice. He shall cause the names on his jury list to be written on small scrolls of paper of equal size, and to be placed in the

jury box, in division marked number one, until drawn out for the trial of an issue as required by law.

Rev., ss. 1429, 1430; Code, ss. 855, 856.

101. Fees deposited for jury trial. Before a party is entitled to a jury he shall deposit with the justice the sum of three dollars for jury fees, and the justice shall pay to all persons who attend, pursuant to the summons, as well to those who do not actually serve as to those who do serve, twenty-five cents each, to be included in the judgment as part of the costs, in case the party demanding the jury recover judgment, but not otherwise. The justice shall refund to the party the fees of all jurors who do not attend.

Rev., s. 1432; Code, s. 869.

102. Jury drawn and trial postponed. When a trial by jury is demanded, the justice shall immediately, in the presence of the parties, proceed to draw the names of twelve jurors from division marked number one of the jury box; and the trial of the cause shall thereupon be postponed to a time and place to be fixed by the justice.

Rev., s. 1433; Code, s. 858.

103. Summoning the jury. A list of the jurors so drawn shall be immediately delivered by the justice to any constable, or other lawful officer, with an order indorsed thereon, directing him to summon the persons named in the list to appear as jurors at the time and place fixed for the trial; and it is the duty of the officer to proceed forthwith to summon such jurors, or so many of them as can be found, according to the order; and he shall make return thereof at the time and place appointed, stating in his return the names of the jurors summoned by him.

Rev., s. 1434; Code, s. 859.

104. Selection of jury. At the time and place appointed, and on return of the order, if the trial be not further adjourned, and if adjourned, then at the time and place to which the trial shall be adjourned, the justice shall proceed, in the presence of the parties, to draw from the jurors summoned the names of six persons to constitute the jury for the trial of the issue.

Rev., s. 1435; Code, s. 860.

105. Challenges. Each party shall be entitled to challenge, peremptorily, two of the persons drawn as jurors.

Rev., s. 1436; Code, s. 861.

106. Names returned to the jury box. The scrolls containing the names of jurors not summoned, if any, and of those summoned, but not drawn, and of those drawn, but challenged and set aside, must be returned by the justice to his jury box, in division marked number one: Provided, that the scrolls containing the names of such as are not legally liable, or legally qualified to serve as jurors, shall be destroyed.

Rev., s. 1437; Code, s. 862.

107. Names of jurors serving. The scrolls containing the names of the jurors who serve on the trial of an issue must be placed in the jury box in division

marked number two, until all the scrolls in division marked number one have been drawn out. As often as that may happen, the whole number of scrolls shall be returned to division marked number one, to be drawn out as in the first instance.

Rev., s. 1441; Code, s. 868.

108. Tales jurors summoned. If a competent and indifferent jury is not obtained from the twelve jurors drawn, as before specified, the justice may direct others to be summoned from the bystanders, sufficient to complete the jury.

Rev., s. 1438; Code, s. 863.

109. No juror to serve out of township. No person is compelled to serve as a juror in a justice's court out of his own township, except as a talesman.

Rev., s. 1439; Code, s. 867.

110. Additional deposit for jury fees on adjournment. No adjournment shall be granted after the return of the jury, unless the party asking the same shall, in addition to the other conditions imposed on him by law or by the justice, deposit with the justice, to be immediately paid to the jurors attending, the sum of twenty-five cents each, such amount to be in no case included in the judgment as part of the costs. On such adjournment, the jurors shall attend at the time and place appointed, without further summons or notice; and the fees for the jury, deposited with the justice in the beginning shall remain in his hands until the jury are empaneled on the trial, and shall be then immediately paid to the jurors or to the party entitled thereto.

Rev., s. 1442; Code, s. 870.

111. Jury sworn and empaneled; verdict; judgment. The jury shall be sworn and empaneled by the justice, who shall record their verdict in his docket and enter a judgment in the case according to such verdict.

Rev., s. 1443; Code, s. 864.

ART. 15. JUDGMENT AND EXECUTION

112. Justice's judgment docketed; lien and execution. A justice of the peace, on the demand of a party in whose favor he has rendered a judgment, shall give a transcript thereof which may be filed and docketed in the office of the superior court clerk of the county where the judgment was rendered. And in such case he shall also deliver to the party against whom such judgment was rendered, or his attorney, a transcript of any stay of execution issued, or which may thereafter be issued, by him on such judgment, which may be in like manner filed and docketed in the office of the clerk of such court. The time of the receipt of the transcript by the clerk shall be noted thereon and entered on the docket; and from that time the judgment shall be a judgment of the superior court in all respects for the purposes of lien and execution. The execution thereon shall be issued by the clerk of the superior court to the sheriff of the county, and shall have the same effect, and be executed in the same manner, as other executions of the superior court; but in case a stay of execution upon such judgment shall be granted, as provided by law, execution shall not be issued

thereon by the clerk of the superior court until the expiration of such stay. A certified transcript of such judgment may be filed and docketed in the superior court clerk's office of any other county, and with like effect, in every respect, as in the county where the judgment was rendered, except that it shall be a lien only from the time of filing and docketing such transcript.

Rev., s. 1479; Code, s. 839.

113. Effect of judgment on appeal. In cases of appeal to the superior court from a justice's judgment docketed in such court, when judgment is rendered in the superior court on such appeal, the lien acquired by the docketing of such justice's judgment shall merge into the judgment of the superior court, and continue as a lien from the date of the docketing of such justice's judgment, and be superior to any other judgment docketed subsequent to the date of the justice's judgment, except prior attachment liens and judgment on the same. The clerk of the superior court shall carry forward and tax into the judgment of the superior court all costs incurred in the justice's court, including transcript and docketing, as well as all costs incurred in the superior court, and shall issue execution only on the judgment rendered in the superior court, and not upon the justice's judgment. When the judgment of the superior court is satisfied, it shall be a satisfaction of the justice's judgment, and the clerk shall note such satisfaction on the record of the justice's judgment.

Rev., s. 1479; 1903, c. 179.

114. Entries made by clerk when judgment is rendered. Whenever a transcript of a judgment taken before a justice of the peace is docketed on the judgment docket of the superior court and the same is afterwards reversed, modified, or affirmed in the superior court on appeal by a final judgment, the clerk of said court shall within ten days thereafter enter on the judgment docket where the said transcript was first docketed, the word "reversed," "modified," or "affirmed," as the case may be, and further refer to the book and page where can be found the judgment reversing, modifying, or affirming the former judgment. Any clerk failing to perform such duties as are required of him in this section shall pay to any person all such damages as he may have sustained by such failure.

Rev., s. 1479; 1907, c. 880.

115. Justice's judgment removed to another county. Any person who may desire to have a justice's judgment in his favor removed to another county to be enforced against the goods and chattels of the defendant, must obtain from the justice who rendered the judgment a transcript thereof, under his hand; and must further procure a certificate from the clerk of the superior court of the county where the judgment was rendered, under the seal of his court, that the justice who gave the judgment was, at the rendition thereof, a justice of the county. On such transcript of the judgment, thus certified, any justice in any other county may award execution for the sum therein expressed.

Rev., s. 1480; Code, s. 846.

116. Issue and return of execution. Execution may be issued on a judgment, rendered in a justice's court, at any time within one year after the rendition thereof, and shall be returnable sixty days from the date of the same.

Rev., s. 1481; Code, s. 840, Rule 14.

117. Levy and lien of execution. Executions issued by a justice, which must be directed to any constable or other lawful officer of the county, shall be a lien on the goods and chattels of the defendant named therein, from the levy thereof only, but shall not be levied on or enforced in any manner against real estate; but when a justice's judgment shall be made a judgment of the superior court, as is elsewhere provided, the execution shall be capable of being levied and collected out of any property of the defendant in execution, and it shall be a lien on the real estate of said defendant from the time when it becomes a judgment of the superior court.

Rev., s. 1482; Code, s. 841; 1868-9, c. 159, s. 5.

118. Stay of execution. In all actions founded on contract, whereon judgments are rendered in justices' courts, stay of execution, if prayed for at the trial by the defendant or his attorney, shall be granted by the justices in the following manner: For any sum not exceeding twenty-five dollars, one month; for any sum above twenty-five dollars and not exceeding fifty dollars, three months; for any sum above fifty dollars and not exceeding one hundred dollars, four months; for any sum above one hundred dollars, six months. But no stay of execution shall be allowed in any action wherein judgment is rendered on a former judgment taken before a justice of the peace.

Rev., s. 1483; Code, s. 842; 1868-9, c. 272.

119. Security on stay of execution. The party praying for a stay of execution shall, within ten days after the trial, give sufficient security, approved by the justice, for payment of the judgment, with interest thereon till paid, and cost; and the acknowledgment of the surety, entered by the justice in his docket and signed by the surety, shall be sufficient to bind such surety. If the judgment be not discharged at the time to which execution has been stayed, the justice who awarded the judgment shall issue execution against the principal, or surety, or both.

Rev., s. 1484; Code, s. 843.

120. Stay of execution on appeal. In all cases of appeal from justices' courts, if the appellant desires a stay of execution of the judgment, he may, at any time, apply to the clerk of the appellate court for leave to give the undertaking as provided in a subsequent section; and the clerk, upon the undertaking being given, shall make an order that all proceedings on the judgment be stayed. Instead of before the clerk of the appellate court, the appellant may give the undertaking before the justice who tried the cause, who shall indorse his approval thereon.

Rev., ss. 1485, 1486; Code, ss. 882, 883; 1869-70, c. 187.

121. Nature of undertaking. The undertaking shall be in writing, executed by one or more sufficient sureties, to be approved by the justice or clerk making the order, to the effect that if judgment be rendered against the appellant, the sureties will pay the amount together with all costs awarded against the appellant, and when judgment shall be rendered against the appellant, the appellate court shall give judgment against the said sureties.

Rev., s. 1487; Code, s. 884; 1879, c. 68.

122. Execution stayed upon order given. A delivery of a certified copy of the order, hereinbefore mentioned, to the justice of the peace, shall stay the issuing of an execution on the judgment; if it has been issued, the service of a certified copy of such order on the officer holding the execution shall stay further proceedings thereon. A certified copy of such order shall also be served on the respondent, or on his agent or attorney, within ten days after the making thereof.

Rev., s. 1488; Code, s. 885.

ART. 16. APPEAL

123. No new trial; either party may appeal. A new trial is not allowed in a justice's court in any case whatever; but either party dissatisfied with the judgment in such court may appeal therefrom to the superior court, as hereinafter prescribed.

Rev., s. 1489; Code, s. 865.

NOTE. See s. 1478.

124. Appeal does not stay execution. No appeal shall prevent the issuing of an execution on a judgment, or work a stay thereof, except as provided for by giving an undertaking and obtaining an order to stay execution.

Rev., s. 1490; Code, s. 875; 1876-7, c. 251, s. 6.

125. Manner of taking appeal. The appellant shall, within ten days after judgment, serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served, and the defendant did not appear and answer, he shall have fifteen days, after personal notice of the rendition of the judgment, to serve the notice of appeal herein provided for.

Rev., s. 1491; Code, s. 876; 1876-7, c. 251, s. 7.

126. No written notice of appeal in open court. Where any party prays an appeal from a judgment rendered in a justice's court, and the adverse party is present in person or by attorney at the time of the prayer, the appellant shall not be compelled to give any written notice of appeal either to the justice or to the adverse party.

Rev., s. 1492; Code, s. 877; 1869-70, c. 187; 1876-7, c. 251, s. 8.

127. Justice's return on appeal. The justice shall, within ten days after the service of the notice of appeal on him, make a return to the appellate court and file with the clerk thereof the papers, proceedings and judgment in the case, with the notice of appeal served on him. He may be compelled to make such return by attachment. But no justice shall be bound to make such return until the fees, prescribed by law for his service, be paid him. The fee so paid shall be included in the costs, in case the judgment appealed from is reversed.

Rev., s. 1493; Code, s. 878.

128. Defective return amended. If the return be defective, the judge or clerk of the appellate court may direct a further or amended return as often as may be necessary, and may compel a compliance with the order by attachment.

Rev., s. 1494; Code, s. 879.

129. Restitution ordered upon reversal of judgment. If the judgment appealed from, or any part thereof, be paid or collected, and the judgment be afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing of the appeal, on a previous notice of six days. If the order be obtained before the judgment of reversal is entered, the amount may be included in the judgment.

Rev., s. 1495; Code, s. 886.

ART. 17. FORMS

130. Forms to be used in justice's court. The following forms, or substantially similar ones, shall be sufficient in all cases of proceedings in civil actions, provided for in this article:

[No. 1]

SUMMONS

North Carolina, -----County, -----Township.

A-----B-----	} Before-----, Justice of the Peace.
against	
C-----D-----	

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 -----, 19-----, at his office (or elsewhere, as the justice may appoint the place of trial), in----- Township, 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.

Herein fail not. Witness our said justice, this-----day of-----, 19-----

G. W. H.-----
Justice of the Peace.

[No. 2]

SUMMONS ON ALLOWING APPLICATION TO REHEAR

(Title, etc., 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 rehearing 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 -----, 19-----; 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 -----, 19-----, at -----, in said county, when and where the complaint will be reheard 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.

Herein fail not. Witness our said justice, this ----- day of -----, 19-----

G. W. H.-----
Justice of the Peace.

[No. 3]

AFFIDAVIT TO OBTAIN ATTACHMENT

(Title as in No. 1)

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).

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. 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.)

Sworn to and subscribed before me, this _____ day of _____, 19____
A. _____ B. _____
 G. W. H. _____
 Justice of the Peace.

[No. 4]

ANOTHER FORM OF AFFIDAVIT TO OBTAIN ATTACHMENT

(Title, etc., as in No. 1)

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 _____, 19____

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, etc., to defraud defendant's creditors).

(Sworn to, etc., as in No. 3.)

A. B. _____

[No. 5]

AFFIDAVIT AGAINST A FOREIGN CORPORATION

North Carolina, _____ County.

A. _____ B. _____
 against
 The Highland Mining Co. } Before _____, Justice of the Peace.

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 _____, 19____, until the _____ day of _____, 19____

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, etc., as in No. 3.)

A. B. _____

[No. 6]

UNDERTAKING UPON ATTACHMENT

(Title as in No. 1 or No. 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 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 _____, 19____
G. W. H. _____
 Justice of the Peace.

[No. 7]

WARRANT OF ATTACHMENT

(Title as in No. 1 or No. 5)

State of North Carolina, to any constable or other lawful officer of ----- County—
Greeting:

It appearing by affidavit to the undersigned that a cause of action exists in favor of the plaintiff against the defendant for the sum of ----- dollars, and that the defendant is not a resident of this state (or otherwise, as the fact may be), and the plaintiff having given the undertaking 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 -----, 19-----, with your proceedings hereon.

Witness our said justice, this ----- day of -----, 19-----

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 -----, 19-----

O. P. M.-----
Constable (or Sheriff).

[No. 9]

INVENTORY OF PROPERTY ATTACHED TO ABOVE RETURN

(Title as in No. 1 or No. 5)

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 certify 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 -----, 19-----

O. P. M.-----
Constable (or Sheriff).

[No. 10]

ORDER DIRECTING SALE OF PERISHABLE PROPERTY

(Title as in No. 1 or No. 5)

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 -----, 19-----

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 -----, 19----

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 -----, 19----

O. P. M.-----
Constable (or Sheriff).

[No. 12]

ORDER DIRECTING THIRD PERSON (H. B.) TO APPEAR AND BE EXAMINED

(Title as in No. 1 or No. 5)

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 -----, 19----, and be examined on oath concerning the same.

Dated this ----- day of -----, 19----

G. W. H.-----
Justice of the Peace.

[No. 13]

ATTACHMENT TO ENFORCE OBEDIENCE TO ABOVE ORDER

(Title as in No. 1 or No. 5)

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 -----, 19----, 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 -----, 19----, 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 -----, 19----, 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 this 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 -----, 19----

G. W. H.-----
Justice of the Peace.

[No. 14]

UNDERTAKING ON DISCHARGE OF ATTACHMENT

(Title of the cause as in No. 1)

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 _____, 19____

(Signed.)

B. B. _____

D. D. _____

Signed and delivered in the presence of G. W. H., Esq., this _____ day of _____,

G. W. H. _____

Justice of the Peace.

ACKNOWLEDGMENT AND AFFIDAVIT OF SURETIES

North Carolina, _____ County.

On this _____ day of _____, 19____, 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 and subscribed before me the day above written.

G. W. H. _____

Justice of the Peace.

[No. 15]

ORDER VACATING ATTACHMENT ON SECURITY BEING GIVEN

(Title as in No. 1 or No. 5)

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 _____, 19____, 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 _____, 19____

G. W. H. _____

Justice of the Peace.

[No. 16]

FORM OF PUBLICATION TO BE MADE BY PLAINTIFF IN ATTACHMENT

(Title as in No. 1)

[Amount sued for] 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, North Carolina, at his office (or otherwise as the case may be), on the _____ day of _____, 19____, when and where the defendant is required to appear and answer the complaint.

Dated this _____ day of _____, 19____

A. B. _____, Plaintiff.

[No. 17]

AFFIDAVIT FOR ARREST ON DEBT FRAUDULENTLY CONTRACTED

(Title as in No. 1)

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 _____, 19____, 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 _____, 19____, 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 _____, 19____, 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 nonacceptance 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 _____, 19____

G. W. H. _____

Justice of the Peace.

[No. 18]

UNDERTAKING ON ARREST

(Title as in No. 1)

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 _____, 19____

G. W. H. _____

Justice of the Peace.

[No. 19]

ORDER OF ARREST

(Title as in No. 1)

North Carolina, _____ County, _____ Township.

To any constable or other lawful officer of said county:

For the causes stated in the annexed affidavit, you are required forthwith to arrest C. D., the defendant named above, and hold him to bail in the sum of _____ dollars (the sum should be the amount of the plaintiff's claim), and to return this order before the undersigned at his office in said county, on the _____ day of _____, 19____; of which return you will give notice to plaintiff or his attorney.

Dated this _____ day of _____, 19____

G. W. H. _____

Justice of the Peace.

[No. 20]

UNDERTAKING OF BAIL ON ARREST

(Title as in No. 1)

Whereas, the above named defendant, C. D., has been arrested in this action ;

Now, therefore, we, B. B., of ----- County, and D. D., of ----- County, undertake, in the sum of ----- dollars (the sum should be the same as mentioned in the order of arrest), that if the defendant is discharged from arrest he shall at all times render himself amenable to the process of the court during the pendency of this action, and to such as may be issued to enforce judgment therein.

B. B.-----
D. D.-----

Signed in my presence, this ----- day of -----, 19----

G. W. H.-----
Justice of the Peace.

[No. 21]

NOTICE OF EXCEPTION TO BAIL

(Title as in No. 1)

To O. P. M., constable (or sheriff) of the county of----- :

Take notice, that the plaintiff does not accept the bail offered by the defendant in this action (and if the undertaking is defective in form or otherwise, add also), and further he excepts to the form and sufficiency of the undertaking.

Yours, etc.,

A. B.-----, Plaintiff.

(or M. W. N.-----, Attorney for Plaintiff.)

Dated this ----- day of -----, 19----

[No. 22]

NOTICE OF JUSTIFICATION OF BAIL

(Title as in No. 1)

To A. B., Plaintiff (or M. W. N., attorney for plaintiff) :

Take notice, that the bail in this action will justify before G. W. H., Esq., a justice of the peace for said county, at the office of said justice, in said county, on the ----- day of -----, 19----

Dated this ----- day of -----, 19----

C. D.-----

(or, M. W. N.-----, Attorney for C. D.), Defendant.

[No. 23]

NOTICE OF OTHER BAIL

(Title as in No. 1)

Take notice that R. S., of ----- County (physician), and Y. Y., of ----- County (farmer) are proposed as bail, in addition to (or in place of) B. B. and D. D., the bail already put in ; and that they will justify (conclude as in last form). Date, etc.

[No. 24]

JUSTIFICATION OF BAIL

(Title as in No. 1)

On this ----- day of -----, 19----, 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.)

Examination taken and sworn to before me, this ----- day of -----, 19----

(Signatures of bail.)

G. W. H.-----
 Justice of the Peace.

[No. 25]

ALLOWANCE OF BAIL

(Title as in No. 1)

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 -----, 19----

G. W. H.-----
 Justice of the Peace.

[No. 26]

SUBPENA 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 -----, 19----, 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).* Herein fail not, under the penalty prescribed by law. Witness our said justice, this ----- day of -----, 19----

G. W. H.-----
 Justice of the Peace.

[No. 27]

N. B.—The justice may, instead of a formal subpoena, 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 this ----- day of -----, 19----

G. W. H.-----
 Justice of the Peace.

[No. 28]

SUBPENA DUCES TECUM

If any witness has a paper or document, which a party desires as evidence at the trial, the justice will pursue the form No. 26 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 No. 26.)

[No. 29]

FORM OF OATH OF 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. 30]

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:

(Title as in No. 1)

To R. P.:

Take notice, that on the ---- day of -----, 19----, 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 -----, 19----, 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 -----, 19----

A. B.-----, Plaintiff.

The justice will enter the proceedings on the foregoing notice on his docket as follows:

A-----B-----	}	Justice's Court.
against		
C-----D-----		
		Motion for penalty against R. P., defaulting witness.

----- day of -----, 19----, 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 -----, 19----, 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. 31]

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 -----, 19----, 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 -----, 19----

G. W. H.-----
Justice of the Peace.

[No. 32]

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. 33]

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. 34]

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 the ----- day of -----, 19----, to show cause why he, the said R. S., should not be fined according to law for his nonattendance as a juror before our said justice at his office in said county on the ----- day of -----, 19----, 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 -----, 19----

G. W. H.-----
Justice of the Peace.

[No. 35]

DEMURRER TO COMPLAINT

(Title as in No. 1)

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. 36]

DEMURRER TO ANSWER

(Title as in No. 1 or No. 5)

The plaintiff demurs to the answer of the defendant, for that the facts stated in the answer are not legally sufficient to constitute a defense 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. 37]

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 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.

NOTE. The following is offered as a general precedent of the manner in which the justice will make the entries in his docket:

[No. 38]

(Title as in No. 1)

-----, 19----. Summons issued; returnable on the ---- instant at my office.
-----, 19----. 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., attorney.

The plaintiff complains on a promissory note executed by the defendant to him, dated -----, 19----, 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 setoff 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.

-----, 19----. The parties appear and proceed to the trial of the cause. The following jurors are returned as summoned upon the venire by O. P. M., constable. (Insert the names of all jurors summoned.) The following jurors, who are returned as summoned, do not appear. (Insert their names.) The following jurors appear according to the summons. (Insert their names.) The following jurors are sworn to try the action. (Insert their names.)

H. P. and J. M., witnesses for the plaintiff, and W. F., a witness for the defendant, are sworn and testify; J. S., a witness on the part of the defendant, is offered, but objected to 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 in open court and publicly deliver their verdict, by which they find in favor of the plaintiff for \$----- damages; whereupon, I adjudged that the plaintiff do recover of the defendant—

Damages, - - - - - \$-----
Costs, - - - - - -----
-----, 19----- Execution issued for above judgment to O. P. M., constable.
-----, 19----- 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, etc. (as above).

[No. 39]

FORM OF NOTICE OF APPEAL TO THE SUPERIOR COURT, WHERE A NEW TRIAL OF THE WHOLE MATTER IS TO BE HAD

(Title as in No. 1)

To G. W. H., Esq., a justice of the peace for said county.
Take notice, that the defendant in the above action appeals to the Superior Court from the judgment rendered therein by you on the ----- day of -----, 19-----, in favor of the plaintiff for the sum of sixty-five dollars damages and the further sum of three dollars and seventy-five cents costs, and that this appeal is founded upon the ground that the said judgment is contrary to law and evidence.
Dated this ----- day of -----, 19-----
W. W.-----
Attorney for Appellant.

[No. 40]

RETURN TO NOTICE OF APPEAL

A-----B----- }
 against } County of -----
C-----D----- }

To the Superior Court of ----- County:
An appeal having been taken in this action by the defendant, I, G. W. H., the justice before whom the same was tried, in pursuance of the notice of appeal hereto annexed, do hereby certify and return that the following proceedings were had by and before me in said action:
On the first of February, one thousand eight hundred and sixty-nine, at the request of the plaintiff, I issued a summons in his favor and against the defendant, which is herewith sent. Said summons was, on the return day thereof, returned before me at my office; and at the same time and place the parties personally appeared.
The plaintiff complained for goods sold and delivered to defendant to the amount of \$75. The defendant denied the right of the plaintiff to recover that amount for the goods, on the ground that he had paid, at or shortly after the purchase of said goods, ----- dollars thereon; and he also claimed to have a setoff against the plaintiff to the amount of \$85 for board and lodging furnished to plaintiff and work and labor done for him; and he claimed to be entitled to judgment against the plaintiff for \$-----
Both parties introduced evidence upon the claims so made by them, and after hearing their proofs and allegations, I rendered judgment in favor of the plaintiff and against the defendant, on the tenth of February, eighteen hundred and sixty-nine, for \$65 damages, and for the further sum of \$3.75, costs of the action.

I also certify that on the eleventh of February, eighteen hundred and sixty-nine, the defendant served the annexed notice of appeal on me, and at the same time paid me my fee of \$1 for making my return.
All of which I send, together with the process, pleadings, and other papers in the cause.
Dated this 15th day of February, 1904.

G. W. H.-----
Justice of the Peace.

N. B.—If the cause was tried by a jury, state the fact and set forth the verdict, with the judgment thereon. It is not necessary to set out in the return a copy of any process, pleading, affidavit or other paper. It is sufficient to refer to such a paper as filed and as herewith sent.

[No. 41]

WHERE THE SUM DEMANDED EXCEEDS TWO HUNDRED DOLLARS

It appearing that the sum demanded by the plaintiff in this action exceeds two hundred dollars, it is ordered that the action be dismissed, and judgment is rendered against A. B., plaintiff, for the sum of ----- dollars, costs.

(Date and sign.)

[No. 42]

WHERE THE TITLE TO REAL ESTATE IS IN QUESTION

N. B.—The defendant, if he wishes to make answer to title, must file a written answer to the complaint, setting forth the facts.

ANSWER OF TITLE

(Title as in No. 1)

The defendant answers to the complaint:

1. That no allegation thereof is true.

2. That the plaintiff ought not to have or maintain his action against the defendant, because the premises mentioned and described in the complaint, at the time when the rent and render, for which said action is brought, is alleged to be due, was and is now the land and freehold of one J. D., and not that of the plaintiff; nor was the plaintiff then, nor is he now, entitled to the possession thereof; and the defendant further answers that the title to said premises was, at the time aforesaid, and is now, in said J. D., and will come in question on the trial of this action.

Dated this ----- day of -----, 19----

C. D-----, Defendant.

It appearing from the answer and proof of the defendant that the title to real estate is in controversy in this action, it is ordered that the action be dismissed, and judgment is rendered against the plaintiff for ----- dollars, costs.

[No. 43]

TENDER OF JUDGMENT

(Title as in No. 1)

To C. D-----:

Take notice, that the defendant hereby offers to allow judgment to be taken against him by the plaintiff in the above action for the sum of fifty dollars, with costs.

Dated this ----- day of -----, 19----

C. D-----, Defendant.

[No. 44]

ACCEPTANCE OF TENDER OF JUDGMENT

(Title as in No. 1)

To A. B-----:

Take notice, that the plaintiff hereby accepts the offer to allow the plaintiff to take judgment in the above action for the sum of fifty dollars, with costs, and the justice will enter up judgment accordingly.

Dated this ----- day of -----, 19----

A. B-----, Plaintiff.

[No. 45]

FORM OF JUDGMENT ON TENDER

(Title as in No. 1)

N. B.—The justice will state all the proceedings in the action from the issuing of the summons down to the appearance of the parties and the complaint of the plaintiff, and then proceed as follows:

Whereupon, the said defendant, before answering said complaint, made and served an offer, in writing, to allow the plaintiff to take judgment against him for the sum of fifty dollars with costs;* and the said plaintiff thereupon accepted such offer, and gave notice thereof to the defendant in writing; said offer and acceptance thereof being filed:

Now, therefore, judgment is accordingly rendered in favor of the plaintiff and against the defendant for the sum of fifty dollars damages, and the further sum of one dollar, costs.

If notice of acceptance is not given, the entry will be as follows:

(Follow the foregoing form down to the asterisk (*) and then add):

And the said plaintiff having refused to accept such offer, the defendant answered the complaint by denying, etc. (state the defense of the defendant down to the judgment, which, in case the plaintiff fails to recover more than the sum mentioned in the offer, will be entered thus):

After hearing the proofs and allegations of the respective parties, I adjudge that the plaintiff do recover the sum of fifty dollars damages, and the further sum of one dollar, costs.

I further adjudge that the defendant do recover of the plaintiff the sum of two dollars and seventy-five cents, costs accruing in the action subsequent to the offer of the defendant referred to.

[No. 46]

GENERAL FORM—EXECUTION

(Title as in No. 1)

State of North Carolina, to any constable or other lawful officer of _____ County—
Greeting:

Whereas, judgment has been rendered by G. W. H., Esq., a justice of the peace for said county, against C. D., in favor of A. B., for the sum of _____ dollars damages, and the further sum of _____ dollars costs, on the _____ day of _____, 19____;

You are therefore commanded forthwith to levy of the goods and chattels of the said C. D. (excepting such goods and chattels as are by law exempt from execution) the amount of such judgment, with interest from the date thereof until the money is recovered.

And make due return, according to law, in sixty days from the date hereof.

Dated this _____ day of _____, 19____

G. W. H. _____
Justice of the Peace.

[No. 47]

EXECUTION IN ATTACHMENT

(Title as in No. 1)

State of North Carolina, to any constable or other lawful officer of _____ County—
Greeting:

Whereas, in pursuance of a warrant of attachment, dated the _____ day of _____, 19____, issued by G. W. H., Esq., a justice of the peace of said county, in an action wherein A. B. was plaintiff and C. D. defendant, the following property of defendant was, on the _____ day of _____, 19____, duly levied on and attached.

(Here insert a list of property)

And whereas, judgment was rendered in said action, on the ---- day of -----, in favor of said plaintiff, and against the said defendant in the sum of ----- dollars;

Therefore, we command you that you satisfy the said judgment out of the property so attached as aforesaid, by the sale of the same or so much thereof as shall be sufficient to satisfy the said judgment; and if a sufficient sum be not realized therefrom, then you satisfy the said judgment out of any other goods and chattels of the said judgment debtor within your county.

And make due return thereof according to law within sixty days from the date hereof.

Witness, our said justice, this ---- day of -----, 19----

G. W. H.-----
Justice of the Peace.

[No. 48]

RECORD OF CONVICTION OF A CONTEMPT

The justice will make an entry in his docket stating the particular circumstances of the contempt, of which the following is offered as an example:

Whereas, on the ---- day of -----, 19----, while engaged in the trial of an action (or other judicial act, as the case may be) in which A. B. was plaintiff and C. D. was defendant, at my office in ----- County, M. B. did willfully and contemptuously interrupt me, and did then and there conduct himself so disorderly and insolently towards me, and by making a loud noise did disturb the proceedings on said trial (or other judicial act) and impair the respect due to the authority of the law; and on being ordered by me to cease making such noise and disturbance, the said M. B. refused so to do, but on the contrary did publicly declare and with loud voice (state whatever offensive words were used), and whereas, when immediately called upon by me to answer for the said contempt said M. B. did not make any defense thereto, nor excuse himself therefrom; the said M. B. is therefore convicted of the contempt aforesaid, and is adjudged to pay a fine of five dollars and be imprisoned in the county jail for the term of two days, and until he pays such fine or is duly discharged from imprisonment according to law.

G. W. H.-----
Justice of the Peace.

[No. 49]

WARRANT OF COMMITMENT FOR A CONTEMPT

(Title as in No. 1)

State of North Carolina, to the keeper of the common jail of-----County—
Greeting:

Whereas, etc. (recite the record of conviction so as to show the entire matter of contempt, together with the judgment therefor, and then proceed as follows):

Therefore, you are hereby commanded to receive the said M. B. into your custody in the said jail, and him there safely keep during the said term of two days, and until he pays the said fine or is duly discharged according to law.

Herein fail not.

Dated this ---- day of -----, 19----

G. W. H.-----
Justice of the Peace.

Rev., s. 1496; Code. s. 909.

NOTE. For criminal procedure and jurisdiction, see Criminal Procedure.

NOTE. *Recorders' Courts.* Under the Constitution, article 4, sections 2 and 12, there have been established in different localities various courts, inferior to the superior court, known by different names, as Recorders' Courts, County Courts, Criminal Courts, Police Courts, Municipal Courts, etc. The jurisdiction of these courts is criminal or civil, or both, and depends upon the local statutes creating them. Since there are about eighty of these courts, created at different times and by different statutes, reference must be made to the local statute in each particular case.

CHAPTER 28

DEBTOR AND CREDITOR

ART. 1. ASSIGNMENTS FOR BENEFIT OF CREDITORS.

1. Debts mature on exception of assignment ; no preferences.
2. Trustee to file schedule of debts.
3. Trustee to recover property conveyed fraudulently or in preference.
4. Substitute for dead or incompetent trustee appointed in special proceeding.
5. Insolvent trustee removed unless bond given ; substitute appointed.
6. Trustee removed on petition.
7. Substituted trustee to give bond.
8. Only perishable property sold within ten days of registration.
9. Creditors to file verified claims with clerk ; false swearing misdemeanor.
10. Priority of payments by trustee.
11. Trustee to account quarterly ; final account in twelve months.
- 11a. Trustee violating duties guilty of misdemeanor.

ART. 2. PETITION OF INSOLVENT FOR ASSIGNMENT FOR CREDITORS.

12. Petition for assignment ; schedule ; inventory ; affidavit.
13. Clerk to give notice of petition.
14. Order of discharge and appointment of trustee.
15. Terms and effect of order of discharge.
16. Suggestion of fraud by opposing creditors.

ART. 3. TRUSTEE FOR ESTATE OF DEBTOR IMPRISONED FOR CRIME.

17. Persons who may apply for trustee for imprisoned debtor.
18. Superior court appoints ; copy of sentence to be produced.
19. Duties of trustee ; accounting ; oath.
20. Court may appoint several trustees.
21. Court may remove trustee and appoint successor.

ART. 4. DISCHARGE OF INSOLVENT FROM IMPRISONMENT.

22. Insolvent debtor's oath.
23. Persons imprisoned for nonpayment of maintenance in bastardy or of cost in criminal cases.
24. Petition ; before whom ; notice ; service.
25. Warrant issued for prisoner.
26. Proceedings on application.
27. Suggestion of fraud.
28. Persons taken in arrest and bail proceedings or in execution.
29. When petition may be filed.
30. Petition ; contents ; verification.
31. Notice ; length of notice and to whom given.
32. Who may suggest fraud.
33. Where no suggestion of fraud discharge granted.
34. Continuance granted for cause.
35. Where fraud in issue, discharge only after trial.
36. If fraud found, debtor imprisoned.
37. Effect of order of discharge.

ART. 5. GENERAL PROVISIONS.

38. Superior court tries issue of fraud.
39. Insolvent released on giving bond.
40. Surety in bond may surrender principal.
41. Creditor liable for debtor's jail fees.
42. False swearing ; penalty.
43. Powers of trustees under this chapter.
44. Jail bounds.

ART. 1. ASSIGNMENTS FOR BENEFIT OF CREDITORS

1. **Debts mature on execution of assignment; no preferences.** Upon the execution of any voluntary deed of trust or deed of assignment for the benefit of creditors, all debts of the maker thereof shall become due and payable at once, and no such deed of trust or deed of assignment shall contain any preferences of one creditor over another, except as hereinafter stated.

Rev., s. 967; 1893, c. 453; 1909, c. 918, s. 1.

2. **Trustee to file schedule of debts.** Upon the execution of such deed of trust, the trustee, whether named therein or appointed as hereafter provided for, shall file with the clerk of the superior court of the county in which said deed of trust is registered, within ten days after the registration thereof, an inventory under oath, giving a complete, full and perfect account of all property that has come into his hands or to the hands of any person for him, by virtue of such deed of trust, and when further property of any kind not included in any previous return come to the hands or knowledge of such trustee he shall return the same as hereinbefore prescribed within ten days after the possession or discovery thereof.

Rev., s. 968; 1893, c. 453, s. 2.

3. **Trustee to recover property conveyed fraudulently or in preference.** It is the duty of the trustee to recover, for the benefit of the estate, property which was conveyed by the grantor or assignor in fraud of his creditors, or which was conveyed or transferred by the grantor or assignor for the purpose of giving a preference. A preference, under this section, shall be deemed to have been given when property has been transferred or conveyed within four months next preceding the registration of the deed of trust or deed of assignment in consideration of the payment of a preexisting debt, when the grantee or transferee of such property knows or has reasonable ground to believe that the grantor or assignor was insolvent at the time of making such conveyance or transfer.

1909, c. 918, s. 2.

4. **Substitute for incompetent trustee appointed in special proceeding.** When a trustee named in a deed of assignment for the benefit of creditors has died or resigned or has in any way become incompetent to execute the trust, the clerk of the superior court of the county wherein said deed of assignment has been registered is authorized and empowered, in a special proceeding in which all persons interested have been made parties, to appoint some discreet and competent person to act as such trustee and to execute all the trusts created in the original deed of assignment, according to its true intent and as fully as if originally appointed trustee therein.

1915, c. 176, s. 1.

5. **Insolvent trustee removed unless bond given; substitute appointed.** Upon the complaint of any creditor of the assignor or trustee in such deed of trust, alleging under oath that the trustee named therein is insolvent and asking that he be required to give bond or be removed, it is the duty of the clerk of the superior court of the county in which such deed of trust is registered, upon a notice of not more than ten days to such trustee, to hear the complaint. If

upon such hearing the clerk is satisfied that such trustee is insolvent, he shall remove such trustee and appoint some competent person to execute the provisions of such deed of trust, unless such insolvent trustee shall file with the clerk a good and sufficient bond, to be approved by him, in a sum double the value of the property in the deed of trust, payable to the state of North Carolina, and conditioned that such trustee shall faithfully execute and carry into effect the provisions of said deed of trust.

Rev., s. 969; 1893, c. 453, s. 3.

6. Trustee removed on petition of creditors; substitute appointed. Upon the written petition of one-fourth of the number of the creditors of the grantor or assignor whose claims aggregate more than fifty per cent of the total indebtedness of said grantor or assignor, the clerk of the superior court of the county in which said deed of trust or deed of assignment is registered, upon a notice of not more than ten days to said trustee of said petition, shall remove said trustee and appoint some competent person to execute the provisions of such deed of trust or deed of assignment.

1909, c. 918, s. 3.

7. Substituted trustee to give bond. Upon the removal or resignation of any trustee it is the duty of the clerk to require the person appointed to execute the provisions of such deed of trust, before entering upon his duties, to file with the clerk a good and sufficient bond, to be approved by him in a sum double the value of the property in said deed of trust, payable to the state of North Carolina, and conditioned that such person shall faithfully execute and carry into effect the provisions of said deed of trust.

Rev., s. 970; 1893, c. 453, s. 3; 1909, c. 918, s. 4; 1915, c. 176, s. 2.

8. Only perishable property sold within ten days of registration. It is unlawful for any trustee, whether named in such deed of trust or appointed by a clerk of the superior court, to sell any part of the property described in such deed of trust within ten days from the registration thereof, unless such property or some part thereof be perishable, in which case he may sell such property as is perishable, according to the powers conferred upon him in said deed of trust.

Rev., s. 971; 1893, c. 453, s. 4.

9. Creditors to file verified claims with clerk; false swearing misdemeanor. All creditors of the maker of such deed of trust shall, before receiving payment of any amount from the said trustee, file with the clerk of the superior court a statement under oath that the amount claimed by him is justly due, after allowing all credits and offsets, to the best of his knowledge and belief. Any creditor who shall knowingly swear falsely in such statement shall be guilty of a misdemeanor.

Rev., ss. 972, 3617; 1893, c. 453, ss. 6, 7.

10. Priority of payments by trustee. The trustee, after paying the necessary costs of the administration of the trust, shall pay as speedily as possible (1) all debts which are a lien upon any of the trust property in his hands, to the extent of the net proceeds of the property upon which such debt is a lien; (2) wages due to workmen, clerks, traveling or city salesmen or servants which

have been earned within three months before registration of said deed of trust or deed of assignment, and (3) all other debts equally ratable.

1909, c. 918, s. 5.

11. Trustee to account quarterly; final account in twelve months. The trustee, whether named in the deed of trust or appointed by a clerk of a superior court, shall within three months from the registration of such deed of trust, and at each succeeding period of three months, file with the clerk of the superior court of the county in which the same is registered an account under oath, stating in detail his receipts and disbursements and his action as trustee, and within twelve months he shall file his final account of his administration of his trust. The clerk may upon good cause shown, extend the time within which the quarterly and final accounts herein provided for are to be filed.

Rev., s. 973; 1893, c. 453, s. 5.

11a. Trustee violating duties guilty of misdemeanor. If any trustee in a deed of trust for the benefit of creditors shall fail to file his inventory as required by law, or shall knowingly make any false statement in such inventory, or shall knowingly fail to include any property therein, or shall sell any part of the property described in the deed of trust within ten days unless such property so sold be perishable, or shall fail to file either of the quarterly accounts or the final accounts as required by law, or shall knowingly make any false statement in such quarterly or final account, or shall knowingly fail to include any property, money or disbursement in such quarterly or final account, he shall, in either case, be guilty of a misdemeanor.

Rev., s. 3689; 1893, c. 453, s. 8.

ART. 2. PETITION OF INSOLVENT FOR ASSIGNMENT FOR CREDITORS

12. Petition; schedule; inventory; affidavit. 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. On presenting such petition, every insolvent shall deliver therewith a schedule containing an account of his creditors and an inventory of his estate, which inventory 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.

He 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.

Rev., s. 1930; Code, ss. 2942, 2943, 2944; 1868-9, c. 162, ss. 1, 2, 3.

13. Clerk to give notice of petition. 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, and shall post a notice of the contents of the order at the courthouse door and three other public places in the county where the application is made for four successive weeks; or, in lieu thereof, shall publish the same for three successive weeks in any newspaper published in said county, or in an adjoining county.

Rev., s. 1931; Code, ss. 2945, 2946; 1868-9, c. 162, ss. 4, 5.

14. Order of discharge and appointment of trustee. If no creditor oppose the discharge of the insolvent, the clerk of the superior court before whom the hearing of the petition is had shall enter an order of discharge and appoint a trustee of all the estate of such insolvent.

Rev., s. 1935; Code, s. 2949; 1868-9, c. 162, s. 8.

15. Terms and effect of order of discharge. The order of discharge shall declare that the person of such insolvent shall forever thereafter be exempted from arrest or imprisonment on account of any judgment, or by reason of any debt due at the time of such order, or contracted for before that time, though payable afterwards. But no debt, demand, judgment or decree against any insolvent, discharged under this chapter, shall be affected or impaired by such discharge, but the same shall remain valid and effectual against all the property of such insolvent acquired after his discharge and the appointment of a trustee; and the lien of any judgment or decree upon the property of such insolvent shall not be in any manner affected by such discharge.

Rev., s. 1933; Code, s. 2950; 1868-9, c. 162, s. 9.

16. Suggestion of fraud by opposing creditor. Every creditor opposing the discharge of the insolvent may suggest fraud and set forth the particulars thereof in writing, verified by his oath; but the insolvent shall not be compelled to answer the suggestions of fraud in more than one case, though as many creditors as choose may make themselves parties to the issues in such cases.

Rev., s. 1934; Code, s. 2948; 1868-9, c. 162, s. 7.

ART. 3. TRUSTEE FOR ESTATE OF DEBTOR IMPRISONED FOR CRIME

17. Persons who may apply for trustee for imprisoned debtor. When any debtor is imprisoned in the penitentiary for any term, or in a county jail for any term more than twelve months, application by petition may be made by any creditor, the debtor, or by his wife, or any of his relatives, for the appointment of a trustee to take charge of the estate of such debtor.

Rev., s. 1943; Code, s. 2974; 1868-9, c. 162, s. 40.

18. Superior court appoints; copy of sentence to be produced. The application must be made to the superior court of the county where the debtor was

convicted; and upon producing a copy of the sentence of such debtor, duly certified by the clerk of the court, together with an affidavit of the applicant that such debtor is actually imprisoned under such sentence, and is indebted in any sum, the clerk or the judge may immediately appoint a trustee of the estate of such debtor.

Rev., s. 1944; Code, s. 2975; 1868-9, c. 162, ss. 41, 42.

19. Duties of trustee; accounting; oath. The trustee of the imprisoned debtor shall pay his debts pro rata. After paying such debts, the trustee shall apply the surplus, from time to time, to the support of the wife and children of the debtor, under the direction of the superior court. When the imprisoned debtor is lawfully discharged from his imprisonment, the trustee shall deliver to him all the estate, real and personal, of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor. The trustee shall make his returns and have his accounts audited and settled by the clerk of the superior court of the county where the proceeding was had, in like manner as provided for personal representatives. Before proceeding to the discharge of his duty, the trustee shall take and subscribe an oath, well and truly to execute his trust according to his best skill and understanding. The oath must be filed with the clerk of the superior court.

Rev., ss. 1945, 1946, 1947; Code, ss. 2976, 2978, 2979; 1868-9, c. 162, ss. 43, 45, 46.

20. Court may appoint several trustees. The court has power, when deemed necessary, to appoint more than one person trustee under this chapter; but in reference to the rights, authorities and duties conferred herein, all such trustees shall be deemed one person in law.

Rev., s. 1948; Code, s. 2980; 1868-9, c. 162, s. 47.

21. Court may remove trustee and appoint successor. In case of the death, removal, resignation or other disability of a trustee, the court making the appointment may from time to time supply the vacancy; and all proceedings may be continued by the successor in office in like manner as in the first instance.

Rev., s. 1949; Code, s. 2981; 1868-9, c. 162, s. 48.

ART. 4. DISCHARGE OF INSOLVENT FROM IMPRISONMENT

22. Insolvent debtor's oath. Prisoners in order to be entitled to discharge from imprisonment under the provisions of this article shall take the following oath:

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.

Rev., s. 1918a; Code, s. 2972; 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, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 31; 1881, c. 76.

23. Persons imprisoned for nonpayment of maintenance in bastardy and costs in criminal cases. The following persons may be discharged from imprisonment upon complying with this article:

1. Every putative father of a bastard committed for a failure to give bond, or to pay any sum of money ordered to be paid for its maintenance.

2. Every person committed for the fine and costs of any criminal prosecution.

Rev., s. 1915; Code, s. 2967; 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, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 26.

24. **Petition; before whom; notice; service.** Every such person, having remained in prison for twenty days, may apply by petition to the court, where the judgment against him was entered, praying to be brought before such court at a time and place to be named in the petition, and to be discharged upon taking the oath hereinafter prescribed. The applicant shall cause ten days notice of the time and place of filing the petition to be served on the sheriff or other officer by whom he was committed. In cases of conviction before a justice of the peace the clerk of the superior court of the county where the convicted person confined for costs is, may administer the oath and discharge the prisoner.

Rev., s. 1916; Code, ss. 2968, 2969; 1891, c. 195; 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, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 28; 1874-5, c. 11; 1868-9, c. 162, s. 27; 1873-4, c. 90.

25. **Warrant issued for prisoner.** The clerk of the superior court, or justice of the peace before whom such petition is presented, shall forthwith issue a warrant to the sheriff, or keeper of the prison, requiring him to bring the prisoner before the court, at the time and place named for the hearing of the case, which warrant every such sheriff or keeper shall obey.

Rev., s. 1917; Code, s. 2970; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, cc. 797, 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 29.

26. **Proceeding on application.** At the hearing of the petition, if the prisoner has no visible estate, and takes and subscribes the oath or affirmation prescribed in this article, the clerk of the superior court, or justice of the peace before whom he is brought, shall administer the oath or affirmation to him, and discharge him from imprisonment; of which an entry shall be made in the docket of the court, and, where the proceeding is before a justice of the peace, the justice shall return the petition and orders thereon into the office of the clerk of the superior court to be filed.

Rev., s. 1918; Code, s. 2971; 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, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 30.

27. **Suggestion of fraud.** The chairman of the board of commissioners, and every officer interested in the fee bill taxed against such prisoner, may oppose his taking the oath prescribed in the preceding section, and file particulars of the suggestion in writing, in the court where the same shall stand for trial as prescribed in this chapter in other cases of fraud or concealment.

Rev., s. 1919; Code, s. 2973; 1868-9, c. 162, s. 32.

28. **Persons taken in arrest and bail proceedings, or in execution.** The following persons are entitled to the benefit of this chapter:

1. Every person taken or charged on any order of arrest for default or bail, or on surrender of bail in any action.

2. Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever.

Rev., s. 1920; Code, s. 2951; 1868-9, c. 162, s. 10.

29. When petition may be filed. Every person taken or charged as in the preceding section specified, may, at any time after his arrest or imprisonment, petition the court from which the process issued on which he is arrested or imprisoned, for his discharge therefrom, on his compliance with this chapter.

Rev., s. 1921; Code, s. 2952; R. C., c. 59, s. 3; 1868-9, c. 162, s. 11.

30. Petition; contents; verification. The petition shall set forth the cause of the imprisonment, with the writ or process and complaint on which the same is founded, and shall have annexed to it a just and true account of all his estate, real and personal, and of all charges affecting such estate, as they exist at the time of filing his petition, together with all deeds, securities, books or writings whatever relating to the estate and the charges thereon; and also what property, real and personal, the petitioner claims as exempt from sale under execution, and shall have annexed to it an oath or affirmation, subscribed by the petitioner and taken before any person authorized by law to administer oaths, to the effect following:

I, -----, the within named petitioner, do swear (or affirm) that the within petition and account of my estate, and of the charges thereon, are, in all respects, just and true; and that I have not at any time or in any manner disposed of or made over any part of my property, with a view to the future benefit of myself or my family, or with an intent to injure or defraud any of my creditors; so help me, God.

Rev., s. 1922; Code, ss. 2953, 2954; R. C., c. 59, s. 3; 1868-9, c. 162, ss. 12, 13.

31. Notice; length of notice and to whom given. Twenty days notice of the time and place at which the petition will be filed, together with a copy of such petition and the account annexed thereto, shall be personally served by such debtor on the creditor or creditors at whose suit he is arrested or imprisoned, and such other creditors as the debtor may choose, or their personal representatives or attorneys. If the person to be notified reside out of the state, and has no agent or attorney in the state, the notice may be served on the officer having the claim to collect, or by two weekly publications in any newspaper in the state.

Rev., s. 1923; Code, s. 2955; R. C., c. 59, ss. 3, 20; 1773, c. 100, s. 8; 1868-9, c. 162, s. 14.

32. Who may suggest fraud. Every creditor upon whom the notice directed in the preceding section is served may suggest fraud upon the hearing of the petition, and the issues made up respecting the fraud shall stand for trial as in other cases.

Rev., s. 1924; Code, s. 2956; R. C., c. 59, s. 13; 1822, c. 1131, s. 4; 1835, c. 12; 1868-9, c. 162, s. 15.

33. Where no suggestion of fraud, discharge granted. If no creditor suggests fraud or opposes the discharge of the debtor, the justice of the peace or the clerk of the superior court before whom the petition is heard, shall forthwith discharge the debtor, and, if he surrenders any estate for the benefit of his creditors, shall appoint a trustee of such estate. The order of discharge and appointment shall be entered in the docket of the court, and if granted by a justice of the peace a copy thereof shall be certified by him to the clerk of the superior court, where the same shall be recorded, and filed.

Rev., s. 1925; Code, s. 2957; 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, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 16.

34. Continuance granted for cause. When it appears to the court that any debtor, who may have given bond for his appearance under this chapter, is prevented from attending court by sickness or other sufficient cause, the case shall be continued to another day, or to the next term, when the same proceedings shall be had as if the debtor had appeared according to the condition of his bond, and in the event of his death in the meantime, his bond shall be discharged.

Rev., s. 1926; Code, s. 2959; R. C., c. 59, s. 10; 1822, c. 1131, s. 1; 1868-9, c. 162, s. 18.

35. Where fraud in issue, discharge only after time. After an issue of fraud or concealment is made up, the debtor shall not discharge himself as to the creditors in that issue, except by trial and verdict in the same, or by a discharge by consent.

Rev., s. 1927; Code, s. 2962; R. C., c. 59, s. 17; 1868-9, c. 162, s. 21.

36. If fraud found, debtor imprisoned. If, on the trial, the jury finds that there is any fraud or concealment, the judgment shall be that the debtor be imprisoned until a full and fair disclosure and account of all his money, property or effects be made by the debtor.

Rev., s. 1928; Code, s. 2961; R. C., c. 59, s. 14; 1822, c. 1131, s. 4; 1835, c. 12; 1868-9, c. 162, s. 20.

37. Effect of order of discharge. The order of discharge under this chapter, whether granted upon a nonsuggestion of fraud, upon the finding of a jury in favor of the debtor, or otherwise, shall be in like terms and have like effect as prescribed in section 20 (one thousand nine hundred and thirty-three); except that the body of such debtor shall be free from arrest or imprisonment at the suit of every creditor, and as to him only, to whom the notice required may have been given; and the notices, or copies thereof, shall in all cases be filed in the office of the superior court clerk.

Rev., s. 1929; Code, s. 2960; R. C., c. 59, s. 11; 1822, c. 1131, s. 4; 1835, c. 12; 1868-9, c. 162, s. 19.

ART. 5. GENERAL PROVISIONS

38. Superior court tries issue of fraud. In every case where an issue of fraud is made up as provided in this chapter, the case shall be entered in the trial docket of the superior court, and stand for trial as other causes; and upon a finding by the jury in favor of the petitioner the judge shall discharge the debtor; if the finding is against the petitioner he shall be committed to jail until he makes full disclosure.

Rev., s. 1935; Code, s. 2949; 1868-9, c. 162, s. 8.

39. Insolvent released on giving bond. Every debtor entitled under the provisions of this chapter to discharge as an insolvent may, at the time of filing his application for a discharge or at any time afterwards, tender to the sheriff or other officer having his body in charge, a bond, with sufficient surety, in double the amount of the sum due any creditor or creditors at whose suit he was taken or charged, conditioned for the appearance of such debtor before the court where his petition is filed, at the hearing thereof, and to stand to and abide by the final order or decree of the court in the case. If such bond be satisfactory to the sheriff, he shall forthwith release such debtor from custody.

Rev., s. 1935; Code, s. 2958; R. C., c. 59, s. 27; 1868-9, c. 162, s. 17.

40. Surety in bond may surrender principal. The surety in any bond conditioned for the appearance of any person under this chapter, may surrender the principal, or such principal may surrender himself, in discharge of the bond, to the sheriff or other officer of any court where such principal is bound to appear, in the manner provided in the chapter entitled Civil Procedure, article Arrest and Bail.

Rev., s. 1937; Code, s. 2963; R. C., c. 59, s. 23; 1793, c. 100, s. 7; 1793, c. 380, s. 1; 1822, c. 1131, s. 3; 1868-9, c. 162, s. 22.

41. Creditor liable for jail fees. When any debtor is actually confined within the walls of a prison, on an order of arrest in default of bail or otherwise, the jailer must furnish him with necessary food during his confinement, if the prisoner requires it, for which the jailer shall have the same fees as for keeping other prisoners. If the debtor is unable to discharge such fees, the jailer may recover them from the party at whose instance the debtor was confined. And at any time after the arrest, the sheriff or jailer may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees that accrue after such notice, and if the plaintiff fails to give such security then the sheriff may discharge the debtor out of custody.

Rev., s. 1938; Code, s. 2965; R. C., c. 69, s. 5; 1773, c. 100, ss. 8, 9; 1821, c. 1103; 1868-9, c. 162, s. 24.

42. False swearing; penalty. If any insolvent or imprisoned debtor takes any oath prescribed in this chapter falsely and corruptly, and upon indictment for perjury is convicted thereof, he shall suffer all the pains of perjury, and he shall never after have any of the benefits of this chapter, but may be sued and imprisoned as though he had never been discharged.

Rev., ss. 1940, 3614; Code, s. 2964; R. C., c. 59, s. 25; 1793, c. 100, s. 10; 1868-9, c. 162, s. 23.

43. Power of trustees under this chapter. Any trustee appointed under this chapter, in the several cases therein contemplated, is hereby declared a trustee of the estate of the debtor, in respect to whose property such trustee is appointed for the benefit of creditors, and is invested from the time of appointment with all the powers and authorities, and subject to the control, obligations and responsibilities prescribed by law in relation to personal representatives over the estates of deceased persons; but all debts shall be paid by the trustees pro rata.

Rev., s. 1941; Code, s. 2977; 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.

44. Jail bounds. Any imprisoned debtor may take the benefit of the prison bounds by giving security, as required by law, except as follows:

1. A debtor against whom an issue of fraud is found.

2. Any debtor who, for other cause, is adjudged to be imprisoned until he make a full and fair disclosure or account of his property.

Rev., s. 1942; Code, s. 2966; R. C., c. 59, s. 27; 1818, c. 964; 1868-9, c. 162, s. 25.

CHAPTER 29

DESCENTS

1. Rules of descent.

- Rule 1. Lineal descent.
- Rule 2. Females inherit with males, younger with older children; advancements.
- Rule 3. Lineal descendant represents ancestor.
- Rule 4. Collateral descent of estate derived from ancestor.
- Rule 5. Collateral descent of estate not derived from ancestor.
- Rule 6. Half blood inherits with whole; parents from child.
- Rule 7. Unborn infant may be heir.
- Rule 8. Widow may take as heir.
- Rule 9. Illegitimate children inherit from mother.
- Rule 10. Heirs of illegitimate.
- Rule 11. Estate for life of another not devised deemed inheritance.
- Rule 12. Seizin defined.
- Rule 13. Issue of certain colored persons to inherit.

1. Rules of descent. When any person dies 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:

Rev., s. 1556; Code, s. 1281; R. C., c. 38, s. 1.

Rule 1, Lineal descent. 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.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 1.

Rule 2, Females inherit with males, younger with older children; advancements. Females shall inherit equally with males, and younger with older children: Provided, that when a parent dies 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 has 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 has been advanced in personal estate of greater value than an equal share thereof which shall come to the other children, he or his legal representatives shall be charged in the division of the real estate, if there be any, with the excess in value, which he may have received as aforesaid, over and above an equal distributive share of the personal estate.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, s. 1. Rule 2; 1784, c. 204, s. 2; 1808, c. 739; 1844, c. 51, ss. 1, 2.

Rule 3, Lineal descendant represents ancestor. The lineal descendants of any person deceased shall represent their ancestor, and stand in the same place as the person himself would have done had he been living.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 3; 1808, c. 739.

Rule 4, Collateral descent of estate derived from ancestor. On failure of lineal descendants, and where the inheritance has been transmitted by descent from an ancestor, or has been derived by gift, devise or settlement from an ancestor, to whom the person thus advanced would in the event of such ancestor's death, have been the heir or one of the heirs, the inheritance shall descend to the next collateral relations, capable of inheriting, of the person last seized, who were of the blood of such ancestor, subject to the two preceding rules.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 4; 1808, c. 739.

Rule 5, Collateral descent of estate not derived from ancestor. On failure of lineal descendants, and where the inheritance has not been transmitted by descent or derived as aforesaid from an ancestor, or where, if so transmitted or derived, the blood of such ancestor is extinct, the inheritance shall descend to the next collateral relation, capable of inheriting, of the person last seized, whether of the paternal or maternal line, subject to the second and third rules.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 5; 1808, c. 739.

Rule 6, Half blood inherits with whole; parents from child. Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules which prevail in descents at common law: Provided, that in all cases where the person last seized, leaves no issue capable of inheriting, nor brother, nor sister, nor issue of such, the inheritance shall vest in the father, and mother, as tenants in common if both are living, and if only one of them is living, then in such survivor.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 6; 1808, c. 739; 1915, c. 9, s. 1.

Rule 7, Unborn infant may be heir. No inheritance shall descend to any person, as heir of the person last seized, unless such person shall be in life at the death of the person last seized, or shall be born within ten lunar months after the death of the person last seized.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 7; 1823, c. 1210.

Rule 8, Widow may take as heir. When any person dies leaving none who can claim as heir to him, his widow shall be deemed his heir, and as such shall inherit his estate.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 8; 1801, c. 575, s. 1.

Rule 9, Illegitimate children inherit from mother. Every illegitimate child of the mother and the descendants of any such child deceased shall be considered an heir: Provided, however, that where the mother leaves legitimate and illegitimate children such illegitimate child or children shall not be capable of inheriting of such mother any land or interest therein which was conveyed or devised to such mother by the father of the legitimate child or children; but such illegitimate child or descendant shall not be allowed to claim, as representing such mother, any part of the estate of her kindred, either lineal or collateral.

Rev., s. 1556, Rule 9; Code, s. 1281; R. C., c. 38, Rule 10; 1799, c. 522; 1913, c. 71.

Rule 10, Heirs of illegitimate. Illegitimate children shall be considered legitimate as between themselves and their representatives, and their estates shall descend accordingly in the same manner as if they had been born in wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall descend to such person as would inherit, if all such children had been born in wedlock: Provided, that when any illegitimate child dies without issue, his inheritance shall vest in the mother in the same manner as is provided in rule six of this chapter.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 11.

Rule 11, Estate for life of another, not devised, deemed inheritance. Every estate for the life of another, not devised, shall be deemed an inheritance of the deceased owner, within the meaning and operation of this chapter.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 12.

Rule 12, Seizin defined. Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title or interest in the inheritance.

Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 13.

Rule 13, Issue of certain colored persons to inherit. The children of colored parents born at any time before the first day of January, one thousand eight hundred and sixty-eight, of persons living together as man and wife, are declared legitimate children of such parents or either one of them, with all the rights of heirs at law and next of kin, with respect to the estate or estates of any such parents, or either one of them. If such children be dead their issue shall represent them with all the rights of heirs at law and next of kin provided by this section for their deceased parents or either of them if they had been living; and the provision of this section shall apply to the estates of such children as are now deceased or otherwise.

Rev., s. 1556; Code, s. 1281; 1897, c. 153; 1879, c. 73.

NOTE. For distribution of personal property, see Administration, Art. Distribution.

CHAPTER 30

DIVORCE AND ALIMONY

1. Jurisdiction.
2. Bond for costs unnecessary.
3. Venue.
4. What marriages may be declared void on application of either party.
5. Grounds for absolute divorce.
6. Grounds for divorce from bed and board.
7. Affidavit to be filed with complaint; affidavit of intention to file complaint.
8. Material facts found by jury; parties cannot testify to adultery.
9. Effects of absolute divorce.
10. Custody of children in divorce.
11. Alimony on divorce from bed and board.
12. Alimony pendente lite; notice to husband.
13. Alimony without divorce.
14. Alimony in real estate, writ of possession issued.

1. Jurisdiction. The superior court shall have jurisdiction of complaints for divorce and alimony, or either.

Rev., s. 1557; Code, s. 1282; 1868-9, c. 93, s. 45.

2. Bond for costs unnecessary. 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.

Rev., s. 1558; Code, s. 1294; 1871-2, c. 193, s. 41.

3. Venue. In all proceedings for divorce, the summons shall be returnable to the court of the county in which either the plaintiff or defendant resides.

Rev., s. 1559; Code, s. 1289; 1871-2, c. 193, s. 40; 1915, c. 229, s. 1.

4. What marriages may be declared void on application of either party. 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 the chapter entitled Marriage, or declared void by said chapter, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in said chapter.

Rev., s. 1560; Code, s. 1283; 1871-2, c. 193, s. 33.

5. Grounds for absolute divorce. Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

1. If the husband commits adultery.
2. If the wife commits adultery.
3. If either party at the time of the marriage was and still is naturally impotent.
4. If the wife at the time of the marriage is pregnant, and the husband is ignorant of the fact of such pregnancy and is not the father of the child with which the wife was pregnant at the time of the marriage.

Rev., s. 1561; Code, s. 1285; 1887, c. 100; 1889, c. 442; 1899, c. 29; 1903, c. 490; 1871-2, c. 193, s. 35; 1879, c. 132; 1905, c. 499; 1917, c. 25, s. 1.

5. If there has been a separation of husband and wife, and they have lived separate and apart for ten successive years, and the plaintiff in the suit for divorce has resided in this state for that period.

1907, c. 89, s. 1; 1911, c. 117; 1913, c. 165; 1917, c. 57.

6. Grounds for divorce from bed and board. 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:

1. If either party abandons his or her family.
2. Maliciously turns the other out of doors.
3. By cruel or barbarous treatment endangers the life of the other.
4. Offers such indignities to the person of the other as to render his or her condition intolerable and life burdensome.
5. Becomes an habitual drunkard.

Rev., s. 1562; Code, s. 1286; 1871-2, c. 193, s. 36.

7. Affidavit to be filed with complaint; affidavit of intention to file complaint. The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint. The plaintiff shall also set forth in such affidavit, either that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint, and that complainant has been a resident of the state for two years next preceding the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove his property and effects from the state, whereby she may be disappointed in her alimony. If any wife files in the office of the superior court clerk of the county where she resides an affidavit, setting forth the fact that she intends to file a petition or bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which the petition or action will be based for six months, she may reside separate and apart from her husband, and may secure for her own use the wages of her own labor during the time she remains separate and apart from him. If she fails to file her petition or bring her action for divorce within ninety days after the six months have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section.

Rev., s. 1563; Code, s. 1287; 1868-9, c. 93, s. 46; 1869-70, c. 184; 1907, c. 1008, s. 1.

8. Material facts found by jury; parties cannot testify to adultery. The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, and on such trial neither the husband nor wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.

Rev., s. 1564; Code, s. 1288; 1868-9, c. 93, s. 47.

9. Effects of absolute divorce. After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again unless otherwise provided by law: Provided, that no judgment of divorce shall render illegitimate any children in esse, or begotten of the body of the wife during coverture.

Rev.. s. 1569; Code, s. 1295; 1871-2, c. 193, s. 43.

10. Custody of children in divorce. After the filing of a complaint in any action for divorce, whether from the bonds of matrimony, or from bed and board, both before and after final judgment therein, it is lawful for the judge of the court, in which such application is or was pending, to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper, and from time to time to modify or vacate such orders, and may commit their custody and tuition to the father or mother as may be thought best; or the court may commit the custody and tuition of such infant children, in the first place, to one parent for a limited time, and after the expiration of that time, then to the other parent; and so alternately: Provided, that no order respecting the children shall be made on the application of either party without five days notice to the other party, unless it shall appear that the party having the possession or control of such children has removed or is about to remove the children, or himself, beyond the jurisdiction of the court.

Rev.. s. 1570; Code, ss. 1296, 1570; 1871-2, c. 193, s. 46.

11. Alimony on divorce from bed and board. When any court adjudges any two married persons divorced from bed and board, it may also decree to the party upon whose application such judgment was rendered, such alimony as the circumstances of the several parties may render necessary; which, however, shall not in any case exceed the one-third part of the net annual income from the estate, occupation or labor of the party against whom the judgment shall be rendered.

Rev.. s. 1565; Code, s. 1290; 1871-2, c. 193, s. 37.

12. Alimony pendente lite; notice to husband. If any married woman applies to a court for a divorce from the bonds of matrimony, or from bed and board, with her husband, and sets forth in her complaint such facts, which upon application for alimony shall be found by the judge to be true and to entitle her to the relief demanded in the complaint, and it appears 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 appears 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 in all cases of application for alimony pendente lite under this or the succeeding section, whether in or out of term, it shall be admissible for the husband to be heard by affidavit in reply or answer to the allegations of the complaint: Provided further, that if the husband has abandoned his

wife and left the state, or is in parts unknown, or is about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice is necessary.

Rev., s. 1566; Code, s. 1291; 1871-2, c. 193, s. 38; 1883, c. 67.

13. Alimony without divorce. If any husband separates himself from his wife and fails to provide her with the necessary subsistence according to his means and condition in life, or if he is 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 wife and children, having regard also to the separate estate of the wife.

Rev., s. 1567; Code, s. 1292; 1871-2, c. 193, s. 39.

14. Alimony in real estate, writ of possession issued. In all cases in which the court grants alimony by the assignment of real estate, the court has power to issue a writ of possession when necessary in the judgment of the court to do so.

Rev., s. 1568; Code, s. 1293; 1868-9, c. 123, s. 1.

NOTE. Effect of absolute divorce on right to administer, see Administration, Art. 3.

For effect of abandonment on custody of children, see Adoption of Minors.

Rights of appeal in habeas corpus as to custody of children, see Habeas Corpus.

For effect on property rights, see Married Women.

CHAPTER 31

DOGS

ART. 1. OWNER'S LIABILITY.

1. Liability for injury to livestock or fowls.
2. Permitting bitch at large.
3. Sheep-killing dogs to be killed.
4. Failing to kill mad dog.

ART. 2. DOG TAX.

5. Dog tax submitted to voters on petition.
6. Repeal of dog tax submitted on petition.
7. Conduct of elections.
8. Commissioners to provide for registration; ballots and machinery.
9. Canvass of votes and returns.
10. Contents and record of petition; notice of election.
11. License tax.
12. Dogs to be listed; failure a misdemeanor.
13. Collection and application of tax.
14. Listed dogs protected; exceptions.
15. Application of article to counties having dog tax.

ART. 1. OWNER'S LIABILITY

1. Liability for injury to livestock or fowls. If any dog, not being at the time on the premises of the owner or person having charge thereof, shall kill or injure any livestock or fowls, the owner or person having such dog in charge shall be liable for damages sustained by the injury, killing, or maiming of any livestock, and costs of suit.

1911, c. 3, s. 1.

2. Permitting bitch at large. If any person owning or having any bitch shall knowingly permit her to run at large during the erotic stage of copulation he shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3303; Code, s. 2501; 1862-3, c. 41, s. 2.

3. Sheep-killing dogs to be killed. If any person owning or having any dog that kills sheep or other domestic animal, upon satisfactory evidence of the same being made before any justice of the peace of the county, and the owner duly notified thereof, shall refuse to kill it, and shall permit such dog to go at liberty, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days, and the dog may be killed by any one if found going at large.

Rev., s. 3304; Code, s. 2500; 1862-3, c. 41, s. 1; 1874-5, c. 108, s. 2.

4. Failing to kill mad dog. If the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to any person under his control, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he shall forfeit and pay the sum of fifty dollars to him who will sue therefor; and the offender shall be liable to pay all damages which may be sustained by any one, in his property or person, by the bite of any such dog.

and shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3305; Code, s. 2499; R. C., c. 67.

NOTE. For statutes forbidding bird dogs at large at certain seasons, see Game Laws.

ART. 2. DOG TAX

5. Dog tax submitted to voters on petition. Upon the written application of one-third of the qualified voters of any county in this state made to the board of commissioners of such county, asking that an election be held in said county to adopt the provisions of this act for levying and collecting a dog tax in said county, it shall be the duty of said board of commissioners from time to time to submit the question of "dog tax" or "no dog tax" to the qualified voters of said county; and if at any such election a majority of the votes cast shall be in favor of said dog tax, then the provisions of this act shall be in full force and effect over the whole of said county and the dog tax hereinafter provided for shall be levied and collected in said county; but if a majority of the votes cast at such election shall be against said dog tax, then the provisions of this article shall not apply to any part of said county.

1917, c. 206, s. 1.

6. Repeal of dog tax submitted on petition. Upon the written application of one-third of the qualified voters of any county in this state which now has a local law taxing dogs, or which may hereafter adopt the provisions of this act and by election thereunder hereafter vote a dog tax in such county, made to the board of commissioners of such county, asking that an election be held in said county to repeal or abrogate the dog tax law of said county, it shall be the duty of said board of commissioners from time to time to submit the question of "no dog tax" or "dog tax" to the qualified voters of said county. And if at any such election a majority of the votes cast shall be against said dog tax, then the dog tax theretofore levied and collected in said county shall not be longer levied or collected therein and the law taxing dogs shall thereafter be inoperative in said county.

1917, c. 206, s. 2.

7. Conduct of elections. Every election held under the provisions of this act shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the general assembly: Provided, that no such election shall be held in any county oftener than once in two years.

1917, c. 206, s. 3.

8. Commissioners to provide for registration; ballots and machinery. The board of commissioners of any county in this state in which an election is to be held under the provisions of this act may provide for a new registration of voters in said county if they deem necessary, or they may provide for the use of the registration of voters in effect at the general election for county officers in said county next preceeding the holding of the election hereunder, and they shall appoint such officers as may be necessary to properly hold such election and shall designate the time and places for holding such elections, and make all rules,

regulations, and do all other things necessary to carry into effect the provisions of this act; they shall provide ballots without device for all qualified voters in said county, on which shall be written or printed the words "for dog tax," and also shall provide like ballots on which shall be printed or written the words "against dog tax."

1917, c. 206, s. 4.

9. Canvass of votes and returns. At the close of said election the officers holding same shall canvass the vote and certify the returns to the said board of commissioners of said county, and the said board of commissioners shall canvass the said returns and declare the results of said election in the manner now provided by law for holding special tax school elections.

1917, c. 206, s. 4.

10. Contents and record of petition; notice of election. The qualified voters of any county who shall make written application to the board of commissioners of said county asking that an election be held under the provisions of this act shall designate and insert in said application the amount of dog tax to be levied and collected in said county, which tax shall not exceed the sum of five dollars nor be less than the sum of one dollar for each dog, whether male or female, and the board of commissioners shall have said written application, specifying the amount of said dog tax to be voted for in said county, recorded in the records of their proceedings, and shall cause to be published in some newspaper published or circulated in said county, and posted at the courthouse door and five other public places in said county, a notice of the time and places for holding said election and specifying the amount of tax to be voted for in said county.

1917, c. 206, s. 5.

11. License tax. Any person or persons, firm or corporation, owning or keeping any dog or dogs, whether male or female, in any county which shall adopt the provisions of this act for the levy and collection of said dog tax, shall pay annually a license or privilege tax on each dog whether male or female, such sum or sums as may be designated and inserted in the written application of the qualified voters of said county asking for said election and as recorded in the proceedings of the board of county commissioners of said county, which shall not exceed the sum of five dollars nor be less than the sum of one dollar for each dog: Provided, the tax voted for and levied on female dogs may be greater than the tax on male dogs, but in no event shall said tax exceed the sum of five dollars, nor be less than the sum of one dollar for any dog, whether male or female.

1917, c. 206, s. 6.

12. Dogs to be listed; failure a misdemeanor. It shall be the duty of any person, firm or corporation, owning or keeping any dog, whether male or female, in said county subject to the tax herein provided for, at the same time and place of listing other personal property for taxation, to list such dog with the list taker in the same manner as other personal property is listed, and any person, firm, or corporation failing to list any dog as herein required shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five dollars nor more than ten dollars for each offense, or be imprisoned not more than

thirty days; and it shall be the duty of the several list takers in said county to see that all dogs are properly listed.

1917, c. 206, s. 7.

13. Collection and application of tax. The dog tax voted for under the provisions of this act shall be due and collectible at the same time and in the same manner as provided by law for the collection of taxes on other personal property in said county, and shall be collected by the collector of other taxes in said county in the same manner and under the same penalties provided by law for collection of taxes on other personal property in said county, and shall be applied to the road fund, or school fund, of said county, as may be directed by the board of commissioners of said county.

1917, c. 206, s. 8.

14. Listed dogs protected; exceptions. Any person who shall steal any dog which has been listed for taxation as herein provided shall be guilty of a misdemeanor and fined or imprisoned, in the discretion of the court; and any person who shall kill any dog the property of another, after the same has been listed as herein provided, shall be liable to the owner in damages for the value of such dog. Nothing in this act shall prevent the killing of a mad dog, sheep-killing dog, or egg-sucking dog on sight, when off the premises of its owner, and the owner shall not recover any damages for the loss of such dog.

1917, c. 206, s. 9.

15. Application of article to counties having dog tax. Any county in this state which now has a local law taxing dogs, may, by election in the manner herein provided for, accept the provisions of this act, and if adopted by a majority of the qualified voters of said county at such election, the local law taxing dogs in such county shall thereby be repealed and annulled, and the provisions of this article shall be in full force and effect in such county.

1917, c. 206, s. 10.

CHAPTER 32

ELECTRIC COMPANIES

1. May use public highways.
2. May acquire right of way by contract.
3. Grant of eminent domain; exception as to mills and water powers.
4. Residences, etc., may be taken under certain conditions.
5. Condemnation on petition; parties' interests only taken; no survey required.
6. Copy of petition to be served.
7. Proceedings same as for railroads.
8. Commissioners to inspect premises.

1. May use public highways. Any duly incorporated company possessing the power to construct telegraph or telephone lines, lines for the conveying of electric power or for lights, either or all, has the right to construct, maintain and operate such lines along any railroad or other public highway, but such lines shall be so constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway.

Rev., s. 1571; Code, s. 2007; 1899, c. 64, s. 1; 1903, c. 562; 1874-5, c. 203, s. 2.

2. May acquire right of way by contract. Such telegraph, telephone, or electric power or lighting company has power to contract with any person or corporation, the owner of any lands or of any franchise or easement therein, over which its lines are proposed to be erected, for the right of way for planting, repairing and preservation of its poles or other property, and for the erection and occupation of offices at suitable distances for the public accommodation. This section shall not be construed as requiring electric power or lighting companies to erect offices for public accommodation.

Rev., s. 1572; Code, s. 2008; 1899, c. 64; 1903, c. 562, ss. 1, 2; 1874-5, c. 203, s. 3.

3. Grant of eminent domain; exception as to mills and waterpowers. Such telegraph, telephone, electric power or lighting company shall be entitled, upon making just compensation therefor, to the right of way over the lands, privileges and easements of other persons and corporations, and to the right to erect poles, to establish offices, and to take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, works, or power-houses, with the right to divert the water from such ponds or reservoirs and conduct the same by flume, ditch, conduit, waterway or pipe line, or in any other manner to the point of use for the generation of power at its said power-houses, returning said water to its proper channel after being so used.

Nothing in this section authorizes interference with any mill or power plant actually in process of construction or in operation; or the taking of water-powers, developed or undeveloped, with the land adjacent thereto necessary for their development. Any provisions in conflict with this chapter in any special charters granted before January 31, one thousand nine hundred and seven, in respect to the exercise of the right of eminent domain are repealed.

Rev., s. 1573; Code, s. 2009; 1874-5, c. 203, s. 4; 1899, c. 64; 1903, c. 562; 1907, c. 74.

4. Residences, etc., may be taken under certain cases. Residence property or vacant lots adjacent thereto in towns or cities, or other residence, gardens,

orchards, graveyards or cemeteries may be taken under the preceding section, only when the company alleges, and upon the proceedings to condemn, makes it appear to the satisfaction of the court that it owns or otherwise controls not less than seventy-five per cent of the fall of the river or stream on which it proposes to erect its works, from the location of its proposed dam to the head of its pond or reservoir; or when the corporation commission, upon the petition filed by the company, shall, after due inquiry, so authorize. Nothing in this section repeals any part or feature of any private charter, but any firm or corporation acting under a private charter may operate under or adapt any feature of this section.

1907, c. 74; 1917, c. 108.

5. Condemnation on petition; parties' interests only taken; no survey required. When such telegraph, telephone, electric power or lighting company fails on application therefor to secure by contract or agreement such right of way for the purposes aforesaid over the lands, privilege or easement of another person or corporation, it is lawful for such company, first giving security for costs, to file its petition before the superior court for the county in which said lands are situate, or into or through which such easement, privilege or franchise extends, setting forth and describing the parcels of land, privilege or easement over which the way, privilege or right of use is claimed, the owners of the land, easement or privilege, and their place of residence, if known, and if not known that fact shall be stated, and such petition shall set forth the use, easement, privilege or other right claimed, and must be sworn to, and if the use or right sought be over or upon an easement or right of way, it shall be sufficient to give jurisdiction if the person or corporation owning the easement or right of way be made a party defendant.

Only the interest of such parties as are brought before the court shall be condemned in any such proceedings, and if the right of way of a railroad or railway company sought to be condemned extends into or through more counties than one, the whole right and controversy may be heard and determined in one county into or through which such right of way extends:

It is not necessary for the petitioner to make any survey of or over the right of way, nor to file any map or survey thereof, nor to file any certificate of the location of its line by its board of directors.

Rev., s. 1574; Code, s. 2010; 1899, c. 64, s. 2; 1903, c. 562; 1874-5, c. 203, s. 5.

6. Copy of petition to be served. A copy of such petition, with a notice of the time and place the same will be presented to the superior court, must be served on the persons whose interests are to be affected by the proceeding at least ten days prior to the presentation of the same to the said court.

Rev., s. 1575; Code, s. 2011; 1874-5, c. 203, s. 6; 1899, c. 64, s. 3.

7. Proceedings same as for railroads. The proceedings for the condemnation of lands, or any easement, or interest therein, for the use of telegraph, telephone, electric power or lighting companies, the appraisal of the lands, or interest therein, the duty of the commissioners of appraisal, the right of either party to file exceptions, the report of commissioners, the mode and manner of appeal, the power and authority of the court or judge, the final judgment, and the manner of its entry and enforcement, and the rights of the company pending the appeal,

shall be as prescribed for condemning lands to the use of railroads, as provided for in the chapter Eminent Domain.

Rev., s. 1576; Code, s. 2012; 1899, c. 64; 1903, c. 562.

8. Commissioners to inspect premises. In considering the question of damages when the interest sought is over an easement, privilege or right of way, the commissioners may inspect the premises or rest their finding on such testimony as to them may be satisfactory.

Rev., s. 1577; Code, s. 2013; 1874-5, c. 203, s. 9.

CHAPTER 33

EMINENT DOMAIN

ART. 1. RIGHT OF EMINENT DOMAIN.

1. Corporation in this chapter defined.
2. By whom right may be exercised.
3. Right to enter on and purchase lands.
4. Power of railroad companies to condemn land for union depots, double-tracking etc.
5. Condemning land for industrial sidings.
6. Condemnation by schools for water supply.
- 6a. Condemnation for steamboat wharves and warehouses.
7. May take material from adjacent lands.
8. How material paid for.
9. Dwelling-house and burial grounds cannot be condemned.

ART. 2. CONDEMNATION PROCEEDINGS.

10. Proceedings when parties cannot agree.
11. Petition filed; contains what; copy served.
12. How process served.
13. Service where parties unknown.
14. When court may direct how papers to be served.
15. Answer to petition; hearing; commissioners appointed.
16. Powers and duties of commissioners.
17. Form of commissioners' report.
18. Exceptions to report; hearing; appeal; when title vests; restitution.
19. Provision for jury trial on exceptions to report.
20. When benefits exceed damage, corporation pays costs.
21. Title of infants, persons non compos, and trustees without power of sale acquired.
22. Rights of claimants of fund determined.
23. Attorney for unknown parties appointed; pleadings amended; new commissioners appointed.
24. Court may make rules of procedure in.
25. Change of ownership pending proceeding.
26. Defective title; how cured.
27. Title to state lands acquired.
28. Quantity which may be condemned for certain purposes.

ART. 1. RIGHT OF EMINENT DOMAIN

1. Corporation in this chapter defined. For the purpose of this chapter, unless the context clearly indicates the contrary, the word "corporation" includes the bodies politic and natural persons, enumerated in the following section, which possess the power of eminent domain.

2. By whom right may be exercised. The right of eminent domain may, under the provisions of this chapter, be exercised for the purpose of constructing their roads, canals, lines of wires, or other works, which are authorized by law and which involve a public use or benefit, by the bodies politic, corporations, or persons following:

1. Railroad, street railroad, plankroad, tramroad, turnpike, canal, telegraph, telephone, electric power or lighting, public water supply, flume, or incorporated bridge companies.

2. Municipalities operating water systems and sewer systems and all water companies operating under charter from the state or license from municipali-

ties, which may maintain public water supplies, for the purpose of acquiring and maintaining such supplies.

3. Persons operating or desiring to operate electric light plants, for the purpose of constructing and erecting wires or other necessary things.

4. Public institutions of the state for the purpose of providing water supplies, or for other necessary purposes of such institutions.

5. School committees of public school districts, public school committees of townships, county board of education, boards of trustees or of directors of any corporation holding title to real estate upon which any public school, private school, high school, academy, university or college is situated, in order to obtain a pure and adequate water supply for such school, college or university.

Rev., s. 2575; Code, s. 1698; R. C., c. 61, s. 9; 1852, c. 92, s. 1; 1874-5, c. 83; 1907, cc. 39, 458, 783; 1911, c. 62, ss. 25, 26, 27; 1917, cc. 51, 132.

NOTE. For power of municipalities to acquire property by eminent domain, see Municipal Corporations, ss. 162, 163.

For condemnation for water supply, see Public Health, ss. 69, 70.

For the right of eminent domain and the exercise of the right by electrical companies, see Electric Companies.

For condemnation for street railroads operating by electricity, and owning one side of a stream, of land on the other side for a dam, see Railroads, s. ----.

For power of municipal hospital to condemn land see Public Hospitals, s. 15.

For condemnation of land for roads, see Roads and Highways.

The provision of this section giving eminent domain to public institutions of the state, supersedes older more limited provisions omitted.

3. Right to enter on and purchase lands. Such bodies politic, corporation, or persons, may at any time enter upon the lands through which they may desire to conduct the roads or works authorized under the preceding section and lay out the same, and they may also enter upon such contiguous land along the route as may be necessary for depots, warehouses, engine sheds, workshops, water stations, tool-houses, and other buildings necessary for the accommodation of their officers, servants and agents, horses, mules and other cattle, and for the protection of their property; and shall pay to the proprietors of the land so entered on, such sum as may be agreed on between them.

Rev., s. 2575; Code, s. 1698; R. C., c. 61, s. 9; 1852, c. 92; s. 1; 1874-5, c. 83.

4. Power of railroad companies to condemn land for union depot, double-tracking, etc. Any railroad company operating a line of railroad in North Carolina whenever it shall find it necessary to occupy any land for the purpose of getting to a union depot which has been ordered by the corporation commission, or for the purpose of maintaining, operating, improving, or of straightening its line, or of altering its location, or of constructing double tracks, or of enlarging its yard or terminal facilities, or of connecting two of its lines already in operation not more than six miles apart, shall have the power to condemn all lands needed for such purpose under the provisions of this chapter. More than two acres may be condemned for yard or terminal facilities if required for due operation of the railroad. No lands in any incorporated towns shall be condemned under this section until approved by the corporation commission, nor shall any yard, garden or dwelling-house be condemned, unless the corporation commission, upon petition filed by the railroad seeking to condemn, shall, after due inquiry, find that the railroad company cannot make the desired improvement without condemning the yard, garden or dwelling-house, except at an excessive cost. The power to condemn land under this section shall be enforce-

able and matters arising in regard thereto shall be tried only in the courts created by or under the Constitution of this state. No rights granted or acquired under the provisions of this section shall in any way destroy or abridge the rights of the state to regulate or control such railroad company or to exclude foreign corporations from doing business in this state.

1907, c. 458, ss. 1, 2, 3.

5. Condemning land for industrial sidings. Any railroad company doing business in this state, whether such railroad be a domestic or foreign corporation, which has been or shall be ordered by the corporation commission to construct an industrial siding as provided in the chapter, Corporations, is empowered to exercise the right of eminent domain for such purpose, to condemn property as provided in this chapter, and to acquire such right of way as may be necessary to carry out the orders of the corporation commission. Whenever it is necessary for any railroad company doing business in this state to cross the street or streets in a town or city in order to carry out the orders of the corporation commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the state: Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

1911, c. 203.

6. Condemnation by schools for water supply. If the school authorities mentioned in subsection 5 of section 2 of this chapter shall be unable to agree with the owners of any lands which or the use of which, it is necessary to appropriate in obtaining a pure and adequate water supply for the school, they shall file a petition for the condemnation of such lands in conformity with the provisions of this chapter. In addition to the particulars required to be set out in section 11 of this chapter, the petition shall state whether the water supply is desired to be obtained from a spring, from a stream, or by digging artesian wells. The proceedings for such condemnation shall conform to the requirements of this chapter. No greater amount of land in area or width shall be condemned under this section than is necessary to obtain a pure and adequate water supply.

Any person holding title to land upon which any school, public or private, is located is empowered to obtain water supplies from the springs, streams or artesian wells the use of which is acquired under this section by building intakes, reservoirs, digging ditches, laying pipes or doing such other things as may be needful to obtain the water supply.

1907, c. 671.

6a. Condemnation for steamboat wharves and warehouses. Upon the order of the corporation commission that any steamboat company provide wharf and warehouse facilities as may be deemed reasonable and just, at any particular point, such company shall have power to condemn land for such purpose in accordance with the provisions of this chapter.

Ex. Sess. 1913, c. 52.

7. May take material from adjacent lands. For the purpose of constructing and operating its works and necessary appurtenances thereto, or of repairing

them after they shall have been made, or of enlarging or otherwise altering them, the corporation entitled to exercise the powers of eminent domain may, at any time, enter on any adjacent lands, and cut, dig, and take therefrom any wood, stone, gravel, water or earth, which may be deemed necessary: Provided, that they shall not, without the consent of the owner, destroy or injure any ornamental or fruit trees.

Rev., s. 2576; Code, s. 1702; R. C., c. 61, s. 22; 1874-5, c. 83; 1907, c. 39, s. 2.

8. How material paid for. If for the value of the damages done to the owner by reason of the acts in the preceding section mentioned, the parties may be unable to agree, the same shall be valued in the manner hereinafter provided.

Rev., s. 2577; Code, s. 1703; R. C., c. 61, s. 23; 1874-5, c. 83.

9. Dwelling-house and burial grounds cannot be condemned. No such corporation shall be allowed to have condemned to its use, without the consent of the owner, his dwelling-house, yard, kitchen, garden or burial ground, unless condemnation of such property is expressly authorized.

Rev., s. 2578.

NOTE. For power of electric companies to take dwellings, etc., see Electric Companies, sec. 4.

In Ashe, Watauga, and Yancey counties, yards, gardens and orchards may be condemned when necessary by railroad companies proceeding in conformity with the provisions of this chapter. P. L. 1911, c. 584.

ART. 2. CONDEMNATION PROCEEDINGS

10. Proceedings when parties cannot agree. If any corporation, enumerated in section 2 of this chapter, possessing by law the right of eminent domain in this state, is unable to agree for the purchase of any real estate required for purposes of its incorporation or for the purposes specified in this chapter, it shall have the right to acquire title to the same in the manner and by the special proceedings herein prescribed.

Rev., s. 2579; Code, ss. 1943, 2009; 1885, c. 168; 1893, c. 63; 1901, cc. 6, 41, s. 2; 1899, c. 64; 1903, cc. 562, 159, s. 16; 1871-2, c. 138, s. 13.

11. Petition filed; contains what; copy served. For the purpose of acquiring such title the corporation, or the owner of the land sought to be condemned, may present a petition to the clerk of the superior court of the county in which the real estate described in the petition is situated, praying for the appointment of commissioners of appraisal. Such petition shall be signed and verified according to the rules and practice of such court; and if filed by the corporation it must contain a description of the real estate which the corporation seeks to acquire; and it must, in effect, state that the corporation is duly incorporated, and that it is its intention in good faith to conduct and carry on the public business authorized by its charter, stating in detail the nature of such public business, and the specific use of such land; that the land described in the petition is required for the purpose of conducting the proposed business, and that the corporation has not been able to acquire title thereto, and the reason of such inability. The petition, whether filed by the corporation or the owner of the land, must also state the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate; and if any such per-

sons are infants, their ages, as near as may be, must be stated; and if any such persons are idiots or persons of unsound mind or are unknown, that fact must be stated, together with such other allegations and statements of liens or encumbrances on said real estate as the corporation or the owner may see fit to make. A summons as in other cases of special proceedings, together with a copy of the petition, must be served on all persons whose interests are to be affected by the proceedings, at least ten days prior to the hearing of the same by the court.

Rev., s. 2580; Code, s. 1944; 1893, c. 396; 1871-2, c. 138, s. 14; 1907, c. 783, s. 3.

12. How process served. The summons and a copy of the petition shall be served in the same manner as in special proceedings.

Rev., s. 2581; Code, s. 1944; 1871-2, c. 138, s. 14.

13. Service where parties unknown. If the person on whom such service of summons and petition is to be made is unknown, or his residence is unknown and cannot by reasonable diligence be ascertained, then such service may be made under the direction of the court, by publishing a notice, stating the time and place within which such person must appear and plead, the object thereof, with a description of the land to be affected by the proceedings, in a paper, if there be one, printed in the county where the land is situate, once in each week, for four weeks previous to the time fixed by the court, and if there be no paper printed in such county, then in a newspaper printed in the city of Raleigh.

Rev., s. 2582; Code, s. 1944, subsec. 5.

14. When court may direct how papers to be served. In all cases not herein otherwise provided for, services of orders, notices, and other papers in the special proceedings authorized by this chapter may be made as in other special proceedings.

Rev., s. 2583; Code, s. 1944, subsec. 7.

15. Answer to petition; hearing; commissioners appointed. On presenting such petition to the superior court, with proof of service of a copy thereof, and of the summons, all or any of the persons whose estates or interests are to be affected by the proceedings may answer such petition and show cause against granting the prayer of the same, and may disprove any of the facts alleged in it. The court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of three disinterested and competent freeholders who reside in the county where the premises are to be appraised, for the purposes of the company, and shall fix the time and place for the first meeting of the commissioners.

Rev., s. 2584; Code, s. 1945; 1871-2, c. 138, s. 15.

16. Powers and duties of commissioners. The commissioners, before entering upon the discharge of their duties, shall take and subscribe an oath that they will fairly and impartially appraise the lands mentioned in the petition. Any one of them may issue subpoenas, administer oaths to witnesses, and any two of them may adjourn the proceedings before them from time to time, in their discretion. Whenever they meet except by the appointment of the court or pursuant to adjournment, they shall cause ten days notice of such meeting to

be given to the parties who are to be affected by their proceedings, or their attorney or agent. They shall view the premises described in the petition, hear the proofs and allegations of the parties, and reduce the testimony, if any is taken by them, to writing; and after the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, a majority of them all being present and acting, shall ascertain and determine the compensation which ought justly to be made by the corporation to the party or parties owning or interested in the real estate appraised by them. They shall report the same to the court within ten days.

Rev., s. 2585; Code, s. 1946; 1871-2, c. 138, ss. 16-18; 1891, c. 160.

17. Form of commissioners' report. When the commissioners shall have assessed the damages, they shall forthwith make and subscribe a written report of their proceedings, in substance as follows:

To the Clerk of the Superior Court of _____ County:

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 _____ corporation proposes 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 work of the corporation, and all other inconveniences likely to result to the owner, we have estimated and do assess the damages aforesaid at the sum of \$-----.

We have estimated the special benefits which the said owner will receive from the construction of said works to be the sum of \$-----.

Given under our hands, the _____ day of _____, A.D. 19-----.

Rev., s. 2586; Code, s. 1700; R. C., c. 61, s. 17; 1874-5, c. 83.

18. Exceptions to report; hearing; appeal; when title vests; restitution. Within twenty days after filing the report the corporation or any person interested in the said land may file exceptions to said report, and upon the determination of the same by the court, either party to the proceedings may appeal to the court at term, and thence, after judgment, to the supreme court. The court or judge on the hearing may direct a new appraisal, modify or confirm the report, or make such order in the premises as to him shall seem right and proper. If the said corporation, at the time of the appraisal, shall pay into court the sum appraised by the commissioners, then and in that event the said corporation may enter, take possession of, and hold said lands, notwithstanding the pendency of the appeal, and until the final judgment rendered on said appeal. And if there shall be no appeal, or if the final judgment rendered upon said petition and proceedings shall be in favor of the corporation, and upon the payment by said corporation of the sum adjudged, together with the costs and counsel fees allowed by the court, into the office of the clerk of the superior court, then and in that event all persons who have been made parties to the proceedings shall be divested and barred of all right, estate and interest in such easement in such real estate during the corporate existence of the company aforesaid. A certified copy of such judgment under the seal of the court shall be registered in the county where the land is situated, and a copy of the same, or the original certified, may be given in evidence in all actions and proceedings, as deeds for land are now allowed to be read in evidence. All real estate acquired by any corporation under and pursuant to the provisions of this chapter for its purposes shall be

deemed to be acquired for the public use. But if the court shall refuse to condemn the land, or any portion thereof, to the use of such corporation, then, and in that event, the money paid into court, or so much thereof as shall be adjudged, shall be refunded to the corporation. And the corporation shall have no right to hold said land not condemned, but shall surrender the possession of the same on demand, to the owner or owners, or his or their agent or attorney. And the court or judge shall have full power and authority to make such orders, judgments and decrees, and issue such executions and other process as may be necessary to carry into effect the final judgment rendered in such proceedings. If the amount adjudged to be paid the owner of any property condemned under this chapter shall not be paid within one year after final judgment in the proceeding, the right under the judgment to take the property or rights condemned shall ipso facto cease and determine, but the claimant under the judgment shall still remain liable for all amounts adjudged against him except the consideration for the property.

Rev., s. 2587; Code, s. 1946; 1893, c. 148; 1915, c. 207.

19. Provision for jury trial on exceptions to report. In any action or proceeding by any railroad or other corporation to acquire rights of way or real estate for the use of such railroad or corporation, and in any action or proceeding by any city or town to acquire rights of way for streets, any person interested in the land, or the city, town, railroad or other corporation shall be entitled to have the amount of damages assessed by the commissioners or jurors heard and determined upon appeal before a jury of the superior court in term, if upon the hearing of such appeal a trial by a jury be demanded.

Rev., s. 2588; 1893, c. 148.

20. When benefits exceed damage, corporation pays costs. In any case where the benefits to the land caused by the erection of the railroad, street railway, telephone, telegraph, water supply, bridge, or electric power or lighting plant or other structure, are ascertained to exceed the damages to the land, then the corporation acquiring the same by right of eminent domain shall pay the costs of the proceeding except as provided by law, and shall not have a judgment for the excess of benefits over the damage.

Rev., s. 2589; 1891, c. 160.

NOTE. For costs in such proceedings, see Costs, Art. 3.

21. Title of infants, persons non compos, and trustees without power of sale, acquired. In case any title or interest in real estate required by any corporation for its purposes shall be vested in any trustee not authorized to sell, release and convey the same, or in any infant, idiot, or person of unsound mind, the superior court shall have power, by a special proceeding, on petition, to authorize and empower such trustee or the general guardian or committee of such infant, idiot, or person of unsound mind, to sell and convey the same to such corporation, on such terms as may be just; and in case any such infant, idiot, or person of unsound mind has no general guardian or committee, the said court may appoint a special guardian or committee for the purpose of making such sale, release or conveyance, and may require such security from such general or special guardian or committee as said court may deem proper. But before any conveyance or release authorized by this section shall be executed, the terms on which the same is to be executed shall be reported to the court on oath; and if

the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report and direct the proper conveyance or release to be executed, which shall have the same effect as if executed by an owner of said land having legal power to sell and convey the same.

Rev., s. 2590; Code, s. 1956; 1871-2, c. 138, s. 28.

22. Rights of claimants of fund determined. If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into the said court by the corporation, and may determine who is entitled to the same and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made.

Rev., s. 2591; Code, s. 1947; 1871-2, c. 138, s. 19.

23. Attorney for unknown parties appointed; pleadings amended; new commissioners appointed. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent, and shall make an allowance to said attorney for his services, which shall be taxed in the bill of costs. The court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this chapter as may be necessary, or to cause new parties to be added and to direct such further notices to be given to any party in interest, as it deems proper; and also to appoint other commissioners in place of any who shall die, refuse, neglect to serve or be incapable of serving.

Rev., s. 2592; Code, s. 1948; 1871-2, c. 138, s. 20.

24. Court may make rules of procedure in. In all cases of appraisal under this chapter where the mode or manner of conducting all or any of the proceedings to the appraisal and the proceedings consequent thereon are not expressly provided for by the statute, the courts before whom such proceedings may be pending shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this chapter, and the practice in such cases shall conform as near as may be to the ordinary practice in such courts.

Rev., s. 2593; Code, s. 1949; 1871-2, c. 138, s. 21.

25. Change of ownership pending proceeding. When any proceedings of appraisal shall have been commenced, no change of ownership by voluntary conveyance or transfer of the real estate or other subject matter of the appraisal, or any interest therein, shall in any manner affect such proceeding, but the same may be carried on and perfected as if no such conveyance or transfer had been made or attempted to be made.

Rev., s. 2594; Code, s. 1950; 1871-2, c. 138, s. 22.

26. Defective title; how cured. If at any time after an attempt to acquire title by appraisal of damages or otherwise it shall be found that the title thereby attempted to be acquired is defective, the corporation may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been

made, and at any stage of such new proceedings the court may authorize the corporation, if in possession to continue in possession, and if not in possession, to take possession and use such real estate during the pendency, and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the corporation on account thereof, on such corporation paying into court a sufficient sum or giving security as the court may direct to pay the compensation therefor when finally ascertained, and in every such case the party interested in such real estate may conduct the proceedings to a conclusion if the corporation delays or omits to prosecute the same.

Rev., s. 2595; Code, s. 1951; 1871-2, c. 138, s. 23.

27. Title to state lands acquired. The secretary of state shall have power to grant to any railroad company any land belonging to the people of this state which may be required for the purposes of its road, on such terms as may be agreed on by them, or such company may acquire title thereto by appraisal, as in the case of lands owned by individuals; and if any land belonging to a county or town is required by any company for the purposes of the road, the county or town officers having the charge of such land may grant such land to such company for such compensation as may be agreed upon.

Rev., s. 2596; Code, s. 1955; 1871-2, c. 138; s. 27.

28. Quantity which may be condemned for certain purposes:

1. Right of way of railroad. The width of the land condemned for any railroad shall not be less than eighty feet nor more than one hundred, except where the road may run through a town, when it may be of less width; or where there may be deep cuts or high embankments, when it may be of greater width.

2. Plankroads, etc. No greater width of land than sixty feet shall be condemned for the use of any plankroad, tramroad, canal, street railway or turnpike; or greater width than sixteen feet for the use of any flume.

3. Depot or station. No greater quantity of land than two acres, contiguous to any railroad, plankroad, tramroad, turnpike, flume, or canal shall be condemned at one place for a depot or station.

Rev., s. 2597; Code, ss. 1707, 1708, 1709; R. C., c. 61, ss. 27, 28, 29; 1852, c. 92; 1874-5, c. 83; 1907, c. 39.

NOTE. For the condemnation by a railroad of more than two acres for yard or terminal facilities, see this chapter, section 4.

CHAPTER 34

ESTATES

1. Fee tail converted into fee simple.
2. Survivorship in joint tenancy abolished; proviso as to partnerships.
3. Survivorship among trustees.
4. Limitations on failure of issue.
5. Unborn infant may take by deed or writing.
6. "Heirs" construed "children" in certain limitations.
7. Possession transferred to use in certain conveyances.
8. Collateral warranties abolished; warranties by life tenant deemed covenants.
9. Spendthrift trusts.
10. Titles quieted.
11. Remainders to persons not in esse or unascertained; procedure for sale.
12. Sales of contingent remainders validated.

1. Fee tail converted into fee simple. Every person seized of an estate in tail shall be deemed to be seized of the same in fee simple; and all sales and conveyances, made bona fide and for valuable consideration, since the first day of January, one thousand seven hundred and seventy-seven, by any tenant in tail in actual possession of any real estate where such estate has been conveyed in fee simple, shall be good and effectual in law to bar any tenant in tail and in remainder, of and from all claim, action and right of entry, whatsoever, of, in, and to such entailed estate, against any purchaser, his heirs, or assigns, now in actual possession of such estate, in the same manner as if such tenant in tail had possessed the same in fee simple.

Rev., s. 1578; Code, s. 1325; R. C., c. 43, s. 1; 1784, c. 204, s. 6.

2. Survivorship in joint tenancy, abolished; proviso as to partnership. In all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, or assigns respectively of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors, administrators and assigns respectively of such deceased partner, all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners.

Rev., s. 1579; Code, s. 1326; R. C., c. 43, s. 2; 1784, c. 204, s. 6.

3. Survivorship among trustees. In all cases where only a naked trust not coupled with a beneficial interest has been created or exists, or shall be created, and the conveyance is to two or more trustees, the right to perform the trust

and make estates under the same shall be exercised by any one of such trustees, in the event of the death of his cotrustee or cotrustees or the refusal or inability of the cotrustee or cotrustees to perform the trust; and in cases of trusts herein named the trustees shall hold as joint tenants, and in all respects as joint tenants held before the year one thousand seven hundred and eighty-four.

Rev., s. 1580; 1885, c. 327, s. 1.

NOTE. Executors and administrators hold as joint tenants, see Administration, Art. 19, s. 169.

4. Limitations on failure of issue. Every contingent limitation in any deed or will, made to depend upon the dying of any person without heir or heirs of the body, or without issue or issues of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person dies, not having such heir, or issue, or child, or offspring, or descendant or other relative (as the case may be) living at the time of his death, or born to him within ten lunar months thereafter, unless the intention of such limitation be otherwise, and expressly and plainly declared in the face of the deed or will creating it: Provided, that the rule of construction contained in this section shall not extend to any deed or will made and executed before the fifteenth of January, one thousand eight hundred and twenty-eight.

Rev., s. 1581; Code, s. 1327; R. C., c. 43, s. 3; 1827, c. 7.

5. Unborn infant may take by deed or writing. An infant unborn, but in esse, shall be deemed a person capable of taking by deed or other writing any estate whatever in the same manner as if he were born.

Rev., s. 1582; Code, s. 1328; R. C., c. 43, s. 4.

6. "Heirs" construed "children" in certain limitations. A limitation by deed, will, or other writing, to the heirs of a living person, shall be construed to be to the children of such person, unless a contrary intention appear by the deed or will.

Rev., s. 1583; Code, s. 1329; R. C., c. 43, s. 5.

7. Possession transferred to use in certain conveyances. By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or deed operating by way of covenant to stand seized to use, or otherwise, by any manner or means whatsoever it be, the possession of the bargainor, releasor, or covenantor shall be deemed to be transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person shall have in the use, as perfectly as if the bargainee, releasee or person entitled to the use had been enfeoffed at common law with livery of seizin of the land intended to be conveyed by such deed or covenant.

Rev., s. 1584; Code, s. 1330; R. C., c. 43, s. 6; 27 Hen. VIII, c. 10.

8. Collateral warranties abolished; warranties by life tenants deemed covenants. All collateral warranties are abolished; and all warranties made by any tenant for life of lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder shall be void; and all such warranties, as aforesaid, shall be deemed covenants only, and bind the covenantor in like manner as other obligations.

Rev., s. 1587; Code, s. 1334; R. C., c. 43, s. 10; 4 Anne, c. 16, s. 21; 1852, c. 16.

9. Spendthrift trusts. It is lawful for any person by deed or will to convey any property, which does not yield at the time of the conveyance a clear annual income exceeding five hundred dollars, to any other person in trust to receive and pay the profits annually or oftener for the support and maintenance of any child, grandchild or other relation of the grantor, for the life of such child, grandchild or other relation, with remainder as the grantor shall provide; and the property so conveyed shall not be liable for or subject to be seized or taken in any manner for the debts of such child, grandchild or other relation, whether the same be contracted or incurred before or after the grant.

Rev., s. 1588; Code, s. 1335; 1871-2, c. 204, s. 1.

10. Titles quieted. An action may be brought by any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claims; and by any man or woman against his or her wife or husband or alleged wife or husband who have not lived together as man and wife within the two years preceding, and who at the death of such plaintiff might have or claim to have an interest in his or her estate, and a decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff then owned or afterwards acquired: Provided, that no such relief shall be granted against such husband or wife or alleged wife or husband, except in case the summons in said action is personally served on such defendant.

If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs. In any case in which judgment has been or shall be docketed, whether such judgment is in favor of or against the person bringing such action, or is claimed by him, or affects real estate claimed by him, or whether such judgment is in favor of or against the person against whom such action may be brought, or is claimed by him, or affects real estate claimed by him, the lien of said judgment shall be such claim of an estate or interest in real estate as is contemplated by this section.

Rev., s. 1589; 1893, c. 6; 1903, c. 763; 1907, c. 888.

11. Remainders to persons not in esse or unascertained; procedure for sale. In all cases where there is a vested interest in real estate, and a contingent remainder over to persons who are not in being, or when the contingency has not yet happened which will determine who the remaindermen are, there may be a sale of the property by a proceeding in the superior court at term time, which proceeding shall be conducted in the manner pointed out in this section. Such proceedings may be commenced by summons by any person having a vested interest in the land, and all persons in esse who are interested in said land, shall be made parties defendant and served with summons as in other civil actions, and upon nonresidents or persons whose names and residences are unknown, by publication as now required by law or such service in lieu of publication as now provided by law. In cases where the remainder will or may go to minors or persons under other disabilities, or to persons not in being, or whose names and residences are not known, or who may in any contingency become interested in said land, but because of such contingency cannot be ascertained, the judge of the superior court shall, after due inquiry of persons who are in no way interested in or connected with such proceeding, designate and appoint some discreet

person as guardian ad litem to represent such remaindermen, upon whom summons shall be served as provided by law for other guardians ad litem, and it shall be the duty of such guardian ad litem to defend such actions, and when counsel is needed to represent him, to make this known to the judge, who shall by an order give instructions as to the employment of counsel and the payment of fees. The court shall, if the interest of all parties require or would be materially enhanced by it, order a sale of such property or any part thereof for reinvestment, either in purchasing or in improving real estate, less expense allowed by the court for the proceeding and sale, and such newly acquired or improved real estate shall be held upon the same contingencies and in like manner as was the property ordered to be sold. The court may authorize the loaning of such money subject to its approval until such time when it can be reinvested in real estate.

Rev., s. 1590; 1903, c. 99; 1905, c. 548; 1907, c. 956; 1907, c. 980.

12. Sales of contingent remainders validated. In all cases where property has been conveyed by deed, or devised by will, upon contingent remainder, executory devise or other limitation where a judgment of a superior court has been rendered authorizing the sale of such property discharged of such contingent remainder, executory devise or other limitation in actions or special proceedings where all persons in being who would have taken such property if the contingency had then happened were parties, such judgment shall be valid and binding upon the parties thereto and upon all other persons not then in being: Provided, that nothing herein contained shall be construed to impair or destroy any vested right or estate.

Rev., s. 1591; 1905, c. 93.

NOTE. For deeds of revocation of future interests made to persons not in esse, see Conveyances, Art. 1, s. 6.

CHAPTER 35

EVIDENCE

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ART. 1. STATUTES

1. Printed statutes and certified copies evidence. All statutes, or joint resolutions, passed by the general assembly may be read in evidence from the printed statute book ; or a copy of any act of the general assembly certified by the secretary of state shall be received in evidence in every court.

Rev., ss. 1592, 1593 ; Code, ss. 1339, 1340 ; R. C., c. 44, ss. 4, 5 ; 1826, c. 7.

2. Martin's collection of private acts. Any private act published by Francis X. Martin, in his collection of private acts, shall be received in evidence in every court.

Rev., s. 1593 ; Code, s. 1340 ; R. C., c. 44, s. 5 ; 1826, c. 7, s. 2.

3. Laws of other states or foreign countries. A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree or ordinance, by the executive thereof, contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the judicial tribunals thereof, shall be evidence of the statute, law, proclamation, edict, decree, or ordinance. The unwritten, or

common law of another state, or of a territory, or of a foreign country, may be proved as a fact by oral evidence. The books of the reports of cases, adjudged in the courts thereof, shall also be admitted as evidence of the unwritten or common law thereof. And either party may also exhibit a copy of the law of such state, territory, or foreign country, duly certified by the secretary of state of this state as having been copied from a printed volume of the laws of such state, territory or country, on file in the state, or supreme court, library, or in the offices of the governor or secretary of state.

Rev., s. 1594; Code, s. 1338; R. C., c. 44, s. 3; 1823, c. 1193, ss. 1, 3; C. C. P., s. 360.

NOTE. See also, s. 2503.

4. Town ordinances certified. In the trial of appeals from mayors' courts, when the offense charged is the violation of a town ordinance, a copy of the ordinance alleged to have been violated, certified by the mayor, shall be prima facie evidence of the existence of such ordinance.

Rev., s. 1595; 1899, c. 277, s. 2.

NOTE. For pleading ordinances and printed ordinances as evidence, see Municipal Corporations, Art. 17, part 2.

ART. 2. GRANTS, DEEDS AND WILLS

5. Copies certified by secretary of state. Copies of the plots and certificates of survey, or their accompanying warrants, and all abstracts of grants, which may be filed in the office of the secretary of state, certified by him as true copies, shall be as good evidence, in any court, as the original.

Rev., s. 1596; Code, s. 1341; R. C., c. 44, s. 6; 1822, c. 1154.

5a. Certified copies of grants and abstracts. For the purpose of showing title from the state of North Carolina to the grantee or grantees therein named and for the lands therein described, duly certified copies of all grants and of all memoranda and abstracts of grants on record in the office of the secretary of state, given in abstract or in full, and with or without the signature of the governor and the great seal of the state appearing upon such record, shall be competent evidence in the courts of this state or of the United States or of any territory of the United States, and in the absence of the production of the original grant, shall be conclusive evidence of a grant from the state to the grantee or grantees named and for the lands described therein.

1915, c. 249, s. 1.

5b. Certified copies of grants and abstracts recorded. Duly certified copies of such grants and of such memoranda and abstracts of grants may be recorded in the county where the lands therein described are situated, and the records thereof in such counties or certified copies thereof shall likewise be competent evidence for the purpose of showing title from the state of North Carolina to the grantee or grantees named and for the lands described therein.

1915, c. 249, s. 2.

6. Copies of grants certified by clerk of secretary of state validated. All copies of grants heretofore issued from the office of the secretary of state, duly certified under the great seal of the state, and to which the name of the secretary has been written or affixed by the clerk of the said secretary of state, are hereby ratified and approved and declared to be good and valid copies of the

original grants and admissible in evidence in all courts of this state when duly registered in the counties in which the land lies; all such copies heretofore registered in said counties are hereby declared to be lawful and regular in all respects as if the same had been signed by the secretary of state in person and duly registered.

Rev., s. 1597; 1901, c. 613.

7. Copies of grants in Burke. Copies of grants issued by the state within the county of Burke prior to the destruction of the records of said county by General Stoneman in the year one thousand eight hundred and sixty-five, shall be admitted in evidence in all actions when the same are duly registered; and when the original grants are lost, destroyed or cannot be found after due search, it shall be presumed that the same were duly registered within the time prescribed by law, as provided upon the face of original grant.

Rev., s. 1610; 1901, c. 513.

8. Copies of grants in Moore. Copies of grants for land situated in Moore County and the counties of which Moore was a part, entered in a book, and the book being certified under the seal of the secretary of state, shall have the force and effect of the originals and be evidence in all courts.

Rev., s. 1613; 1903, c. 214.

9. Certain deeds dated before 1835 evidence of due execution. In all actions hereafter instituted in which the title or ownership of any lands situated in North Carolina is at issue or in dispute, any deed or release, or a duly certified copy thereof, in which the people of the state of North Carolina are grantees and bearing date prior to the year one thousand eight hundred and thirty-five and purporting to have been filed and recorded in the office of the secretary of state of North Carolina prior to said year and now on file and of record in said office and executed, or purporting to have been executed by any person or persons as the representatives or agents or for or on behalf of any society, tribe, nation or aggregation of persons, whether signed or executed individually or in their representative capacity, and any such deed or release having been authorized to be executed by an act of the general assembly of North Carolina by the properly authorized agents of such society, tribe, nation or aggregation of persons, shall be prima facie evidence that the person or persons signing or executing any such deed or release were the properly authorized agent or agents of such society, tribe, nation or aggregation of persons. Any recitals, or statements of fact in any such deed or release shall be prima facie evidence of the truth thereof in any such actions. But this shall not apply to actions pending on March 3, 1915.

1915, c. 75.

10. Certified copies of maps of Cherokee lands. Certified copies by the secretary of state of the copies, or parts thereof, of the maps of the Cherokee lands and of the Cherokee Country, as provided for and described in chapter one hundred and seventy-five of the laws of one thousand nine hundred and eleven shall have the same force and effect and be entitled to the same force and effect as evidence as certified copies of the whole or parts of the original maps.

1911, c. 175.

11. Certified copies of certain surveys and maps obtained from the state of Tennessee. A certified copy of the report of the survey made by the North Carolina commissioners, McDowell, Vance and Matthews, of that portion of the state of Tennessee extending from a point on the Virginia line to a point on the Smoky Mountain west of the Pigeon River, as obtained and filed by the secretary of state under the provisions of chapter one hundred and sixty-two of the laws of one thousand nine hundred and thirteen, shall, when certified under the hand and seal of the secretary of state, be competent evidence in the trial of any action in the courts of the state.

1913, s. 162.

12. Evidence of title under H. E. McCulloch grants. In all actions or suits, wherein it may be necessary for either party to prove title, by virtue of a grant or grants made by the king of Great Britain or Earl Granville to Henry McCulloch, or Henry Eustace McCulloch, it shall be sufficient for such party, in the usual manner, to give evidence of the grant or conveyance from the king of Great Britain or Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, and the mesne conveyances thereafter, without giving any evidence of the deed or deeds of release, relinquishment or confirmation of Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, or the power or powers of attorney by which the conveyances from the said Henry McCulloch, or Henry Eustace McCulloch, purport to have been made.

Rev., s. 1600; Code, s. 1336; R. C., c. 44, s. 1; 1819, c. 1021.

13. Conveyances or certified copies evidence of title under McCulloch. In all trials where the title of either plaintiff or defendant shall be derived from Henry Eustace McCulloch, or Henry McCulloch, out of their tracts number one and three, it shall not be required of such party to produce, in support of his title, either the original grant from the crown to the proprietors, or a registered copy thereof; but in all such cases the grant or deed executed by such reputed proprietors, or by his or their lawful attorney, or a certified copy thereof, shall be deemed and held sufficient proof of the title of such proprietors, in the same manner as though the original grants were produced in evidence.

Rev., s. 1601; Code, s. 1337; R. C., c. 44, s. 2, 1807, c. 724.

14. Certified copies of registered instruments evidence. A copy of the record of any deed, mortgage, power of attorney, or other instrument required or allowed to be registered, duly authenticated by the certificate and official seal of the register of deeds of the county where the original or duly certified copy has been registered, may be given in evidence in any of the courts of the state where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court.

Rev., s. 1598; Code, s. 1251; 1893, c. 119, s. 2; R. C., c. 37, s. 16; 1846, c. 68, s. 1.

15. Common survey of contiguous tracts evidence. Whenever any person owns several tracts of land which are contiguous or adjoining, but held under

different deeds and different surveys, it may be lawful for any such person to have all such bodies of land included in one common survey by running around the lines of the outer tracts, and thereupon the possession of any part of said land covered by such common survey shall be deemed and held in law as a possession of the whole and every part thereof: Provided, that nothing in this section shall be construed to affect the rights or claims of persons which have already accrued to any part of said land. In all cases where such common surveys are made as directed by this section, the same may be recorded and registered as in cases of deeds, and shall be evidence in like manner.

Rev., s. 1505; Code, s. 1277; 1869-70, c. 34, ss. 1, 2.

16. Certified copies registered in another county and used in evidence. A copy from the office of the register of deeds of any county of the record of any deed, mortgage, power of attorney or other instrument required or allowed to be registered, duly authenticated by the certificate and official seal of the register of deeds of such county, may, upon presentation to the register of deeds of any other county, be registered without further proof, and the record thereof, or a duly certified copy of the same, may be given in evidence in any court in the state where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court.

Rev., s. 1599; Code, s. 1253; 1893, c. 119, s. 3; R. C., c. 37, s. 16; 1846, c. 68.

17. Deeds and record thereof lost, presumed to be in due form. Whenever it is shown in any judicial proceeding, that a deed or conveyance of real estate has been lost or destroyed, and that the same had been registered, and that the register's book containing the copy has been destroyed by fire or other accident, so that a copy thereof cannot be had, it shall be presumed and held, unless the contents be shown to have been otherwise, that such deed or conveyance transferred an estate in fee simple, if the grantor was entitled to such an estate at the time of conveyance; and that it was made upon sufficient consideration.

Rev., s. 1602; Code, s. 1348; R. C., c. 44, s. 14; 1854, c. 17.

18. Local: recitals in tax deeds in Haywood and Henderson. In all legal controversies touching lands in the counties of Haywood and Henderson, in which either party shall claim title under any sale for taxes alleged to have been due and laid, in and for the year one thousand seven hundred and ninety-six, or any preceding year, the recital contained in the deed or assurance, made by the sheriff or other officer conveying or assuring the same, of the taxes having been laid and assessed, and of the same having remained due and unpaid, shall be held and taken to be prima facie evidence of the truth of each and every of the matters so recited.

Rev., s. 1606; Code, s. 1346; R. C., c. 44, s. 11.

19. Local: copies of records from Tyrrell. Copies of records of the county of Tyrrell between the years one thousand seven hundred and thirty-five and one

thousand seven hundred and ninety-nine, when copied in a book and certified to by the clerk of the superior court of Tyrrell County as to the records of his office and by the register of deeds as to the records of his office, and deposited in their respective offices in Washington County, shall be treated in all respects as original records and received as evidence in all courts of Washington County.

Rev., s. 1612; 1903, c. 199.

20. Local: records of partition in Duplin. The transcripts made by the clerk of the superior court of Duplin County, in accordance with chapter three hundred and ninety-five of the laws of one thousand nine hundred and seven, of the reports of committees relating to the partition of real estate on file in his office prior and up to the year one thousand eight hundred and fifty-six, entered and indexed in a book entitled Reports of Committees, A, and the reports of committees beginning with and subsequent to the year one thousand eight hundred and fifty-six, entered and indexed in a book entitled Reports of Committees, B, shall be as competent evidence as are the original reports of the committees.

1907, c. 395, ss. 3, 4.

21. Local: records of wills in Duplin. The transcripts made by the clerk of the superior court of Duplin County, in accordance with chapter three hundred and ninety-five of the laws of one thousand nine hundred and seven, of all wills and entries of probate and dates of registration appearing on the same, on file in his office prior and up to the January term of the county court of Duplin County, one thousand eight hundred and thirty, and entered in a book designated as Record of Wills, A, and duly indexed as provided by law, shall be as competent evidence in any court as are the originals of such wills.

1907, c. 395, ss. 1, 2.

22. Local: records of deeds and wills in Anson County. The copies of the deeds and deed books and of the wills and will books made in Anson County under the act of March second, one thousand nine hundred and five, shall have the same force and effect as the original deeds and deed books copied and as the original wills and will books copied, and shall take the place of said original deeds and deed books and wills and will books as evidence in all court procedure; and wherever said deed books or will books are ordered or directed to be produced in court by subpoena or other order of court, the copies made under such act shall be produced, unless the court shall specially order the production of the original books, and the copies so produced in court shall have the same validity and effect and be used for the same purposes, with the same effect as the original books.

Rev., s. 1615; 1905, c. 663, s. 3.

23. Local: record of wills in Brunswick. Under the provisions of chapter one hundred and six of the laws of one thousand nine hundred and eight, authorizing and directing that all unrecorded wills, dated prior to January first, one thousand eight hundred and seventy-five, on file in the office of the clerk of the superior court of Brunswick County, and which have been duly proved in the form required by law, and bearing the adjudication certificate of the proper officer, shall be recorded in the book of wills in the said office and properly indexed; that all wills recorded in the minutes of the court of

pleas and quarter sessions or other books of record in said office shall be transcribed and indexed in the book of wills in said office; and that all wills recorded in the office of the register of deeds of said county shall be properly indexed in the book kept for the purpose in the office of the clerk of the superior court of the county; the record of any instrument or certified copy thereof, recorded under the provisions of this act, shall be admitted in evidence in the trial of any cause, subject to the same rules upon which other wills are admitted.

1908, c. 106.

24. Copies of wills. Copies of wills, duly certified by the proper officer, may be given in evidence in any proceeding wherein the contents of the will may be competent evidence.

Rev., s. 1603; Code, s. 2175; R. C., c. 119, s. 21; 1784, c. 225, s. 6.

25. Copies of wills in secretary of state's office. Copies of wills filed or recorded in the office of the secretary of state, attested by the secretary, may be given in evidence in any court, and shall be taken as sufficient proof of the devise of real estate, and are declared good and effectual to pass the estate therein devised: Provided, that no such will may be given in evidence in any court nor taken as sufficient proof of the devise unless a certificate of probate appear thereon.

Rev., s. 1607; Code, s. 2181; R. C., c. 44, s. 12; 1852, c. 172; 1856-7, c. 22.

26. Copies of wills recorded in wrong counties. Whereas, by reason of the uncertainty of the boundary lines of many of the counties of the state, wills have been proved, recorded and registered in the wrong county, whereby titles are insecure; for remedy whereof: The registry or duly certified copy of the record of any will, duly recorded, may be given in evidence in any of the courts of this state.

Rev., s. 1608; Code, s. 2182; 1858-9, c. 18.

27. Copy of will proved and lost before recorded. When any will which may have been proved and ordered to be recorded shall have been destroyed during the late war, before it was recorded, a copy of such will, so entitled to be admitted to record, though not certified by any officer, shall, when the court shall be satisfied of the genuineness thereof, be ordered to be recorded, and shall be received in evidence whenever the original or duly certified exemplification would be; and such copies may be proved and admitted to record under the same rules, regulations and restrictions as are prescribed in the chapter entitled *Burnt and Lost Records*.

Rev., s. 1609; Code, s. 2183; 1866-7, c. 127.

28. Certified copies of deeds and wills from other states. 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.

Rev., s. 1619; Code, s. 1344; R. C., c. 44, s. 9; 1802, c. 623.

NOTE. See also, Wills, ss. 20, 21.

29. Copies of lost records in Bladen. The clerk of the superior court of Bladen County shall transcribe the judgment docket and index books and the will books in his office, and all other books in said office containing records made since the year one thousand eight hundred and sixty-eight, and the records so transcribed shall have the same force and effect as the original records would have, and shall be received in evidence as the original records and be *prim facie* evidence of their correctness, and of the sufficiency of their probate, though the probates are lost and are not transcribed.

Rev., s. 1611; 1895, c. 415; 1903, c. 65.

ART. 3. PUBLIC RECORDS

30. Copies of official writings. 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. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under his hand and seal of the county.

Rev., s. 1616; Code, ss. 715, 1342; R. C., c. 44, s. 8; 1792, c. 368, s. 11; 1871-2, c. 91; 1869-9, c. 20, s. 21.

31. Authenticated copies of public records. All copies of bonds, contracts or other papers relating to or connected with the settlement of any account or any part thereof between the United States and an individual, or extracts therefrom when complete on any one subject, or copies from the books or papers on file, or records of any public office of the state or the United States, shall be received in evidence and entitled to full faith and credit in any of the courts of this state when certified to by the chief officer in said office or department to be true copies and authenticated under the seal of said office or department.

Rev., s. 1617; 1891, c. 501.

32. Authenticated copy of record of administration. 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 such state or territory, shall be allowed as evidence.

Rev., s. 1618; Code, s. 1343; R. C., c. 44, s. 7; 1834, c. 4; U. S. Rev. Stat., ss. 905, 906.

ART. 4. OTHER WRITINGS IN EVIDENCE

33. Proof by attesting witness not required. It is not necessary to prove by the attesting witness instruments to the validity of which the attestation is not requisite, and such instruments may be proved by admission or otherwise

as if there had been no attesting witness thereto: Provided, that this section shall not affect the method and manner of proving instruments for registration.

Rev., s. 1604; 1905, c. 204.

34. Parol evidence to identify land described. In all actions for the possession of or title to any real estate parol testimony may be introduced to identify the land sued for, and fit it to the description contained in the paper-writing offered as evidence of title or of the right of possession, and if from this evidence the jury is satisfied that the land in question is the identical land intended to be conveyed by the parties to such paper-writing, then such paper-writing shall be deemed and taken to be sufficient in law to pass such title to or interest in such land as it purports to pass: Provided, that such paper-writing is in all other respects sufficient to pass such title or interest.

Rev., s. 1605; 1891, c. 465, s. 1.

NOTE. For vagueness of description in a deed, see Conveyances, s. 2.

35. Proof of handwriting by comparison. In all trials in this state, when it may otherwise be competent and relevant to compare handwritings, a comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute: Provided, this shall not apply to actions pending on March 5, 1913.

1913, c. 52.

36. Bills of lading in evidence. In all actions by or against common carriers in which it shall be thought necessary to introduce in evidence any bills of lading issued by said common carrier or by a connecting carrier, it shall be competent to introduce in evidence any paper-writing purporting to be the original bill of lading, or a duplicate thereof, upon proof that such paper purporting to be such bill of lading or duplicate was received in due course of mail from consignor or agent of said carrier or connecting carrier, or delivered by said common carrier to the consignee or other person entitled to the possession of the property for which said paper purports to be the bill of lading: Provided, that such purported bill of lading shall not be declared to be the bill of lading unless the said purported bill of lading is first exhibited by the plaintiff or his agent or attorney to the defendant or its attorney, or its agent upon whom process may be served, ten days before the trial where the point of shipment is in the state, and twenty days when the point of shipment is without the state. Upon such proof and introduction of the bill of lading, the due execution thereof shall be prima facie established.

1915, c. 287.

37. Book accounts under sixty dollars. When any person shall bring an action upon a contract, or shall plead, or give notice of, a setoff or counterclaim for goods, wares and merchandise by him sold and delivered, or for work done and performed, he shall file his account with his complaint, or with his plea or notice of setoff or counterclaim, and if upon the trial of the issue, or executing a writ of inquiry of damages in such action, he shall declare upon his oath that the matter in dispute is a book account, and that he hath no means to prove the

delivery of any of the articles which he then shall propose to prove by himself but by this book; in that case such book may be given in evidence, if he shall make out by his own oath that it doth contain a true account of all the dealings, or the last settlement of accounts between himself and the opposing party, and that all the articles therein contained, and by him so proved were bona fide delivered, and that he hath given the opposing party all just credits; and such book and oath shall be received as evidence for the several articles so proved to be delivered within two years next before the commencement of the action, but not for any article of a longer standing, nor for any greater amount than sixty dollars.

Rev., s. 1622; Code, s. 591; R. C., c. 15, s. 1; 1756, c. 57, ss. 2, 6, 7; C. C. P., s. 343a.

38. Book accounts proved by personal representative. In all actions where executors and administrators are parties, such book account for all articles delivered within two years previous to the death of the deceased may be proved under the like circumstances, rules and conditions; and in such case, the executor or administrator may prove by himself that he found the account so stated on the books of the deceased; that there are no witnesses, to his knowledge, capable of proving the delivery of the articles which he shall propose to prove by said book, and that he believes the same to be just, and doth not know of any other or further credit to be given than what is therein mentioned: Provided, that if two years shall not have elapsed previous to the death of the deceased, the executor or administrator may prove the said book account, if the suit shall be commenced within three years from the delivery of the articles: Provided further, that whenever by the aforesaid proviso the time of proving a book account in manner aforesaid is enlarged as to the one party, to the same extent shall be enlarged the time as to the other party.

Rev., s. 1623; Code, s. 592; R. C., c. 15, s. 2; 1756, c. 57, s. 2; 1796, c. 465; C. C. P., s. 343b.

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

Rev., s. 1624; Code, s. 593; R. C., c. 15, s. 3; 1756, c. 57, s. 3; C. C. P., s. 343c.

40. Itemized and verified accounts. In any actions instituted in any court of this state upon an account for goods sold and delivered, for services rendered, or labor performed, or upon any oral contract for money loaned, a verified itemized statement of such account shall be received in evidence, and shall be deemed prima facie evidence of its correctness.

Rev., s. 1625; 1897, c. 480; 1917, c. 32.

ART. 5. LIFE TABLES

41. Mortuary tables as evidence. Whenever it is necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he be living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation

as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the columns headed by the words "completed age" and "expectation" respectively:

<i>Completed Age</i>	<i>Expectation</i>	<i>Completed Age</i>	<i>Expectation</i>
10	43.7	53	18.8
11	48.1	54	18.1
12	47.4	55	17.4
13	46.8	56	16.7
14	46.2	57	16.1
15	45.5	58	15.4
16	44.9	59	14.7
17	44.2	60	14.1
18	43.5	61	13.5
19	42.9	62	12.9
20	42.2	63	12.3
21	41.5	64	11.7
22	40.9	65	11.1
23	40.2	66	10.5
24	39.5	67	10.0
25	38.8	68	9.5
26	38.1	69	9.0
27	37.4	70	8.5
28	36.7	71	8.0
29	36.0	72	7.6
30	35.3	73	7.1
31	34.6	74	6.7
32	33.9	75	6.3
33	33.2	76	5.9
34	32.5	77	5.5
35	31.8	78	5.1
36	31.1	79	4.8
37	30.4	80	4.4
38	29.6	81	4.1
39	28.9	82	3.7
40	28.2	83	3.4
41	27.5	84	3.1
42	26.7	85	2.8
43	26.0	86	2.5
44	25.3	87	2.2
45	24.5	88	1.9
46	23.8	89	1.7
47	23.1	90	1.4
48	22.4	91	1.2
49	21.6	92	1.0
50	20.9	93	.8
51	20.2	94	.6
52	19.5	95	.5

42. Present worth of annuities. Whenever it is necessary to establish the present worth or cash value of an annuity to a person, payable annually during his life, such present worth or cash value may be ascertained by the use of the following table in connection with the mortuary tables established by law, the first column representing the number of years the annuity is to run and the second column representing the present cash value of an annuity of one dollar for such number of years, respectively:

<i>No. of Years Annuity is to Run</i>	<i>Cash Value of of the An- nuity of \$1</i>	<i>No. of Years Annuity is to Run</i>	<i>Cash Value of of the An- nuity of \$1</i>
1 -----	\$ 0.943	26 -----	13.003
2 -----	1.833	27 -----	13.211
3 -----	2.673	28 -----	13.406
4 -----	3.465	29 -----	13.591
5 -----	4.212	30 -----	13.765
6 -----	4.917	31 -----	13.929
7 -----	5.582	32 -----	14.084
8 -----	6.209	33 -----	14.230
9 -----	6.801	34 -----	14.368
10 -----	7.360	35 -----	14.498
11 -----	7.886	36 -----	14.621
12 -----	8.383	37 -----	14.737
13 -----	8.852	38 -----	14.846
14 -----	9.295	39 -----	14.949
15 -----	9.712	40 -----	15.046
16 -----	10.106	41 -----	15.135
17 -----	10.477	42 -----	15.219
18 -----	10.827	43 -----	15.299
19 -----	11.158	44 -----	15.374
20 -----	11.469	45 -----	15.445
21 -----	11.764	46 -----	15.514
22 -----	12.042	47 -----	15.579
23 -----	12.304	48 -----	15.641
24 -----	12.550	49 -----	15.699
25 -----	12.783	50 -----	15.754

The present cash value of the annuity for a fraction of a year may be ascertained as follows: Multiply the difference between the cash value of the annuities for the preceding and succeeding full years by the fraction of the year in decimals and add the sum to the present cash value for the preceding full year. When a person is entitled to the use of a sum of money for life, or for a given time, the interest thereon for one year may be considered as an annuity and the present cash value be ascertained as herein provided.

Rev., s. 1627; 1905, c. 347.

ART. 6. COMPETENCY OF WITNESSES

43. Witness not excluded by interest or crime. No person offered as a witness shall be excluded by reason of incapacity from interest or crime, from giving evidence either in person or by deposition, according to the practice of

the court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit or proceeding, civil or criminal, in any court, or before any judge, justice, jury or other person having, by law, authority to hear, receive and examine evidence; and every person so offered shall be admitted to give evidence, notwithstanding such person may or shall have an interest in the matter in question, or in the event of the trial of the issue, or of the suit or other proceeding in which he is offered as a witness. This section shall not be construed to apply to attesting witnesses to wills.

Rev., s. 1628; Code, ss. 589, 1350; C. C. P., c. 342; 1866, c. 43, ss. 1, 4; 1869-70, c. 177; 1871-2, c. 4.

44. Parties competent as witnesses. On the trial of any issue, or of any matter or question, or on any inquiry arising in any action, suit or other proceeding in court, or before any judge, justice, jury or other person having, by law, authority to hear and examine evidence, the parties themselves and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as otherwise provided, be competent and compellable to give evidence, either *viva voce*, or by deposition, according to the practice of the court, in behalf of either or any of the parties to said action, suit or other proceeding. Nothing in this section shall be construed to apply to any action or other proceeding in any court instituted in consequence of adultery, or to any action for criminal conversation.

Rev., s. 1630; Code, s. 1351; 1866, c. 43, ss. 2, 3.

45. Parties not competent witnesses in certain cases. No person who is or shall be a party to an action founded on a judgment rendered before the first day of August, one thousand eight hundred and sixty-eight, or on any bond executed prior to said date, or the assignor, endorser or any person who has at the time of the trial, or ever has had any interest in such judgment or bond, shall be a competent witness on the trial of such action; but this section shall not apply to the trial of any action commenced before the first day of August, one thousand eight hundred and sixty-eight, nor to the trial of any action in which the defendant therein relies upon the plea of payment in fact, or pleads a counterclaim and also introduces himself as a witness to establish the truth of such plea, but in all such cases the rules of evidence shall prevail as in other cases.

Rev., s. 1633; Code, s. 580; C. C. P., s. 333; 1879, c. 183; 1883, c. 310, ss. 1, 2.

46. A party to a transaction excluded, when the other party is dead. Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest against the executor, administrator or survivor of a deceased person, or the committee of a lunatic, or a person deriving his title or interest from, through or under a deceased person or lunatic, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or lunatic; except where the executor, administrator, survivor, committee or person so deriving title or interest is examined in his own behalf, or the testimony of the lunatic or deceased person is given in evidence concerning the same transaction or communication.

Rev., s. 1631; Code, s. 590; C. C. P., s. 343.

47. Executors may testify as to estate in their hands. In all actions now pending or which may be hereafter instituted upon judgments rendered before the first day of August, one thousand eight hundred and sixty-eight, or upon any bond or promissory note under seal executed prior to said date, wherein a reference has been or may be ordered by the court to ascertain the condition or state of the assets belonging to the estate of any deceased debtor in the hands of his administrator or executor, who is or may be defendant in such actions, it shall be competent for the defendant administrator or executor of such deceased debtor to testify and be examined as a witness in his own behalf concerning his administration upon the estate of his intestate or decedent. When in such cases the defendant administrator or executor testifies or is examined as a witness in his own behalf, it shall also be competent for the plaintiff to testify and be examined in the same in regard to such administration.

Rev., s. 1632; 1885, c. 361.

48. Communications between attorney and client. In cases where fraud upon the state is charged it shall not be a sufficient cause to excuse any one from imparting any evidence or information legally required of him, because he came into the possession of such evidence or information by his position as counsel or attorney before the consummation of such fraud, and any person refusing for such cause to answer any question when legally required so to do shall be guilty of contempt, and punished at the discretion of the court or other body demanding such information: Provided, that it shall not be competent to introduce any admissions thus made on the trial of any persons making the same.

Rev., s. 1620; Code, s. 1349; 1874-5, c. 213.

49. Communication between physician and patient. No person, duly authorized to practiced physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, that the presiding judge of a superior court may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice.

Rev., s. 1621; 1885, c. 159.

50. Defendant in a criminal action competent but not compellable to testify. In the trial of all indictments, complaints, or other proceedings against persons charged with the commission of crimes, offenses or misdemeanors, the person so charged is, at his own request but not otherwise, a competent witness, and his failure to make such request shall not create any presumption against him. But every such person examined as a witness shall be subject to cross-examination as other witnesses. Except as above provided, nothing in this section shall render any person, who in any criminal proceeding is charged with the commission of a criminal offense, competent or compellable to give evidence against himself, nor render any person compellable to answer any question tending to criminate himself.

Rev., ss. 1634, 1635; Code, ss. 1353, 1354; 1881, c. 89, s. 3; 1881, c. 110, ss. 2, 3; 1856-7, c. 23; 1866, c. 43, s. 3; 1868-9, c. 209, s. 4.

51. Husband and wife as witnesses in civil actions. In any trial or inquiry in any suit, action or proceeding in any court, or before any person having, by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as herein stated, be competent and compellable to give evidence, as any other witness on behalf of any party to such suit, action or proceeding. Nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action or proceeding in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage), or in any action or proceeding for or on account of criminal conversation. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage.

Rev., s. 1636; Code, s. 588; C. C. P., s. 341; 1866, c. 43, ss. 3, 4.

52. Husband and wife as witnesses in criminal actions. The husband or wife of the defendant, in all criminal actions or proceedings, shall be a competent witness for the defendant, but the failure of such witness to be examined shall not be used to the prejudice of the defense. Every such person examined as a witness shall be subject to be cross-examined as are other witnesses. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage. Nothing herein shall render any husband or wife competent or compellable to give evidence against each other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, and except that in all criminal prosecutions of a husband for an assault and battery upon his wife, or for abandoning his wife, or for neglecting to provide for her support, it shall be lawful to examine the wife in behalf of the state against the husband.

Rev., ss. 1634, 1635, 1636; Code, ss. 588, 1353, 1354; 1856-7, c. 23; 1866, c. 43; 1868-9, c. 209; 1881, c. 110.

ART. 7. ATTENDANCE OF WITNESS

53. Issue and service of subpœna. In obtaining the testimony of witnesses in causes depending in the superior, criminal and inferior courts, the following rules shall be observed in practice, to wit:

In suits where witnesses are to appear at any court, the clerk at the instance of a party shall issue a subpœna, directed to the sheriff or other officer of the county where such witnesses reside, naming the time and place for their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance they are summoned. Every subpœna made returnable immediately shall be issued only in term time, and shall be personally served on the witness therein named. A copy of every subpœna issued by the clerk in vacation, in case any witness therein named is not to be found, may be left at his usual place of residence; and such copy certified by the sheriff or other officer, and left as aforesaid, shall be deemed a legal summons, and the person therein named shall be bound to appear in the same manner as if personally summoned.

Rev., s. 1639; Code, s. 1355; R. C., c. 31, s. 59; 1777, c. 115, s. 36.

NOTE. For subpœna issued by party or attorney, see Civil Procedure, s. 521.

54. Attendance before referee or commissioners. In all cases not otherwise provided for, when witnesses are required to attend any court, commission, referee, order of survey, or jury of view, a summons shall be issued by the clerk of the court, at the request of either party, naming the day and place when and where they are to appear, the names of the parties to the suit, and in whose behalf summoned.

Rev., s. 1640; Code, s. 1366; R. C., c. 31, s. 68; 1805, c. 685, ss. 1, 2.

55. Subpœna duces tecum issued. In all causes depending in any court, in which the production of an original paper, lodged in any of the public offices of the state, or in any office of any court, shall become necessary, the court may issue the process of subpœna duces tecum, requiring such persons who hold said offices to attend the court with such original paper, in like manner and under the same penalties as witnesses are required in cases of subpœna to testify.

Rev., s. 1641; Code, s. 1372; R. C., c. 31, s. 81; 1797, c. 476.

56. Subpœnas and depositions upon removal of cause. When any cause shall be removed from the superior court of one county to that of another, after the order of removal, depositions may be taken in the cause, and subpœnas for the attendance of witnesses and commissions to take depositions may issue from either of the said courts, under the same rules as if the cause had been originally commenced in the court from which the subpœnas or commissions issued.

Rev., s. 1643; Code, s. 1371; R. C., c. 31, s. 72; 1810, c. 787; 1832, c. 8.

57. Witnesses attend until discharged; effect of nonattendance. Every witness, being summoned to appear in any of the said courts, in manner before directed, shall appear accordingly, and continue to attend from term to term until discharged, when summoned in a civil action or special proceeding, by the court or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution, until discharged by the court, the prosecuting officer, or the party at whose instance he was summoned; and in default thereof shall forfeit and pay, in civil actions or special proceedings, to the party at whose instance the subpœna issued, the sum of forty dollars, to be recovered by motion in the cause, and shall be further liable to his action for the full damages which may be sustained for the want of such witness's testimony; or if summoned in a criminal prosecution shall forfeit and pay eighty dollars for the use of the state, or the party summoning him. If the civil action or special proceeding shall, in the vacation, be compromised and settled between the parties, and the party at whose instance such witness was summoned should omit to discharge him from further attendance, and for want of such discharge, he shall attend the next term, in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk in the same manner as other witnesses, and shall recover from the party, at whose instance he was summoned, the allowance which is given to witnesses for their attendance, with costs.

No execution shall issue against any defaulting witness for the forfeiture aforesaid, but after notice made known to him to show cause against the issuing thereof; and if sufficient cause be shown of his incapacity to attend, execution shall not issue, and the witness shall be discharged of the forfeiture without

costs; but otherwise the court shall, on motion, award execution for the forfeiture against the defaulting witness.

Rev., s. 1643; Code, s. 1356; R. C., c. 31, ss. 60, 61, 62; 1777, c. 115, ss. 37, 38, 43; 1799, c. 528; 1801, c. 591.

58. Witnesses exempt from civil arrest. Every witness shall be exempt from arrest in civil actions or special proceedings 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.

Rev., s. 1644; Code, s. 1367; R. C., c. 31, s. 70; 1777, c. 115, s. 44.

ART. 8. DEPOSITIONS

59. Manner of taking depositions in civil actions. Any party in a civil action or special proceeding, upon giving notice to the adverse party or his attorney as provided by law, may take the depositions of persons whose evidence he may desire to use, without any special order therefor, unless the witness shall be beyond the limits of the United States.

Depositions shall be taken on commission, issuing from the court and under the seal thereof, by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk; or depositions may be taken by a notary public of this state or of any other state or foreign country, without a commission issuing from the court.

Depositions shall be subscribed and sealed up by the commissioners or notary public, and returned to the court, the clerk whereof or the judge holding the court, if the clerk is a party to the action, shall open and pass upon the same, after having first given the parties or their attorneys not less than one day's notice; and all such depositions, when passed upon and allowed by the clerk, without appeal, or by the judge upon appeal from the clerk's order, or by the judge holding the court, when the clerk is a party to the action, shall be deemed legal evidence, if the witness be competent.

Rev., s. 1652; Code, s. 1357; 1911, c. 158; R. C., c. 31, s. 63; 1893, c. 360; 1881, c. 279.

60. Notice required for taking depositions. In taking depositions in civil actions or special proceedings, written notice of the time and place of taking a deposition, specifying the name of the witness, must be served by the party at whose instance it is taken upon the adverse party or his attorney. The time for serving such notice shall be as follows: Three entire days when the party notified resides within ten miles of the place where the deposition is to be taken; in other cases, where the party notified resides in the state, one day more for every additional twenty miles, except where the deposition is to be taken within ten miles of a railway in running operation in the state, when one day only shall be given for every hundred miles of railway to the place where the deposition is to be taken. When a deposition is to be taken beyond the state, ten days notice of the taking thereof shall be given, when the person whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases, where there are no railways running as above specified, twenty days

notice shall be given. When objection is taken to the reading of any such deposition, upon the ground that there are no railways or connecting railways to and from the points specified in this section, or that the notice given had otherwise been actually insufficient, it shall devolve upon the party objecting to satisfy the court of the truth of his allegation.

Rev., s. 1652; Code, s. 1357; 1881, c. 279.

61. Publication of notice in case of nonresident. Instead of the notice served upon the adverse party or his attorney in taking depositions in civil actions or special proceedings, when the adverse party is a nonresident and has no attorney of record, it shall be sufficient to publish notice to the adverse party in some newspaper published in the county where the action is pending, or if no newspaper is published in such county, then in some newspaper in the judicial district, for three consecutive weeks, giving the time and place of taking the deposition and specifying the name of the witness. And when the adverse party is a nonresident and service of notice cannot be had upon him or his attorney in this state, then one publication of notice to open such deposition shall be sufficient notice.

1913, c. 137.

62. Depositions for defendant in criminal actions. In all criminal actions, hearings and investigations, it shall be lawful for the defendant in any such action to make affidavit before the clerk of the superior court of the county in which said action is pending, that it is important for the defense that he have the testimony of any person, whose name must be given, and that such person is so infirm, or otherwise physically incapacitated, or nonresident of this State, that he cannot procure his attendance at the trial or hearing of said cause. Upon the filing of such affidavit, it shall be the duty of the clerk to appoint some responsible person to take the deposition of such witness, which deposition may be read in the trial of such criminal action under the same rules as now apply by law to depositions in civil actions: Provided, that the solicitor or prosecuting attorney of the district, county or town in which such action is pending, have ten days notice of the taking of such deposition, who may appear in person or by representative to conduct the cross-examination of such witness. This section shall not apply to the taking of depositions in courts of justices of the peace.

Rev., s. 1652; Code, s. 1357; 1891, c. 522; 1893, c. 80; 1915, c. 251.

63. Depositions in justices' courts. Any party in a civil action before a justice of the peace may take the depositions of all persons whose evidence he may desire to use in the action; and to do so, he may apply to the clerk of the superior court for a commission to take the same, and shall proceed in all things in taking such depositions as if such action was pending in the superior court. When any such depositions are returned to the clerk, they shall be opened and passed upon by the clerk, and delivered to the justice of the peace, before whom the trial is to be had; and the reading and using of said depositions shall conform to the rules of the superior court.

Rev., s. 1646; Code, s. 1359; 1872-3, c. 33.

64. Depositions before municipal authorities. Any board of aldermen, board of town or county commissioners or any person interested in any proceeding,

investigation, hearing or trial before such board, may take the depositions of all persons whose evidence may be desired for use in said proceeding, investigation, hearing or trial; and to do so, the chairman of such board or such person may apply in person or by attorney to the superior court clerk of that county in which such proceeding, investigation, hearing or trial is pending for a commission to take the same, and said clerk, upon such application, shall issue such commission; and the notice and proceedings upon the taking of said depositions shall be the same as provided for in civil actions; and if the person upon whom the notice of the taking of such deposition is to be served is absent from or cannot after due diligence be found within this state, but can be found within the county in which the deposition is to be taken, then, and in that case, said notice shall be personally served on such person by the commissioner appointed to take such deposition; and when any such deposition is returned to the clerk it shall be opened and passed upon by him and delivered to such board, and the reading and using of such deposition shall conform to the rules of the superior court.

Rev., s. 1653; 1889, c. 151.

65. Depositions in quo warranto proceedings. In all actions for the purpose of trying the title to the office of clerk of the superior court, register of deeds, county treasurer or sheriff of any county, it shall be competent and lawful to take the deposition of witnesses before a commissioner or commissioners to be appointed by the judge of the district wherein the case is to be tried, or the judge holding the court of said district, or the clerk of the court wherein the case is pending, under the same rules as to time of notice and as to the manner of taking and filing the same as is now provided by law for the taking of depositions in other cases; and such depositions, when so taken, shall be competent to be read on the trial of such action, without regard to the place of residence of such witness or distance of residence from said place of trial: Provided, that the provisions of this section shall not be construed to prevent the oral examination, by either party on the trial, of such witnesses as they may summon in their behalf.

Rev., s. 1654; 1889, c. 428.

66. Commissioner may subpoena witness and punish for contempt. Commissioners to take depositions appointed by the courts of this state, or by the courts of the states or territories of the United States, arbitrators, referees, and all persons acting under a commission issuing from any court of record in this state, are hereby empowered, they or the clerks of the courts respectively in this state, to which such commission shall be returnable, to issue subpoenas, specifying the time and place for the attendance of witnesses before them, and to administer oaths to said witnesses, to the end that they may give their testimony. And any witness, appearing before any of the said persons, and refusing to give his testimony on oath touching such matters as he may be lawfully examined unto, shall be committed, by warrant of the person before whom he shall so refuse, to the common jail of the county, there to remain until he may be willing to give his evidence; which warrant of commitment shall recite what authority the person has to take the testimony of such witness, and the refusal of the witness to give it.

Rev., s. 1649; Code, s. 1362; R. C., c. 31, s. 64; 1777, c. 115, s. 42; 1805, c. 685, ss. 1, 2; 1848, c. 66; 1850, c. 188.

67. Attendance before commissioner enforced. The sheriff of the county where the witness may be, shall execute all such subpoenas, and make due return thereof before the commissioner, or other person, before whom the witness is to appear, in the same manner, and under the same penalties, as in case of process of a like kind returnable to court; and when the witness shall be subpoenaed five days before the time of his required attendance, and shall fail to appear according to the subpoena and give evidence, the default shall be noted by the commissioner, arbitrator, or other person aforesaid; and in case the default be made before a commissioner acting under authority from courts without the state, the defaulting witness shall forfeit and pay to the party at whose instance he may be subpoenaed fifty dollars, and on the trial for such penalty, the subpoena issued by the commissioner, or other person, as aforesaid, with the indorsement thereon of due service by the officer serving the same, together with the default noted as aforesaid and indorsed on the subpoena, shall be prima facie evidence of the forfeiture, and sufficient to entitle the plaintiff to judgment for the same, unless the witness may show his incapacity to have attended.

Rev., s. 1650; Code, s. 1363; R. C., c. 31, s. 65; 1848, c. 66, s. 2; 1850, c. 188, ss. 1, 2.

68. Remedies against defaulting witness before commissioner. But in case the default be made before a commissioner, arbitrator, referee or other person, acting under a commission or authority from any of the courts of this state, then the same shall be certified under his hand, and returned with the subpoena to the court by which he was commissioned or empowered to take the evidence of such witness; and thereupon the court shall adjudge the defaulting witness to pay to the party at whose instance he was summoned, the sum of forty dollars; but execution shall not issue therefor until the same be ordered by the court, after such proceedings had as shall give said witness an opportunity to show cause, if he can, against the issuing thereof.

Rev., s. 1651; Code, s. 1364; R. C., c. 31, s. 66; 1850, c. 188, s. 2.

69. Objection to deposition before trial. At any time before the trial, or hearing of an action or proceeding, any party may make a motion to the judge or court to reject a deposition for irregularity in the taking of it, either in whole or in part, for scandal, impertinence, the incompetency of the testimony, for insufficient notice, or for any other good cause. The objecting party shall state his exceptions in writing.

Rev., s. 1648; Code, s. 1361; 1895, c. 312; 1903, c. 132; 1869-70, c. 227, ss. 13, 17.

70. Deposition not quashed after trial begun. No deposition shall be quashed, or rejected, on objection first made after a trial has begun, merely because of an irregularity in taking the same, provided it shall appear that the party objecting had notice that it had been taken, and it was on file long enough before the trial to enable him to present his objection.

Rev., s. 1647; Code, s. 1360; 1869-70, c. 227, s. 12.

71. When deposition may be read on the trial. Every deposition taken and returned in the manner provided by law may be read on the trial of the action or proceeding, or before any referee, in the following cases, and not otherwise:

1. If the witness is dead, or has become insane since the deposition was taken.

2. If the witness is a resident of a foreign country, or of another state, and is not present at the trial.

3. If the witness is confined in a prison outside the county in which the trial takes place.

4. If the witness is so old, sick or infirm as to be unable to attend court.

5. If the witness is the president of the United States, or the head of any department of the federal government, or a judge, district attorney, or clerk of any court of the United States, and the trial shall take place during the term of such court.

6. If the witness is the governor of the state, or the head of any department of the state government, or the president of the university, or the head of any other incorporated college in the state, or the superintendent or any physician in the employ of any of the hospitals for the insane for the state.

7. If the witness is a justice of the supreme court, or a judge, presiding officer, clerk or solicitor of any court of record, and the trial shall take place during the term of such court.

8. If the witness is a member of the congress of the United States, or a member of the general assembly, and the trial shall take place during a session of the body of which he is a member.

9. If the witness has been duly summoned, and at the time of the trial, is out of the state, or is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition.

Rev., s. 1645; Code, s. 1358; 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; 1869-70, c. 227, s. 11; 1881, c. 279, ss. 1, 3; 1905, c. 366.

72. Depositions taken in this state to be used in another state:

1. *By whom obtained.* In addition to the other remedies prescribed by law, a party to an action, suit or special proceeding, civil or criminal, pending in a court without the state, either in the United States or any of the possessions thereof, or any foreign country, may obtain by the proceedings prescribed by this section, the testimony of a witness and in connection therewith the production of books and papers within the state to be used in the action, suit or special proceeding.

2. *Application filed.* Where a commission to take testimony within the state has been issued from the court in which the action, suit or special proceeding is pending, or where a notice has been given, or any other proceeding has been taken for the purpose of taking the testimony within the state pursuant to the laws of the state or country wherein the court is located, or pursuant to the laws of the United States or any of the possessions thereof, if it is a court of the United States, the person desiring such testimony, or the production of papers and documents, may present a verified petition to any justice of the supreme court or judge of the superior court, stating generally the nature of the action or proceeding in which the testimony is sought to be taken, and that the testimony of the witness is material to the issue presented in such action or proceeding, and he shall set forth the substance of or have annexed to his petition a copy of the commission, order, notice, consent or other authority under which the deposition is taken. In case of an application for a subpoena to compel the production of books or papers, the petition shall specify the par-

ticular books or papers, the production of which is sought, and show that such books or papers are in the possession of or under the control of the witness and are material upon the issues presented in the action or special proceeding in which the deposition of the witness is sought to be taken.

3. *Subpœna issued.* Upon the filing of such petition, if the justice of the supreme court or judge of the superior court is satisfied that the application is made in good faith to obtain testimony within the provisions of this section, he shall issue a subpœna to the witness, commanding him to appear before the commissioner named in the commission, or before a commissioner within the state, for the state, territory or foreign country in which the notice was given or the proceeding taken, or before the officer designated in the commission, notice or other paper, by his title or office, at a time and place specified in the subpœna, to testify in the action, suit or special proceeding. Where the subpœna directs the production of books or papers, it shall specify the particular books or papers to be produced, and shall specify whether the witness is required to deliver sworn copies of such books or papers to the commissioner or to produce the original thereof for inspection, but such books and original papers shall not be taken from the witness. This subpœna must be served upon the witness at least two days, or, in case of a subpœna requiring the production of books or papers, at least five days before the day on which the witness is commanded to appear. A party to an action or proceeding in which a deposition is sought to be taken, or a witness subpœnaed to attend and give his testimony, may apply to the court issuing such subpœna to vacate or modify the same.

4. *Witness compelled to attend and testify.* If the witness shall fail to obey the subpœna, or refuse to have an oath administered, or to testify or to produce a book or paper pursuant to a subpœna, or to subscribe his deposition, the justice or judge issuing the subpœna shall, if it is determined that a contempt has been committed, prescribe punishment as in case of a recalcitrant witness. Upon proof by affidavit that a person to whom a subpœna was issued has failed or refused to obey such subpœna, to be duly sworn or affirmed, to testify or answer a question propounded to him, to produce a book or paper which he has been subpœnaed to produce, or to subscribe to his deposition when correctly taken down, the justice or judge shall grant an order requiring such person to show cause before him, at a time and place specified, why he should not appear, be sworn or affirmed, testify, answer a question propounded, produce a book or paper, or subscribe to the deposition, as the case may be. Such affidavit shall set forth the nature of the action or special proceeding in which the testimony is sought to be taken, and a copy of the pleadings or other papers defining the issues in such action or special proceeding, or the facts to be proved therein. Upon the return of such order to show cause, the justice or judge shall, upon such affidavit and upon the original petition and upon such other facts as shall appear, determine whether such person should be required to appear, be sworn or affirmed, testify, answer the question propounded, produce the books or papers, or subscribe to his deposition, as the case may be, and may prescribe such terms and conditions as shall seem proper. Upon proof of a failure or refusal on the part of any person to comply with any order of the court made upon such determination, the justice or judge shall make an order requiring such person to show cause before him, at a time and place therein specified, why such person should not be punished for the offense as for a contempt. Upon the

return of the order to show cause, the questions which arise must be determined as upon a motion. If such failure or refusal is established to the satisfaction of the justice or judge before whom the order to show cause is made returnable, he shall enforce the order and prescribe the punishment as hereinbefore provided.

5. Deposit for costs required. The commissioner herein provided for shall not proceed to act under and by virtue of his appointment until the party seeking to obtain such deposition has deposited with him a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in this state for attendance upon the superior courts. From such deposit the commissioner shall retain whatever amount may be due him for services, pay the witness fees and other costs that may have been incurred by reason of taking such deposition, and if any balance remains in his hands, he shall pay the same to the party by whom it was advanced.

Rev., s. 1655; 1903, c. 608.

ART. 9. INSPECTION AND PRODUCTION OF WRITINGS

73. Inspection of writings. The court before which an action is pending or a judge thereof, may, in their discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court, on motion, may exclude the paper from being given in evidence, or punish the party refusing, or both.

Rev., s. 1656; Code, s. 578; R. C., c. 31, s. 82; R. S., c. 31, s. 86; 1821, c. 1095; C. C. P., s. 331; 1828, c. 7.

74. Production of writings. The courts have full power, on motion and due notice thereof, given, to require the parties to produce books or writings in their possession or control which contain evidence pertinent to the issue, and if a plaintiff shall fail to comply with such order, and shall not satisfactorily account for his failure, the court, on motion, may give the like judgment for the defendant, as in cases of nonsuit; and if a defendant shall fail to comply with such order, and shall not satisfactorily account for his failure, the court, on motion as aforesaid, may give judgment against him by default.

Rev., s. 1657; Code, s. 1373; R. C., c. 31, s. 25; 1821, c. 1095; 1828, c. 7.

75. Admission of genuineness. Either party may exhibit to the other, or to his attorney at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense, to be ascertained at the trial, shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there were good reasons for the refusal.

Rev., s. 1658; Code, s. 578; R. C., c. 31, s. 82; R. S., c. 31, s. 86; 1821, c. 1095; 1828, c. 7; C. C. P., s. 331.

ART. 10. CONFEDERATE CURRENCY

76. Scale of depreciation. Contracts solvable in Confederate currency may be discharged according to the following 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:

<i>Months</i>	<i>1861</i>	<i>1862</i>	<i>1863</i>	<i>1864</i>	<i>1865</i>
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	-----	
December 1st to 10th, inclusive-----	-----	-----	-----	35.00	
December 10th to 20th, inclusive-----	-----	-----	-----	42.00	
December 20th to 30th, inclusive-----	-----	-----	-----	49.00	

This scale applies to the time of contracting and not to the times said debts become due.

Rev., s. 1659; Code, ss. 2495, 2496; 1866, c. 39, s. 1; 1866-7, c. 44.

NOTE. For evidence in indictment for enticing minors from state, see Crimes, s. 50.

For evidence in cases of hunting by night, see Game Law, s. 44.

For evidence necessary in cases of disposing of mortgaged property, see Crimes, s. 114.

For evidence in indictments for secreting seamen, see Crimes, s. 295.

For students as witnesses against lewd women, see Crimes, s. 180.

For evidence to convict of seduction, see Crimes, s. 166.

For what necessary to allege and prove in prosecutions for selling seed cotton, see Commerce in State, s. 16.

For evidence in prosecution for selling liquor in local option territory, see Prohibition, s. 38.

For evidence in cases of gaming, see Crimes, ss. 256, 257; Gaming Contracts.

For evidence in suits against sureties on official bonds, see Bonds, s. 34.

For recitals in tax deeds as evidence, see Taxation, s. 255.

For proof of loss of baggage, see Inns, etc., s. 5.

For certified copies of judgments as evidence, see Civil Procedure, s. 214.

Vouchers evidence of payment by administrator, see Administration, s. 103.

For evidence in regard to dealing in futures, see Gaming Contracts.

For evidence in carrying concealed weapons, see Crimes, s. 230.

For affidavit of woman in bastardy, see Bastardy, ss. 4 and 5.

For evidence as to lynching, see Criminal Procedure, s. 60.

Pleading not admissible against a party in criminal prosecution, see Civil Procedure, s. 140.

Examination in supplementary proceedings, see Civil Procedure, s. 320.

Witness for violation of anti-trust laws, see Monopolies and Trusts, ss. 10, 11.

Witness as to sale of cocaine, see Medicine and Allied Occupations, s. 74.

Witness as to corrupt practices in elections, see Crimes, s. 17.

Witness as to hazing, see Crimes, s. 48.

Evidence in disorderly house cases, see Crimes, s. 174.

For lost deeds and recitals, see Burnt and Lost Records.

CHAPTER 36.

FENCES AND STOCK LAW

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28. Right to feed impounded stock; owner liable.
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32. Commissioners may declare natural barrier sufficient fence.
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ART. 1. LAWFUL FENCES

1. **Fences to be five feet high.** Every planter shall make a sufficient fence about his cleared ground under cultivation, at least five feet high, unless otherwise provided in this chapter, unless there shall be some navigable stream or deep watercourse that shall be sufficient, instead of such fence, and unless his lands shall be situated within the limits of a county, township or district wherein the stock law may be in force.

Rev., s. 1660; Code, s. 2799; R. C., c. 48, s. 1; 1777, c. 121, s. 2; 1791, c. 354, s. 1.

2. **Local: Four and a half feet in certain counties.** A fence four and one-half feet high is a lawful fence in the counties of Alleghany, Bladen, Bruns-

wick, Burke, Caldwell, Cherokee, Craven, Cumberland, Currituck, Davie, Davidson, Duplin, Harnett, Henderson, Jackson, Lenoir, Perquimans, Randolph, Richmond, Robeson, Rutherford, Sampson, Tyrrell, Yancey, Wake, Washington and Wilkes. This section does not apply to stock law fences, nor in Tyrrell county to wire fences which are lawful fences if four feet high.

Rev., s. 1661; 1889, c. 175; 1891, c. 36; 1905, c. 333; 1909, cc. 55, 94; P. L. 1911, c. 15.

3. Local: Four feet in certain counties. A fence four feet high is a lawful fence in the counties of Bertie, Buncombe, Carteret, Hyde, Madison, McDowell, New Hanover, Northampton and Pamlico.

Rev., s. 1662; 1885, c. 304; 1887, c. 66; 1889, c. 390; 1903, cc. 66, 211; 1909, c. 178, s. 2; P. L. Ex. Sess., 1913, c. 48.

4. Watercourse made lawful fence by county commissioners. Any five electors, residents of the same county, may apply to the board of commissioners of the county, at any regular meeting of the same, by written petition praying that any watercourse, or any part of any watercourse, in the county, may be made a lawful fence. Notice of such petition shall be posted forty days at the courthouse door, by the clerk of the board before such petition shall be acted upon. Upon the hearing of such petition, the board of county commissioners is authorized to declare any watercourse, or any part of any watercourse to which the petition applies, a lawful fence. And the several acts of the general assembly, declaring certain watercourses, in part or in whole, lawful fences, are so far repealed as to enable the board of commissioners of any county to declare any of such acts, or parts thereof, to be null and void in said county. Any order made under this section shall be of record and signed by the chairman, and may be rescinded by the board of commissioners at any regular meeting.

Rev., s. 1663; Code, ss. 2808, 2809, 2810; 1872-3, c. 98.

5. Injury to wire fence forbidden. If any person shall willfully destroy, cut or injure any part of a wire fence or a fence composed partly of wire and partly of wood situated on the land of another, he shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not exceeding thirty days or fined not exceeding fifty dollars.

Rev., s. 3413; 1889, c. 516.

NOTE. For other offenses relating to stock law, see this chapter, Art. 3.

ART. 2. DIVISION FENCES

6. Division fences maintainable jointly. Where two or more persons have lands adjoining, which are either cultivated or used as a pasture for stock, the respective owners of each piece of land shall make and maintain one-half of the fence upon the dividing line.

Rev., s. 1664; Code, s. 2800; 1868-9, c. 275, s. 1.

7. Remedy against delinquent owner. If any person who is liable to build or keep up a part of any division fence, fails at any time to do so, the owner of the adjoining land, after notice, may build or repair the whole, and recover of the delinquent one-half of the cost before any court having jurisdiction.

Rev., s. 1670; Code, s. 2807; 1868-9, c. 275, s. 7.

8. Fence erected because of changed use of land. If the owner of a tract of land, who chooses neither to cultivate it, to use it as a pasture, nor to permit his stock to run on it, afterwards uses it in either of these ways and does not so enclose his stock that they cannot enter on the lands of an adjoining owner, he shall refund to such owner one-half the value of any fence erected by the latter on the dividing line.

Rev., s. 1665; Code, s. 2801; 1868-9, c. 275, s. 2.

9. When owner may remove his part of division fence. If any owner of land liable to contribute for the keeping up of a division fence, determines neither to cultivate his land nor permit his stock to run thereon, he may give the adjoining owner three months notice of his determination; and in that case, at any time after the expiration of such notice, and between the first day of January and the first day of March, but at no other time, he may remove the half of the fence kept up by himself, and shall be no longer liable to keep up the same.

Rev., s. 1671; Code, s. 2802; 1903, c. 20; 1868-9, c. 275, s. 8; 1883, c. 111.

10. Proceeding to value division fence. The value of such fence shall be ascertained as follows: Either owner may summon the other to appear before any justice of the peace of the township in which the dividing line is situate; or if it be situate in more than one township, then before any justice of the peace of any township in which any part of it is situate. In his summons he shall name a certain day, not less than five days after the summons, for the appearance of the defendant; he shall also state the purpose of the summons to be the adjustment of all matters in controversy respecting the dividing fence between the parties. The justice shall hear the complaint and defense. If the facts be found such as entitle either party to demand contribution of the other, the justice shall call on the complainant to name an indifferent person, qualified to act as a juror of the township, and if the complainant refuses the justice shall name one for him. The justice shall then call on the defendant to name an indifferent person, qualified to act as a juror of the township, and if the defendant refuses the justice shall name one for him. The justice shall then name a third indifferent person. These three persons, or any two of them, shall view the premises and decide all matters in controversy between the parties, relating to a fence on the dividing line. They shall make a written report to the justice, who shall give judgment thereon, and for the costs, which shall be paid by the owners of the several pieces of land equally. The jurors shall each receive one dollar per day. The fees of the justice and constable shall be as in other cases. Either party may appeal as provided in other cases of justices' judgments.

Rev., s. 1666; Code, s. 2803; 1868-9, c. 275, s. 3.

11. Contents of jurors' report. The report of the jurors shall also state the kind of fence which ought to be kept up, and assign to each owner, in such manner as that it may be identified, the part which he shall keep up.

Rev., s. 1667; Code, s. 2804; 1868-9, c. 275, s. 4.

12. Register to record report. The justice shall return the report, together with a transcript of the proceedings, to the register of deeds of his county for registration. The justice shall collect from the parties the fees of the register, and pay the same to him.

Rev., s. 1668; Code, s. 2805; 1868-9, c. 275, s. 5.

13. Final judgment on report; effect. The final judgment upon the report of the jurors shall be binding on the owners of the respective lands and their assigns, so long as such ownership shall continue, or until the same shall be set aside, modified or reversed.

Rev., s. 1669; Code, s. 2806; 1868-9, c. 275, s. 6.

14. Removal of common fence misdemeanor. If any person owning, occupying, cultivating or being in possession of any lands under a common fence protecting the lands, crops or property of others, shall remove such fence or any part thereof during the time in which any crops are growing or being actually cultivated thereon, or property is protected by such fence, and before such crops are harvested, without the consent and permission of such person or persons whose crop or property is protected by such common fence, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that the provisions of this section shall not apply when ninety days notice of such removal shall have been given to all persons owning, cultivating or in possession of lands surrounded by such common fence, or having property protected thereby, and when thereafter such fence shall be removed between the first day of January and the first day of March following such notice of intended removal.

Rev., s. 3412; Code, s. 2820; 1903, c. 20.

ART. 3. STOCK LAW

15. Term "stock" defined. The word "stock" in this chapter shall be construed to mean horses, mules, colts, cows, calves, sheep, goats, jennets, and all neat cattle, swine and geese.

Rev., s. 1681; Code, s. 2822.

16. County elections. Upon the written application of one-fifth of the qualified voters of any county made to the board of commissioners thereof, it shall be the duty of the commissioners from time to time to submit the question of "stock law" or "no stock law" to the qualified voters of said county. And if at any such election a majority of the votes cast is in favor of "stock law," then the provisions of this chapter relating to the stock law shall be in force over the whole of said county.

Rev., s. 1672; Code, s. 2812.

NOTE. Local law as to Macon County, see P. L. 1911, c. 41.

17. Township elections. Upon the written application of one-fifth of the qualified voters in any township, made to the board of commissioners of the county wherein the township is situated, it shall be the duty of the commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of the township; and if at any such township election a majority of the votes cast is in favor of "stock law," then the stock law shall be in force in said township.

Rev., s. 1673; Code, s. 2813.

18. District elections. Upon the written application of one-fifth of the qualified voters of any district or territory, whether the boundaries of said district follow township lines or not, made to the board of county commissioners

at any time, and setting forth well-defined boundaries of the district, it shall be the duty of the commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of the district, and if at any such election a majority of the votes cast is in favor of "stock law," then the stock law shall be in force over the whole of said district.

Rev., s. 1674; Code, s. 2814.

NOTE. For local law as to Moore County, see 1907, c. 659.

19. Local: How territory released from stock law. Upon the written application of a majority of the qualified voters in any district, territory or well-defined boundary, made to the board of county commissioners, at any time, setting forth that the citizens of said district, territory or boundary are within the stock law boundary, and are desirous of being released from the laws governing stock law territory, it shall be the duty of the commissioners to submit the question of "no stock law" or "stock law" to the qualified voters of said district or territory, and if at any such election a majority of the votes cast is against stock law, then the said district or territory shall be released and free from the operation of the stock law: Provided, the expense incurred in changing the fence in such boundary, district or territory so released be paid by the property holders in such boundary, district or territory, and that the commissioners of the county levy the tax to pay the same on the property holders of such boundary, district or territory so released, but they shall not be further liable for keeping up said stock law fence: Provided, that in any territory where stock law now prevails no election against stock law shall be held in less than two years from the date of the election adopting stock law in said territory: Provided further, that if "no stock law" should carry, it shall not take effect until six months from the date of its ratification: Provided still further, that neither "stock law" or "no stock law" shall take effect during crop season.

This section applies only to the counties of Cherokee, Clay, Graham, Jackson, Macon, Mitchell, Pender, Randolph, Swain, and to Hogback Township in Transylvania County.

Rev., 1675; 1895, c. 35; 1897, cc. 461, 516; 1903, c. 60; 1907, c. 874, s. 3; P. L. 1911, cc. 265, 469; P. L. 1915, c. 379; P. L. 1917, c. 662.

20. How election conducted. Every election under this chapter shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the general assembly: Provided, no such county, township or district election shall be held oftener than once in any one year, although the boundaries of such district may not be the same.

Rev., s. 1676; Code, s. 2815.

21. Powers and duties of county commissioners. The board of commissioners of the county may provide for a new registration of voters, designate places for holding elections, and make all regulations, and do all other things necessary to carry into effect the provisions of this chapter relating to the stock law.

Rev., s. 1677; Code, s. 2826.

22. Admission of lands adjoining stock law territory. Any person, or any number of persons, owning land in a county, district or township, which shall not adopt the stock law, or adjoining any county, township or district where

a stock law prevails, may have his or their lands enclosed within any fence built in pursuance of this chapter. All such adjacent lands, when so enclosed, shall be subject to all the provisions of law with respect to livestock running at large within the original district so enclosed, as if it were a part of the township, county or district with which it is hereby authorized to be enclosed. Any number of landowners, whose lands are contiguous, may at any time build a common fence around all their lands, with gates across all public highways; and no livestock shall run at large within any such enclosure, under the pains and penalties prescribed in this chapter.

Rev., s. 1678; Code, s. 2821.

23. Allowing stock at large in stock law territory forbidden. If any person shall allow his livestock to run at large within the limits of any county, township or district, in which a stock law prevails or shall prevail pursuant to law, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3319; Code, s. 2811; 1889, c. 504.

24. Impounding stock at large in territory. Any person may take up any livestock running at large within any township or district wherein the stock law shall be in force and impound the same; and such impounder may demand fifty cents for each animal so taken up, and twenty-five cents for each animal for every day such stock is kept impounded, and may retain the same, with the right to use it under proper care until all legal charges for impounding said stock and for damages caused by the same are paid, the damages to be ascertained by two disinterested freeholders, to be selected by the owner and the impounder, the freeholders to select an umpire, if they cannot agree, and their decision to be final.

Rev., s. 1679; Code, s. 2816.

NOTE. For local laws as to stock or fowls at large, see Ashe. 1900, c. 132 (livestock, geese and turkeys).

25. Owner notified; sale of stock; application of proceeds. If the owner of such stock be known to the impounder he shall immediately inform the owner where his stock is impounded, and if the owner shall for two days after such notice willfully refuse or neglect to redeem his stock, then the impounder, after ten days written notice posted at three or more public places within the township where the stock is impounded, and describing the stock and stating place, day and hour of sale, or if the owner be unknown, after twenty days notice in the same manner, and also at the courthouse door, shall sell the stock at public auction, and apply the proceeds in accordance with the preceding and succeeding sections, and the balance he shall turn over to the owner if known; and if the owner be not known, to the county commissioners for the use of the school fund of the district wherein said stock was taken up and impounded, subject in their hands for six months to the call of the legally entitled owner.

Rev., s. 1680; Code, s. 2817.

25a. Impounding unlawfully. If any person shall willfully and unlawfully toll, drive, or in any way move any other person's horse, mule, ass, neat cattle, sheep, hog, goat, or dog, from the range or elsewhere, into any stock-law dis-

trict, or into the limits of any city or town, having the right to impound or destroy the same, with intent to secure the poundage or other penalty, or with intent to injure the owner of such animal, or to require him to pay any poundage or penalty on account of such animal, or for hire or reward, he shall be guilty of a misdemeanor. If any person shall unlawfully and willfully remove any animal above named from any lawful inclosure, with intent to injure the owner, he shall be guilty of a misdemeanor.

Rev., s. 3369; 1895, c. 141, s. 1.

26. Illegally releasing or receiving impounded stock. If any person unlawfully receives or releases any impounded stock, or unlawfully attempts to do so, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3310; Code, s. 2819; 1889, c. 504.

27. Impounded stock to be fed and watered. If any person shall impound, or cause to be impounded in any pound or other place, any animal, and shall fail to supply to the same during such confinement a sufficient quantity of good and wholesome food and water, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3311; Code, s. 2484; 1891, c. 65; 1881, c. 368, s. 3.

28. Right to feed impounded stock; owner liable. In case any animal is at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any such pound or other place, in which any animal shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal.

Rev., s. 1682; Code, s. 2485; 1881, c. 368, s. 4.

29. Injuring lands in stock law territory by riding or driving. If any person, by riding or driving upon the lands of another without permission, or while driving livestock along any roadway, public or private, shall willfully, deliberately or recklessly do or permit to be done any actual injury to said land, or to the crops or other property growing or being thereon, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. But no such offender shall be proceeded against, unless the party injured, or some one in his behalf, shall cause a warrant to be issued, or an indictment to be found against the party offending, within fifteen days after the commission of the offense.

Rev., s. 3321; Code, s. 2828; 1889, c. 118.

30. Owner in stock territory allowing stock outside. If any person having stock within the limits of a stock law territory, shall allow the same to run at large beyond the boundaries of said territory, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than fifty dollars or

imprisoned not more than thirty days: Provided, that a person owning or renting land outside of the stock law territory may turn his stock upon the said land outside of the stock law district.

Rev., s. 3322; Code, s. 2827; 1889, c. 266; 1885, c. 371.

31. Stock law territory to be fenced around. The stock law authorized by this chapter shall not be enforced until a fence has been erected around any territory proposed to be enclosed, with gates on all the public roads passing into and going out of said territory: Provided, all streams which are or may be declared to be lawful fences shall be sufficient boundaries, in lieu of fences: Provided further, no fence shall be erected along the boundary lines of any county, township or district where a stock law prevails.

Rev., s. 1683; Code, s. 2823.

32. Commissioners may declare natural barrier sufficient fence. In any county in the state in which or in any portion of which the stock law is now in force or may hereafter be adopted, the county commissioners of said county in their discretion may declare any watercourse, mountain, mountain ranges or parts of same, and also other natural and sufficient obstruction along the line of said stock law territory to be and constitute a sufficient stock law fence, and in that event such watercourse, mountain, mountain range or part thereof and obstructions so declared by said commissioners shall be and constitute a lawful fence to all intents and purposes.

Rev., s. 1684; 1901, c. 542.

33. Assessment of landowners for fence. For the purpose of building stock law fences, the board of commissioners of the county may levy and collect a special assessment upon all real property, taxable by the state and county, within the county, township or district which may adopt the stock law, but no such assessment shall be greater than one-fourth of one per centum on the value of said property.

Rev., s. 1685; Code, s. 2824.

34. Condemnation of land for fence. If the owner of any land objects to the building of any fence herein allowed, his land, not exceeding twenty feet in width, shall be condemned for the fenceway as land is condemned for railroad purposes under the chapter entitled Railroads.

Rev., s. 1686; Code, s. 2825.

35. Injury to stock law fences misdemeanor in stock law territory. If any person willfully tears down, or in any manner breaks a fence or gate, or leaves open a gate erected around a stock law territory, or willfully breaks any enclosure within any township, district or county where a stock law is in force, and wherein any stock is confined, so that the same may escape therefrom, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3411; Code, s. 2820; 1889, c. 504.

36. Impounder violating stock law misdemeanor. If any impounder willfully misappropriates money that he may receive from sale of stock impounded, or in any manner willfully violates any provisions of the law in regard thereto,

he shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3312; Code, s. 2818; 1889, c. 504.

37. Local: Depredation of domestic fowls in certain counties. In the counties and parts of counties hereinafter enumerated, where the stock law prevails, it shall be unlawful for any person to permit any turkeys, geese, chickens, ducks or other domestic fowls to run at large, after being notified as provided in this section, on the lands of any other person while such lands are under cultivation in any kind of grain or feedstuff, or while being used for gardens or ornamental purposes.

Any person so permitting his fowls to run at large, after having been notified to keep them up, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five dollars or imprisoned not exceeding five days, or if it shall appear to any justice of the peace that after two days notice, any person persist in allowing his fowls to run at large and fails or refuses to keep them upon his own premises, then the said justice of the peace may, in his discretion, order any sheriff, constable or other officer to kill said fowls when so depredating.

Alamance, 1901, c. 645.

Bladen, 1901, c. 645.

Buncombe, 1907, c. 508.

Burke, 1907, c. 508.

Cabarrus, 1901, c. 645.

Caldwell, P. L. 1911, c. 244.

Cleveland, 1901, c. 645.

Currituck, 1901, c. 645.

Davidson, P. L. 1911, c. 244.

Duplin, 1908, c. 73.

Edgecombe, 1901, c. 645.

Graham, 1901, c. 645.

Granville, P. L. 1911, c. 244.

Guilford, 1901, c. 645.

Henderson, P. L. 1911, c. 636.

Iredell, in Turnersburg Township, 1901, c. 645; in town of Statesville, 1903, c. 470.

Lee, P. L. 1913, c. 725.

Lenoir, P. L. 1911, c. 244.

Macon, P. L. 1911, c. 244.

Mecklenburg, 1901, c. 645.

Onslow, P. L. 1911, c. 244.

Orange, 1903, c. 115.

Pasquotank, 1901, c. 645.

Rowan, 1909, c. 847.

Surry, 1901, c. 645.

Swain, P. L. 1911, c. 244.

Transylvania, P. L. 1911, c. 244.

Vance, 1909, c. 619.

Wayne, P. L. 1911, c. 244.

NOTE. Statutes more or less similar to the above exist in the following counties:

Catawba, 1903, c. 482.

Chatham, 1903, c. 482.

Davie, P. L. 1915, c. 167.

Forsyth, P. L. 1915, c. 39.

Greene, 1907, c. 917; 1908, c. 78.

Lincoln, P. L. 1915, c. 312.

McDowell, P. L. 1917, c. 328.

Pitt, P. L. 1915, c. 462.

Randolph, P. L. 1913, c. 645.

Robeson, P. L. 1917, c. 662.

Scotland, P. L. 1915, c. 714.

Wake, P. L. 1915, c. 378.

Yadkin, P. L. 1915, c. 39; P. L. 1917, c. 321 (Deep Creek Township excepted).

Yancey, P. L. 1913, c. 739.

CHAPTER 37.

FISH AND FISHERIES

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SUBCHAPTER I. FISHERIES COMMISSION BOARD ACT

ART. 1. DEFINITIONS AND GENERAL PROVISIONS

1. Fish, fishing, fisheries, defined. Wherever the word "fish" or "fishes," as a substantive, occurs in this subchapter, it shall be construed to include porpoises and other marine mammals, fishes, mollusca, and crustaceans, and wherever the word "fishing," or "fisheries" occurs it shall be construed to include all operations involved in using, setting or operating apparatus employed in killing or taking the said animals or in transporting and preparing them for market.

1915, c. 84, s. 24.

2. Administrative agencies under former laws conformed to present law. All acts relating to the fisheries of North Carolina are hereby amended so that the words "shellfish commissioner," "oyster commissioner," or "fish commissioner" shall read "fisheries commissioner," and the words "shellfish commission" shall read "fisheries commission."

1915, c. 84, s. 25; 1917, c. 290, s. 9.

3. State jurisdiction over fisheries. The state of North Carolina shall have exclusive jurisdiction and control over all the fisheries of the state wherever located.

1915, c. 84, s. 18; 1917, c. 290, s. 9.

NOTE. For legislative consent to Federal regulations of fish on certain Federal lands, see chapter Game Laws, s. 21.

4. Edible fish used only as food. Any person, firm or corporation who catches or causes to be caught any edible fish in the waters of the state of North Carolina for any other purpose than as food, and any person, firm or corporation who shall use any edible fish for fertilizing purposes shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days.

1915, c. 84, s. 23.

ART. 2. FISHERIES COMMISSION BOARD; ORGANIZATION,
OFFICERS, SUPPORT

5. Creation and organization of board. For the purpose of enforcing the laws relating to all fish, there is hereby created a fisheries commission, which shall consist of five members appointed by the governor, at least three of whom shall be from the several fishing districts of the state, and shall have a practical knowledge or be familiar with the fishing industry, who shall be denominated the "fisheries commission board."

The members shall be appointed as follows: two, whose terms of office shall expire on the first day of June, nineteen hundred and seventeen; and three, one of whom shall be a member of the minority party, whose term of office shall expire on the first day of June, nineteen hundred and nineteen; and their successors shall be appointed by the governor for a term of four years each thereafter.

The five members shall receive four dollars per day each and traveling expenses while attending meetings of the board: Provided, the per diem and expenses shall not exceed two hundred and fifty dollars each per annum.

1915, c. 84, s. 1; 1917, c. 290, s. 1.

6. Fish commissioner and assistant commissioners. Said board shall appoint a fisheries commissioner within thirty days after the passage of this act, and the said commissioner shall be responsible to the fisheries commission board for carrying out the duties of his office, and shall make semiannual reports to them at such time as they may require. The term of office of said commissioner and his successor in office shall be four years or until his successor is appointed and qualified, and in case of vacancy in the office the appointment shall be to fill the vacancy. The said commissioner may appoint two assistants by and with the consent of the fisheries commission board, who shall hold said offices at the pleasure of the fisheries commissioner and the board, whose duties shall be prescribed by the fisheries commissioner. The aforesaid commissioner and assistant commissioners shall receive such pay as the fisheries commission board shall determine. During the absence of the commissioner, or his inability to act, the fisheries commission board shall appoint one of the assistant commissioners to have and exercise all the powers of the commissioner. The commissioner and assistant commissioners shall each execute and file with the secretary of state a bond, payable to the state of North Carolina, in the sum of five thousand dollars for the commissioner and twenty-five hundred dollars each for each of the assistant commissioners, with sureties to be approved by the secretary of state, conditioned for the faithful performance of their duties and to account for and pay over, pursuant to law, all moneys received by them in their office. The fisheries commissioner and assistant commissioners shall take and subscribe an oath to support the constitution, and for the faithful performance of the duties of his office, which oaths shall be filed with their bonds. The assistant commissioners may be removed for cause by the commissioner, who may appoint their successors.

1915, c. 84, s. 1; 1917, c. 290, s. 1.

7. Fish inspectors. The fisheries commissioner may appoint with the approval of the fisheries commission board, inspectors in each county having fisheries under his jurisdiction, who will assist him at such times as he may require. The said inspector shall serve under the direction of the commissioner receiving compensation not to exceed three dollars per day and necessary expenses while in actual service.

1915, c. 84, s. 2.

8. Board and officers to be free from financial interest in fisheries. The members of the fisheries commission board, the fisheries commissioner, assistant commissioners, and inspectors shall not be financially interested in any fishing industry in North Carolina.

1915, c. 84, s. 8.

9. Clerical force and office. The fisheries commissioner shall rent and equip an office, which will be adequate for the business of the commission, in some town conveniently located to the maritime fisheries, and he is authorized to

employ such clerks and other employees as may be necessary for the proper carrying on of the work of his office, by and with the consent of the fisheries commission board.

1915, c. 84, s. 3.

10. Boats and equipment. The fisheries commissioner is authorized, by and with the consent of the fisheries commission board, to purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to fulfill the duties specified in this act.

1915, c. 84, s. 4.

11. "Fisheries commission fund" derived from imposts. All license fees, taxes, rentals of bottoms for oyster or clam cultivation and other imposts upon the fisheries, in whatever manner collected, shall except as otherwise provided in this act, be deposited with the state treasurer to the credit of the fisheries commission fund, to be drawn upon as directed by the fisheries commission board.

1915, c. 84, s. 9.

12. Temporary appropriation. There is hereby appropriated out of the general treasury as a supplementary fund the sum of ten thousand dollars annually for two years, or as much thereof as may be needed, to the fisheries commission to carry out the work of the commission in the protection and promotion of the fisheries of the state, this sum to be repaid to the general treasury by the fisheries commission when it shall be on a self-sustaining basis; said sum to be used and expended as directed by the fisheries commission board, and any part of it that may be required may be used for purchasing boats and other equipment necessary to carry out the work of the commission.

1915, c. 84, s. 16.

13. Succeeds fish commission and oyster commission as to funds, property and debts. Any money that may be in the state treasury to the credit of the fish commission and oyster commission fund on May first, 1915, shall be transferred by the state treasurer to the credit of the fisheries commission fund, and the fisheries commission board is authorized to pay out of the fisheries commission fund all just claims that may be outstanding against the fish or oyster commissions.

All boats, fishing and oyster tackle, office supplies, stationery, and all other supplies of whatever character belonging to the fish commission and oyster commission shall be transferred to the fisheries commissioner for the use of the fisheries commission.

1915, c. 84, ss. 16, 17.

ART. 3. POWERS AND DUTIES OF BOARD AND OFFICERS

14. Regulations as to fish, fishing and fisheries made by board. The fisheries commission board is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the state, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the state, or which may be bought, sold, or held in possession by any

person, firm, or corporation in the state; and such regulations, prohibitions, restrictions and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper in North Carolina, shall be of equal force and effect with the provisions of this act; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined or imprisoned, at the discretion of the court.

1915, c. 84, s. 21; 1917, c. 290, s. 7.

NOTE. For legislative consent to federal regulation of fish on certain lands, see Game Laws, s. 21.

15. Regulations affecting existing interests not effective for two years. In making regulations the fisheries commission board shall give due weight and consideration to all factors which will affect the value of the present investment in the fisheries, and no changes in the existing laws which, if they should go into effect immediately, would tend to cause fishermen to lose their property, shall go into effect until two years from the date that the change has been made by the fisheries commission board.

1915, c. 84, s. 21; 1917, c. 290, s. 7.

16. Hearing before changes as to certain regulations. If, however, a petition signed by five or more voters of the district or community which will be affected by the proposed changes is filed with the fisheries commission board through the fisheries commissioner, assistant commissioners or inspectors, asking that they have a hearing before any proposed change in the territory, size of mesh, length of net, or time of fishing shall go into effect, petitioning that they be heard regarding such change, the fisheries commission board shall in that event designate by advertisement for a period of thirty days at the courthouse and three other public places in the county affected, and also by publication in a newspaper of the county, if such is published in said county, once a week for two consecutive weeks, a place at which said board will meet and hear argument for and against said change, and may ratify, rescind, or alter this previous order of change as may seem just in the premises.

1915, c. 84, s. 21; 1917, c. 290, s. 7.

17. Reports of board to legislature; publication. The fisheries commission board shall cause to be prepared and submitted to each legislature a report showing the operations, collections and expenditures of the fisheries commission; and it shall also cause to be prepared for publication such other reports, with necessary illustrations and maps, as will adequately set forth the results of the work and the investigations of the fisheries commission, all such reports, illustrations, and maps to be printed and distributed at the expense of the state, as are other public documents, as the fisheries commission board may direct.

1915, c. 84, s. 15.

18. Duties of commissioner. It is the duty of the commissioner: To enforce all acts relating to the fish and fisheries of North Carolina.

By and with the advice and consent of the fisheries commission board, to make such regulations as shall maintain open for the passage of fishes all inlets and not less than one-third of the width of all sounds and streams, or such greater proportions of their width as may be necessary.

To collect and compile statistics showing the annual product of the fisheries of the state, the capital invested, and the apparatus employed, and any fisherman refusing to give these statistics shall be refused a license for the next year.

To prepare and have on file in his office maps based on the charts of the United States Coast and Geodetic Survey, of the largest scale published, showing as closely as may be the location of all fixed apparatus employed during each fishing season.

To have surveyed and marked in a prominent manner those areas of waters of the state in which the use of any or all fishing appliances are prohibited by law or regulation, and those areas of waters in the state in which oyster tonging or dredging is prohibited by law.

To prosecute all violations of the fish laws, and wherever necessary he may employ counsel for this purpose.

To remove pending trial nets or other appliances he finds being fished or used in violation of the fisheries laws of the state.

To carry on investigations relating to the migrations and habits of the fish in the waters of the state, also investigations relating to the cultivation of the oyster, clam and other mollusca, and of the terrapin and crab, and for this purpose he may employ such scientific assistance as may be authorized by the fisheries commission board.

The commissioner shall be responsible for the collection of all license taxes, fees, rentals, or other imposts on the fisheries, and shall pay same into the state treasury to the credit of the fisheries commission fund. He shall on or before the twenty-fifth day of each month mail to the treasurer of the state a consolidated statement showing the amount of taxes and license fees collected during the preceding month, and by and from whom collected.

He shall, in an official capacity, have power to administer oaths and to send for and examine persons and papers.

If any fisherman fail or refuse to give statistics as required in this section, the board may extend the time of his operations, and the fisheries commission board is empowered to make such rules and regulations as they think proper to procure statistics as to the annual products of the fisheries of the state.

1915, c. 84, s. 5; 1917, c. 290, s. 10.

19. Arrests without warrant. The fisheries commissioner, assistant commissioners and inspectors shall have power, without warrant, to arrest any person or persons violating any of the fishery laws in their presence who shall be carried before a magistrate for trial as is required by law in case of persons arrested without warrant.

1915, c. 84, s. 6; 1917, c. 290, s. 2.

20. Taking fish for scientific purposes. The fisheries commissioner and the United States bureau of fisheries may take and cause to be taken for scientific purposes or for fish culture any fish or other marine organism at any time from the waters of North Carolina, any law to the contrary notwithstanding; and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture: Provided, that in taking fish for fish culture in the hatcheries of this state the fish shall only be taken while the hatcheries are in operation and only between the hours of four and eleven p.m.

1915, c. 84, s. 7.

21. Licenses to fish; issuance, terms and enforcement. Each and every person, firm, or corporation, before commencing or engaging in any kind of fishing in the state, shall file with an inspector of the county in which he desires to fish, or with the fisheries commissioner or any of his assistant commissioners, a sworn statement as to the number and kind of nets, seines, or other apparatus intended to be used in fishing. Upon filing this sworn statement on oath the fisheries commissioner shall issue or cause to be issued to the said party or parties, a license as prescribed by law; said applicant shall pay a license fee equal in amount to the fee or tax prescribed by law for fishing different kinds of apparatus in the waters of the state of North Carolina, or for tonging or dredging for oysters, as the case may be. The fisheries commissioner shall keep in a book especially prepared for the purpose an exact record of all licenses, to whom issued, the number and kinds of nets, boats, and other apparatus licensed, and the license fees received. He shall furnish to each person, firm, or corporation in whose favor a license is issued a special tag which will show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorized to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the fisheries commissioner. All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet and on the opposite side of mainsail, above all reef points, in black letters, not less than twenty inches long, the initial letter of the county granting the license and the number of said license, the number to be painted on canvas and furnished by the fisheries commissioner, for which he shall receive the sum of fifty cents. Any boat or vessel used in catching oysters without having complied with the provisions of this section may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings, shall be paid into the school fund. The licenses to fish with nets shall all terminate on December thirty-first. Any person who shall willfully use for fishing purposes any kind of net whatever, without having first complied with the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars for each and every offense.

1915, c. 84, s. 10; 1917, c. 290, s. 9.

22. Resident may catch shellfish for own use. No tax shall be levied or collected from bona fide residents or citizens of this state who take fish, oysters, clams, escallops, or crabs other than with dredges for his own personal or family's use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars or imprisoned not exceeding thirty days.

1917, c. 290, s. 6.

23. Licenses for oyster boats; schedule. The fisheries commissioner, assistant commissioner, or inspector, may grant license for a boat to be used in catching oysters upon application made, according to law, and the payment of a license tax as follows: On any boat or vessel without cabin or deck, and under custom-house tonnage, using scrapes or dredges, measuring over all twenty-

five feet and under thirty, a tax of three dollars; fifteen feet and under twenty-five feet, a tax of two dollars; on any boat or vessel with cabin or deck and under custom-house tonnage, using scrapes or dredges, measuring over all thirty feet or under, a tax of five dollars; over thirty feet a tax of six dollars; on any boat or vessel using scoops, scrapes, or dredges required to be registered or enrolled in the custom house, a tax of one dollar and fifty cents a ton on gross tonnage. No vessel propelled by steam, gas or electricity, and no boat or vessel not the property absolutely of a citizen or citizens of this state, shall receive license or be permitted in any manner to engage in the catching of oysters anywhere in the waters of this state.

1915, c. 84, s. 11.

24. Licenses for purse or shirred nets; schedule. Whenever any person or persons, corporation or corporations, may intend to take menhaden (fat-backs), porgies, herring, or other fish in any waters within the jurisdiction of the state, including the waters of the Atlantic Ocean within three nautical miles of the coasts of said state, either on his own account and benefit or on account and benefit of his employer, with purse or shirred nets, such person or persons, corporation or corporations shall make an application to the fisheries commissioner for a license, and, upon receipt of such application, the fisheries commissioner shall, upon the receipt of a sum equal to one dollar and fifty cents for each ton of the gross tonnage of each vessel employed in such fishing, said gross tonnage to be determined by custom-house measurements, as a license fee, issue to such person or persons, corporation or corporations, a license duly signed by the fisheries commissioner, which said license shall be valid and in force for the term of one year; all such licenses to be dated January first, and no license shall be for a space of time less than one year. And the owner or captain of any and every vessel or boat engaged in such fishing shall furnish the fisheries commissioner with the name and postoffice address of every member of the crew employed, and in case of any change in the crew, the captain or owner shall immediately notify the fisheries commissioner, giving name and address of the member of the crew employed or substituted. For every violation of this act or any provision of this section the offending person or persons, corporation or corporations, shall be guilty of a misdemeanor and be fined two hundred dollars for each and every offense.

1915, c. 84, s. 12; 1917, c. 290, s. 3.

25. Licenses for various appliances and their users; schedule. The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina:

Anchor gill nets, twenty-five cents for one hundred yards or fraction thereof.

Stake gill nets, ten cents for each hundred yards or fraction thereof.

Drift gill nets, twenty-five cents for each hundred yards or fraction thereof.

Pound nets, one dollar for each pound.

Submarine pounds, or submerged trap nets, two dollars for each trap or pound.

Shrimp trawl nets, twenty-five cents each.

Seine drag nets and mullet nets under one hundred yards and not over three hundred yards, fifty cents each.

Seine drag nets and mullet nets over three hundred yards and under one thousand yards, seventy-five cents per one hundred yards or fraction thereof.

Seine drag nets and mullet nets over one thousand yards, one dollar per one hundred yards or fraction thereof.

Fyke nets, twenty-five cents each.

Tonging for oysters, the license tax shall be one dollar for each tonger.

For taking scallops with rakes, tongs, scoops, or scrapes, one dollar for each person and for every person assisting or employed.

For taking clams with rakes, tongs, scoops, or scrapes, one dollar for each person and for every person assisting or employed.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

1915, c. 84, s. 14; 1917, c. 290, s. 5.

26. Licenses for dealers and packers. The license tax for all persons or dealers who purchase oysters or carry on the business of canning, packing, shucking, or shipping, shall be five dollars.

The license tax for all persons or dealers who purchase or carry on the business of canning, packing, shucking or shipping scallops shall be five dollars.

The license tax for all persons or dealers who purchase or carry on the business of packing or shipping fish shall be two dollars and fifty cents: Provided, the fisherman who pays a license on nets to catch fish, and ships such fish as are caught in such licensed nets, shall not be liable for this tax.

The license tax for all persons or dealers who purchase or carry on the business of canning, packing, or shipping shrimp, shall be two dollars and fifty cents: Provided, the fishermen who pay a license on nets to catch shrimp, and ship only such shrimp as are caught in such licensed nets, shall not be liable for this tax.

The license tax for all persons or dealers who purchase or carry on the business of packing or shipping crabs out of the state shall be five dollars: Provided, that no pound net shall be set in the waters of the Atlantic Ocean within the three-mile limit: Provided, further, that hand nets of not less than one and one-eighth inch bar mesh may be used in New Hanover County, and that no order shall be made by the fisheries board derogatory of this section; and that the tax by this act shall not apply to crabs and clams.

1917, c. 290, s. 5.

27. Purchase tax for shellfish dealers; schedule; collection. All dealers in oysters, scallops, clams, or crabs, and all persons who purchase oysters, scallops, clams or crabs for canning, packing, shucking, or shipping, shall pay a tax of two cents on every bushel of oysters: Provided, coon oysters shall be taxed three-fourths cents per bushel; two and one-half cents on every bushel of clams; ten cents on every gallon of scallops; two and one-half cents on every dozen of soft crabs, and ten cents on every bushel of hard crabs purchased by them or caught by them or by any one of them: Provided, that no oysters, scallops, clams, or crabs shall be twice taxed; and Provided, further, that no tax shall be imposed on oysters, scallops, or clams taken from private oyster beds, scallop or clam gardens.

This tax shall be paid to and collected by the inspectors, and when paid a receipt shall be given therefor. Upon failure or refusal by any person, firm, or corporation to pay said tax, his license shall at once become null and void,

and no further license shall be granted him during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the state of North Carolina on relation of the commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the general fisheries commission fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor.

1915, c. 84, s. 13; 1917, c. 290, s. 4.

28. Printed regulations furnished dealers. It is the duty of the fisheries commission board, upon issuing any license under the provisions of this subchapter, to furnish with said license the printed regulations controlling the waters in which such fisherman applying therefor proposes to fish.

1917, c. 290, s. 12.

29. Dealers to keep and furnish statistics. All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, scallops, clams, crabs, shrimp, and fish taken from the public grounds or natural beds of the state, or the natural waters or streams of the state, shall keep a permanent record of all such products, showing the quantity of each of said products so purchased, packed, canned, or shipped, the kind of fish, from whom each of said species of fish, mollusca, or crustaceans were purchased, that a statement of all these facts shall be made whenever required by the fisheries commissioner, but shall be at least at the end of each month. That all such records shall be open at all times to the fisheries commissioner, assistant commissioner, or any one under the direction of the fisheries commissioner.

1917, c. 290, s. 11.

30. Disturbing marks or property of commission prohibited. Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the fisheries commission in marking the restricted areas relating to any and all fishing, or marking other areas in which oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, or shall injure or destroy any boat or other property of any kind used by the fisheries commission board or any officer or employee thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court; and any person anchoring or mooring a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars and imprisoned thirty days in jail, at the discretion of the court.

1915, c. 84, s. 22; 1917, c. 290, s. 8.

31. Explosives, drugs and poisons prohibited. It shall be unlawful to place in any of the waters of this state any dynamite, giant or electric powder, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking, killing or injuring fish. And any one violating this section shall, upon conviction, be fined not less than one hundred dollars and imprisoned not less than thirty days.

1915, c. 84, s. 19.

32. Possession of fish killed by explosives as evidence. The possession of fish killed by explosive agencies shall be prima facie evidence that explosives were used for the purpose of killing fish.

Rev., s. 2466; Code, s. 3405; 1889, c. 312; 1911, c. 170.

33. Discharge of deleterious matter into waters prohibited. It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the state any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said water; and any person, persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: Provided, this section shall not apply to corporations chartered either by general law or special act before the ratification of this act.

1915, c. 84, s. 20.

34. Violations of fisheries law misdemeanor; licenses, forfeited. Upon failure of any person, firm or corporation to comply with any of the provisions of this act, or any of the fisheries laws, any license issued to any such person, firm or corporation may be revoked by the fisheries commission, and upon satisfactory settlement may be reinstated, with the consent of the board. All such persons violating the provisions of this act or of the fisheries law shall be guilty of a misdemeanor.

1917, c. 290, s. 11.

SUBCHAPTER II. SHELLFISH

ART. 4. SHELLFISH GENERAL LAWS

Part 1. Definition of Natural Oyster Bed

35. Oyster bed defined. A natural oyster or clam bed, as distinguished from an artificial oyster or clam bed, shall be one not planted by man, and is any shoal, reef or bottom where oysters are to be found growing in sufficient quantities to be valuable to the public.

Rev., s. 2371; 1893, c. 287, s. 1.

Part 2. Leases of Bottoms

36. Fisheries commissioner to lease. The fisheries commissioner shall have power to lease to any duly qualified person, firm or corporation, for purposes of oyster or clam culture, any bottom of the waters of the state not a natural oyster bed, as defined in this act, nor a clam reservation, as defined in this act, in accordance with the provisions of Part 2 of this article (secs. 36 to 45).

This section is inapplicable in New Hanover County.

1909, c. 871, ss. 1, 9.

37. Lessee to be citizen. Any citizen of North Carolina, or firm or corporation organized under the laws of the state and doing business within its limits, shall be granted the privilege of taking up bottoms for purposes of oyster or clam culture, under the provisions of this act. This section is inapplicable to New Hanover County.

1909, c. 871, ss. 2, 9.

38. Areas leased in different waters. The area which may be taken up for purposes of oyster or clam culture shall be not less than one acre nor more than fifty acres, with the exception of the open waters of Pamlico Sound (and for the purposes of this act open waters of Pamlico Sound shall mean the waters that are outside of two miles of the shore line), in which the minimum limit shall be five acres and the maximum shall be two hundred acres: Provided, that the limit of entry in Core Sound, North River, Newport River, Bogue Sound and all bays and creeks bordering on these waters, and in Jones Bay, Rose Bay, Abels Bay, Swan Quarter Bay, Middle Bay, Bay River, Deep Bay, Juniper Bay, West and East Bluff bays, Wysocking Bay, Fire Creek, Stumpy Point Bay, Mouse Harbor Bay, Maw Bay and Broad Creek, tributaries of Pamlico Sound, shall be one acre as a minimum and ten acres as a maximum: Provided further, however, that at the end of one year from the passage of this act the minimum area in Core Sound, North River, Newport River, Bogue Sound and all bays and creeks bordering on these waters, and in Jones Bay, Rose Bay, Abels Bay, Swan Quarter Bay, Middle Bay, Bay River, Deep Bay, Juniper Bay, West and East Bluff bays, Wysocking Bay, Fire Creek, Stumpy Point Bay, Mouse Harbor Bay, Maw Bay and Broad Creek, tributaries of Pamlico Sound, shall be one acre and the maximum fifty acres; but no person, firm, corporation or association shall severally or collectively hold any interest in any lease or leases aggregating an area of greater than fifty acres, except in the open waters of Pamlico Sound, where the aggregate area shall be two hundred acres.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 2, 9.

39. Prerequisites for lease; application; deposit; survey; location. Such persons, firms or corporations desiring to avail themselves of the privileges of this act shall make written application, on a form to be prepared by the fisheries commissioner, setting forth the name and address of the applicant, describing as definitely as may be the location and extent of the bottom for which application is made, and requesting the survey and leasing to the applicant of said bottom. As soon as possible after the application is received, the fisheries commissioner shall cause to be made a survey and map of said bottom, at the expense of the applicant. The fisheries commissioner shall also thoroughly examine said bottoms by sounding and by dragging thereover a chain to detect the presence of natural oysters. Should any natural oysters be found, the commissioner shall cause examination to be made to ascertain the area and density of oysters on said bottom or bed, to determine whether the same is a natural bed, under the definition contained in this act. He shall be assisted in this examination on tonging ground by an expert tonger, to be appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert tonger may be able to take in a specified time; and on dredging ground the commissioner shall be assisted by an expert dredger, appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert

dredger may be able to take in a specified time. The fisheries commissioner shall require the bodies of bottoms applied for to be as compact as possible, taking into consideration the shape of the body of water and the consistency of the bottom. No application shall be entertained nor lease granted for a piece of bottom within two hundred yards of a known natural bottom, bed or reef. A deposit of ten dollars will be required of each applicant at the time of making his application, said sum to be credited to the cost of the survey of the bottom applied for.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 3, 9.

40. Execution of lease; notice and filing; marking and planting. Immediately upon the completion of the survey and the mapping thereof, and the payment by the applicant of the cost of said survey and map, the fisheries commissioner shall execute to the applicant, upon a form approved by the attorney-general of the state, a lease for the bottoms applied for. A copy of the lease, map of the survey and a description of the bottom, defining its position, shall be filed in the office of the fisheries commissioner. After the execution of said lease, the lessee shall have the sole right and use of said bottoms, and all shells, oysters and culls thereon or placed thereon shall be his exclusive property so long as he complies with the provisions of this law. The lessee shall stake off and mark the bottoms leased in the manner prescribed by the fisheries commissioner, and failure to do so within a period of thirty days of an order so to do issued by the commissioner shall subject said lessee to a fine of five dollars per acre for each sixty days default in compliance with said order. The corner stakes, at least, of each lease shall be marked with signs plainly displaying the number of the lease and the name of the lessee. The lessee shall, within two years of the commencement of his lease, have planted upon his holdings a quantity of shells equal to an average of fifty bushels of seed oysters or shells per acre of holdings, and within four years from the commencement of his lease a quantity of oysters or shells equal to an average of not less than one hundred and twenty-five bushels per acre. The oyster commissioner shall, upon granting any lease, publish a notice of the granting of same in a newspaper of general circulation in the county wherein the bottom leased is located.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 4, 9.

41. Term and rental. All leases made under the provisions of this act shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of one dollar per acre for the first ten years and two dollars per acre per year for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this act the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years of the lease. This rental shall be in lieu of all other taxes and imposts whatever, and shall be considered as all and the only taxation which can be

imposed by the state, counties, municipalities or other subordinate political bodies. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 5, 9.

42. Nature of lessee's rights; assignment and inheritance. The said lease shall be heritable and transferable, in whole or in part, provided the qualifications of the heirs and transferees are such as are described by this act. Non-residents, acquiring by inheritance or process sale, or persons already holding the maximum area permitted by this act, shall within a period of twelve months from the time of acquisition, dispose of said prohibited or excess of holding to some qualified person, firm or corporation, under penalty of forfeiture. The lease shall be subject to mortgage, pledge, seizure for debt and the same other transactions as are other property rights in North Carolina. No transfer shall be of effect unless of court record, until entered on the books of the fisheries commissioner.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 6, 9.

43. Renewal of lease. The term of each lease granted under the provisions of this act shall be for a period of twenty years from the first day of April preceding the date of granting of said lease. At the expiration of the first lease, the lessee, upon making written application on the prescribed form, shall be entitled to successive leases on the same terms as applied to the last ten years of the first lease, for a period not exceeding ten years each.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 7, 9.

44. Forfeiture of lease for nonpayment. The failure to pay the rental of bottoms leased for each year in advance on or before the first day of April, or within thirty days thereafter, shall ipso facto cancel said lease and shall forfeit to the State the said leased bottoms and all oysters thereon, and upon said forfeiture the fisheries commissioner is hereby authorized to lease the said bottoms to any qualified applicant therefor: Provided, that no forfeiture shall be valid, however, under the provisions of this section, unless there shall have been mailed by the fisheries commissioner to the last address of the lessee upon the books of the commissioner a thirty days notice of the maturity of said rental.

This section is inapplicable to New Hanover County.

1909, c. 871, ss. 8, 9.

45. Contest over grant of lease; time for contest; decision; appeal. If any person, within four months of the publication of the notice of granting of any lease, make claim that a natural oyster bottom, bed or reef exists within the boundaries of said lease, he shall, under oath, state his claim, and request the fisheries commissioner to cancel said lease: Provided, however, that each such claim and petition shall be accompanied by a deposit of twenty-five dollars. No petition unaccompanied by said deposit shall be considered by the commissioner. The fisheries commissioner shall, in person, examine into said claim, and, if the

decision should be against the claimant, the deposit of twenty-five dollars shall be forfeited to the state and deposited to the credit of the fisheries commission fund. Should, however, the claim be sustained and a natural bed be found within the boundary of the lease, the said natural bed shall be surveyed and marked with stakes or buoys, at the expense of the lessee, and the said natural bed be thrown open to the public fishery. If no such claim be presented within a period of four months, or if when so presented it fail of substantiation, as provided, the lessee shall thereafter be secure from attack on such account, and his lease shall be incontestable so long as he complies with the other provisions of this act. In each and every such case the decision of the fisheries commissioner shall be subject to review and appeal before a judge of the superior court, who shall render a decision without the aid of a jury, and his decision shall be final.

This section is inapplicable to New Hanover County.

1909, c. 871, s. 9.

NOTE. Licenses for bottoms in New Hanover County, see Revisal of 1905, ss. 2373, 2374, 2377.

Part 3. Licenses and Taxes

46. License to catch oysters; oath of applicant. Any person desiring to catch oysters from the public grounds and natural oyster beds shall make and subscribe to the following oath, before some officer qualified to administer oaths:

I, ----- (state if owner, lessee, master, captain, mate, foreman, or agent of any boat used, or that may be used, in dredging oysters from the public grounds of the state), being an applicant for oyster license, do solemnly swear that I am a citizen of North Carolina, and have been a resident of the state for the two years next preceding this day; that my place of residence is now in ----- County; that I will not, if granted license, employ any nonresident or unlicensed person as an assistant or serve as an assistant to any nonresident who is owner, lessee, master, captain, mate or foreman, or who has any interest in, or in the profits derived from, any boat that is used or that may be used in dredging oysters from the public grounds of the state, or unlicensed person, nor will I transfer, assign, or otherwise dispose of my license to any person, firm or corporation; that I will not knowingly or willfully violate or evade any of the laws or regulations of the state relating to oyster industry; so help me, God.

He shall then present to and file said oath with the fisheries commissioner, assistant commissioner or inspector, who, if satisfied with the truth of the statement made in the oath of application, shall issue to him an oysterman's license in the following form:

State of North Carolina, ----- County.

-----, a resident of ----- County, having this day made application to me for an oysterman's license, and having filed with me the oath prescribed by law, I do hereby grant to him license to catch oysters from the public grounds of this state from the fifteenth day of October, -----, until the first day of next April.

Witness my hand and official seal, this the ----- day of -----, 19-----

-----,
Fisheries Commissioner, Assistant Fisheries Commissioner, or
Inspector (as the case may be).

Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6.

NOTE. For making false affidavits, see this chapter, s. 66.

47. Filing oath; recording license; fees. The oath and a record of the license shall be kept by the fisheries commissioner, assistant commissioner or

inspector, and for issuing and recording the same he shall receive from the applicant a fee of twenty-five cents, which, together with all other license fees collected under this chapter, shall be paid over to the state treasurer and constitute part of the fisheries commission fund. No fee shall be charged by the clerk for administering the oath.

Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6.

48. Licensee to be resident, not interested in oyster boat. No person shall be licensed to catch oysters from the public grounds of the state who is owner, lessee, master, captain, mate or foreman, or who owns an interest in or who is an agent for any boat that is used or that may be used in dredging oysters from the public grounds of the state, who is not a bona fide resident of this state and who has not continuously resided therein for two years next preceding the date of his application for license, and no nonresident shall be employed as a laborer on any boat licensed to dredge oysters under this subchapter who has an interest in or who receives any profit from the oysters caught by any boat permitted to dredge oysters on the public grounds of the state. Any person, firm or corporation employing any nonresident laborer forbidden by this section, upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars.

Rev., s. 2408; 1903, c. 516, s. 6; 1905, c. 525, s. 3.

49. Tax on oysters exported from state. All oysters going out of the state in any boat or vessel shall pay a tax of two cents per tub.

1907, c. 969, s. 11; Ex. Sess. 1913, c. 42, s. 3.

50-51. Oyster dealer's license. The fisheries commissioner, assistant commissioner or inspector shall, upon application and the payment of a fee of fifty cents, grant to the applicant a dealer's license, authorizing the applicant to engage in the business of buying, purchasing, canning, packing, shucking or shipping oysters. Such license shall not be issued prior to the fifteenth day of November of any year and shall expire on the fifteenth day of March following. The assistant fisheries commissioner or inspector granting the license shall at once mail a duplicate to the fisheries commissioner. Nothing contained in this section (except as to New Hanover, Onslow and Pender counties), shall be deemed to require any license of persons engaged in the business of buying, purchasing, canning, packing, shucking or shipping oysters which were not taken or caught from the public grounds or natural oyster beds of the state: Provided, that in New Hanover, Onslow and Pender counties, such license shall not be issued prior to the fifteenth day of October in any year and shall expire on the first day of April following.

Rev., s. 2411; 1903, c. 516, s. 9; 1905, c. 525, s. 6; 1907, c. 969, s. 7; 1915, c. 136, s. 3.

52. Monthly reports of licenses to be filed. The fisheries commissioner, assistant commissioner or inspector who are authorized to issue license or to collect a license tax, shall, on or before the fifteenth day of each month, mail to the oyster commissioner a statement, showing all licenses issued during the preceding month, to whom issued and for what purpose, and the amount of tax collected by them from all sources under the oyster laws, and shall at the same time remit said amount direct to the state treasurer. They shall at the same time

mail to each inspector asking for the same a list of all persons to whom license has been issued and of all boats or vessels licensed, and for what purpose.

Rev., s. 2412; 1903, c. 516, s. 4; 1905, c. 525, s. 6.

53. Oyster beds real property for taxation, etc. All grounds taken up or held for the purpose of cultivating shellfish shall be subject to taxation as real estate, and shall be so considered in the settlement of the estates of deceased or insolvent persons.

Rev., s. 2380; 1887, c. 119, s. 9.

Part 4. Catching and Dealing in Oysters Regulated

54. Close season for oysters; exceptions. If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster-beds of this state between the fifteenth day of April and the fifteenth day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs from March fifteenth to May first and with dredges from March fifteenth to April fifth, in any year, to be used for planting on private grounds entered and held under the laws of this state, upon the condition further that they shall not be removed from said private grounds within a period of three months from time of planting: Provided further, that oysters may be taken with hand-tongs, only for home consumption: Provided further, that coon oysters may be taken from November first to May first of each year in the waters of Onslow and Carteret counties.

This section, except as specifically provided, is inapplicable to New Hanover, Onslow and Pender counties.

Rev., s. 2383; 1907, c. 969, s. 4; 1913, c. 85; 1915, c. 120.

55. Oyster dealers to keep records. All persons engaged in buying, packing, canning, shucking or shipping oysters shall keep a permanent record of all oysters either bought or caught by them, or by persons for them, when and from whom bought, the number of bushels and the price paid therefor. All these records shall at all times be open to the examination and inspection of the fisheries commissioner, assistant commissioner and inspector, and upon request shall be verified by the parties making them. If any person engaged in buying, packing, canning, shucking or shipping oysters taken or caught from the public grounds or natural oyster beds of the state shall fail to keep a permanent record of all oysters bought by him or caught by him, or by persons for him, when and from whom bought, the number of bushels and the price paid therefor, or shall fail upon demand to exhibit such record as required by law, or shall fail to verify the same, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty-days.

Rev., ss. 2396, 2418; 1903, c. 516, s. 5; 1915, c. 136, s. 2.

56. Oyster measure. All oysters measured in the shell shall be measured in a circular tub with straight sides and straight, solid bottom, with holes in the bottom not more than one-half inch in diameter. The said measures shall have the following dimensions: A bushel tub shall measure eighteen inches from inside to inside across the top, sixteen inches from inside to inside chimb to the bottom and twenty-one inches diagonal from inside chimb to top. All

measures found in the possession of any dealer not meeting the requirements of this section shall be destroyed by said fisheries commissioner, assistant commissioner or inspector. Any person using an unlawful measure for the sale or purchase of oysters shall be guilty of a misdemeanor.

Rev., s. 2417; 1903, c. 510, s. 12; 1907, c. 969, s. 10; Ex. Sess. 1913, c. 42, s. 2.

57. Local modification as to oyster measure in New Hanover, Onslow and Pender counties. In New Hanover, Onslow and Pender counties all measures used for buying or selling oysters shall have a brand, to be adopted by the fisheries commissioner, stamped therein by said commissioner, assistant commissioner, or his lawful inspectors.

Rev., s. 2417; 1903, c. 516, s. 12.

58. Illegal measures prohibited. If any person shall in buying or selling oysters use any measure other than that prescribed by law for the measurement of oysters, or if any dealer in oysters shall have in his possession any measure for measuring oysters other than that prescribed by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2399; 1903, c. 516, s. 12.

59. Dredging regulated as to territory and season. Any bona fide resident of the state duly licensed according to law and using a licensed boat or vessel may use scoops, scrapes or dredges in catching or taking oysters from the fifteenth day of November in each year to the first day of April following, from the public grounds and natural oyster beds in the broad open waters of Pamlico Sound, Pamlico River, Neuse River and Shoal River, except in those portions of said sound and rivers in which the use of such instruments and implements is prohibited as herein provided. No person shall use any implement or instrument except hand-tongs in catching oysters in any bay, river, creek, strait, or any tributary of such which border upon or empty into Pamlico Sound, Pamlico River, or Long Shoal River, except as hereinafter provided; and any point inside of a line drawn from the farthest or extreme outward point of land or marsh on the one side to the farthest or extreme outward point of land or marsh on the opposite side of any creek, strait or bay, shall be construed to be within the said creek, strait or bay for the purposes of this section. Nor shall any person use any implement or instrument except hand-tongs in the waters of Pamlico Sound from what is known as the Reef or Reefs in the eastern portion of said sound to the line of banks bordering its eastern shores; nor along the shores of Pamlico County inside of a line beginning at Maw Point and running to the west end of Brant Island, thence to Pamlico Point; nor in the waters of Pamlico Sound north of a line running from Long Shoal light to Gull Shoal life-saving station, from the first day of February of each year to the fifteenth day of November, nor in any of the waters of Carteret County. And for the purpose of this section, the northern boundary of said county shall be a line extending from Swan Point to Harbor Island light, thence a line to Southwest Straddle light, thence a line to Northwest Point light, thence a line to the middle of Ocracoke Inlet; nor in the waters of Neuse River above a line in said river running from Carbacon buoy to the western point of land at Pierce's Creek.

Rev., 2413; 1903, c. 516, ss. 13, 14, 15; 1905, c. 507, s. 2.

60. Illegal dredging prohibited; evidence. If any person shall use any scoops, scrapes or dredges for catching oysters except at the times and in the places in this chapter expressly authorized, or shall between the fifth day of April and the fifteenth day of November of any year carry on any boat or vessel any scoops, scrapes, dredges or winders, such as are usually or can be used for taking oysters, he shall be guilty of a misdemeanor.

If any boat or vessel shall be seen sailing on any of the waters of this state during the season when the dredging of oysters is prohibited by law in the same manner in which they sail to take or catch oysters with scoops, scrapes or dredges, the said boat or vessel shall be pursued by any officer authorized to make arrests, and if said boat or vessel apprehended by said officer shall be found to have on board any wet oysters or the scoops, scrapes, dredges or lines, or deck wet, indicating the taking or catching of oysters at said time, and properly equipped for catching or taking oysters with scoops, scrapes or dredges, such facts shall be prima facie evidence that said boat or vessel has been used in violation of the provisions of the law prohibiting the taking or catching of oysters with scoops, scrapes or dredges in prohibited territory, or at a season when the taking or catching of oysters with scoops, scrapes or dredges is prohibited by law, as the case may be.

Rev., ss. 2385, 2397; 1903, c. 516, ss. 13, 14, 15, 28.

61. Dredging prohibited in certain waters of Pamlico Sound; exception. It shall be unlawful for any person to use any rakes, scrapes, scoops or dredges, or any other instrument or implement other than ordinary hand-tongs, for the purpose of taking or catching oysters from the public oyster grounds or natural oyster beds in any of the waters of Pamlico Sound or its tributaries north of a line running from West Bluff Bay to the center of Ocracoke Inlet; any person found guilty of the violation of this prohibition shall be punished by a fine not less than twenty-five dollars or imprisoned not less than thirty days.

1909, c. 559.

62. Culling required; size limit. All oysters taken from the public grounds of this state, with whatsoever instrument or implement, shall be culled and all oysters whose shells measure less than two and one-half inches in longest diameter, except such as are attached to a large oyster and cannot be removed without destroying the small oyster, and all shells taken with the said oysters shall be returned to the public ground when and where taken, and no oysters shall be allowed by the inspectors to be marketed which shall consist of more than ten per cent of such small oysters and shells, except "coon" oysters and oysters largely covered with mussels: Provided, these musselled oysters must not contain more than five per cent of shells or small oysters under regulation size.

Rev., s. 2415; 1903, c. 516, s. 11; 1905, c. 525; 1907, c. 969, s. 8; Ex. Sess. 1913, c. 42, s. 1.

63. Local modification as to culling oysters in New Hanover, Onslow and Pender counties. In New Hanover, Onslow and Pender counties the preceding section is in force, except that the oysters shall be measured "from hinge to mouth," instead of in longest diameter.

Rev., s. 2415; 1903, c. 516, s. 11; 1905, c. 525.

63a. Taking uncultured oysters for planting permitted to residents. Residents of the state of North Carolina shall be permitted to take oysters without

culling from natural rocks at any time during the year for planting purposes only, in the waters of North Carolina.

1917, c. 153.

64. Unculled oysters seized and scattered on public grounds. Whenever oysters are offered for sale or loaded upon any vessel, car or train, without having been properly culled according to law, the commissioner, assistant commissioner, or inspector shall seize the boat, vessel, car or train containing the same and shall cause the said oysters to be scattered upon the public grounds, and the costs and expenses of said seizure and transportation shall be a prior lien to all liens on said boat, vessel, car or train, and if not paid on demand the officers making the seizure shall, after advertisement for twenty days, sell the same and make title to the purchaser, and after paying expenses as aforesaid pay the balance, if any, into the oyster fund. For the towing of said boat, a charge of three dollars and fifty cents per hour shall be charged against said boat for towage.

The last sentence is not applicable in New Hanover, Onslow, and Pender counties.

Rev., s. 2416; 1903, c. 516, s. 3; 1907, c. 969, s. 9.

65. Shells to be bought and scattered on public beds. The oyster commissioner is hereby empowered to expend one-half of the balance to the credit of the oyster fund on the fifteenth day of April in each year for the purpose of buying oyster shells and scattering the same on the natural oyster grounds of the state during the months of April and May.

Rev., s. 2421; 1903, c. 516, s. 20.

Part 5. Criminal Offenses Connected With Oyster Industry

66. Perjury in application for oyster license. If any person shall make any false statement for the purpose of procuring any license, which may be required by law, to catch oysters, or to engage in the oyster industry, he shall be guilty of perjury and punished as provided by law.

Rev., s. 2390; 1903, c. 516, s. 17.

67. Catching oysters without license. If any person shall catch oysters from the public grounds of the state without having first obtained a license according to law, or shall employ any person as agent or assistant, or shall as the agent or assistant of any person catch oysters from the public grounds, without all of said persons having first obtained a license according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2386; 1903, c. 516, s. 6.

68. Oyster dealing without license. If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds, or natural oyster beds of the state, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2395; 1903, c. 516, s. 9; 1915, c. 136, s. 1.

69. Use of unlicensed boat in catching oysters. If any person shall use any boat or vessel in catching oysters, which boat has not been licensed according to law, and which is not in all respects complying with the law regulating the use of such vessels, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars nor less than ten dollars or imprisoned not more than thirty nor less than ten days for the first offense, but for the second or subsequent offense he shall be guilty of a misdemeanor and punished at the discretion of the court.

Rev., s. 2387; 1903, c. 516, s. 8.

70. Failure to stop and show license. If any person using a boat or vessel for the purpose of catching oysters shall refuse to stop and exhibit his license when commanded to do so by the fisheries commissioner, assistant commissioner or any inspector, he shall be guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than fifty dollars.

Rev., s. 2389; 1903, c. 516, s. 26.

71. Displaying false number on boat. If any person shall display any other number on the sail than the one specified in their license or display a number when the boat or vessel has not been licensed, he shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars.

Rev., s. 2388; 1903, c. 516, s. 27.

72. Catching oysters for lime. If any person shall take or catch any live oysters to be burned for lime or for any agricultural or mechanical purpose, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that shells may be taken which do not contain more than five per cent of live oysters.

In New Hanover, Onslow and Pender counties the proviso to this section is not in force.

Rev., s. 2400; Code, s. 3389; 1885, c. 182; 1907, c. 969, s. 12.

73. Catching oysters Sunday or at night. If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the state at night or on Sunday, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2384; 1903, c. 516, s. 16.

74. Unloading at factory Sunday or at night. If any person shall unload any oysters from any boat, vessel or car at any factory or house for shipping, shucking or canning oysters on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector.

Rev., s. 2394; 1903, c. 516, s. 16.

75. Oyster-laden boats in canals regulated. No boat or vessel loaded with oysters shall be permitted by the inspectors of South Mills and Coinjock to pass through the canals, which do not have a certificate showing that the cargo has been inspected and the tax paid thereon.

Rev., s. 2420; 1903, c. 516, s. 17.

76. Sale or purchase of uncultured oysters. If any person shall sell or offer for sale, transport or offer to transport out of the state, or from one point in the state to another, or have in his possession any oysters, which have not been properly culled according to law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It is unlawful for any person, firm or corporation to purchase oysters which have not been properly culled according to law, and for each violation shall upon conviction be fined two hundred dollars or be imprisoned in the discretion of the court.

In New Hanover, Onslow and Pender counties the purchase of uncultured oysters is not forbidden.

Rev., s. 2392; 1903, c. 516, s. 3; 1907, c. 969, s. 5.

77. Boat captain's purchase of uncultured oysters. The captain of any run or buy boat who shall purchase oysters which have not been properly culled according to law shall upon conviction be fined two hundred dollars or imprisoned in the discretion of the court, and the having of uncultured oysters aboard of his boat shall be prima facie evidence of his having purchased them. When any person, firm or corporation shall furnish the captain of any run or buy boat with funds with which to purchase oysters, they shall not be held responsible for his acts and shall not be deemed the purchaser of such oysters.

This section is inapplicable to New Hanover, Onslow and Pender counties.

1907, c. 969, s. 5.

78. Larceny from private grounds. Any person who shall feloniously take, catch or capture or carry away any shellfish from the bed or ground of another shall be guilty of larceny and punished accordingly.

Rev., s. 2401; 1887, c. 119, s. 15.

79. Injury to private grounds; work at night. If any person shall willfully commit any trespass or injury with any instrument or implement upon any ground upon which shellfish are being raised or cultivated, or shall remove, destroy or deface any mark or monument lawfully set up for the purpose of marking any grounds, or who shall work on any oyster ground at night, he shall be guilty of a misdemeanor. But nothing in the provisions of this section shall be construed as authorizing interference with the capture of migratory fishes or free navigation or the right to use on any private grounds any method or implement for the taking, growing or cultivation of shellfish.

Rev., s. 2402; 1887, c. 119, s. 11.

ART. 5. SHELLFISH; LOCAL LAWS

80. New Hanover, Onslow and Pender: Close season for oysters. If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this state between the first day of April and the first day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs only during the month of April in any year, to be used for planting on private grounds, entered and held under the laws of this state: Provided further, that oysters may be taken with

hand-tongs only for home consumption: Provided further, that coon oysters may be taken from October first to May first of each year in the waters of Onslow and Carteret counties: Provided also, that it shall be lawful to take or catch oysters on public oyster grounds north of the line running from Point Peter to Duck Island, except between a line running from the east end of Hog Island to the beach and from Ballast Point to the beach in Dare County, to be sold to residents or nonresidents, from April first to May fifteenth of each year, upon the payment by the purchaser of a tax of one and one-half cents per tub.

This section applies only to the counties of New Hanover, Onslow and Pender.

Rev., s. 2383; 1903, c. 516, s. 22; 1905, c. 525, ss. 5, 8; 1907, c. 936, s. 4.

NOTE. See this chapter, s. 54.

81. Brunswick, New Hanover and Pender: Clams protected. It shall be unlawful for any person, firm or corporation to take clams in the counties of Brunswick, New Hanover or Pender, from any of the waters thereof, for the purpose of bedding for market or for shipment from the said counties, from the twenty-fifth day of March to the fifteenth day of December of each year: Provided, however, that citizens of the said counties shall have the privilege at all times of the year to catch clams for selling in any of the said counties, in small quantities, for table use only. It shall be unlawful for any person, firm or corporation to purchase clams in the counties of New Hanover or Pender for the purpose of shipping from the said counties, or for any person, firm or corporation to ship from the said counties of Brunswick, New Hanover or Pender any clams at any time from the twenty-fifth day of March to the fifteenth day of December of every year, and in Brunswick County from the first day of March to the first day of December of every year. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined for each offense not exceeding fifty dollars or imprisoned not more than thirty days, in the discretion of the court.

1909, c. 879; P. L. 1913, c. 805.

82. Brunswick: Clams; size limit. It shall be unlawful for any person or persons to catch any clams for use or for sale under one and one-half inches in diameter in the waters of Brunswick County; and upon conviction shall be guilty of a misdemeanor.

P. L. 1913, c. 805.

83. Brunswick: Fire on oyster beds; raking. In Brunswick County it shall be unlawful for any person or persons to build a fire upon any natural oyster bed or rock at a place where oysters are in a state of growth. It shall be unlawful for any person or persons to rake with clam rake any oyster bed or oyster rock. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

1915, c. 138.

84. Carteret: Clams in Newport River. It shall be unlawful for any person or persons, firm or corporation, between the fifteenth day of April and the fifteenth day of October of any year, to take any clams from the waters of Newport River and its tributaries, for the purpose of shipping, selling, marketing or bedding the same. Any person or persons, firm or corporation violating the

provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars for each offense, or imprisoned not exceeding thirty days, or both, in the discretion of the court.

1907, c. 840.

85. New Hanover: Catching oysters in Myrtle Grove Sound. If any person shall take or catch any oysters from Myrtle Grove Sound, from Perrine's or Whitaker's Creek to the head waters of said sound in New Hanover County, from the first day of May until the first day of September, except for his own consumption, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than twenty days.

Rev., s. 2426; Code, s. 3423; 1883, c. 358, ss. 1, 2.

86. New Hanover: Clams in Masonboro Sound. It shall be unlawful for any person or persons to use any rake or other instrument with more than two prongs for the purpose of taking clams from any natural oyster rock or the other waters of Masonboro Sound, in the county of New Hanover, between what is known as Fowler's Landing to Cockle Shell Point, in said county, a distance of about one mile. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 521.

87. Onslow: Catching oysters and clams in certain waters. It shall be unlawful for any person to take or catch any oysters or clams from the natural oyster beds heretofore staked off and defined by the shellfish commissioners of Onslow County, or from any ground, between the first days of April and October of each year, lying north of the following lines, to wit: Beginning at triangulation point "Mount Millow," on the western shore of New River, and running thence eastwardly to triangulation point "pond," the eastern shore of New River. It shall be unlawful for any person during the months of May, June and July of each year to take or catch oysters or clams from the natural oyster beds within the grounds lying south of the line mentioned above. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction or confession in open court shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It shall be the duty of the fisheries commissioners to keep the lines marking the natural oyster beds in said waters properly marked and staked off.

1907, c. 949.

88. Onslow: Catching oysters in Stump Sound. It shall be unlawful for any person, firm or corporation to catch, take or carry away from the oyster beds in the waters of Stump Sound, in Onslow County, between Alligator Bay and the Pender County line, any oysters except for home consumption between the first day of March and the twenty-fifth day of October in any year. Any person, firm or corporation violating this section shall, upon conviction, be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court.

1915, c. 130.

89. Onslow: Clams in Brown Sound and Queen's Creek. It shall be unlawful for any person, firm or corporation to catch or take any clams from the waters herein described between the first day of April and the first day of October. Said territory shall be as follows: Beginning at the mouth of Queen's Creek, in Onslow County, and running the various courses of the said Queen's Creek channel to Bogue Inlet, including all the waters south of said channel to the Horse Ford, between Brown Sound and New River: Provided, this shall not be so construed as to prohibit any one from catching clams for their own table use only. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 514.

ART. 6. TERRAPIN

90. Drag-nets prohibited to nonresidents. If any person who is not a citizen and who has not resided in the state continuously for the preceding two years shall use any drag-net or other instrument for catching terrapin he shall be guilty of a misdemeanor.

Rev., s. 2369; Code, ss. 3375, 3376.

91. Diamond-back terrapin protected. If any person shall take or catch any diamond-back terrapin between the fifteenth day of April and the fifteenth day of August of any year, or any diamond-back terrapin at any time, of less size than five inches in length upon the bottom shell, or shall interfere with, or in any manner destroy any eggs of the diamond-back terrapin, he shall be guilty of a misdemeanor, and 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 apply to parties empowered by the state to propagate the said diamond-back terrapin; and the possession of any diamond-back terrapin between the fifteenth days of April and August shall be prima facie evidence that the person having the same has violated this section. It shall be the duty of all sheriffs and constables to give immediate information to some justice of the peace of any violation of this section.

Rev., s. 2370; Code, s. 3377; 1899, c. 582; 1881, c. 115, ss. 1, 6.

92. Local—Carteret: Diamond-back terrapin. Any bona fide citizen of Carteret County is empowered to cultivate and propagate the diamond-back terrapin at one place in the waters of Carteret County: Provided that he shall not interfere with the eggs laid by the wild diamond-back terrapin in its natural haunts, and that no undersized terrapin shall be taken for any purpose during the closed season prescribed by law in regard to catching terrapin.

The grantee of the privilege conferred by this section shall cultivate and propagate the diamond-back terrapin in a manner approved by the United States bureau of fisheries. If at any time the said grantee violates any of the laws of North Carolina regarding diamond-back terrapin the privilege hereby conferred shall cease and he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

Pr. 1913, c. 402; P. L. Ex. Sess., 1913, c. 58.

SUBCHAPTER III. FISH OTHER THAN SHELLFISH

ART. 7. SALT FISH AND FISH SCRAP

93. Inspectors for salt fish; duties; fees. The board of county commissioners of every county where fish are packed for sale or shipment shall appoint and qualify one or more sworn inspectors of fish at or near all packing localities, whose duty it shall be to inspect all salt fish packed for sale or shipment; and all barrels, half-barrels and packages of fish inspected and approved by them shall be branded with the word "inspected" and the name of the inspector. Said board shall regulate and prescribe the duties, powers and fees of said inspector, which fees shall not exceed five cents per barrel of two hundred pounds net and two and one-half cents per half-barrel of one hundred pounds net and smaller packages, to be paid by the shipper. This section shall not apply to fishermen who may sell their fish to packers and shippers by weight or otherwise, as they may agree: Provided, that in any county where the board of county commissioners have not already appointed an inspector as is provided in section one of said act, that upon a petition of two or more persons it shall be mandatory upon the said board of county commissioners to immediately appoint an inspector in accordance with the provisions above. Upon failure to do so for five days after said petition has been filed, said board shall be guilty of a misdemeanor: Provided, said petition be filed with the clerk of the board of commissioners five days before regular meeting of said board, and upon conviction shall be fined not less than five nor more than fifty dollars for each member or be imprisoned not more than thirty days.

1909, c. 663, s. 1; 1911, c. 171.

94. Salt fish sold by weight; marked on package. All salt fish packed for market shall be sold at their net weight, which shall be marked on every package; and any person packing or offering for sale salt fish, fraudulently marking the net weight on the package, shall for each offense be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, or both, at the discretion of the court.

1909, c. 663, s. 2.

95. Salt mullet; special marking. Each package of salt mullets packed and offered for sale shall be marked or stamped "large," "medium" or "small," and all packages containing any other kind of fish shall be marked plainly the name of the fish contained, and any person who shall pack as principal or shall have the same done by others for him shall be deemed the packer and shall stamp his name and place of packing, together with net weight and size of fish, as prescribed in this section, on the head of each package before offering for sale or shipment, and on failure to pack and stamp as herein prescribed, or to pack or stamp said package falsely, so as to misrepresent the weight or size of the fish in said package, shall be guilty of a misdemeanor and fined not less than five nor more than fifty dollars for each offense, and may be imprisoned at the discretion of the court, not to exceed thirty days: Provided, this section shall not apply to packages containing less than fifty pounds net fish: Provided further, this section shall not apply to fishermen themselves, but shall apply only to mer-

chants and others who may be classed as packers or brokers, within the proper meaning of the term.

1909, c. 663, s. 3.

96. Measures for fish scrap and oil. For the purpose of uniformity in the trade of manufacturing fish scrap and oil in the state of North Carolina, there is hereby established a standard measure of twenty-two thousand cubic inches for every one thousand fish. Any person, firm, corporation or syndicate buying or selling menhaden fish for the purpose of manufacturing within the borders of this state, who shall measure the fish by any other standard (more or less) than is prescribed in this section, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. Each day said measure is unlawfully used shall constitute a separate and distinct offense.

1911, c. 101.

ART. 8. COMMERCIAL FISHING; GENERAL REGULATIONS

97. Right of fishing in grantee of land under water. Whenever any person acquires title to lands covered by navigable water under the subchapter Entries and Grants of the chapter entitled State Lands, the owner or person so acquiring title has the right to establish fisheries upon said lands; and whenever the owner of such lands improves 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, 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. This section shall apply where the owner of such lands shall erect platforms or structures of any kind thereon to be used in fishing with nets and seines. Every person who shall willfully destroy or injure the said platforms or structures, or shall interfere with or molest the owner in the use of such lands as aforesaid, or in any other manner shall violate this section, shall be guilty of a misdemeanor. This section shall not relieve any person from punishment for the obstruction of navigation.

Rev., s. 2460; Code, s. 3354; 1874-5, c. 183, ss. 1-6.

98. Seines prohibited to nonresidents; exceptions. If any person who has not resided in the state continuously for at least twelve months next preceding the day on which he shall begin to take fish shall use, or cause to be used, in any of the waters of the state, any weir, hedge, net, or seine, for the purpose of taking fish for sale or exportation, or if any person shall assist in using, or be interested in using or causing to be used, in any such waters for the purpose aforesaid, any weir, hedge, net, seine or tongs in the use of which any such non-resident person may have an interest, he shall be guilty of a misdemeanor. Nothing herein shall prevent any person from fishing with seines hauled to the shore at any fishery, the title to which fishery or any interest therein having been acquired by such person by purchase or inheritance. This section shall not

extend to servants employed to fish by any persons allowed to fish in the navigable waters of the state. No nonresident of the state shall make any sale, assignment or transfer of any fishery, weir, or other fishing apparatus, or privilege mentioned in this section, to any citizen of the state for the purpose of operating and working said fishery, weir, or other fishing apparatus as aforesaid, under the name and ownership of such citizen, or as the servant or employee of any citizen; and any sale, transfer or assignment not made bona fide and for a full consideration, shall be null and void.

Upon affidavit founded upon information and belief that any nonresident of the state is operating any such fishery, weir, or other fishing apparatus as aforesaid in the waters of the state, under such sale, assignment or transfer, as the pretended servant or employee of any citizen of the state, it shall be the duty of the justice of the peace before whom said affidavit is made, to issue a warrant against the said nonresident and citizen under whose name said fishery is operated, and upon conviction the said offenders shall be guilty of a misdemeanor, and shall, for every offense, be fined not more than fifty dollars, or imprisoned not more than thirty days. Upon the said trial, the burden of proof shall be on the defendants to prove the bona fides and full consideration of said sale or transfer.

Rev., s. 2467; Code, ss. 3379, 3380; R. C., c. 81. s. 5; 1844, c. 40, s. 1; 1876-7, c. 33; 1883, c. 171.

99. Menhaden fishing forbidden to nonresidents. It is unlawful for any person, firm, or corporation, not a citizen or resident of the state of North Carolina, to catch, capture, or otherwise take any menhaden or fatbacks within the waters of the state of North Carolina to the extreme limits of the state's jurisdiction in and over said waters; and for the purposes of this act the following boundaries are hereby declared to be the boundaries to which the waters of the said state extend, to wit: a distance of three nautical miles, measured from the outer beach or shores of the state of North Carolina out and into the waters of the Atlantic Ocean; and any portions or portion of any water within a distance of three nautical miles from said waters of the Atlantic Ocean to any beach or shore of said state shall be deemed, for the purposes of this act, within the waters of said state: Provided, that any citizen or resident of the state of North Carolina, whether person, firm, or corporation, may take, capture, or catch any menhaden or fatbacks at any time, subject to existing laws.

It is unlawful for any nonresident person, persons, firm, or corporation knowingly to buy, cook, or manufacture into fertilizer any menhaden or fatbacks caught, taken, or captured contrary to the provisions of the above.

Any person, persons, firm, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction in any county opposite the place at which said act is done, shall be fined not less than twenty-five hundred dollars or imprisoned for two years, or both, in the discretion of the court: Provided, that each catch, or taking, or purchase, or act of manufacture, shall constitute a distinct and separate offense.

It is the duty of the fisheries commissioner or assistant commissioner, whenever an affidavit is delivered to him stating that the affiant is informed and believes that said act is being violated at any particular place, to go himself or send a duly authorized deputy to such place, investigate the same, and such officer

shall seize and remove all nets, machinery, or other appliances and paraphernalia setting or being used in violation of this section, sell same at public auction and apply the proceeds of such sale to the payment of costs and expenses of such removal, and pay any balance remaining into the school fund of the county nearest to the place where the offense is committed.

1911, c. 102.

100. Menhaden fishing with nets regulated. If any person shall catch any menhaden or fatbacks within the waters of the state of North Carolina, to the extreme limits of the state's jurisdiction as defined in the preceding section in any purse net or purse seine with a bar of less than one inch and with a mesh of less than two inches, or shall knowingly cook or manufacture for fertilizer any menhaden or fatbacks caught in any net or seine having bars of less than one inch or having meshes of less than two inches at any place within the state of North Carolina, he shall be guilty of a misdemeanor, and for each and every offense shall be fined not less than five hundred dollars or imprisoned for one year, or both, in the discretion of the court. Every person found fishing for menhaden or fatbacks within three miles of the shore of any county, shall be presumed to have violated this section. And all such persons, firms or corporations shall be subject to all the pains and penalties denounced in this section, and they may be prosecuted in the courts of any county in this state. All persons aiding and abetting shall be guilty as principals.

This section is inapplicable to the counties of Dare, Brunswick, Pender, and New Hanover.

Rev., s. 2438; 1905, cc. 274, 508.

101. Poisoning streams. If any person shall put any poisonous substance for the purpose of catching, killing or driving off any fish in any of the waters of a creek or river, he shall be guilty of a misdemeanor.

Rev., s. 3417; Code, s. 1094; 1883, c. 290.

102. Fish offal in navigable waters. If any person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the state, any fish offal, in any quantity that shall be likely to hinder or prevent the passage of fish along such channel, or if any person shall throw or cause to be thrown into the waters known as the Frying Pan, tributary to the Great Alligator River, in Tyrrell County, any fish offal in any quantities whatsoever, he shall be guilty of a misdemeanor.

Rev., s. 2444; Code, ss. 3386, 3389, 3407.

103. Sunday fishing. If any person fish on Sunday with a seine, drag-net or other kind of net, except such as is fastened to stakes, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months.

Rev., s. 3841; Code, s. 1116; 1883, c. 338.

NOTE. This section does not apply to Onslow County so far as established seines are concerned. 1885, c. 171; 1889, c. 23.

104. Robbing nets. If any person shall, without authority of the owner, take any fish from any nets of any kind, he shall be guilty of a misdemeanor.

Rev., s. 2478; Code, s. 3418; 1883, c. 137, s. 5.

105. Vessel injuring nets. If any master or other person having the management or control of a vessel or boat of any kind, in the navigable waters of the state, shall willfully, wantonly, and unnecessarily do injury to any seine or net, which may be lawfully hauled, set or fixed in said waters for the purpose of taking fish, he shall forfeit and pay to the owner of such seine or net, or other person injured by such act, one hundred dollars, and shall be guilty of a misdemeanor.

Rev., s. 2465; Code, ss. 3385, 3389.

NOTE. Fishing without permission, see Game Laws.

106. Injury to fishing structures. If any person shall willfully destroy or injure any platform or structure on any land covered by navigable waters, which land has been duly entered and granted and over which the owner has, according to law, acquired a prior right of fishery, or shall interfere with or molest the owner in the use thereof or of said prior right of fishery, he shall be guilty of a misdemeanor. If any person shall willfully destroy or injure any platform or structure erected in any navigable water by the owner of the adjoining land for the purpose of drawing or hauling nets or seines thereon, or shall interfere with or molest the owner in the use of any such lands, he shall be guilty of a misdemeanor.

Rev., ss. 3414, 3415; Code, s. 2753; 1874-5, c. 183, ss. 2-4.

107. Obstructing passage of fish in streams. If any person shall set a net of any description across the main channel of any river or creek, or shall erect, so as to extend more than three-fourths of the distance, across any such river or creek any stand, dam, weir, hedge or other obstruction to the passage of fish, or shall erect any stand, dam, weir, or hedge, in any part of any river or creek that may be left open for the passage of fish, or who, having erected any dam where the same was allowed, and shall not make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish, he shall be guilty of a misdemeanor: Provided, that this section shall not apply to the creeks in the sound between Bogue Inlet, and Brown Inlet, in Onslow County, except the main channel thereof.

Rev., s. 2457; Code, ss. 3387, 3388, 3389; 1909, c. 466, s. 1.

108. Dams for mills and factories regulated; sluiceways. No person shall place or allow to remain any dam for mill or factory purposes 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 the Cashie River to the Virginia line; in the Dan River from the crossing of the state line to a point nearest Danbury; in the Neuse River from New Bern 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 Asheboro road; in the New Hope River from its mouth to the Orange County line; in Northeast Cape Fear River from Wilmington to South Washington; in Black River from its mouth to the junction of the Coharie; in the South River from its junction with the Black River to the crossing of the Fayetteville and Warsaw public road; in Lumber River from

the state line to the northern boundary of Robeson County; in the Yadkin River from the state line to Patterson's factory; in Elk Creek, a tributary of the Yadkin River, from its mouth to Daniel Wheeler's in Watauga County; in Stony Fork Creek, a tributary of the Yadkin River, from its mouth to John Jones's old store; in Ararat River from its mouth to the bridge at Mount Airy; in North Fork of Catawba from its mouth to Turkey Cove; in Broad River from the state line to Reedy Patch Creek; in Green River from its mouth to its junction with North Pacolet; in the Tennessee River from the state line to its junction with the Nantahala; in Pigeon River from the state line to the Forks of Pigeon; in the French Broad River from the state line to Brevard and in the Swannanoa River; in Toe River from the state line to the confluence of the North and South Forks of Toe; in New River from the state line to the point of divergence from the western boundary line of Alleghany County; in Little River in Johnston County from its junction with Neuse River in Wayne County to the Wake County line; in Cane River from the mouth of same to mouth of Bolling Creek in Yancey County, also Old Fields of Toe on North Toe River in Mitchell County; Johns River from its mouth to the forks of said river near Carrell Moore's in Caldwell County; Catawba River from the South Carolina line to the town of Old Fort in McDowell County, unless the owner thereof shall construct thereon at his own expense a sluiceway for the free passage of fish, of a width not less than three feet nor more than ten feet: Provided, such sluiceway shall be constructed according to plans and specifications to be furnished by the board of agriculture, and shall not injure the water-power of such owner: Provided further, in order to ascertain whether sluiceways will or will not injure the water-power aforesaid the owner of such dam may select two disinterested persons and the board of agriculture two others, who may select the fifth person to aid in the arbitration and settlement of such complaint: Provided further, this section shall not apply to Pigeon River in Haywood County: Provided also, it shall be lawful for any person to remove any obstruction in the main channel of the Cape Fear River to the width of one hundred feet, for the free passage of fish in the county of Harnett. This proviso, however, shall not apply to any dam or obstruction placed or kept upon said river by the Cape Fear Iron and Steel Company.

Rev., s. 2462; Code, s. 3410; 1901, c. 208; 1880, c. 34; 1881, cc. 21, 32, 250, 320; 1905, c. 278; P. L. 1913, c. 758.

109. Sluiceways and fish passages; regulation and enforcement. The sluiceways referred to in the preceding section shall be so constructed and placed upon such dams by the owner thereof within sixty days after notice has been given by the board of agriculture, under a penalty of one hundred dollars per day for each day thereafter that such dam shall remain without such sluiceway, and shall be kept open by him during the months of February, March, April, May, June, October and November, and at all other times when there is sufficient water to supply both the water-power and the sluiceway, a fine of fifty dollars per day for each day said sluiceway shall be allowed to remain closed, and any person who shall fish with net, trap, hook and line, or who shall take in any way whatsoever any fish within two hundred feet of said sluiceway shall be subject to a fine of one dollar for each fish so taken, or a fine of fifty dollars for each offense, or imprisonment for thirty days.

No other obstruction to the passage of fish shall exist or be built between the designated points in the streams mentioned in this and the preceding section unless an opening of not less than twenty-five feet, and not more than seventy-five feet, embracing the main channel of said streams, shall be made by the owner of such obstructions within twenty days after notice from the board of agriculture to make such opening under penalty of fifty dollars per day for each day such obstruction shall remain unopened. Said notice shall be served by the sheriff of the county, and his return shall be *prima facie* evidence of notice in any suit for such penalty.

Rev., ss. 2463, 2464; Code, ss. 3411, 3412; 1880, c. 34, ss. 2, 3.

NOTE. See further as to obstructing streams and fish passages, Rivers and Creeks. ss. 5, 15.

ART. 9. COMMERCIAL FISHING; LOCAL REGULATIONS

Part 1. Sounds and Inlets

110. Inlets; nets in, regulated. If any person shall set any pound net, dutch net or hedge net within two miles of Oregon Inlet or Hatteras Inlet or within ten miles of New Inlet in Dare County, or shall between the first day of January and the first day of May following of any year, set or operate any seine or stationary nets of any kind in the main channels within three miles of the inside mouths of Ocracoke, Hatteras, Oregon, or any other inlet north of Ocracoke Inlet, connecting the waters of the Atlantic Ocean with any of the sounds or other inland waters, or shall fish with seines or nets of any description in the waters of Bear Inlet or Brown's Inlet or within one mile of Bear Inlet or Brown's Inlet, on the eastern or western beach of said inlets, except at regularly established fisheries on said Bear or Brown's inlet beaches, or shall fish with seines or nets on the inside of said Bear or Brown's inlet within one-fourth mile of said inlets between the first day of October and the first day of April, he shall be guilty of a misdemeanor.

Rev., s. 2450; 1893, c. 216; 1903, c. 724; 1903, c. 416.

111. Pamlico and sounds to the north; net stakes to be removed. Every person who shall set or use any net in the waters of Pamlico, Croatan, Currituck or Albemarle sounds or their tributaries, except Perquimans River, shall be required to pull up and remove their broken, decayed and abandoned net stakes within thirty days from the day the nets were taken from them, and not later than the first day of June, and any person failing to pull up and remove their stakes, as required by this section, shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 2448; Code, ss. 3382, 3414; 1883, c. 69; R. C., c. 81, s. 8; 1844, c. 40, s. 7; 1852, c. 13; 1893, c. 147; Ex. Sess. 1908, c. 19, s. 1.

NOTE. For Currituck County, the above section is applicable, except that the words "broken, decayed and abandoned" before "net stakes" are omitted. Ex. 1908, c. 19.

112. Pamlico, Croatan, and Albemarle sounds and inlets; fishing regulated. If any person shall set or fish any net, seine or appliance of any kind for catching fish at any place within a radius of two and one-half miles either way from Roanoke Marshes lighthouse, at a distance more than five hundred yards from the shore of Roanoke Island or the mainland on the western side of Croatan and

Pamlico sounds, except that on the western side of Pamlico and Croatan sounds fishing shall be permitted in that territory extending one thousand yards from the shore, beginning at the two-and-one-half-mile limit heretofore defined and extending to the southern end of the Roanoke Marshes, on the Pamlico Sound side, and to the north end of the same marshes of the Croatan side, but in neither case shall the nets within this one-thousand-yard limit be within one and one-quarter miles in any direction from the Roanoke Marshes lighthouse; or shall set or fish any pound or dutch net on the eastern side of Pamlico Sound within ten miles of the Roanoke Marshes lighthouse, except such as shall be fished within one thousand yards of Roanoke Island or Hog Island shores; or shall set or fish any dutch or pound net on the eastern side of Pamlico Sound more than two thousand yards west of a line running south-southeast (magnetic) from Big Island to a point on the twelve-foot curve westerly of Chicamacomico or south of said point more than two thousand yards from the twelve-foot curve, as marked on the chart of the coast and geodetic survey, corrected from data obtained to November twenty-second, one thousand nine hundred and four; or shall set or fish any dutch or pound net on the west side of Pamlico Sound, in said sound, extending into the water more than two thousand yards from the shore; or shall set or fish any pound or dutch net in Croatan Sound farther from the shore than one-fifth of the width of said sound at that point; or shall set or fish any net, seine or appliance of any kind for catching fish at any place within the area of one-sixth the width of the sound or river on either side of a line passing through the middle of the channel of Croatan Sound and the middle of Albemarle Sound, up Chowan River as far as Cannon's ferry, and other tributaries of Albemarle Sound (provided, this clause does not apply to seines used on the rivers); or shall set or fish any pound or dutch net in the Albemarle Sound more than two thousand yards from the shore of the mainland, or in Chowan River farther from the shore than one-third of the width of said river, at the place where said nets are fished or set, or within one-fourth mile of any wharf used by a steamer on said river; or shall set or fish any net or appliance of any kind for catching fish within one mile on either side of a line running westerly or southwesterly from the center of New Inlet to an intersection with the line extending from Big Island southwest (magnetic), or within one mile on either side of a line running westerly or southwesterly from the center of Oregon Inlet to a point two thousand yards west of the continuation of the said line running from Big Island south-southeast (magnetic), or within one mile on either side of a line six miles long running from the center of Hatteras Inlet in a northwesterly direction, these restricted areas to include the channels extending from Oregon, New and Hatteras inlets, respectively, he shall be guilty of a misdemeanor and be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. The provisions of this section shall apply only to that part of each year in which shad and herring fishing are permitted by law in the several waters, except that in Albemarle and Croatan sounds the provisions of this section shall apply for the entire year, as far as it relates to pound nets. The fisheries commissioner is authorized, in determining the boundaries of the restricted areas on either side of Roanoke Marshes, to run straight lines from the stake two thousand yards from the shore in the two-and-one-half-mile radius from Roanoke Marshes lighthouse to the stake five hundred yards eastward from the point of Roanoke Marshes, and shall run straight lines from the stake one-fifth the width of Croa-

tan Sound in the two-and-one-half mile radius from Roanoke Marshes lighthouse south to the stake five hundred yards from the eastward point of Roanoke Marshes; that the boundary lines marking the restricted areas in these sounds shall be run in straight lines from stake to stake, located at certain points, but said stakes not to be in any case more than three miles apart. The place of trial for offenses under this section shall be the county opposite where the act was committed.

It is the duty of the fisheries commissioner, or any of his assistants or deputies, whenever a complaint is made to him, either orally or in writing, stating that any of the laws relating to fish or fisheries are being violated at any particular place, to go himself or send a deputy to such place and investigate same, and he shall seize and remove all nets or other appliances set or being used in violation of the fisheries laws of the state, sell same at public auction after advertisement for twenty days at the courthouse and three other public places in the county in which the seizure was made, and apply the proceeds of sale to the payment of costs and expense of such removal, and pay any balance remaining, to the school fund of the county nearest to where the offense is committed. And the failure of the fisheries commissioner or his deputies to perform the above prescribed duty shall render his bond liable to a penalty of five hundred dollars, one-half to go to the informant and the other half to be paid to the school fund of the county in which the action is brought.

Rev., s. 2440; 1905, c. 292; 1909, c. 540, s. 3; 1911, c. 18.

113. Albemarle and Croatan sounds and inlets; drift nets. If any person shall drift or fish any drift nets between the first day of February and the first day of May of any year, within two miles of the mouth of any river emptying into Albemarle Sound, or within three miles of any seine-beach on the Albemarle or Croatan sounds while being fished, or within ten miles of Ocracoke, Hatteras, Oregon or New inlets, or within ten miles of the Roanoke Marshes, he shall be guilty of a misdemeanor, and be fined not less than fifty dollars or imprisoned not less than thirty days: Provided, the people of Dare County shall be allowed to use drift nets for herring.

Rev., s. 2446; Code, s. 3396; 1881, c. 274, ss. 1, 2; 1883, c. 145.

114. Albemarle Sound and tributaries; nets and net stakes. No person shall set or fish any dutch net or pound net in Roanoke River, Cashie or Middle and Eastmost rivers, or within two miles of the mouth of said rivers, or within one mile of the mouth of any other river emptying into Albemarle Sound, or less than two miles in width at its mouth, and any such net set within one mile of the mouth of any other river emptying into said sound shall not extend into the main channel at its mouth. No person shall set or fish with a dutch net or pod net within half a mile to the eastward or westward of the outside windlasses or snatch-blocks of any seine fishery in operation on said sound; and any such net set or fished within one mile of such windlasses or snatch-blocks of any seine fishery in operation shall run at right angles to the shore from the shore, and shall not extend further into the sound from the water's edge than the distance from such windlasses or snatch-blocks to the line of such net; and all persons who shall set or fish any such net in said sound shall pull up and remove the stakes used for the same by the first day of June next succeeding the fishing

season, and if any person shall set or fish any dutch net or pod net in said sound in violation of this section he shall be guilty of a misdemeanor, and be subject to a penalty of three hundred dollars: Provided, that dutch nets may be used in Cashie River two and one-half miles from its mouth, if they do not extend more than one-third the width of said river from the shore, and such nets may be along the sound shore on the Bertie County side between the following points along said shore, to wit: commencing at the mouth of Cherry Tree Cut Branch, Kentrock field and Landing field, and running around the shore to the mouth of Morgan Swamp, thence to Rock Spring Branch, and that any nets set or fished within that line shall not extend from the shore in any direction a greater distance than six hundred and fifty yards measured at high water, and within this distance of six hundred and fifty yards is to be included the nets, hedges and all parts thereof.

Rev., s. 2439; Code, s. 3383; 1889, c. 122; 1891, c. 322; 1895, c. 245; 1899, c. 310; 1899, c. 412; 1909, c. 540, s. 2; 1911, c. 23.

115. Albemarle Sound in certain parts; gill nets. It is unlawful to set, fish or use any gill nets of any description, either stake, anchor or drift, for commercial purposes in the Albemarle Sound west of a line drawn straight from Batt's Island on northern side of Albemarle Sound to mouth of Scuppernong River on south side of said sound, except between the hours of four o'clock and eleven o'clock p.m., and then said nets or combinations of such nets shall not be more than six hundred yards in length and there shall not be allowed to any boat more than six hundred yards of such gill nets.

It is the duty of the fisheries commissioner or other persons entrusted with the enforcement of the fishery laws of the state to seize and remove any gill net of any description being set, setting or being used in violation of this act, or which is more than six hundred yards in length, and to dispose of the same as provided by law.

It is the duty of the fisheries commissioner to keep a deputy, assistant or inspector on the waters of Albemarle Sound to enforce this section and the other fish laws applicable to Albemarle Sound, and the failure of the fisheries commissioner to perform this duty shall render his official bond liable to the penalty prescribed in the third preceding section which regulates fishing in Pamlico, Croatan and Albemarle sounds and inlets.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars (one-half to go to the informant and the other half to the school fund), or imprisoned in the discretion of the court.

1911, c. 18; 1913, c. 43.

116. Albemarle Sound off Tyrrell County; gill nets. It is unlawful for any person, firm or corporation to set or use for catching fish any anchor gill net within fourteen hundred yards of any stake gill net of from four and one-half inch to five and one-half inch mesh, in that part of the Albemarle Sound embraced in the following area: Commencing on the east shore of the Scuppernong River where said river empties into the Albemarle Sound, thence north to the middle of the Albemarle Sound, thence along the middle of the Albemarle Sound to a point in the sound opposite Newberry Pier, thence to the shore at Newberry Pier, and along the sound shore to the beginning. Any person, firm

or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned for not more than thirty days.

1915, c. 112.

117. Albemarle Sound in certain parts; anchor, drift and stake nets. If any person shall set or fish an anchor, drift or staked gill net in the waters of Albemarle Sound or its tributaries west of a line running from Skinner's Point buoy to Roanoke lighthouse, or if any person shall east of said line set or fish in the waters of said sound or its tributaries any anchor, drift or staked gill net longer than one thousand yards, or combination of such nets longer than one thousand yards; or shall set or fish any anchor, drift or staked gill nets within one and one-half miles of any seine grounds on the said sound or rivers emptying therein or within one-half mile of any dutch net stand where the same is now located in said sound or rivers, unless said seine ground or dutch net stand is owned by the person setting such nets; or shall set or fish any line or row of anchor, drift or staked gill nets anywhere in said sound or rivers nearer to any other row of such nets than half the length of the longer of said row he shall be guilty of a misdemeanor and shall be fined not exceeding one hundred dollars or be imprisoned not more than thirty days. And any person who shall willfully violate the provisions of this section shall forfeit and pay for each violation of the same the sum of one hundred dollars to be recovered in a civil action by any one who will sue therefor; one-half of said recovery shall inure to the benefit of the public school fund: Provided, that nothing in this section shall prevent the setting of gill nets in the Chowan River or its tributaries above Holliday's Island: Provided further, that one-third of said stream, along the channel shall be kept free from any class of net: Provided further, that no pound net shall be set within one hundred yards of any other pound net set by another person in Chowan River, north of Holliday's Island.

Rev., s. 2451; 1897, c. 51; 1899, c. 41; 1899, c. 130; 1911, c. 104.

118. Albemarle Sound; nets near wharves or Norfolk Southern Railroad bridge. It is unlawful to set any pound or dutch nets in Albemarle Sound nearer to either side of the Norfolk Southern Railroad bridge across said sound than three hundred yards, or to set any stake, drift, or anchor gill nets nearer to either side of said bridge than one-half mile. It is unlawful to set any net of any description in front of a wharf, that is, between the pier of any wharf now used as a landing for any steamboat and the middle of the stream on which the wharf is built. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court.

1911, c. 163.

119. Croatan marshes: nets and fishing apparatus near. If any person, for the purpose of taking fish, shall between the first day of February and the first day of May, of the same year, use or cause to be used, at or within half a mile of the marshes separating the waters of Croatan and Pamlico sounds, any weir, hedge, net or seine, he shall be guilty of a misdemeanor.

Rev., s. 2424; Code, s. 3378; R. C., c. 81, s. 4; 1844, c. 40, s. 3.

120. Currituck Sound; nets used regulated. It is unlawful for any person or persons, firm or corporation to fish in the waters of Currituck Sound with a drag, haul, seine or any other kind of net of whatsoever kind with a bar of less than one and three-eighths inches, or a mesh of less than two and three-quarters inches. Any person or persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned more than thirty days, in the discretion of the court.

1913, c. 29.

121. Pamlico Sound; nets to be set north and south. Every net (unless the same be a drag-net and hauled to the shore), which may be used for catching shad in that portion of the waters of Pamlico Sound, lying between a line drawn eastwardly from Stumpy Point and Mount Pleasant in Hyde County to a point ten miles south of Hatteras Inlet in said sound, shall be set and fixed in said waters, in a direction from north to south, and shall not be used in any other manner; and any person offending against this section shall, for every offense, forfeit five dollars.

Rev., s. 2433; Code, s. 3381; 1889, c. 261; R. C., c. 81, s. 7; 1844, c. 40, s. 6.

122. Pamlico Sound, tributaries, rivers and waters of Carteret County; nets regulated. There shall be no pound or other tarred nets with a mesh smaller than one and one-half inches bar, before tarring, fished in Pamlico, Tar, and Neuse rivers, Pamlico Sound and the waters of Carteret County, and there shall be no pound or stake nets fished within three miles of the inside mouths of Ocracoke Inlet nor in the principal channel or channels of said inlet nor within one mile of said channel or channels until the said channel or channels reach deep water, at any time, and the other inlets north of it shall be left under section 112 of this chapter. No stake or pound net which shall be fished in any of the waters mentioned in this act, without being tarred, shall have a mesh of less than one and three-eighths inches bar. The bunt, which must not be longer than thirty yards, of all seines and haul-nets fished in the waters of Pamlico, Tar and Neuse rivers and Pamlico Sound shall not be smaller than one and one-eighth inches bar net, but nothing herein shall apply to nets fishing for menhaden. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars and imprisoned at the discretion of the court: Provided, this section shall apply only to that part of the year beginning January fifteenth and ending May fifteenth.

1907, c. 948, ss. 1-4; 1909, c. 540, s. 4.

123. Pamlico Sound; waters of Pamlico County; nets regulated. It is unlawful for any person or association of persons or corporation to set or cause to be set, fish or cause to be fished in Pamlico Sound from the mouth of Bay River to Neuse River and in Neuse River, more than four pound, pod or dutch nets in any one string, with leads of more than two hundred yards in length for each pound or net, or at a greater distance than one and one-half miles from the shore at right angles or thereabouts from the place opposite where such net may be set; and it is unlawful for any person, association of persons or corporation to set or cause to be set any pound, pod, or dutch net or string of nets of any kind, or fish any such nets nearer to a net or string of nets already set and being fished than five hundred yards, and no pound, pod, or

dutch net nor any lead thereto shall be set other than at right angles or thereabouts from the short. It is unlawful for any person or persons, firm or corporation to use, set or fish any drag or haul net in the waters of Smith's Creek or its tributaries in Pamlico County.

It is unlawful for any person or persons or corporation to set or fish or cause to be set or fished any pound, pod, or dutch net in the waters of Pamlico County on the south or east side thereof or in Neuse River, of a size smaller than one and one-quarter mesh or bar measure or two and one-half inches string measure.

Any person, persons or corporation who shall violate any of the above provisions shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court, and shall also forfeit such net or nets any portion of which may be set beyond such distance from the shore or set in any manner or place forbidden in this section.

It is the duty of the sheriff of Pamlico County, upon reliable information that any person or persons or corporation has set or caused to be set any pound or dutch net, or that any portion of any such net has been set at a greater distance than one and one-half miles from the shore from the mouth of Bay River to Neuse River and from Neuse River to Baird's Creek, or nearer than five hundred yards to any nets already set, to ascertain the truth thereof, and if such report be correct, take into possession at once any such net so set, and after ten days public notice at three public places in his county sell the same at public sale, and from the proceeds he shall retain the actual cost of taking such net, and a fee for services of two and one-half dollars and the remainder of said proceeds he shall pay one-half to the informer and the other to be paid to the county treasurer, who shall place the same to the credit of the public school fund of the county.

It is lawful for any person or persons to set pound, pod, or dutch nets in the manner prescribed in this section in the waters of Pamlico County and in Neuse River upon the north side thereof from its mouth to Baird's Creek, at any time during the year, and from the northern end of outer Swan Island to Adams Creek on the south side of Neuse River, from the first day of January to the first day of May.

P. L. 1913, c. 752, s. 5.

124. Roanoke Sound; nets in. It is unlawful for any person or persons to set any pound nets or any other kind of nets east of a line beginning at a point one thousand yards east of Hog Island Point and running direct to a point two hundred yards east of Broad Creek Point; thence following the east shore of Roanoke Island to Ballast Point; or set or fish any pound or dutch nets or any other kind of net in that portion of Roanoke Sound north of a line extending from Ballast Point east ten degrees north further from the shore than one-fifth of the width of said sound. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. This section shall not prevent the setting of pound nets inside of Shallow Bag Bay, and shall apply only to that part of each year in which shad and herring fishing is permitted by law in the several waters.

1911, c. 26.

Part 2. Streams

125. Black River; fishing regulated. It is unlawful for any person or persons to catch or take fish, either by rod or hook, seines, nets, striking, muddying the pools or lagoons, feeling by hand, gigging or in any other method or in any manner whatsoever, during the months of May, June, July and August, excepting Tuesday and Friday of each week in each year, in the waters of Black River and its tributaries, in the counties of Pender and Bladen. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not less than five dollars nor more than ten dollars or imprisoned not more than thirty days, one-half of the fine to be paid to the informer and one-half to the school fund.

1909, c. 478.

126. Black River and Mingo Creek; only hook and line. If any person shall fish in that part of Black River in Sampson and Cumberland counties and below the Atlantic Coast Line Railway bridge, or in Mingo Creek in said counties below the Aversboro and Clinton road otherwise than with a hook and line, he shall be guilty of a misdemeanor.

Rev., s. 2471; 1895, c. 276.

127. Black River in Bladen, Cumberland and Sampson; close season. It is unlawful for any person to catch with hook and line, seine, or destroy with gun or any gig or striking iron the fish in the waters of Black River and its tributaries in the counties of Bladen, Cumberland and Sampson from the fifteenth of May until the fifteenth of August in each year. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned in the county jail not more than thirty days, for each and every offense.

P. L. 1913, c. 623, s. 1.

128. Black River and Six Runs; obstructing channel; lay days. It is unlawful for any person or persons to fish in that part of Black River from the Cape Fear River to the mouth of Great Coharie, and in that part of Six Runs River from its mouth to where it is crossed by the Atlantic Coast Line Railroad, with any wire trap, net or contrivance whatever that will obstruct the free passage of fish in said waters, from the first day of March to the fifteenth day of June of each year, except from six o'clock p.m. to six o'clock a.m. on Tuesday, Thursday and Saturday nights. It is unlawful for any person or persons fishing as permitted in the foregoing to leave, or permit being left, in the parts of the said streams defined in the foregoing section any wire trap, net or contrivance whatever that will obstruct the free passage of fish, or any parts of any such wire trap, net or contrivance, at any time during which such fishing is prohibited. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 169.

129. Cape Fear River; nonresidents may not fish. If any person who is a nonresident of the state shall catch fish, for marketable purposes, in the waters

of the Cape Fear River, or any of its tributaries, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.

Rev., s. 3416; 1895, c. 230.

130. Cape Fear River; nets and seines regulated. If any person shall use any net for catching sturgeon in the waters of New Hanover County, the bars of the meshes of which net shall be less than ten inches in the diamond; or shall haul a seine or nets or pod fish within three hundred yards of any established fishery, except with the nets of such fishery; or shall set or fish any stationary nets in the waters of the Cape Fear River, except on the east side thereof and in New Hanover County; or shall set any net in said river otherwise than east or west, or shall own or control more than one line of nets, or shall operate or fish any shad nets in Cape Fear River below the mouth of Brunswick River between the twentieth day of April and the fifteenth day of January; or shall set any set net or stationary net of any kind in the Cape Fear River north of the mouth of the Brunswick River, or in the Brunswick River; or shall operate any drift net in the Cape Fear River of more than three hundred yards in length, or shall catch shad in said river with seines or nets from the twentieth of April to the fifteenth of January, he shall be guilty of a misdemeanor. The possession of a sturgeon net with meshes of a size smaller than allowed by this section shall be prima facie evidence of having fished the same. In setting nets in Cape Fear River as allowed by this section the following rules shall prevail: They shall begin at a point one hundred yards from the edge of the channel on the east side of said river and running thence due east one hundred and twenty yards, then leaving a gap of one hundred and twenty yards. Then from the east end of said gap another net may be set one hundred and twenty yards only, and to continue in the same proportion, always requiring a gap of one hundred and twenty yards to intervene between each one hundred and twenty yards of nets so set, and no net or sets of nets of any kind shall be placed opposite said gaps, within a distance of a half mile of same, and none of the nets so set shall be nearer than a half mile of the west shore of said Cape Fear River. An established fishery in the meaning of this section is one where there is a camp for the use of the hands, and where the seine or nets and boats used by the said fishery are kept, and where the said fishery was established prior to the first day of January one thousand eight hundred and ninety-nine.

Rev., s. 2468; Code, s. 3403; 1901, c. 173; 1899, c. 440; 1881, c. 280; 1907, c. 752.

131. Cape Fear River; fish traps regulated. If any person shall construct, operate or maintain any fish traps in the Cape Fear River, or shall fail to remove all traps now in the channel of said river within sixty days from the first day of March, one thousand nine hundred and five; or shall fail on the first day of June of each year to remove the slats or fingers from any fish trap allowed to be operated in said river under this section, he shall be guilty of a misdemeanor. This section shall not apply to Brunswick or New Hanover counties or to a fish trap which extends to not more than one-third the channel of said river.

Rev., s. 2483; 1905, c. 500.

132. Cape Fear and Northeast rivers; nets in. It is unlawful to fish with dutch, pod, fyke or other pound nets, or stake or stationary nets, or nets of like

kind, in the waters of the Cape Fear River below the mouth of Black River, twelve miles above Wilmington, or in the waters of Northeast River below the Castle Hayne bridge. Drift nets shall be permitted in the waters of the Cape Fear River within the territory described in section one of this act and its tributaries, between February first and May first of each year. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days.

1909, c. 841; P. L. 1911, c. 278.

133. Cape Fear, Northeast and Black rivers; obstructing fish; fishing between Saturday evening and Monday evening. If any person shall with seines or nets of any kind catch any fish in the waters of the Cape Fear River from its mouth to the Bladen County line, or in the waters of the Northeast Cape Fear or Black rivers in Pender County between six o'clock p.m. on Saturday and six o'clock p.m. on Monday, or shall obstruct the free passage of fish in the waters of said rivers, he shall be guilty of a misdemeanor.

Rev., s. 2470; 1885, c. 226; 1887, c. 71; 1907, c. 811.

134. Cape Fear River, northeast branch; seines, nets and traps. If any person shall fish in the northeast branch of the Cape Fear River with seine, net or trap, from the twenty-third day of February to the first day of July of any year, between the hours of six o'clock p.m. on Saturday and six o'clock p.m. on Monday of each week, or shall at any time use more than one seine at a time in any fishing hole in said river, or use, set or place in said river any hedge, trap or other obstruction which will prevent the free passage of fish up said river, which said hedge, trap or other obstruction shall extend more than one-third across the main channel of the said river, he shall be guilty of a misdemeanor. This section shall not apply to that portion of said river which lies between the city of Wilmington and a point on said river known as The Three Cypressess, twelve miles distant from said city of Wilmington.

Rev., s. 2469; 1889, c. 182; 1891, c. 198.

135. Goose and Oyster creeks; drag or haul nets unlawful. It is unlawful for any person or persons to fish with a drag or haul net of any description in the waters of Oyster Creek and its tributaries and Goose Creek or its tributaries (said creek being a dividing line between the counties of Pamlico and Beaufort.) Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court.

1907, c. 222; P. L. 1911, c. 381.

136. Little River; obstructions in. If any person shall place any obstruction in Little River, dividing the counties of Pasquotank and Perquimans, and allow it to remain for a longer time than ten days, he shall be guilty of a misdemeanor, and fined not less than five dollars, nor more than ten dollars: Provided, nothing in this section shall be so construed as to prohibit citizens from fishing with dip-nets in said river during the months of March and April in each year.

Rev., s. 2443; Code, s. 3400; 1881, c. 18.

137. Lumber River; close season for traps in. It is unlawful for any person to set any trap for the purpose of catching fish in Lumber River or its

tributaries in Columbus and Robeson counties, between the first day of April and the first day of September in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 608.

138. Lumber River and waters of Robeson, Columbus, Hoke and Scotland; fishing regulated. It is unlawful for any person, firm or corporation to fish with seine, trap, nets, or by gigging, muddying, striking, dynamiting, shooting, or using lime or other chemicals by which fish may be killed, in Lumber River or any of its tributaries, or other rivers, lakes, ponds, or swamps of Robeson, Columbus, Hoke and Scotland counties: Provided, that gill nets may be set in these waters during six months in each year, beginning with October and ending with March. And provided further, that in Robeson and Hoke counties owners of private lakes and ponds may fish therein with seines, nets or traps from July first to September thirtieth.

Any person, firm, or corporation violating this section shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars nor less than ten dollars; the fine to be paid to the school fund of the county in which the offense was committed, or imprisoned not more than thirty days nor less than ten days in the county jail, the county commissioners of said counties having the privilege of sending the said person or persons so convicted to the chain-gang of their respective counties or to hire them out in case there is no chain-gang. The police force of said counties have full power and authority to arrest, without warrant, any and all persons violating this section.

P. L. 1915, c. 358; P. L. 1917, c. 368.

139. Moccasin River and Big and Little Contentnea creeks; obstructions and nets in. It is unlawful for any person or persons to hedge or otherwise obstruct the free passage of water, fish, timber, rafts or boats, in the run of Moccasin River or Big Contentnea Creek, from Rountree's bridge in Wilson County to the mouth of said river or creek, or to make any like obstruction in the run of Little Contentnea Creek. It is unlawful for any person or persons to fish with traps of any description in the waters of either of said streams, except from Rountree's bridge to Barefoot's Mill: Provided, no hedge or trap shall obstruct more than one-third of the waters of Contentnea Creek. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars and not more than fifty dollars or imprisoned not more than thirty days; and one-half of the fine so imposed shall be paid to the person who reports such offenses to the proper lawful officer, and the other half to the common school fund of the county in which the misdemeanor is committed.

1907, c. 615; Ex. Sess., P. L., 1913, c. 252.

140. Neuse and Trent rivers; stationary, set or dutch nets. No person or association of persons shall set or place or cause to be set or placed any stationary, set or dutch nets in either Neuse or Trent rivers above the point of conflux of the said Neuse and Trent rivers. That no person or association of persons or corporation shall set, cause to be set, fish or cause to be fished, use or cause to be used any dutch net, pound net or other stationary trap net or seine of similar

description, by whatever name known, in the waters of Neuse River above Wilkinson's Point, on Pamlico side. Any person or association of persons setting or placing any nets, as described above, on any day or part of a day, above the point of conflux of the said Neuse and Trent rivers, shall be guilty of a misdemeanor. Any person or association of persons or corporation setting or placing or causing to be set or placed any nets, as described above, on any day or part of a day, above Wilkinson's Point, in Neuse River, shall be guilty of a misdemeanor. Any person or association of persons or corporation violating the provisions of this section shall upon conviction be fined fifty dollars or imprisoned thirty days for each and every violation. Any party who is the informant against any one violating this section shall, upon conviction of such person so violating the section, receive one-half of the fine prescribed.

1909, c. 801; P. L. 1911, c. 616.

141. Neuse and Trent rivers; size of seine bars regulated. If any person shall use any drag-net or seine with bars of less size than one and a quarter inch in the Neuse and Trent rivers, or in any of the tributaries thereof, except for the purpose of catching herring, from the fifteenth day of January to the fifteenth day of May of each year, he shall be guilty of a misdemeanor, and fined not less than five nor more than fifty dollars for every offense. This section shall not apply to the waters of the Neuse and its tributaries above the Wayne and Johnston County line.

Rev., s. 2454; Code, s. 3395; 1881, c. 146, ss. 1, 2.

142. Neuse River; obstructions in, by dams, nets, etc. Any person who shall construct a dam, put in traps, dutch net, wire seine, or anything else in Neuse River between its mouth and the Falls of Neuse in Wake County, for the purpose of obstructing the passage of fish in said river shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this section shall not apply to seines, set nets, running or skimming nets: Provided, this section shall not prevent the use of traps in Wayne County, where the trap and its wings do not extend more than one-third across the stream.

Rev., s. 2474; Code, s. 3422; 1885, c. 391; 1893, c. 354; 1883, c. 301, ss. 1, 2; 1895, c. 403; 1901, c. 395.

142a. Neuse River; certain nets regulated. If any person shall use or cause to be used any dutch net, pound net, or other stationary trap net, or seine of similar description by whatever name known, in the waters of Neuse River for the purpose of taking fish therefrom, except the ordinary set net in use in said river prior to the first day of January, one thousand eight hundred and ninety-seven, he shall for each day's use thereof as aforesaid forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by warrant before any justice of the peace in the counties of Carteret, Craven and Pamlico or Lenoir, and shall be applied to the use of the public schools of said counties, and such offender in addition to the penalties contained in this section shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars, nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve months: Provided, that a resident and citizen of the state may fish with dutch, trap or pound nets in the waters of

Neuse River on the Pamlico side of said river between the mouth of said river and Upper Broad Creek not more than five hundred yards from the shore.

Rev., s. 2453; Code, s. 3397; 1897, c. 145; 1899, cc. 299, 422, 435; 1901, c. 74; 1903, c. 704; 1905, c. 817.

143. Pamlico and Tar rivers; dutch, etc., nets prohibited. If any person shall set down or fish any dutch, pod, fyke or pound net or net of like kind in the waters of Pamlico or Tar rivers or their tributaries except in the manner, and in the part, and during the time, which such nets are by law allowed to be fished, he shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, and shall be imprisoned in the county jail not less than thirty and not more than sixty days.

Rev., s. 2428; Code, s. 3417; 1903, c. 52.

143a. Pamlico and Tar rivers: lay days. If any person, from the fifteenth day of February to the tenth day of May of every year, from twelve o'clock meridian of Saturday until sunrise Monday morning of each week, shall fish any seine, set net, drift net, or any other net of any name or kind whatever, in the waters of Pamlico or Tar rivers and tributaries, except bow or skim nets, he shall be guilty of a misdemeanor.

Rev., s. 2427; Code, s. 3416; 1883, c. 137, s. 3.

144. Pamlico River; dutch, etc., nets allowed under regulation. It shall be lawful to fish with dutch, pod, fyke or other pound nets, or nets of like kind, in the waters of Pamlico River below a line beginning on the southern shore of Pamlico River at Maule's Point, and running due north to a point on the northern shore of said river: Provided, that no dutch, pod, fyke or pound net, or other net of like kind, shall extend out in said river more than one-fourth of the distance across said river from the shore, and that none of said dutch, pod, fyke or pound nets shall be set, placed down or fished nearer to each other than five hundred yards, measuring up and down the river; nor shall they be placed, set down or fished within five hundred yards of any seine beach in actual use for hauling a seine, nor within one mile of the mouth of Bath Creek: Provided, no nets of the kind enumerated in this section, or other nets of like kind, shall be placed down, set or fished in said rivers between the tenth day of May and the first day of July in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, in the discretion of the court.

Rev., s. 2429; Code, s. 3417; 1903, c. 52; 1909, c. 540, s. 1; 1909, c. 700.

145. Perquimans River; nets in, regulated. If any person shall fish with any seine, or set any dutch net or hedge within one mile of a straight line commencing at Stephenson's Point on the north side of Perquimans River and running in a southwesterly direction to the nearest point of land on the south side of said river known as Belgrade Bluff, or shall haul any seine or set any dutch net or other kind of net so as to extend beyond the middle of said river at any part thereof, he shall be guilty of a misdemeanor.

Rev., s. 2441; 1893, c. 147, ss. 1, 2, 4.

146. Roanoke River; drift nets in, regulated. It is unlawful to fish any drift nets in the Roanoke River over twenty yards in length, and no net shall

drift within three hundred yards of another net and no two nets shall drift abreast of each other. Any person violating the provisions of this act shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court.

1911, c. 163, s. 3.

147. Scuppernong River and Lake Phelps; nets in, regulated. It is unlawful for any person, firm or corporation to set or in any manner fish with more than one hundred yards of gill nets within the waters of Lake Phelps or Scuppernong in Tyrrell and Washington counties, or to set or in any manner fish with more than one pound, pod, or dutch net, and shall be restricted to the months of February, March, and April of each year. Any person, firm, or corporation violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 378; 1911, c. 129.

148 Scuppernong River; nets obstructing channel or near bridges. If any person shall set any kind of a fish weir or pod net, gill net or net of any kind in the Scuppernong River using more than one-half of the channel of said river, or within one hundred yards of the public bridges at Columbia and the Cross landing, crossing said river, he shall be guilty of a misdemeanor, and fined a sum not to exceed fifty dollars, or imprisoned not to exceed thirty days: Provided, this section shall not apply to the hauling of seines.

Rev., s. 2445; Code, s. 3408; 1885, c. 18; 1903, c. 91.

149. Scuppernong River; nets near Norfolk and Southern Railroad bridge. It is unlawful for any person to fish any pound or dutch nets within fifty yards of the Norfolk and Southern Railroad bridge across Scuppernong River. Any person violating this section shall be guilty of a misdemeanor and punished by a fine of not more than one hundred dollars nor less than twenty-five dollars, in the discretion of the court.

Ex. Sess. 1908, c. 82; 1909, c. 119.

149a. Trent River; use of nets, regulated. If any person shall set any trap, dutch, pound or pod net of any description whatever in Trent River, or shall at any time extend his set nets more than one-third the distance across the Trent River from either side, or shall set any net nearer to any other net than one hundred yards either on the same or on the opposite side of the river, or shall fish with seines or set nets of any description in Trent River from its mouth to upper Tucker bridge, between the hours of twelve o'clock noon on Saturday and twelve o'clock noon on Monday of each week, or shall set or haul a net or seine of any description between the town of Trenton and Brown's Mill on said river from the sixteenth day of May to the first day of August in each year, he shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or be imprisoned not less than ten nor more than thirty days.

Rev., s. 2455; Code, s. 3397; 1893, c. 447; 1897, c. 294.

Part 3. Counties

150. Counties on Pamlico Sound: Size of fish caught or sold. It is unlawful for any person to buy, sell, offer for sale, or to have in his possession any blue-

fish, trout or drum under eight inches in length, or any mullet under six inches in length, or any croakers, spots and hogfish under five inches in length, or sea mullet, flounders, mackerel and hickory shad less than eight inches long or butterfish and steerfish less than four and one-half inches long, at any time during the year. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars. This section shall only apply to the counties of Beaufort, Carteret, Dare, Hyde, and Pamlico.

1909, c. 474, ss. 3, 4; 1909, c. 906.

151. Brunswick, New Hanover and Pender: Size of bars in nets. If any person shall use in any of the waters of Brunswick, New Hanover and Pender counties any nets, seines, set-downs, fish traps or any other nets of any description for the purpose of taking fish, the bars of the meshes of which nets, seines, set-downs, or fish traps shall be less than one and one-eighth inches in length, he shall be guilty of a misdemeanor.

Rev., s. 2470; 1885, c. 226; 1887, c. 71.

152. Brunswick, Cumberland, New Hanover, Sampson, and Harnett: Close season for fish. If any person shall 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, or the waters of Big Coharie, Little Coharie, Bear Skin and Big swamps 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 northeast branch of the Cape Fear River in the county of New Hanover, between the fifteenth days of May and August of each year, he shall be guilty of a misdemeanor, and fined not to exceed five dollars.

Rev., s. 2472; Code, s. 3409; 1889, c. 414; 1871-2, c. 152; 1879, c. 283; 1881, c. 369.

153. New Hanover, Onslow and Pender: Purse nets and seines for food fish. It is unlawful for any person, firm, or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of New Hanover, Onslow and Pender counties, extending to the extreme limits of the state's jurisdiction in and over such waters, making the boundaries of said counties to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of said counties out into the waters of the Atlantic Ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said counties for the purpose of this section. It is unlawful for any person, firm, or corporation to purchase, trade for, or deal in, or sell any food fish caught as is set forth above. Any person, firm, corporation, partnership, or association who knowingly rents, leases or permits to be used any purse seine or purse net, rents or leases any vessel, boat or steamer upon which is used a purse seine or purse net in the catching of food fish in the waters of said counties shall be guilty of a misdemeanor. Any person who furnishes information upon which any person, firm, or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor.

P. L. 1913, c. 717.

154. Beaufort: Nets regulated in certain creeks. It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets, fyke nets, thrash nets or any set or gill nets longer than thirty yards on top line, in the waters of Bath Creek, Blount's Creek, Jordan's Creek, Pungo Creek, Wright's Creek or their tributaries, in Beaufort County, during the months of March, April, May, June and July of each and every year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense.

1909, c. 586.

155. Beaufort: Fishing by residents in Bath Creek. It is lawful for any person or persons who are resident citizens of Beaufort County to fish with any kind of nets, except pound nets or purse nets, in the waters of Bath Creek from Bath Creek bridge to the mouth of said creek.

P. L. 1911, c. 547.

156. Beaufort: Certain nets in Blount's Creek. It is unlawful for any person or persons to use or fish with any drag net or slash net in the waters of Blount's Creek or its tributaries. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days for each offense.

P. L. 1911, c. 120.

157. Beaufort: Certain nets in Durham and Lee's creeks. It is unlawful for any persons to catch fish with seine, drag nets, purse nets, thrash nets or hauling nets of any description in the waters of Durham Creek, Lee's Creek, or their tributaries in Beaufort County. Any persons violating this act shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than ten dollars for each and every offense.

1907, c. 439.

158. Beaufort: Certain nets in Nixon's Creek. It is unlawful for any person or persons to use or fish with any drag nets, purse nets, or pound nets in the waters of Nixon's Creek in Beaufort County. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not exceeding thirty dollars or imprisoned not more than twenty days for each offense.

P. L. 1911, c. 525.

159. Beaufort: Certain nets in North Creek. It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets or fyke nets in the waters of North Creek and its tributaries in Beaufort County. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense.

1907, c. 629.

160. Bladen: Manner of fishing in Brown Marsh and Horseshoe swamps. It is unlawful for any person to fish with a seine or by muddying the water or

by means of any lime, dynamite, or any other such material or substance in Brown Marsh and Horseshoe swamps in Bladen County. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned for thirty days. This section shall apply only to Brown Marsh Township in Bladen County.

P. L. 1915, c. 187.

161. Bladen: White Lake; hook and line only. It is unlawful to catch, kill, or destroy fish in White Lake in Bladen County by means of nets, traps, by gigging, by shooting, or by any other means or methods, except by hook and line: Provided, that set hooks, bobs, and trolls shall be construed as being hooks and lines. Any person violating the provisions of this section shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

P. L. 1913, c. 295.

162. Brunswick: Mullet fishing; purse nets. If any person, firm or corporation shall fish for and catch any mullets with any purse seine or purse net in the waters within the limits of Brunswick County, extending to the extreme limits of the state's jurisdiction in and over said waters; and for the purpose of this section, any portion of any water within a distance of three nautical miles from the outer shores of said county shall be deemed the waters of said county. Or if the master or any employee on any steamboat engaged in fishing for menhaden or fatbacks shall discharge from said boat fish offal, blood or slime within a distance of one-half of a mile of any established mullet fishery on the Brunswick County coast between the first of August and the thirty-first of December of each year, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. For the purposes of this section an established fishery is declared to be that point on the beach occupied by the surfboat and seine in regular use.

Rev., s. 2481; 1905, c. 748.

163. Brunswick: Nonresidents must have license. It is unlawful for any nonresident of this state to engage in the business of gathering oysters, clams and terrapins for gain, or for market, within the limits of Brunswick County without first obtaining from the county commissioners of said county a license to carry on such business, which license may be granted by the county commissioners of said county upon paying to the treasurer of said county, to be used for county purposes, the sum of fifty dollars for each nonresident engaged in such business, and twenty-five dollars for each nonresident hand employed: Provided, that such license so granted shall be for one year and shall expire on the first day of October of each year. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor.

1907, c. 68.

164. Carteret: Cedar Island Township; hauling nets with power. It is unlawful for any person or persons, firm or corporation to pull any haul net within the waters of Cedar Island Township, Carteret County, with steam, gasoline or any other motor power. Any person or persons, firm or corporation

violating the provisions of this section shall be guilty of a misdemeanor, and be fined or imprisoned, or both, in the discretion of the court.

1915, c. 281.

165. Carteret: Use of dutch nets. If any person shall use or cause to be used any dutch net, pound net or other stationary trap, net or seine of similar description by whatever name known, in the waters of Carteret County for the purpose of taking fish therefrom, he shall for each day's use thereof forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by a warrant before any justice of the peace in the county of Carteret, and shall be applied to the use of the public schools of said county; and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor, and fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve months: Provided, this section shall not apply to the ordinary set nets heretofore in use in the waters of said county.

Rev., s. 2435; Code, s. 3420; 1883, c. 199.

166. Carteret: Size of seine mesh. If any person shall catch mullets in the waters of Carteret County with a seine or net having a mesh of less than one and one-eighth inch, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 2434; 1895, c. 25; 1903, c. 508.

167. Carteret: Length of nets; joining together. 1. It is unlawful for any person, firm, corporation, or syndicate, to fish any net or seine in the waters of the state of North Carolina within the boundaries of Carteret County more than two hundred and seventy-five yards in length: Provided, this length shall not apply to purse seines used for the purpose of catching menhaden (fatbacks), only.

Any person, firm, corporation, or syndicate violating this subsection shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned not more than thirty days, in the discretion of the court. Each day said nets or seines are fished shall constitute a separate offense under this subsection.

2. When a condition arises that a crew of fishermen find it advantageous to join two or three nets together for the purpose of temporary fishing, it shall be lawful under this section to do so under the following rules and regulations, namely (Provided, such nets when joined together shall not be fished in the bite of Cape Lookout): (a) The total length of nets joined together shall not exceed eight hundred and twenty-five yards. (b) That not more than one of the nets (two hundred seventy-five yards) shall be owned by any one person, firm, corporation, or syndicate thus fishing. (c) That not less than two men shall be permitted to fish with each net thus joined together. (d) That no position or haul shall be held by anchoring boat (except when occupied by men fishing same), buoys, stakes, or any other device. (e) That no seines or nets shall be hauled by capstans. (f) That no nets of smaller mesh than $1\frac{3}{8}$ inch bar or $2\frac{6}{8}$ inch stretched measure shall be joined together for the purpose of fishing under this section. (g) That no nets thus joined shall be fished in the waters of the state

of North Carolina within the boundaries of Carteret County at any stationary fishery. (h) That the fishing of such nets thus joined together shall not be permitted in the waters of Carteret County where said waters are of less width than one and one-fourth miles. It is expressly enacted that each net joined together under this subsection shall have two staffs.

Any person violating any of the provisions of this subsection shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months.

168. Carteret: Obstructions to fish prohibited. If any person shall obstruct any navigable water or passageway for fish in Carteret County by placing bushes, posts or any stationary material or fixtures in such a manner as to prevent the free passage of fish, he shall be guilty of a misdemeanor and fined not less than one hundred dollars. Nothing in this section shall be construed to prohibit any person from using a lawful net or seine in any way or manner except as a stop net or seine. This section shall not apply to any net that the fish can pass freely by one end.

Rev., s. 2436; 1903, c. 520.

169. Carteret: Pound nets in Neuse River. It is lawful to fish pound nets from January first to May fifteenth of each year within the waters of that portion of Carteret County, with a line beginning at the northwest point of outward Swan Island, running a due north course; from such line running up the Neuse River to the spar buoy at the entrance of Adams Creek: Provided, that not more than five nets shall be set in any one stand: Provided further, that not more than one-fourth of the river in width shall be used for the purpose of fishing under this section. Any person, firm, corporation, or syndicate fishing with pound nets in the waters of Carteret County at any other time except as prescribed in this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months, in the discretion of the court. It is expressly enacted that every day such fishing is done in violation of this section shall constitute a separate offense.

1911, c. 128.

170. Carteret: Purse nets for mullet prohibited. If any person shall fish for or catch any mullets with any purse seine or purse net in any waters within the limits of Carteret County, extending to the extreme limits of the state's jurisdiction in and over such waters, he shall be guilty of a misdemeanor and be fined not less than five hundred dollars or imprisoned not less than one year. For the purposes of this section the following boundaries are hereby declared to be the boundaries to which the waters of said county extend, to wit: A distance of three nautical miles, measured from the outer beach or shores of Carteret County out and into the waters of the Atlantic Ocean; and any portions of any water within a distance of three miles from said waters of the Atlantic Ocean to any beach or shore of said county shall be deemed the waters of said county for the purposes of this section.

Rev., s. 2437; 1903, c. 583; 1905, cc. 274, 508.

171. Carteret and Onslow: Purse nets prohibited for food fish. It is unlawful for any person, firm or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of Carteret and Onslow counties extending to the extreme limits of the state's jurisdiction in and over such waters, making the boundaries of said county to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of Carteret and Onslow counties out into the waters of the Atlantic Ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said county for the purposes of this section. It is unlawful for any person, firm or corporation to purchase, buy, or trade for, or deal in, or sell any food fish caught as is set forth in this section. Any person, firm or corporation violating any provision of this act shall be deemed guilty of a misdemeanor, and shall be fined not less than three hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court. Any person who shall furnish information upon which any person, firm or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor.

1907, c. 857; 1911, cc. 126, 204.

172. Chatham: Fishways in Haw River. All persons maintaining dams across Haw River in the county of Chatham shall, upon thirty days notice from the board of commissioners of said county, establish fishways in said dams; and if said fishways shall not be made within three months from the service of the notice, said persons so offending shall be guilty of a misdemeanor, and fined at the discretion of the court.

Rev., s. 2476; Code, s. 3402; 1881, c. 343, ss. 1, 2.

173. Columbus: Lumber River; fishing regulated. It is unlawful for any person, firm or corporation to fish with seine, traps, gigging, striking, or dynamiting, by shooting with gun or rifle in Lumber River or its tributaries in Columbus County: Provided, this section shall not apply to any person fishing on his own lands or those who may have written consent of the owner of the land where fishing. It is unlawful for any person, firm or corporation to fish with gill net in Lumber River or its tributaries in Columbus County, except during the months of October, November, December, January and February. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than ten dollars, one-half to go to the informant, or imprisoned not more than thirty days nor less than ten days, in jail, with authority to the county commissioners of Columbus County to hire out such convict.

P. L. 1913, c. 740.

174. Columbus: Traps and nets in Porter Swamp. It is unlawful for any person or persons to set any fish traps or nets in the waters of Porter Swamp in Columbus County in such manner as to prevent the free passage of fish. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned not less than ten days nor more than thirty days for each offense.

P. L. 1911, c. 748.

175. Currituck County: Fishing in Atlantic Township. It is unlawful for any person or persons to catch fish with seine or set net, or nets of any kind, in the waters of Atlantic Township, between the fifteenth day of April and the twentieth day of October in each year, within the following boundaries in said township: Beginning at a cedar stump standing on the beach north of Caffie's Inlet life-saving station and extending a west course five hundred yards from the shore; thence paralleling the shore a southerly course to the Dare County line. It is unlawful to set any pound or dutch nets in the waters of said township. Nothing herein shall prevent the catching or selling of twenty-five pounds of fish on any one day for home consumption; nor prevent the catching of eels, mullets and herrings at any time during each year; nor prohibit fishing at night. Any person violating the provisions of this section or any part thereof shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not more than fifty dollars nor less than twenty dollars or imprisoned not more than thirty days.

1909, c. 619.

176. Currituck County: Dutch nets in Currituck Sound. If any firm, company or corporation shall operate or cause to be operated in the waters of Currituck County, or be interested in (in any manner whatsoever) more than six pound or dutch nets, or use more than one hundred yards of hedging to a net, or set a stand of such nets exceeding eight hundred yards in length from land to the extreme outward end; or if any person shall set any pound or dutch nets to the east of the center of Currituck Sound, except that part from the west point of Mackey's Island north of the Virginia line; or if any person shall leave any landing or anchorage before sunrise for the purpose of fishing in Currituck Sound or tributaries, or shall continue to fish after dark, he shall be guilty of a misdemeanor and be fined not less than twenty-five, nor more than fifty dollars. This section shall not prohibit fishing after dark in that part of said sound west of a line beginning at the north point of Bell's Island, thence north not more than one thousand yards from the mainland to the mouth or entrance of Tull's Creek, nor night fishing between the thirty-first day of March and the twentieth day of October five hundred yards from the shore from Martin's Point to Kitty Hawk Bay.

Rev., s. 2430; 1905, c. 273, ss. 3-7.

177. Currituck County: Shipping or selling fish. If any person shall catch or capture any fish with nets or other appliances in the waters of Currituck County between the fifteenth day of April and the twentieth day of October of each year, or shall sell or ship out of the county or state any fresh fish between said dates; or if any person shall be found with more than twenty-five pounds of freshwater fish in his possession between the thirty-first day of March and the twentieth day of October of each year, herrings, mullets, shad and eels excepted; or if any person shall in said county catch eels for market between the thirtieth day of April and the twentieth day of September following in each year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars and not less than twenty-five dollars. Any citizen may catch, not to exceed twenty-five pounds, at any time for home consumption, and sell or give not more than ten pounds to any one person in one day.

Rev., s. 2431; 1905, c. 273, s. 1; 1907, c. 520.

178. Currituck County: Right of search. If any constable, game warden or justice of the peace of Currituck County shall be informed, or have cause to suspect, that either of the two preceding sections is being violated, he is hereby authorized and empowered to examine the contents of any fishing boat, or packages in transit, and any person or common carrier refusing to exhibit the contents of any fishing boat or package to such officer shall be guilty of a misdemeanor, and shall be fined not less than twenty-five and not more than fifty dollars.

Rev., s. 2432; 1905, c. 273, ss. 2, 7.

179. Dare: Dutch and pound nets prohibited. It is unlawful for any person, firm or corporation to set any dutch or pound net within the space or area of water bounded and described as follows: Beginning at Hollowell's Wharf, at Nag's Head, and running thence a due west course to the channel in Roanoke Sound; thence northwest to the Currituck County line; thence with said Currituck County line to the shore.

Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined fifty dollars or imprisoned thirty days in the discretion of the court.

1913, c. 113.

179a. Dare: Fishing in Kitty Hawk Bay regulated. If any person shall take, catch or capture any fish with nets or other appliances in that part of the waters of Kitty Hawk Bay and its tributaries, lying in Dare County, between the thirtieth day of April and the fifteenth day of October of each year, or shall sell or ship out of the county any chub or perch between said dates, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. Nothing in this section shall prevent any citizen from catching fish at any time for home consumption.

Rev., s. 2484; 1905, c. 363.

180. Greene: Size of mesh; fishing on another's land. It is unlawful for any person or persons to fish with or set any nets with less meshes than one and one-fourth inches square. No person or persons shall fish with nets of any kind on another person's land without first getting permission from the owner of the lands to do so, except in navigable streams as rivers or large creeks. Any person or persons violating this section shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than five dollars nor more than twenty dollars for each offense. This section shall apply to Greene County only.

P. L., 1915, c. 494.

181. Hertford and Northampton: Fish in Potecasi Creek protected. It is unlawful for any person to use, set or in any manner to fish with any fish trap, fyke net, seine or drag net in the waters of Potecasi Creek, in Hertford and Northampton counties, from its mouth to the Creekville mill, in Northampton County. Any person violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 662.

182. Hyde: Pound and dutch nets prohibited. It is unlawful for any person to set or use any pound or dutch net south of the dividing line between Dare and Hyde counties on the west side of Pamlico Sound along the shores of Hyde County, more than two thousand yards from a line drawn from point to point along said shore. Any person violating this section shall be deemed guilty of a misdemeanor and upon conviction shall remove said nets at once: Provided, that any person failing to remove said nets after conviction shall be subject to a fine of not less than ten nor more than fifty dollars.

1915, c. 59.

183. Hyde: Drag nets prohibited in Rose Bay. It is unlawful for any person to use or take fish from the waters of Rose Bay, or any of its tributaries, in Hyde County, with drag nets or drop nets. Any person violating this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars nor more than fifty dollars.

P. L. Ex. Sess. 1913, c. 264; P. L. 1915, c. 349.

184. Hyde: Drag nets prohibited in Slade's River and Fortescue Creek. The name of Slade's Creek in Hyde County is hereby changed to Slade's River, and by such name the said water-course shall in future be designated in all official maps, records, laws and other official documents authorized by the state of North Carolina. Fishing with drag nets is prohibited in said river and tributaries and in the waters of Fortescue's Creek, in said county. Any violation of the provisions of this section relating to the manner of fishing shall be a misdemeanor, and shall be punished by a fine not exceeding fifty dollars or imprisonment not exceeding thirty days, in the discretion of the court.

1909, c. 520.

185. Hyde: Slade's River; nets in. The mouth of Slade's River in Hyde County is hereby fixed and located by running a straight line from Aquillas Point on Pungo River to Sandy Point on said Pungo River. It is unlawful for any person, firm or corporation to set, fish, or use any kind of net except stake gill nets on the east of said line. Any one violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not more than thirty days, in the discretion of the court.

1911, c. 59.

185a. New Hanover: Licenses for oyster and clam beds:

1. License from clerk; area and nature of licensee's right. Any inhabitant of this state may make an oyster or clam bed in any of the waters of New Hanover County and lay down or plant oysters or clams therein, having first obtained license as hereinafter directed from the superior court clerk of the county, and he may stake out the grounds so as to include not exceeding ten acres with good and substantial stakes, extending at least two feet above high water mark, and placed at such intervals as to make the boundaries of such bed or garden distinctly known; and every person who shall obtain such license shall hold the same and have exclusive privilege thereof to him, his heirs and assigns. But no person may have more than one bed in the county: Provided, nothing herein shall be construed to affect the rights of any owner of lands in which there

may be creeks or inlets, or which may be adjacent to any navigable waters, or to authorize any person to appropriate to his own use, or to stake off and enclose any natural oyster or clam bed, or in anywise to infringe the common right of the citizens of the state to any such natural bed or to obstruct the free navigation of the waters aforesaid.

2. *Procedure to obtain license; hearing.* When a license is desired according to the preceding section the clerk of the superior court of New Hanover County may, in his discretion, grant the license to any inhabitant of this state who shall apply therefor as herein provided. The applicant shall first stake off the proposed bed as provided in the preceding section, and shall publish a notice for thirty days at the courthouse door of the county wherein said bed is proposed, designating the location thereof as near as may be and the day when he will apply for the issuing such license. Upon the day named in said notice, upon which application for such license is to be made, any inhabitant of the county shall have the right to appear before the clerk and object to the issuing of such license by filing an affidavit stating that the proposed oyster or clam bed is a natural oyster or clam bed. If the applicant shall refuse to file an affidavit denying the proposed oyster or clam bed is a natural bed, the clerk shall refuse to grant the license. If the applicant shall file an affidavit denying that such proposed bed is a natural bed, it shall be the duty of the clerk to transmit affidavits to the next term of the court of the county, and at such term the issue shall be tried to determine whether the proposed bed is a natural bed, and after the trial the clerk shall grant or refuse the license in accordance with the judgment rendered upon the determination of such issue.

3. *Power of county commissioners; surveys; forfeiture of license.* The board of county commissioners of New Hanover County may in their discretion cause to be made, not oftener than once in twelve months, a survey and examination of every oyster or clam bed or garden in the county, the result of which examination or survey shall be reported under oath to the clerk of the superior court; and if it be found that the holder of such license as aforesaid has included within his stakes any natural oyster or clam bed, or a space containing more than ten acres, he shall forfeit such license and all the rights and privileges thereto belonging. If the holder of such license fail for the space of two years either to use such bed or to keep it properly designated by stakes, he shall forfeit such license and all the rights and privileges therein granted.

Rev., ss. 2372, 2373, 2374; 1883, c. 332, ss. 1, 2, 4; 1893, c. 287, s. 2.

NOTE. 1907, c. 969, is by s. 13, inapplicable to Onslow, Pender, and New Hanover.

1909, c. 871, is by s. 9, inapplicable to New Hanover, but it modifies and extends system of leasing bottoms so as to embrace the rest of state.

1917, c. 290, s. 13, repeals entry and grant system for whole state.

185b. **New Hanover: Leases of oyster bottoms.** Any person who is and has been continuously for two years a bona fide resident of the state of North Carolina and over twenty-one years of age may lease or enter not more than fifty acres of any bottom where oysters do not naturally grow or on any ground where there is not a sufficient growth of oysters to justify at the time of leasing the gathering of the same for profit. When any person desires to lease or enter any such ground he shall advertise the fact at the courthouse and three other places for four weeks in the county where said bottom desired to be leased is located, and advertise in some newspaper published in said county for four

weeks, and if there be none published in said county, then in a newspaper published in an adjoining county. Application for such land shall be made to the clerk of the superior court, who shall appoint a man and the applicant shall choose another, which two so chosen shall appoint a third man and the three shall constitute a board of arbitration, and the said board of arbitration shall inspect the bottom desired to be leased, and if they find the same subject to lease and so report to the clerk, then it shall be the duty of the said clerk to issue a lease as herein provided, and for such service the clerk shall receive the following fees, to wit: Twenty-five cents for the application, twenty-five cents for the appointment and twenty-five cents for filing a report of arbitration, and copy-sheet fees for recording such lease and other papers necessary to be recorded. Such bottom shall be surveyed by the county surveyor; all cost and expense to be paid by the lessee, who shall also pay a yearly rental of fifty cents per acre, which rental shall be paid to the oyster commissioner and go to the benefit of the oyster fund. A failure to pay rental for two years shall render the lease null and void. No bottom which has been surveyed prior to sixth day of March, one thousand nine hundred and five, need be resurveyed where such leases are plainly marked at that time. The county surveyor shall furnish the lessee a map or plot free of charge. No lease shall be issued for any ground closer than two hundred yards to any natural oyster bed.

Rev., s. 2377; 1905, c. 525, s. 2.

186. New Hanover: Nets in Masonboro and Myrtle Grove sounds. If any person shall use any fyke nets or set down seines, or place any fish trap for the purpose of catching fish in the waters of Masonboro and Myrtle Grove sounds in New Hanover County, he shall be guilty of a misdemeanor, and fined not more than fifty dollars, or imprisoned not more than twenty days.

Rev., s. 2425; Code, s. 3421; 1883, c. 288, ss. 1, 2.

187. New Hanover: Seines in Atlantic Ocean. It is unlawful for any person, firm or corporation to fish with seines, purse, pod or pound nets, or with any kind of nets, except cast nets, in the waters of the Atlantic Ocean in New Hanover County within the following limits:

Beginning at a point on the beach on the north side of the mouth of Moore's Inlet and extending southwardly along the strand of the Atlantic Ocean to a point on the north of the mouth of Masonboro Inlet, and extending one mile out from the shore line. The above shall not apply to the use of set nets between the first day of November and the first day of May next following. Any person violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars and imprisoned not more than sixty days.

1915, c. 104.

188. Onslow: Obstruction in Cypress Swamp and Haws Run. It is unlawful for any person, firm or corporation to fell any trees in or in any way obstruct the natural flow of the waters of Cypress Swamp and Haws Run in Onslow County. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 772.

189. Onslow: Stop nets prohibited. It is unlawful for any person, firm or corporation to set, place, fix, establish or operate any stop net that will prevent or interrupt the passage of any fish in the water of any creek or sound in Onslow County, between New River and the Carteret County line in said county. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1915, c. 133.

190. Onslow: Nets and seines in ocean regulated. It is unlawful for any person, firm or corporation to set any net or seine on the coast of Onslow County for a longer time than one hour at any one time. Any person violating this provision shall, upon conviction, be fined not less than one hundred dollars or imprisoned not less than three months. One-half of said fine shall go to the party or parties reporting such offenses, and furnishing sufficient evidence to convict. In the event any offender shall be unable to pay fine, that his boats, nets and other fishing paraphernalia shall be forfeited and sold to the highest bidder for cash at courthouse door after twenty days notice, and proceeds of said sale be applied to cost and fine and any surplus paid to the defendant: Provided, however, this section shall not tend to convict any party who shall catch more fish than can be taken up in one hour.

1915, c. 184.

191. Onslow: Seines and nets in New River. It is unlawful for any person, firm, corporation or association to catch fish with haul seine, purse net, or drop net in the waters of New River in the main channel between Hatcher's Rock and New River Inlet, or within one-half mile of said inlet in the Atlantic Ocean. Any person, firm, corporation or association violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars, nor more than five hundred dollars, or imprisoned in the discretion of the court; fifty dollars of said fine to be paid to the person or persons furnishing evidence sufficient to convict.

P. L. 1913, c. 707.

192. Pamlico County: Use of nets regulated. If any person shall set or fish any dutch or pound nets in the waters of Pamlico County, or shall use any seine or drag net in the waters of said county including the north side of Neuse River from the mouth of the river to the mouth of upper Broad Creek from the first day of May to the first day of January next ensuing, or shall at any time catch fish with a seine or drag net along the shores of said county on any day of the week except Monday, Wednesday and Friday, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 2452; 1885, c. 198; 1889, c. 544; 1893, c. 334.

193. Pamlico County: Nets in Dawson's Creek. It is unlawful for any person to fish with drag or haul net of any description in the waters of Dawson's Creek, in Pamlico County. Any person violating this section shall be deemed guilty of a misdemeanor, and fined or imprisoned, at the discretion of the court.

P. L. 1911, c. 470.

194. Pamlico County: Drag nets prohibited in certain streams. It is unlawful for any person to haul or use any drag net in the waters of Vandemere Creek and its tributaries, Smith's Creek, Chappel's Creek and its tributaries, Trent Creek and its tributaries and Bay River and its tributaries, from the mouth of Trent Creek to the head of both its northwest and southwest prongs, for the purpose of catching or taking fish from said waters. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or imprisoned not less than five days nor more than ten days for each and every offense.

1909, c. 692.

195. Pasquotank County: Pound or fyke nets in Pasquotank River. It is unlawful for any person, firm or corporation to fish in Pasquotank River above Stinking Gut on either side of said river with pound or fyke nets, or any other kind of net with mudge or leads: Provided, this section shall not be construed to prohibit fishing in said territory with gill nets. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars or imprisoned not to exceed thirty days, in the discretion of the court.

P. L. 1913, c. 752, s. 6.

196. Pasquotank County: Nets in Hatley Creek. If any person shall haul or fish with a drag net, or set a pound net in Big Hatley Creek, or Little Hatley Creek within two hundred yards of the mouth of either of said creeks, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2442; 1895, c. 389; 1903, c. 497; 1911, c. 127.

197. Pasquotank and Perquimans: Gill nets allowed. It is lawful for fishing in the Albemarle Sound lying opposite to Perquimans and Pasquotank counties, and its tributaries lying and being in said counties, to set gill nets as near as one hundred and fifty yards of any pound or dutch nets fished in said waters: Provided, that any net shall not be set beyond the line now prohibited in said waters.

1911, c. 138.

198. Robeson: Fishing in Lumber River. It is unlawful for any person to fish with seine, nets, traps, gigging, or by muddying, striking or dynamiting, in Lumber River or the other rivers, creeks, lakes or ponds in Robeson County: Provided, that this does not apply to persons fishing on their own premises. Any person violating this section shall be guilty of a misdemeanor and on conviction shall be fined not more than fifty dollars, nor less than ten dollars, one-half to go to the informant, or imprisoned not more than thirty days nor less than ten days in jail, with privilege to county commissioners of Robeson County, or adjacent county, to hire out.

P. L. 1911, c. 529; P. L., Ex. Sess., 1913, c. 272.

199. Robeson: Nets and traps; close season; limit catch. It is unlawful for any person to set any trap or net for the purpose of catching fish in Lumber River or any of its tributaries in Robeson County between the first day of April

and the first day of September in any year. It is unlawful at all times for any person to catch or take more than twelve of the fish known as "red breasts" and trout from Lumber River or any of its tributaries in Robeson County, in any one day, whether said fish be caught with hook and line, net, trap or in any other manner. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

P. L. 1911, c. 703.

200. Sampson: Fishing regulated. It is unlawful for any person to fish in any of the rivers, creeks, or other streams of Sampson County by means of lime, dynamite, pod nets, bag nets, traps, or by any means or contrivance whereby the free passage of fish is obstructed. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

P. L. 1915, c. 464, ss. 2, 3.

201. Tyrrell: Alligator River and Frying Pan Creek; nets in. If any person shall fish any pound net, gill net, seine or nets of any kind in Alligator River within one mile of the mouth of Frying Pan Creek in Tyrrell County, or shall set any weir or fish net of any kind or any other obstruction that prevents the passage of fish in said creek from its mouth to Jarmin's Point, at the two pines and low cypress, he shall be guilty of a misdemeanor. If any person shall set any pound net or dutch net in Alligator River within one-half mile of the mouth of Frying Pan Creek in Tyrrell County, or in Frying Pan Creek within three miles of where it enters into Alligator River, he shall be guilty of a misdemeanor and shall be fined fifty dollars or imprisoned thirty days, or both, at the discretion of the court.

Rev., ss. 2447, 2449; 1889, c. 105; 1899, c. 465; 1905, c. 282.

NOTE. As to throwing fish offal in Frying Pan Creek, etc., see this chapter, s. 102.

202. Wayne: Nets and traps in Neuse and Little rivers. The citizens of Wayne County are hereby permitted to put in fish traps and gill stick nets in Neuse and Little rivers, within the limits of Wayne County.

P. L. 1911, c. 465.

SUBCHAPTER IV. NONCOMMERCIAL FISHING

ART. 10. GENERAL REGULATIONS

203. Trout protected; close season. If any person shall catch mountain trout by seining at any time, or shall take them by shooting or otherwise between the fifteenth day of October and the thirtieth day of December, he shall be guilty of a misdemeanor.

Rev., s. 3418; Code, s. 1122; 1869-70, c. 142.

NOTE 1. For local regulations protecting trout, see list following, by counties.

NOTE 2. For general statutes regulating noncommercial as well as commercial fishing, see *supra*, this chapter, Art. 8.

For fishing without permission on another's land, see Game Laws, s. 46.

NOTE 3. Local regulations as to fishing in streams enumerated, see *supra* this chapter, Art. 9, Part 2, and the following:

Streams on Grandfather Mountain; fishing without consent forbidden. Rev., s. 2842; 1909, c. 84.

Hiwassee River; obstructions in. Rev., s. 2461.

Nantahala River; fishing regulated. Rev., s. 2477.

South Fork River; obstructions in. Rev., s. 2473.

NOTE 4. Local regulations as to counties, see *supra* this chapter, Art. 9, Part 3, and the following:

Ashe. Waters stocked by U. S. Government; fishing prohibited. P. L. 1911, c. 195.

Avery. Elk and Toe rivers; close season. P. L. 1915, c. 526.

Avery, Caldwell, and Mitchell. Rainbow trout; fishing regulated. P. L. 1911, c. 675; P. L. 1913, c. 752, s. 2.

Buncombe. Fish protected; close season for and size of trout; game warden's duty. 1909, c. 570.

Burke. Dynamiting fish prohibited. 1909, c. 895.

Permission to fish required; dynamiting and seining prohibited. P. L. 1911, c. 137; P. L. 1913, c. 752, s. 1.

Burke, Caldwell, and McDowell. Fishways in Catawba River; seining and trapping prohibited. P. L. 1911, c. 170.

Cabarrus. Seining in Coddle and Big Cold Water creeks. P. L. 1911, c. 361.

Cherokee. Shooting fish. P. L. 1915, c. 608, ss. 4, 5; P. L. 1917, c. 162.

Seines and traps in Valley, Notla, and Hiwassee rivers. Rev., s. 2458.

Clay. Fishing for California trout regulated. 1909, c. 374.

Dynamiting fish prohibited. P. L. 1913, c. 623, s. 3.

Free passage of fish in Mission Dam in Hiwassee River. 1909, c. 112.

Columbus. Fishing regulated. P. L. 1917, cc. 394, 713.

Craven. Fishing from bridges at New Bern. Rev., s. 2456.

Duplin and Pender. Fishing regulated. P. L. 1917, c. 665.

Durham and Orange. Use of seines and nets in Eno River. P. L. 1913, c. 547.

Gates. Fish in Speight's Mill Pond protected. 1907, c. 646.

Fishing in Bennett's Creek Mill Pond regulated. 1907, c. 734.

Graham. Close season for trout in Yellow Creek. P. L. 1911, c. 127.

Close season for rainbow trout. P. L. 1911, c. 59.

Halifax. Fishing regulated. P. L. 1917, c. 174.

Harnett and Lee. Seines prohibited in Upper Little River. P. L. 1911, c. 379.

Dynamite prohibited in Upper Little River. P. L. 1915, c. 519.

Haywood. Catching trout in Cataloochee Creek. Rev., s. 2480.

Fishing in Cataloochee Township. 1907, c. 704.

Fishing in Cecil Township. 1907, c. 696.

Henderson. Fishing in certain streams prohibited. 1895, c. 345; P. L. 1913, c. 623, s. 2.

Obstructions in streams prohibited. Rev., s. 2479.

Hertford. Fishing in Liverman's Mill Pond. P. L. 1915, c. 354.

Johnston. Close season for Hannah's and Stone's creeks. P. L. 1915, c. 645.

Fishing in Black Creek prohibited. 1907, cc. 713, 870; P. L. 1911, c. 493; P. L. 1913, c. 373.

Madison. Close season; use of dynamite. P. L. 1911, c. 380.

Martin. Permission required to fish in Cross Roads Township. 1907, c. 338.

McDowell. Fishing regulated. 1891, c. 5; 1907, cc. 544, 886.

Mitchell. Dynamiting fish prohibited. 1909, c. 895.

Mitchell and Yancey. Use of explosives and dynamite prohibited. P. L. 1913, c. 576.

Perquimans. Shooting fish in Goodwin's Mill Pond forbidden. 1909, c. 118.

Polk. Seines, nets, and dynamite prohibited; exception. 1909, c. 590; P. L. 1911, c. 549.

Fishing in North Pacolet and Vaughan's Creek regulated. 1907, c. 149.

Rockingham. Dynamiting fish in Haw River forbidden. 1909, c. 311.

Sampson. Fishing in certain streams permitted. 1907, c. 359.

Swain. Close season for trout in Tabor's Mill Creek. P. L. 1911, c. 121.

Close season in Sawmill and Tabor's Mill creeks. P. L. 1915, c. 355.

Fishing on Sunday prohibited. P. L. 1915, c. 573.

Hazel and Forney's creeks; close season; limit. 1909, c. 247.

Hazel Creek. 1905, c. 281; 1907, c. 426.

Rainbow trout in Ocoa Township. P. L. 1911, c. 208.

Transylvania. Seining and trapping prohibited. 1909, c. 128.

Watauga. Trout protected. 1899, c. 285; P. L. 1915, c. 622.

Fishing regulated. 1909, c. 108; P. L. 1911, c. 124; P. L. 1913, c. 762.

Dynamiting fish prohibited. 1909, c. 895.

Yancey. Fishing regulated. P. L. 1911, c. 290; P. L. 1913, c. 752, s. 7.

CHAPTER 38

GAME LAWS

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ART. 1. ADMINISTRATION OF GAME LAWS

Part 1. County Administrative System and County Licenses

1. Application of county game law system. In the following counties the game laws are administered through the county game protection commission as provided in the following eight sections of this chapter, and in these counties licenses of the Audubon Society shall not be good: Beaufort, Bertie, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Cleveland, Craven, Dare, Davie, Duplin, Forsyth, Franklin, Gaston, Gates, Halifax, Harnett, Hertford, Hyde, Jackson, Johnston, Jones, Lincoln, Macon, Madison, Martin, Mitchell, Montgomery, Nash, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Polk, Randolph, Richmond, Robeson, Sampson, Stanly, Stokes, Swain, Transylvania, Tyrrell, Union, Vance, Washington, Wayne, Wilkes, Wilson, Yadkin.

1909. c. 840, s. 12; 1909, c. 824; P. L. 1911, cc. 413, 468, 589, 608, 664, 683; P. L. 1913, c. 384.

NOTE. For local laws regulating game protection and licensing in the following counties, see the laws cited:

- Alexander, P. L. 1917, c. 250.
- Anson, P. L. 1917, c. 474.
- Clay, P. L. 1913, c. 206.
- Craven, P. L. 1911, c. 589; P. L. 1913, c. 384.
- Currituck, P. L. 1917, c. 24; 1909, c. 708.
- Davidson, Ex. Sess., P. L. 1913, cc. 53, 257.
- Graham, P. L. 1917, c. 125.
- Granville, P. L. 1911, c. 408.
- Guilford, P. L. 1917, c. 649.
- Haywood, P. L. 1915, c. 566.
- Henderson, P. L. 1911, c. 184.
- Hoke, P. L. 1915, c. 459.
- Iredell, P. L. 1917, c. 459.
- Jackson (Sylva Township), 1909, c. 534.
- Lincoln, 1909, c. 840.
- Mitchell, P. L. 1913, c. 70.
- Northampton, P. L. 1911, c. 760.
- Onslow, P. L. 1913, c. 591.
- Pender, P. L. 1915, c. 150.
- Robeson, P. L. 1917, c. 376.
- Scotland, P. L. 1917, c. 57.
- Warren, P. L. 1915, c. 137.
- Yancey, P. L. 1915, c. 136.

2. Game protection commission; creation and objects. The boards of county commissioners for the several counties named in the preceding section are hereby constituted game-protection commissioners for their respective counties, for the better protection and preservation of game in the said counties and to secure the better enforcement of the game laws of said counties.

1909, c. 840, s. 1.

3. Chief county game warden; appointment, term, duty. The board of county commissioners of each of such counties, on the first Monday in May, one thousand nine hundred and nine, and biennially thereafter, shall appoint a chief game warden for their respective counties, who shall hold his office for a term of two years, and whose duty it shall be diligently to enforce the game laws of their counties, as hereinafter set forth.

1909, c. 840, s. 5.

4. Deputy township game wardens. For more thorough enforcement of the game laws of said counties it shall be the duty of the chief game warden, upon the petition of three freeholders of any township in said county, to appoint deputy game wardens in said township.

1909, c. 840, s. 6.

5. Qualification of wardens; clerk's fee. Every warden so appointed shall, before entering upon the duties of his office, take and subscribe before the clerk of the superior court of the county wherein he is appointed an oath to perform the duties of his office, together with the other oaths, prescribed for police officers, and execute a bond in the sum of fifty dollars for the faithful discharge of his duty, and the oath and bond shall be recorded by the clerk in his office. The clerk shall not charge more than fifty cents for taking and recording said oath.

1909, c. 840, s. 7.

6. Deputy warden's fees. The deputy game warden shall receive the sum of two and one-half dollars for each nonresident license procured for nonresident hunters, and for each conviction for the said game laws he shall receive the sum of two and one-half dollars, in addition to fees allowed by law for serving process and other acts as constable. The moneys paid out to the chief game warden or his deputies for convictions as herein provided shall be paid out of the fund for the enforcement of the game law by the treasurer of the county, in the same manner as the county funds are disbursed; and the amount due said wardens and deputies for collecting license taxes shall be retained by them when remitting license taxes to the clerk of the court.

1909, c. 840, ss. 8, 9.

NOTE. For special provisions as to compensation in Craven, see P. L. 1911, c. 589; 1913 c. 384.

7. County license for hunters. Any nonresident of the state of North Carolina who desires to hunt, shoot or trap birds or other animals in any part of the said counties shall make application to the clerk of the superior court of the county where the applicant desires to hunt, shoot or trap, who shall issue such a license upon payment of a tax of ten dollars and the clerk's fees, amounting to fifty cents. The license shall expire on the termination of the hunting season,

as fixed for the said counties. The license shall be of such form as the game protection commission of the county shall prescribe, and shall entitle the owner to hunt in any county enumerated in the first section of this chapter, in the manner provided by law for hunting in such county. Any license granted hereunder shall entitle the holder to hunt only in the county issuing the same.

Licenses under this section shall issue only in the counties enumerated in the first section of this chapter.

1909, c. 840, s. 3.

8. Disposition of license fees from county licenses. The funds received by the clerk of the superior court or other person from the sale of hunters' licenses shall be turned over to the county treasurer, and one-half thereof shall be turned into the school fund of said county and the other half be set apart as a fund for the enforcement of the game law in said county.

1909, c. 840, s. 4.

NOTE. For special provision in Craven, see P. L. 1911, c. 589, P. L. 1913, c. 384.

Part 2. Administration Through Audubon Society

9. Audubon Society; incorporation and corporate powers. J. Y. Joyner, T. Gilbert Pearson, R. H. Lewis, A. H. Boyden, H. H. Brimley, P. D. Gold, Jr., J. F. Jordan and R. N. Wilson are hereby created a body politic and corporate under the name and style of the Audubon Society of North Carolina, and by that name and style they and their associates and successors shall have perpetual succession, with power to take and hold, either by gift, grant, purchase, devise, bequest or otherwise, any real or personal estate, not exceeding fifty thousand dollars in value, for the general use and advancement of the purposes of the said corporation, or for any special purpose, consistent with the charter; and such property shall be exempt from taxation; to make rules and by-laws; to have and to use a common seal, and to change the same at pleasure; and to do and perform all such acts and things as are or may become necessary for the advancement and furtherance of the corporation.

Rev., s. 1862; 1903 (Pr.), c. 337.

10. Objects of society. The objects for which the corporation is formed are to promote among the citizens of North Carolina a better appreciation of the value of song and insectivorous birds to man and the state; to encourage parents and teachers to give instruction to children on the subject; to stimulate public sentiment against the destruction of wild birds and their eggs; to secure the enactment and enforcement of proper and necessary laws for the protection and preservation of birds and game of the state; to provide for the naming of special officers and investing them with necessary power, who shall work under the direction and control of the Audubon Society of North Carolina, looking to the rigid enforcement of the game and bird protective laws of the state; to distribute literature bearing on these topics among the members of the society and other persons, and to raise and provide funds for defraying the necessary expenses of the society in the accomplishment of the purposes herein named.

Rev., s. 1864; 1903 (Pr.), c. 337, s. 3.

11. Officers of society. The officers of said corporation shall be a president, vice president, secretary and treasurer, and such other officers as may be fixed

by the by-laws. The treasurer shall be appointed as provided in the next following section.

Rev., s. 1863; 1903 (Pr.), c. 337, s. 2.

12. Appointment of bird and game wardens and treasurer of society. The governor, upon recommendation of the Audubon Society of North Carolina, shall, from time to time appoint bird and game wardens, and the treasurer of the society, whose terms of office, unless otherwise provided for, shall be during good behavior or until their successors are appointed. The governor shall issue to the treasurer of the Audubon Society, and to each person appointed as warden, a commission, and shall transmit such commission to the clerk's office of the superior court for the county from which the prospective treasurer or bird and game warden is appointed; and no tax or fee shall be charged or collected for said commission. Any of the said wardens may be removed by the governor upon proof satisfactory to him that they are not fit persons for said position. The compensation of said wardens shall be fixed and paid by the said society.

Rev., s. 1867; 1903 (Pr.), c. 337, s. 12.

13. Qualification and badge of bird and game wardens; clerk's fee for record. Every bird and game warden, appointed as provided in the last section shall before entering on the duties of his office, take and subscribe before the clerk of the superior court of the county in which he resides an oath to perform the duties of his office together with the other oaths prescribed for police officers, and execute a bond in the sum of one hundred dollars for the faithful performance of his duties, and the said oath and bond shall be recorded by the clerk in his office. The clerk shall not charge more than fifty cents for taking and recording said oath. The game and bird warden when acting in his official capacity, shall wear in plain view a metallic shield with the words "Game and Bird Warden" inserted thereon.

Rev., s. 1868; 1903 (Pr.), c. 337, s. 15.

14. Nonresident hunter's license from Audubon Society. Any nonresident who desires to hunt birds or animals in any part of the state other than in the counties enumerated in the first section of this chapter shall make application to the clerk of the superior court of any county who shall issue such license upon the payment of a tax of ten dollars and the clerk's fee. The license shall expire on the termination of the hunting season as fixed for the several counties, and shall entitle the owner to hunt anywhere in the state other than in the counties enumerated in the first section of this chapter except upon private property which he shall not do without the written consent of the owner. The license may be revoked by the Audubon Society upon proof that the holder has hunted in violation of the law. No license shall be granted to any person whose license has been revoked, for a period of one year thereafter. Such license shall not authorize the holder to hunt in any county at any time or in any manner other than is provided by law for hunting in such county. Provided, however, that the nonresident child or parent of a resident owner of land in this state shall be allowed to hunt on the land of his parent or child as though he were a resident of the state.

Rev., s. 1872; 1903 (Pr.), c. 337, ss. 10, 17; 1909, c. 185, s. 1.

15. Clerks to report on licenses and transmit funds to state treasurer. The clerk of the superior court shall make a report on the first day of December of each year and at the close of the hunting season for their respective counties to the Audubon Society, on forms provided by said society, of licenses issued, and shall at the same time transmit all funds received for such license to the treasurer of the state.

Rev., s. 1874; 1903 (Pr.), c. 337, s. 10.

NOTE. For form of license, see this chapter, s. 19.

16. Bird and game fund. The funds received by the treasurer of the state from the license tax on nonresident hunters shall constitute a fund known as the Bird and Game Fund, which fund shall be paid out by the treasurer of the state on the order of the treasurer of the Audubon Society of North Carolina, who shall make an annual report to the governor of the receipts and expenditures of the society for the year.

Rev., s. 1871; 1903 (Pr.), c. 337, s. 10.

17. Exportation of game by licensees from society. Any person holding a hunter's license from the Audubon Society to hunt in North Carolina shall be permitted to take out of the state fifty partridges or quail, fifty beach birds or snipe, twelve grouse, or two wild turkeys in a season.

Rev., s. 1873; 1903 (Pr.), c. 337, s. 11.

NOTE. Shipment of live quail forbidden, see this chapter, s. 25a.

Part 3. Common Provisions as to Wardens and Licenses

18. Powers of wardens; right of search, seizure and sale. Upon qualifying as prescribed in section 5 or section 13 above, the wardens shall possess and exercise the powers and authority of constables under the laws of this state, so far and so far only as such powers apply to the execution of any papers and to proceedings relative to game and game laws. It shall be their duty to see that the bird and game laws are enforced, to obtain information as to the violations thereof, and to prosecute all persons or corporations having in their possession any bird or game contrary to such laws. Upon making affidavit before a justice of the peace or any court of the state that there exist reasonable grounds to believe that any game or game birds are in the possession of any common carrier in violation of the law, such warden shall be entitled to search, open, enter and examine all cars, warehouses and receptacles of common carriers in this state, where they have reason to believe are to be found any game or birds taken or held in violation of the law and to seize such game or birds.

Any bird or game caught, taken, killed, shipped, or received for shipment had in possession or under control by any person or corporation contrary to the provisions of this law, which may come into the possession of said warden, shall be sold at auction, and the warden disposing of the same shall issue a certificate to the purchaser certifying that the said bird or animal was legally obtained and possessed, and any one so acquiring said bird or animal can have the right to use it as if the same had been sold, killed or possessed in accordance with the law. The funds received from the sale of such confiscated birds or game shall, in the counties enumerated in the first section of this chapter, be paid

to the county treasurer and placed to the account of the fund for the enforcement of the game law; in other counties, where the game law is administered through the Audubon Society, such funds shall be forwarded by the game warden to the treasurer of the state and placed to the account of the bird and game fund.

Rev., s. 1868; 1869; 1870; 1903 (Pr.), c. 337, ss. 13, 14, 15; 1909, c. 840, s. 10.

19. Form and record of hunter's license. The form of license for nonresident hunters shall be prescribed by the game protection commission of the county in the counties enumerated in the first section of this chapter; in other counties by the Audubon Society. The game protection commission or the Audubon Society in the counties where they respectively exercise authority under this chapter shall furnish to the clerks of the superior court a bound book for the purpose of keeping a record of all hunters license issued.

Rev., s. 1865; 1903 (Pr.), 337, s. 10; 1909, c. 840, s. 2.

20. Nonresidents hunting without license. If any nonresident shall hunt in the state without license, as required by law, or shall hunt upon the lands of another without his written consent, or shall fail to carry his license with him in hunting, or shall fail upon demand to exhibit it to any game warden or police officer, he shall be guilty of a misdemeanor. Each day's hunting without license shall be a separate offense.

Rev., s. 3469; 1903 (Pr.), c. 337, s. 10.

ART. 2. PROTECTION OF GAME AND BIRDS; GENERAL PROVISIONS

21. Legislative consent to federal regulations on certain federal lands. The consent of the general assembly of North Carolina, is hereby given to the making by the congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March first, one thousand nine hundred and eleven, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U. S. Stat. at Large, p. 961), and acts of congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

1915, c. 205.

21a. Protection of buffalo and elk. It shall be unlawful for any person or persons to shoot, kill, capture, destroy, or run with dogs, or in any other manner interfere with any buffalo or elk in North Carolina. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor, and shall be fined or imprisoned, in the discretion of the court.

1917, c. 240.

21b. Game birds defined. Under the laws of this state, the following only shall be considered game birds: loons, and grebes, swans, geese, brant, river,

fish and sea ducks, rails, coots, marsh-hens and gallinules, plovers, shore and surf birds, snipe, woodcock, sandpipers, yellow legs, chewink or tohee and curlews, and the wild turkey, grouse, partridge, pheasant, quail, dove, robin and meadow lark.

Rev., s. 1875; 1903 (Pr.), c. 337, s. 4.

22. Illegal killing of game and birds prohibited. If any person shall at any time hunt, capture or kill any nongame bird, or shall during the close season, or time in each year in which the hunting or killing is prohibited, chase with dogs, hunt, kill, or wound, or in any manner take or capture any game bird, or any deer, opossum, rabbit or squirrel, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to birds caught or killed by authority of the Audubon Society for scientific purposes only. This section shall not apply to the English or European housesparrow, owls, hawks, crows, blackbirds, jackdaws, turkey buzzards, vultures and rice birds.

Rev., s. 3466; 1903 (Pr.), c. 337, s. 14; 1915, c. 182, s. 1.

NOTE. For local statutes, varying punishments provided in this section, see the laws referred to in Article 4 of this chapter, Close Season for Greene, and the following:

Pamlico, 1905, c. 47; Halifax and Warren, 1905, c. 137; Montgomery, 1905, c. 284; Granville, 1905, c. 369; New Hanover, 1905, c. 409.

For local statute in Perquimans County as to rewards for the heads of gray hawks and crows, see P. L. 1911, c. 235.

23. Birds kept as pets, or for breeding. It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating.

Rev., s. 1876; 1903 (Pr.), c. 337, ss. 6, 7.

24. Certificates to take birds, nests or eggs. The Audubon Society of North Carolina may issue a certificate to any properly accredited persons of the age of twelve years and upward, permitting the holder thereof to collect birds, their nests or eggs for strictly scientific purposes; said certificate shall be in force only during the calendar year in which issued, and shall not be transferable. In order to obtain such certificates the applicant for same must present to the persons having authority to grant such certificates written testimonials from two well-known scientific men, certifying to the good character and fitness of said applicant to be intrusted with such privilege, and must pay the said society one dollar to defray the necessary expenses attending the granting of such certificate. On satisfactory proof that the holder of such certificate has killed any bird or taken the nests or eggs of any birds other than for scientific purposes, his certificate shall become void, and he shall be further subject for each offense to the penalty provided for such violation of the law.

Rev., s. 1866; 1903 (Pr.), c. 337, s. 5.

25. Destroying nests or eggs of birds. If any person shall take or needlessly destroy the nest or eggs of any wild birds, except those of the English or European housesparrow, owls, hawks, crows, blackbirds, jackdaws and rice birds, he shall be guilty of a misdemeanor and be fined one dollar for each nest or egg destroyed or taken, or be imprisoned not less than five nor more than ten days for each offense. This section shall not apply to any person taking eggs or nests

for scientific purposes only, by authority of the Audubon Society of North Carolina.

Rev., s. 3464; Code, s. 2836; 1903 (Pr.), c. 337, s. 4.

NOTE. As to wild turkeys' and quails' nests in Bertie County. 1909, c. 717.

As to destruction of birds' nests and eggs in Mitchell County. P. L. 1913, c. 70.

For local statute protecting wild animals in parks in Transylvania County, see P. L. 1911, c. 491.

For protection of wild animals and birds in Fairview Park, Albemarle, Stanly County. Ex. Sess. 1913, c. 26.

ART. 3. SHIPMENT OR POSSESSION OF GAME

25a. Shipment of live quail or partridges out of state forbidden. No person shall catch, net, or trap any quail or partridges for the purpose of shipping or transporting the same out of the state. No person, firm or corporation shall transport, or cause to be transported or have possession of with intent to transport or to secure the transportation of, any live quail or partridges beyond the limits of the state. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction fined or imprisoned in the discretion of the court.

All authority given to the Audubon Society of North Carolina to grant permits to stop a transport of live quail or partridges beyond the limits of the state is revoked.

1911, c. 2.

26. Exportation from state prohibited. If any person shall knowingly receive for transportation, or shall transport or cause to be transported, or have in his possession with the intent to transport, or to secure the transportation of, or shall in any manner carry or convey, beyond the limits of this state, except for purposes of propagation under permits issued by the Audubon Society of North Carolina, any partridge, pheasant, grouse, shore or beach birds, quail, wild turkey, snipe, woodcock, or nongame bird which have been killed or captured within this state, he shall be guilty of a misdemeanor; and each bird so killed or taken or had in possession, received for transportation or transported contrary to the provisions of this section shall constitute a separate offense. The reception by any person or corporation within this state of any such birds or game for shipment to a point beyond the limits of this state, shall be prima facie evidence that said birds or game were killed within the state for the purpose of conveying same beyond its limits; but the provisions of this section shall not apply to the common carriers into whose possession any of the birds mentioned in this section shall come in the regular course of their business for transportation while they are in transit through the state from any place without the state.

Rev., s. 3471; 1903 (Pr.), c. 337, s. 7; Code, s. 2835.

NOTE. For special proviso as to Tyrrell County, see 1909, c. 836.

27. Packages of game to be marked. If any person shall deliver or knowingly receive for transportation any receptacle or package containing birds or game, unless the same shall be labeled on the address side in plain letters with the name and address of the owner and consignor, and with the kind or kinds of birds which the said package or receptacle contains, or shall falsely label the same, he shall be guilty of a misdemeanor.

Rev., s. 3470; 1903 (Pr.), c. 337, s. 8.

ART. 4. CLOSE SEASON FOR GAME

28. Deer. The close season of each year during which deer shall not be hunted with gun, chased with dogs, killed, trapped, or destroyed, shall, as to the several counties or parts of counties specified be as follows:

Alamance -----Feb. 1 to Oct. 1 Rev., s. 1881.	Craven -----Jan. 1 to Sept. 1 P. L. 1917, c. 443.
Alexander -----Feb. 1 to Oct. 1 Rev., s. 1881.	Cumberland ----- See P. L. 1913, c. 501. (Close season for 1918.)
Alleghany -----Feb. 1 to Oct. 1 Rev., s. 1881.	Currituck ----- On North Poplar Branch Township, March 1 to September 20. Rev., s. 1881. Atlantic Township, no open season. 1909, c. 380.
Anson -----no open season before 1922 P. L. 1917, c. 474.	Dare -----Feb. 1 to Oct. 1 P. L. 1911, c. 187.
Ashe -----except Nov. 1 to Nov. 15 1907, c. 358.	Davidson-----except Nov. 1 to Nov. 15 1907, c. 358.
Avery -----no open season before 1922 P. L. 1917, c. 469.	Davie -----Feb. 1 to Oct. 1 Rev., s. 1881.
Beaufort -----Feb. 1 to Nov. 1 P. L. 1917, c. 573.	Duplin -----Jan. 1 to Oct. 1 P. L. 1917, c. 668.
Bertie -----Jan. 1 to Sept. 1 P. L. 1915, c. 555; P. L. 1917, c. 53.	Durham -----Feb. 1 to Oct. 1 Rev., s. 1881.
Bladen -----Dec. 31 to Sept. 30 P. L. 1911, c. 123.	Forsyth-----except Nov. 1 to Nov. 15 1907, c. 358.
Brunswick -----Jan. 1 to Oct. 1 P. L. 1915, c. 568.	Franklin -----Feb. 1 to Oct. 1 Rev., s. 1881.
Buncombe -----Jan. 15 to Oct. 15 P. L. 1917, c. 658.	Gaston -----Feb. 1 to Oct. 1 Rev., s. 1881.
Bertie -----Jan. 1 to Oct. 1 Rev., s. 1881.	Gates -----Feb. 1 to Oct. 1 P. L. Ex. Sess. 1913, c. 170.
Cabarrus -----Feb. 1 to Oct. 1 Rev., s. 1881.	Graham -----Does, no open season Bucks -----except Oct. 1 to Dec. 1 P. L. 1917, c. 125.
Caldwell -----no open season before 1922 P. L. 1917, c. 469.	Granville -----Feb. 1 to Nov. 1 P. L. 1917, c. 598.
Carteret -----Feb. 1 to Sept. 1 P. L. 1915, c. 682.	Guilford -----except Nov. 1 to Nov. 15 1907, c. 358.
Caswell -----except Nov. 15 to Dec. 15 P. L. 1915, c. 129.	Halifax -----Mar. 1 to Nov. 15 P. L. 1913, c. 591.
Catawba -----Feb. 1 to Oct. 1 Rev., s. 1881.	Harnett -----except Nov. 1 to Nov. 15 P. L. 1915, c. 127; P. L. 1917, c. 205.
Chatham -----except Nov. 1 to Nov. 15 1907, c. 358.	Haywood -----Jan. 1 to Nov. 1 P. L. 1915, c. 566.
Cheerokee -----Jan. 1 to Oct. 1 1907, c. 452.	Henderson -----see statute 1909, c. 471.
Clay -----no open season before 1922 P. L. 1917, c. 395.	Hertford -----Jan. 1 to Sept. 1 P. L. 1913, c. 591.
Cleveland -----Feb. 1 to Oct. 1 Rev., s. 1881.	
Columbus -----Jan. 1 to Oct. 1 P. L. 1917, c. 394.	

Hoke -----except Nov. 1 to Dec. 1 P. L. 1915, c. 459; P. L. 1917, c. 100.	Polk -----Feb. 1 to Oct. 1 Rev., s. 1811.
Hyde -----see statute Currituck Township. P. L. 1911, c. 131; P. L. 1913, c. 560.	Randolph ---except Nov. 1 to Nov. 15 1907, c. 358.
Iredell -----Feb. 1 to Oct. 1 Rev., s. 1881.	Richmond ---except Nov. 1 to Nov. 15 P. L. 1915, c. 569.
Jackson -----see statute 1909, c. 471.	Robeson -----Jan. 1 to Nov. 1 Rev., s. 1881.
Johnston -----Feb. 1 to Oct. 1 Rev., s. 1881.	Rockingham except Nov. 1 to Nov. 15 1907, c. 358.
Jones -----Jan. 1 to Sept. 1 P. L. 1917, c. 443.	Rowan -----Feb. 1 to Oct. 1 Rev., s. 1881.
Lee -----Feb. 1 to Oct. 1 Rev., s. 1881.	Rutherford -----Feb. 1 to Oct. 1 Rev., s. 1881.
Lincoln -----Feb. 1 to Dec. 1 P. L. 1913, c. 659; P. L., Ex. Sess., 1913, c. 75; P. L. 1915, c. 92.	Sampson -----Feb. 1 to Oct. 1 Rev., s. 1881.
McDowell -----Feb. 1 to Oct. 1 Rev., s. 1881.	Scotland ---except Nov. 1 to Dec. 1 P. L. 1915, c. 57.
Macon ----no open season until 1922 P. L. 1917, c. 395.	Stanly ---except Nov. 1 to Nov. 15 1907, c. 358.
Madison -----Feb. 1 to Oct. 1 Rev., s. 1881.	Stokes ---except Nov. 1 to Nov. 15 1907, c. 358.
Mecklenburg -----Jan. 20 to Dec. 1 P. L. 1915, c. 562.	Surry ---except Nov. 1 to Nov. 15 1907, c. 358.
Mitchell ---except Oct. 15 to Nov. 1 1907, c. 242.	Swain -----Jan. 15 to Oct. 15 P. L. 1915, c. 772.
Montgomery except Nov. 1 to Nov. 15 1907, c. 358.	Transylvania -----see statute P. L. 1911, c. 348.
Moore ---except Nov. 1 to Nov. 15 1907, c. 358.	Tyrrell -----Feb. 1 to Oct. 15 Rev., s. 1881.
Nash ---except Sept. 1 to Nov. 1 1907, c. 109.	Union -----Feb. 1 to Oct. 1 Rev., s. 1881.
New Hanover-----Jan. 1 to Sept. 1 Rev., s. 1881.	Vance -----Mar. 1 to Nov. 15 P. L. 1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.
Northampton -----Feb. 1 to Sept. 15 P. L. 1915, c. 272.	Wake -----Mar. 1 to Nov. 1 1909, c. 723.
Onslow -----Mar. 15 to Oct. 15 P. L. 1913, c. 591.	Warren -----Feb. 1 to Oct. 1 Rev., s. 1881.
Orange -----Feb. 1 to Oct. 1 Rev., s. 1881.	Washington -----Jan. 15 to Oct. 1 P. L. 1911, c. 216.
Pamlico -----Feb. 1 to July 15 1909, c. 710; P. L. 1913, c. 560.	Watauga ---except Nov. 1 to Nov. 15 1907, c. 358.
Pasquotank -----Feb. 1 to Oct. 1 P. L., Ex. Sess., 1913, c. 170.	Wilkes ---except Nov. 1 to Nov. 15 1907, c. 358.
Pender -----Jan. 1 to Oct. 1 P. L. 1915, c. 150.	Yadkin ---except Nov. 1 to Nov. 15 1907, c. 358.
Perquimans -----Feb. 1 to Oct. 1 P. L., Ex. Sess., 1913, c. 170.	Yancey ---except Oct. 1 to Nov. 30 Rev., 1881.
Person -----Jan. 15 to Sept. 1 Rev., s. 1881.	NOTE. For the punishment for violating the various acts cited, see the Acts.

29. Foxes. The close season of each year during which foxes shall not be hunted with gun, chased with dogs, killed, trapped or destroyed, shall, as to several counties or parts of counties specified be as follows:

Alamance -----Feb. 1 to Oct. 1 P. L. 1911, c. 654.	Lenoir -----Feb. 15 to Sept. 15 P. L. 1917, c. 673.
Alleghany -----Mar. 1 to Oct. 1 P. L. 1915, c. 274.	Lincoln -----Feb. 1 to Nov. 15 P. L. 1913, c. 659.
Buncombe -----Mar. 1 to Sept. 1 P. L. 1917, c. 658.	Montgomery ----Jan. 15 to Oct. 15 P. L. 1911, c. 400.
Burke -----Mar. 1 to Dec. 1 South of Catawba River 1907, c. 388.	Moore -----Mar. 1 to Oct. 1 P. L. 1911, c. 291.
Chatham -----Feb. 1 to Sept. 1 1909, c. 174; P. L. 1911, c. 135.	New Hanover ---Feb. 15 to Sept. 15 P. L. 1917, c. 673.
Cleveland -----Mar. 1 to Dec. 1 1907, c. 388.	Onslow -----Feb. 15 to Sept. 15 P. L. 1917, c. 673.
Duplin -----Feb. 15 to Sept. 15 P. L. 1911, c. 407.	Pender -----Feb. 15 to Sept. 15 P. L. 1911, c. 407.
Franklin -----Mar. 1 to Oct. 15 P. L., Ex. Sess. 1913, c. 169.	Richmond -----Mar. 15 to Sept. 1 P. L. 1911, c. 382.
Granville -----Feb. 1 to Nov. 1 P. L. 1917, c. 598.	Sampson -----Feb. 15 to Sept. 15 P. L. 1917, c. 673.
Halifax -----Mar. 1 to Sept. 15 P. L. 1913, c. 591.	Scotland -----Mar. 2 to Aug. 15 P. L. 1917, c. 57.
Harnett -----April 1 to Sept. 1 1909, c. 667.	Wayne -----Feb. 15 to Sept. 15 P. L. 1917, c. 673.
Hoke -----Mar. 2 to Sept. 15 P. L. 1915, c. 459.	Wilkes -----Feb. 15 to Oct. 1 P. L. 1913, c. 77.
Lee -----Apr. 1 to Aug. 15 P. L., Ex. Sess. 1913, c. 111.	NOTE. For punishments for violating the acts cited, see the Acts.

30. Opossum. The close season of each year during which no opossum shall be shot, killed, hunted or in any way captured shall be as to the several counties specified as follows:

Alamance -----Feb. 1 to Oct. 1 Rev., s. 1883.	Caswell -----Feb. 1 to Oct. 1 Rev., s. 1883.
Alexander -----Mar. 1 to Nov. 1 P. L. 1917, c. 250.	Chatham -----Feb. 1 to Oct. 1 Rev., s. 1883.
Anson -----Jan. 20 to Nov. 20 P. L. 1917, c. 474.	Clay -----Feb. 15 to Nov. 15 P. L. 1917, c. 395.
Ashe -----Feb. 1 to Nov. 1 P. L. 1913, c. 560.	Currituck -----Apr. 1 to Nov. 1 P. L. 1911, c. 378; P. L. 1913, c. 560.
Bertie -----Feb. 1 to Nov. 1 French's Creek Township, Cypress Creek Township, Turnbull Township, Colly Township. 1911, c. 123.	Durham -----Feb. 1 to Oct. 1 Rev., s. 1883.
Bladen -----Feb. 1 to Dec. 1 1909, c. 418.	Edgecombe -----Jan. 1 to Oct. 1 P. L. 1911, c. 189.
	Forsyth -----Feb. 1 to Oct. 1 P. L. 1913, c. 560.

Franklin -----	Feb. 1 to Oct. 1	Pasquotank -----	Apr. 1 to Nov. 1
Rev., s. 1883.		P. L. 1913, c. 369.	
Graham -----	Feb. 1 to Oct. 1	Polk -----	Feb. 1 to Oct. 1
Rev., s. 1883.		P. L. 1915, c. 454.	
Greene -----	Feb. 1 to Sept. 1	Randolph -----	Jan. 1 to Oct. 1
Rev., s. 1883.		P. L. 1911, c. 24.	
Guilford -----	Feb. 1 to Oct. 1	Robeson -----	Mar. 1 to Oct. 1
Rev., s. 1883.		P. L. 1917, c. 537.	
Halifax -----	Feb. 1 to Oct. 1	Rockingham -----	Feb. 1 to Oct. 1
Rev., s. 1883.		P. L. 1911, c. 756.	
Harnett -----	Jan. 1 to Oct. 1	Sampson -----	Mar. 1 to Oct. 1
Rev., s. 1883.		P. L. 1911, c. 19.	
Iredell -----	Mar. 1 to Oct. 1	Surry -----	Jan. 1 to Oct. 1
P. L. 1917, c. 459.		P. L. 1915, c. 289.	
Johnston -----	Mar. 1 to Nov. 1	Swain -----	Feb. 15 to Nov. 15
P. L. 1913, c. 648.		P. L. 1915, c. 772.	
Lee -----	Feb. 1 to Oct. 1	Vance -----	Mar. 1 to Nov. 15
Rev., s. 1883.		1909, c. 516; P. L. 1911, c. 364; P. L. 1913,	
Lincoln -----	Jan. 1 to Oct. 1	c. 718.	
Rev., s. 1883.		Wake -----	Feb. 1 to Oct. 1
Mecklenburg -----	Feb. 1 to Oct. 1	P. L. 1913, c. 225.	
Rev., s. 1883.		Warren -----	Jan. 1 to Oct. 1
Montgomery -----	Jan. 1 to Oct. 1	P. L. 1913, c. 560.	
P. L. 1911, c. 102.		Watauga -----	Mar. 15 to Nov. 1
McDowell -----	Mar. 1 to Oct. 1	P. L. 1913, c. 533.	
1907, c. 886.		Wilkes -----	Mar. 1 to Oct. 15
Moore -----	Feb. 1 to Oct. 1	P. L. 1913, c. 77.	
Rev., s. 1883.		Yadkin -----	Mar. 1 to Oct. 1
Orange -----	Feb. 1 to Oct. 1	1909, c. 612.	
Rev., s. 1883.		Yancey -----	Jan. 1 to Nov. 1
Pamlico -----	Feb. 1 to Oct. 1	P. L. 1913, c. 136.	
Rev., s. 1883.		NOTE. For punishment for violating the	
		acts cited, see the Acts.	

31. Rabbit. The close season of each year during which no rabbits shall be hunted with a gun, shall be as to the several counties specified as follows:

Anson -----	Jan. 20 to Nov. 20	Rockingham -----	Feb. 1 to Oct. 1
P. L. 1917, c. 474.		P. L. 1911, c. 756.	
Cabarrus -----	Mar. 1 to Thanksgiving Day	Rowan -----	May 1 to Sept. 1
P. L. 1913, c. 560.		P. L. 1911, c. 445.	
Durham -----	Feb. 1 to Nov. 15	Warren -----	Mar. 1 to Dec. 1
P. L. 1917, c. 400.		P. L. 1915, c. 137; P. L. 1917, c. 298, 348.	
Forsyth -----	Feb. 1 to Oct. 1	NOTE. For punishment for violating the	
P. L. 1913, c. 560.		acts cited, see the Acts.	
Granville -----	Feb. 1 to Nov. 1		
P. L. 1917, c. 598.			

32. Raccoon. The close season of each year during which no raccoons shall be shot, killed, hunted or in any other way captured, shall be as to the several counties specified as follows:

Anson -----Jan. 20 to Nov. 20 P. L. 1917, c. 474.	Robeson -----Mar. 1 to Oct. 1 P. L. 1917, c. 537.
Ashe -----Feb. 1 to Nov. 1 P. L. 1913, c. 560.	Swain -----Feb. 15 to Nov. 15 P. L. 1915, c. 772.
Bladen -----Feb. 1 to Dec. 1 Colly, Cypress Creek, French's Creek and Turnbull townships. 1909, c. 418.	Wake -----Feb. 1 to Oct. 1 P. L. 1913, c. 225.
Craven -----Apr. 1 to Dec. 1 P. L. 1915, c. 37.	Watauga -----Mar. 15 to Nov. 1 P. L. 1913, c. 533.
Currituck -----Apr. 1 to Nov. 1 P. L. 1913, c. 560.	Yadkin -----Feb. 1 to Nov. 1. 1909, c. 612.
McDowell -----Nov. 1 to Oct. 15 1907, c. 886.	Yancey -----Jan. 1 to Nov. 1 P. L. 1915, c. 136.
Pasquotank -----Apr. 1 to Nov. 1 P. L. 1913, c. 369.	NOTE. For punishment for violating the acts cited, see the Acts.

33. Squirrels. The close season of each year during which no squirrel shall be hunted, killed, or in any way captured, shall be as to the several counties specified as follows:

Alleghany -----Mar. 1 to Aug. 1 P. L. 1913, c. 560.	Carteret -----Mar. 1 to Nov. 1 1907, c. 895; 1909, c. 475.
Anson -----Jan. 20 to Nov. 20 P. L. 1917, c. 474.	Catawba -----Feb. 1 to Nov. 25 P. L. 1911, c. 563; P. L. 1913, c. 560; P. L. 1917, c. 412.
Avery-----except Sept. 15 to Oct. 31 P. L. 1917, c. 555.	Chowan -----Mar. 1 to Dec. 1 1909, c. 13; P. L. 1913, c. 591.
Beaufort -----April 1 to Oct. 1 P. L. 1913, c. 430. Pungo Precinct, no close season. P. L. 1911, c. 766.	Clay -----Feb. 15 to Nov. 25 P. L. 1913, c. 206; P. L. 1915, c. 271; P. L. 1917, c. 417.
Bertie -----Feb. 1 to Oct. 1 P. L. 1915, c. 555; P. L. 1917, c. 53.	Cleveland -----Mar. 1 to Nov. 1 Rev., s. 1882.
Bladen -----Mar. 1 to Oct. 1 White Oak Township. 1909, c. 163. French's Creek, Colly, Cypress Creek and Turnbull townships; Feb. 1 to Nov. 1. 1909, c. 418. Mar. 1 to Nov. 1, Central and Elizabethtown townships. 1909, c. 181.	Craven -----Mar. 1 to Oct. 1 P. L. 1905, c. 77.
Brunswick -----Jan. 15 to Sept. 15 P. L. 1915, c. 568.	Currituck -----Apr. 1 to Oct. 1 1909, c. 351.
Buncombe -----Jan. 15 to Nov. 14 P. L. 1917, c. 658.	Dare -----Mar. 1 to Nov. 1 Rev., s. 1882.
	Duplin -----Mar. 1 to Oct. 15 P. L. 1913, c. 560.
	Durham -----July 1 to Nov. 15 P. L. 1917, c. 400.
	Edgecombe -----Mar. 1 to Oct. 1 1909, c. 512.
	Forsyth -----Feb. 1 to Sept. 1 P. L. 1913, c. 560.

Franklin -----Mar. 1 to Nov. 15 P. L. 1913, c. 560.	New Hanover ----Feb. 15 to Nov. 15 P. L. 1913, c. 558.
Gates -----Mar. 1 to Nov. 1 Rev., s. 1882.	Onslow -----Mar. 15 to Oct. 15 P. L. 1913, c. 591.
Granville -----Feb. 1 to Nov. 1 P. L. 1917, c. 598.	Paullico -----Mar. 1 to Oct. 1 Rev., s. 1882.
Greene -----Feb. 1 to Oct. 1 1907, c. 598.	Pasquotank -----Mar. 1 to Oct. 1 Rev., s. 1882.
Guilford -----Feb. 1 to Aug. 1 1909, c. 338; P. L. 1911, c. 125.	Pender -----Apr. 1 to Oct. 1 1907, c. 50.
Halifax -----Mar. 1 to Nov. 15 P. L. 1913, c. 591.	Rocky Point Township, Jan. 1 to Dec. 1. P. L. 1915, c. 150.
Harnett -----Feb. 1 to Oct. 15 P. L. 1917, c. 398.	Pitt -----Feb. 1 to Sept. 1 P. L. 1913, c. 606.
Haywood -----Jan. 1 to Sept. 1 P. L. 1915, c. 566.	Polk -----Feb. 1 to Aug. 15 P. L. 1915, c. 454.
Hertford -----Jan. 15 to Sept. 15 P. L. 1917, c. 544.	Robeson -----Mar. 1 to Oct. 1 P. L. 1917, c. 537.
Hoke -----except Nov. 1 to Dec. 1 P. L. 1915, c. 459; P. L. 1917, c. 100.	Rockingham -----Feb. 1 to Aug. 1 P. L. 1911, c. 756.
Hyde -----Feb. 1 to Nov. 1 Currituck Township. P. L. 1911, c. 131.	Sampson -----Feb. 1 to Nov. 1 P. L. 1917, c. 521.
Johnston -----Mar. 1 to Nov. 1 P. L. 1913, c. 648; P. L. 1917, c. 520.	Scotland -----except Nov. 1 to Dec. 1 P. L. 1917, c. 57.
Jones -----Mar. 1 to Oct. 1 Rev., s. 1882.	Swain -----Jan. 15 to Oct. 15 P. L. 1915, c. 772.
Lenoir -----Mar. 1 to Sept. 15 1909, c. 614.	Transylvania -----Apr. 1 to Sept. 1 1907, c. 842.
Lincoln -----Feb. 1 to Sept. 1 P. L. 1913, c. 659; P. L. 1917, c. 607.	Tyrrell -----Mar. 1 to Oct. 1 Rev., s. 1882.
Macon -----Feb. 15 to Sept. 1 P. L. 1917, c. 395.	Vance -----Mar. 1 to Nov. 15 1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.
Madison -----Mar. 1 to Oct. 1 Rev., s. 1882.	Wake -----Mar. 1 to Nov. 1 P. L. 1913, c. 225.
Martin -----Mar. 1 to Oct. 1 1909, c. 602.	Warren -----Mar. 1 to Dec. 1 P. L. 1915, c. 137; P. L. 1917, cc. 298, 348.
Mecklenburg -----Mar. 1 to Nov. 1 Rev., s. 1882.	Washington -----Mar. 1 to Dec. 1 P. L. 1911, c. 26; P. L. 1913, c. 560.
Mitchell -----except Sept. 15 to Nov. 1 P. L. 1917, c. 555.	Wayne -----Mar. 1 to Nov. 1 1909, c. 196; P. L., Ex. Sess. 1913, c. 203.
Montgomery -----Apr. 1 to Sept. 1 Rev., s. 1882.	NOTE. For punishment for violating the acts cited, see the Acts.
Nash -----Mar. 1 to Oct. 1 1909, c. 512.	

34. Furbearing animals. The close season of each year during which no furbearing animals shall be hunted, killed or in any way captured, shall be as to the several counties specified as follows:

Ashe -----Feb. 1 to Nov. 1 P. L. 1913, c. 560.	Macon -----Feb. 15 to Nov. 15 P. L. 1917, c. 395.
Clay -----Feb. 15 to Nov. 15 P. L. 1917, c. 395.	Pasquotank -----Apr. 1 to Nov. 1 P. L. 1913, c. 369.
Craven -----Apr. 1 to Nov. 30 P. L. 1915, c. 37.	Robeson -----Mar. 1 to Oct. 1 P. L. 1917, c. 537.
Currituck -----Apr. 1 to Nov. 1 P. L. 1913, c. 560.	Stokes -----Jan. 15 to Sept. 1 P. L. 1917, c. 588.
Gates -----Apr. 1 to Nov. 15 P. L. 1911, c. 745.	Swain -----Feb. 15 to Nov. 15 P. L. 1915, c. 772.
Henderson -----Mar. 15 to Nov. 15 Except wildcats, opossum and moles. P. L. 1911, c. 522; P. L. 1913, c. 560.	Watauga -----Mar. 15 to Nov. 1 P. L. 1915, c. 533.

NOTE. For punishment for violating the above statutes, see the Acts.

35. Quail or partridges. The close season of each year during which no quail or partridges shall be shot, killed, wounded, or in any matter hunted, taken or captured, shall be as to the several counties specified as follows:

Alamance -----Mar. 1 to Nov. 15 1909, c. 715; P. L. 1911, c. 85.	Camden -----Mar. 1 to Nov. 15 P. L. 1917, c. 544.
Alexander -----Jan. 1 to Nov. 20 P. L. 1911, c. 754; P. L. 1917, c. 250.	Carteret -----Mar. 1 to Nov. 1 P. L. 1915, c. 682.
Alleghany -----Mar. 1 to Oct. 15 P. L. 1913, c. 560.	Caswell -----Mar. 1 to Nov. 15 P. L. 1915, c. 129.
Anson -----Jan. 20 to Nov. 20 P. L. 1917, c. 474.	Catawba -----Feb. 1 to Nov. 25 P. L. 1911, c. 563; P. L. 1917, c. 412.
Ashe -----Mar. 1 to Nov. 1 Rev., s. 1884.	Chatham -----Mar. 1 to Nov. 15 P. L. 1911, c. 129.
Avery -----No open season P. L. 1917, c. 555.	Cherokee -----Feb. 15 to Nov. 15 P. L. 1915, c. 608; P. L. 1917, cc. 156, 352.
Beaufort -----Mar. 1 to Nov. 1 P. L. 1917, c. 573.	Chowan -----Mar. 1 to Nov. 15 P. L. 1917, c. 544.
Bertie -----Mar. 1 to Nov. 15 P. L. 1915, c. 555; P. L. 1917, c. 53.	Clay -----Feb. 15 to Nov. 15 P. L. 1917, c. 395.
Bladen -----Mar. 1 to Nov. 1 P. L. 1913, c. 457; P. L. 1915, c. 273.	Cleveland -----Jan. 1 to Dec. 10 P. L. 1917, c. 426.
Brunswick -----Mar. 1 to Nov. 1 Rev., s. 1884.	Columbus -----Apr. 1 to Nov. 1 P. L. 1917, c. 394.
Buncombe -----Jan. 15 to Nov. 14 P. L. 1917, c. 658.	Craven -----Feb. 15 to Nov. 15 P. L. 1917, c. 443.
Burke -----Feb. 1 to Nov. 15 1909, c. 675.	Cumberland -----Mar. 1 to Nov. 1 Rev., s. 1884.
Cabarrus -----Jan. 15 to Dec. 1 P. L. 1911, c. 664.	Currituck -----Mar. 1 to Nov. 15 P. L. 1913, c. 560; P. L. 1917, c. 544.
Caldwell -----Jan. 20 to Nov. 20 P. L. 1911, c. 8.	Dare -----Mar. 1 to Oct. 15 Rev., s. 1884.

Davidson -----	Mar. 1 to Nov. 15	Lee -----	Mar. 1 to Nov. 15
1907, c. 422.		P. L. 1913, c. 612.	
Davie -----	Feb. 20 to Nov. 20	Lenoir -----	Feb. 20 to Nov. 20
P. L. 1917, c. 422.		P. L. 1913, c. 588.	
Duplin -----	Mar. 1 to Nov. 15	Lincoln -----	Feb. 1 to Dec. 1
Rev., s. 1884.		P. L. 1913, c. 659; P. L., Ex. Sess. 1913, c. 75; P. L. 1915, c. 92.	
Durham -----	Feb. 1 to Nov. 15	McDowell -----	Feb. 1 to Nov. 15
P. L. 1917, c. 400.		1909, c. 518; P. L. 1911, c. 128.	
Edgecombe -----	Feb. 15 to Nov. 15	Macon -----	Feb. 1 to Nov. 15
1907, c. 823.		P. L. 1917, cc. 252, 395.	
Forsyth -----	Jan. 1 to Nov. 20	Madison -----	Feb. 1 to Nov. 15
1909, c. 551.		1907, c. 104.	
Kernersville and Abbott's Creek		Martin -----	Mar. 1 to Nov. 1
townships, Feb. 15 to Nov. 15.		Rev., s. 1884.	
P. L. 1911, c. 134.		Mecklenburg -----	Jan. 20 to Dec. 1
Franklin -----	Mar. 1 to Nov. 15	P. L. 1915, c. 562.	
1907, c. 986.		Mitchell -----	No open season
Gaston -----	Jan. 15 to Thanksgiving Day	P. L. 1917, c. 555.	
1907, c. 417.		Montgomery -----	Jan. 25 to Nov. 25
Gates -----	Mar. 1 to Nov. 15	P. L. 1915, c. 564.	
P. L. 1917, c. 544.		Moore -----	Mar. 1 to Nov. 1
Graham -----	Mar. 1 to Nov. 1	Rev., s. 1884.	
P. L. 1917, c. 125.		Nash -----	Feb. 15 to Nov. 15
Granville -----	Feb. 1 to Nov. 1	1907, c. 823.	
P. L. 1917, c. 598.		New Hanover -----	Feb. 15 to Nov. 15
Greene -----	Feb. 1 to Nov. 20	P. L. 1913, c. 558.	
Ex. Sess. 1908, c. 108; 1909, c. 829.		Northampton -----	Mar. 1 to Nov. 15
Guilford -----	Mar. 1 to Nov. 15	P. L. 1915, c. 272.	
1907, c. 345.		Onslow -----	Mar. 15 to Oct. 15
Halifax -----	Mar. 1 to Nov. 15	P. L. 1913, c. 591.	
P. L. 1913, c. 591.		Orange -----	Jan. 15 to Nov. 15
Harnett -----	Mar. 1 to Dec. 1	P. L. 1913, c. 292.	
P. L. 1917, cc. 209, 379.		Pamlico -----	Mar. 1 to Nov. 1
Haywood -----	Jan. 1 to Nov. 1	1909, c. 710.	
P. L. 1915, c. 566.		Pasquotank -----	Mar. 1 to Nov. 15
Henderson -----	Jan. 15 to Nov. 15	P. L. 1917, c. 544.	
P. L. 1911, c. 184; P. L. 1913, c. 560.		Pender -----	Mar. 1 to Nov. 1
Hertford -----	Mar. 1 to Nov. 15	Rev., s. 1884.	
P. L. 1917, c. 544.		Rocky Point Township, Jan. 1 to	
Hoke -----	Feb. 16 to Nov. 15	Dec. 1.	
P. L. 1915, c. 459; P. L. 1917, c. 100.		P. L. 1915, c. 150.	
Hyde -----	Mar. 20 to Oct. 15	Perquimans -----	Mar. 1 to Nov. 15
Rev., s. 1884.		P. L. 1917, c. 544.	
Iredell -----	Jan. 10 to Dec. 1	Person -----	Feb. 1 to Nov. 15
P. L. 1917, c. 459.		P. L. 1915, c. 586.	
Jackson -----	Mar. 1 to Nov. 1	Pitt -----	Mar. 1 to Nov. 20
Rev., s. 1884.		P. L. 1917, c. 155.	
Johnston -----	Mar. 1 to Nov. 1	Polk -----	Feb. 15 to Dec. 1
Rev., s. 1884.		P. L. 1915, c. 454.	
Jones -----	Feb. 15 to Nov. 15		
P. L. 1917, c. 443.			

Randolph -----	Mar. 1 to Nov. 15	Union -----	Jan. 15 to Dec. 15
P. L. 1911, c. 198.		1907, c. 703.	
Richmond -----	Jan. 25 to Nov. 25	Vance -----	Mar. 1 to Nov. 15
P. L. 1915, c. 564.		1909, c. 516, P. L. 1911, c. 364; P. L. 1913, c. 718.	
Robeson -----	Mar. 1 to Nov. 15	Wake -----	Mar. 1 to Nov. 15
P. L. 1917, c. 376.		P. L. 1913, c. 225; P. L. 1917, c. 552.	
Rockingham -----	Feb. 1 to Nov. 15	Warren -----	Mar. 1 to Dec. 1
P. L. 1911, c. 756; P. L. 1913, c. 560.		P. L. 1915, c. 137; P. L. 1917, cc. 298, 348.	
Rowan -----	Feb. 1 to Dec. 1	Washington -----	Mar. 1 to Oct. 1
P. L. 1913, c. 591.		P. L. 1911, c. 26; P. L. 1912, c. 560.	
Rutherford -----	Feb. 15 to Dec. 1	Watauga -----	Mar. 1 to Sept. 1
1909, c. 204; P. L. 1911, c. 182.		1907, c. 851.	
Sampson -----	Feb. 1 to Nov. 1	Wayne -----	Mar. 1 to Nov. 1
P. L. 1917, c. 521.		Rev., s. 1884.	
Scotland -----	Feb. 15 to Nov. 15	Wilkes -----	Feb. 10 to Dec. 1
P. L. 1917, c. 57.		Except on Thanksgiving Day.	
Stanly -----	Feb. 1 to Dec. 1	P. L. 1913, c. 77; P. L. 1917, c. 157.	
1909, c. 630.		Wilson -----	Mar. 1 to Nov. 15
Stokes -----	Jan. 15 to Dec. 15	Rev., s. 1884.	
P. L. 1917, c. 588.		Yadkin -----	Feb. 1 to Dec. 1
Surry -----	Jan. 15 to Dec. 1	1907, c. 607.	
P. L. 1917, c. 47.		Yancey -----	Jan. 1 to Nov. 1
Swain -----	Mar. 1 to Nov. 15	P. L. 1915, c. 136.	
1907, c. 54.		NOTE. For punishment for violating above	
Transylvania -----	Feb. 1 to Nov. 15	acts, see the Acts.	
P. L. 1911, c. 677.			
Tyrrell -----	Mar. 1 to Oct. 15		
Rev., s. 1884.			

36. Wild turkey. The close season for each year during which no wild turkey shall be shot, killed, wounded, or in any manner hunted, taken or captured, shall be as to the several counties specified as follows:

Alamance -----	Mar. 1 to Nov. 15	Brunswick -----	Mar. 1 to Nov. 1
1909, c. 715; P. L. 1911, c. 85.		Rev., s. 1885.	
Alexander -----	Mar. 1 to Nov. 1	Buncombe -----	Jan. 15 to Nov. 15
Rev., s. 1885.		P. L. 1917, c. 658.	
Alleghany -----	Mar. 1 to Nov. 1	Burke -----	Feb. 15 to Dec. 1
Rev., s. 1885.		1909, c. 675.	
Anson -----	no open season before 1922	Cabarrus -----	Mar. 1 to Dec. 1
P. L. 1917, c. 474.		Rev., s. 1885.	
Ashe -----	Mar. 1 to Nov. 1	Caldwell -----	Jan. 20 to Nov. 20
Rev. s. 1885.		P. L. 1911, c. 8.	
Avery -----	No open season	Camden -----	Mar. 1 to Nov. 1
P. L. 1917, c. 555.		Rev., s. 1885.	
Beaufort -----	Mar. 1 to Nov. 1	Carteret -----	Mar. 1 to Nov. 1
P. L. 1917, c. 573.		P. L. 1915, c. 682.	
Bertie -----	Mar. 1 to Nov. 15	Caswell -----	Mar. 1 to Nov. 15
P. L. 1915, c. 555; P. L. 1917, c. 53.		P. L. 1915, c. 129.	
Bladen -----	Jan. 1 to Nov. 1	Catawba -----	Mar. 1 to Nov. 1
P. L. 1913, c. 457; P. L. 1915, c. 273.		Rev., s. 1885.	

Chatham -----	Mar. 1 to Nov. 15	Haywood -----	Jan. 1 to Nov. 1
P. L. 1911, c. 129.		P. L. 1915, c. 566.	
Cherokee -----	Feb. 15 to Nov. 15	Henderson -----	Apr. 1 to Nov. 15
P. L. 1915, c. 608; P. L. 1917, cc. 156, 352.		Rev., s. 1885.	
Chowan -----	Mar. 1 to Dec. 1	Hertford -----	Mar. 1 to Nov. 1
P. L. 1913, c. 591.		Rev., s. 1885.	
Clay -----	Feb. 1 to Nov. 15	Hoke -----	Nov. 1 to Dec. 1
P. L. 1917, c. 395.		P. L. 1915, c. 459; P. L. 1917, c. 100.	
Cleveland -----	Mar. 1 to Nov. 1	Hyde -----	Mar. 1 to Nov. 1
Rev., s. 1885.		Rev., s. 1885.	
Columbus -----	Apr. 1 to Nov. 1	Iredell -----	Mar. 1 to Nov. 1
P. L. 1917, c. 394.		Rev., s. 1885.	
Craven -----	Mar. 1 to Nov. 1	Jackson -----	Mar. 1 to Nov. 1
Rev., s. 1885.		Rev., s. 1885.	
Cumberland -----	Mar. 1 to Nov. 1	Johnston -----	Mar. 1 to Nov. 1
Rev., s. 1885.		Rev., s. 1885.	
No open season in 71st Township.		Jones -----	Mar. 1 to Nov. 1
P. L. 1915, c. 671.		1905, c. 77.	
Currituck -----	Mar. 1 to Nov. 1	Lee -----	Mar. 1 to Nov. 1
Rev., s. 1885.		Rev., s. 1885.	
Davidson -----	Mar. 1 to Nov. 15	Lenoir -----	Mar. 1 to Nov. 1
Rev., s. 1885.		Rev., s. 1885.	
Davie -----	No open season	Lincoln -----	Feb. 1 to Dec. 1
P. L. 1917, c. 422.		P. L. 1913, c. 659; P. L., Ex. Sess. 1913, c. 75; P. L. 1915, c. 92.	
Duplin -----	Mar. 1 to Nov. 1	Macon -----	Feb. 1 to Nov. 15
Rev., s. 1885.		P. L. 1917, cc. 252, 395.	
Durham -----	Feb. 1 to Nov. 15	Madison -----	Feb. 1 to Nov. 15
P. L. 1917, c. 400.		1907, c. 104.	
Edgecombe -----	Feb. 15 to Nov. 15	Martin -----	Mar. 1 to Nov. 1
1907, c. 823.		Rev., s. 1885.	
Forsyth -----	Mar. 1 to Nov. 1	Mecklenburg -----	Jan. 20 to Dec. 1
Rev., s. 1885.		P. L. 1915, c. 562.	
Franklin -----	Mar. 1 to Nov. 1	Mitchell -----	Feb. 1 to Oct. 15
Rev., s. 1885.		P. L. 1913, c. 70.	
Gaston -----	Mar. 1 to Nov. 1	Montgomery -----	Jan. 25 to Nov. 25
Rev., s. 1885.		P. L. 1915, c. 564.	
Gates -----	Mar. 1 to Nov. 1	Moore -----	Jan. 1 to Dec. 1
Rev., s. 1885.		P. L. 1911, c. 130.	
Graham -----	Mar. 1 to Nov. 1	Nash -----	Feb. 15 to Nov. 15
P. L. 1917, c. 125.		1907, c. 823.	
Granville -----	Feb. 1 to Nov. 1	New Hanover -----	Mar. 1 to Nov. 1
P. L. 1917, c. 598.		Rev., s. 1885.	
Greene -----	Mar. 1 to Nov. 1	Northampton -----	Mar. 1 to Nov. 1
Rev., s. 1885.		Rev., s. 1885.	
Guilford -----	Mar. 1 to Nov. 15	Onslow -----	Mar. 15 to Oct. 15
1907, c. 345.		P. L. 1913, c. 591.	
Halifax -----	Mar. 1 to Nov. 15	Orange -----	Jan. 15 to Nov. 15
P. L. 1913, c. 591.		P. L. 1913, c. 292.	
Harnett -----	Mar. 1 to Nov. 1		
Rev., s. 1885.			

Pamlico -----	Mar. 1 to Nov. 1	Stokes -----	Feb. 15 to Dec. 15
1909, c. 710.		P. L. 1917, c. 588.	
Pasquotank -----	Mar. 1 to Nov. 1	Surry -----	closed until Jan. 15, 1922
Rev., s. 1885.		P. L. 1917, c. 47.	
Pender -----	Jan. 1 to Oct. 1	Swain -----	Jan. 15 to Oct. 15
P. L. 1915, c. 639; P. L. 1917, c. 634.		P. L. 1915, c. 772.	
Perquimans -----	Mar. 1 to Nov. 1	Transylvania -----	Feb. 1 to Nov. 15
Rev., s. 1885.		P. L. 1911, c. 677.	
Person -----	Feb. 1 to Nov. 15	Union -----	Jan. 15 to Dec. 15
P. L. 1915, c. 586; P. L. 1917, c. 355.		1907, c. 703.	
Pitt -----	Mar. 1 to Nov. 1	Vance -----	Mar. 1 to Nov. 15
Rev., s. 1885.		1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.	
Polk -----	Feb. 15 to Dec. 1	Wake -----	Mar. 1 to Nov. 15
1909, c. 590; P. L. 1915, c. 454.		P. L. 1913, c. 225; P. L. 1917, c. 552.	
Randolph -----	Mar. 1 to Nov. 15	Warren -----	Mar. 1 to Dec. 1
P. L. 1911, c. 198.		P. L. 1915, c. 137; P. L. 1917, cc. 298, 348.	
Richmond—except Nov. 1 to Nov. 15		Washington -----	Mar. 1 to Nov. 1
P. L. 1915, c. 569.		Rev., s. 1885.	
Robeson -----	Mar. 1 to Nov. 15	Watauga -----	Mar. 1 to Nov. 1
P. L. 1917, c. 376.		Rev., s. 1885.	
Rockingham -----	Feb. 1 to Nov. 15	Wayne -----	Mar. 1 to Nov. 1
P. L. 1911, c. 756; P. L. 1915, c. 560.		Rev., s. 1885.	
Rowan -----	Feb. 1 to Dec. 1	Wilkes -----	Mar. 1 to Nov. 1
P. L. 1913, c. 591.		Rev., s. 1885.	
Rutherford -----	Mar. 1 to Nov. 1	Wilson -----	Mar. 1 to Nov. 15
Rev., s. 1885.		Rev., s. 1885.	
Sampson -----	Feb. 1 to Nov. 1	Yadkin -----	Mar. 1 to Nov. 1
P. L. 1917, c. 521.		Rev., s. 1885.	
Scotland -----except Nov. 1 to Dec. 1		Yancey -----	Jan. 1 to Nov. 1
P. L. 1917, c. 57.		P. L. 1915, c. 136.	
Stanly -----	Feb. 1 to Dec. 1	NOTE. For punishment for violating above acts, see the Acts.	
1909, c. 630.			

37. Dove, robin, and lark. The close season for each year during which no dove, robin, or lark shall be shot, killed, wounded, or in any manner hunted, taken or captured, shall be as to the several counties specified as follows:

Alamance -----	Dove -----	Mar. 1 to Nov. 15
	1909, c. 715, P. L. 1911, c. 85.	
	Robin -----	Apr. 1 to Nov. 15
	P. L. 1913, c. 560.	
	Lark -----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Alexander -----		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Alleghany -----	Dove and lark -----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
	Robin -----	Mar. 1 to Oct. 15
	P. L. 1913, c. 560.	
Anson -----		Jan. 20 to Nov. 20
	P. L. 1917, c. 474.	

Ashe	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Avery	-----	No open season
	P. L. 1917, c. 555.	
Beaufort	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Bertie	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Bladen	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Brunswick	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Buncombe	-----	Jan. 15 to Nov. 1
	P. L. 1917, c. 658.	
	No open season for robin.	
	P. L. 1913, c. 816.	
Burke	-----	Feb. 15 to Dec. 1
	1909, c. 675.	
Cabarrus	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Caldwell	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Camden	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Carteret	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Caswell	-----	Mar. 1 to Nov. 15
	P. L. 1915, c. 129.	
Catawba	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Chatham	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Cherokee	Dove and robin	Feb. 15 to Nov. 15
	P. L. 1915, c. 608; P. L. 1917, cc. 156, 352.	
	Lark	Mar. 1 to Nov. 15
	Rev., s. 1886.	
Chowan	-----	Mar. 1 to Dec. 1
	P. L. 1913, c. 591.	
Clay	-----	Feb. 15 to Nov. 25
	P. L. 1913, c. 206; P. L. 1917, c. 417.	
Cleveland	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Columbus	Dove	Apr. 1 to Nov. 1
	P. L. 1917, c. 394.	
	Robin and lark	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Craven	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Cumberland	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Currituck	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Dare	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	

Davidson	-----	Rev., s. 1886.	-----	Apr. 1 to Oct. 15
Davie	-----	P. L. 1917, c. 422.	-----	Feb. 20 to Nov. 20
Durham	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Edgecombe	-----	Dove	-----	Jan. 1 to July 15
		1909, c. 511.		
		Robin and lark	-----	Mar. 1 to Nov. 15
		Rev., s. 1886.		
Forsyth	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Franklin	-----	Dove and lark	-----	Mar. 1 to Nov. 1
		Rev., s. 1886.		
		Robin	-----	No open season
		P. L. 1913, c. 816.		
Gaston	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Gates	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Granville	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Greene	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Guilford	-----	1907, c. 345.	-----	Mar. 1 to Nov. 15
Halifax	-----	P. L. 1913, c. 591.	-----	Mar. 1 to Nov. 15
		Robin	-----	No open season
		P. L. 1913, 816.		
Harnett	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Haywood	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Henderson	-----	Rev., s. 1886.	-----	Apr. 1 to Nov. 15
Hertford	-----	Dove and lark	-----	Mar. 1 to Nov. 1
		Rev., s. 1886.		
		Robin	-----	No open season
		P. L. 1913, c. 816.		
Hoke	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Hyde	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Iredell	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Jackson	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Johnston	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Jones	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1
Lee	-----	Rev., s. 1886.	-----	Mar. 1 to Nov. 1

Lenoir	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Lincoln	-----	Feb. 1 to Dec. 1
	P. L. 1913, c. 659; P. L., Ex. Sess. 1913, c. 75; P. L. 1915, c. 92.	
McDowell	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Macon	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Madison	-----	Feb. 1 to Nov. 15
	1907, c. 104.	
Martin	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Mecklenburg	-----	Jan. 20 to Dec. 1
	P. L. 1915, c. 562.	
	Robin	No open season
	P. L. 1913, c. 816.	
Mitchell	-----	No open season
	P. L. 1917, c. 555.	
Montgomery	-----	Jan. 26 to Nov. 25
	P. L. 1915, c. 564.	
Nash	Dove and lark	Mar. 1 to Nov. 1
	Rev., s. 1886.	
	Robin	No open season
	P. L. 1913, c. 816.	
New Hanover	-----	Feb. 15 to Nov. 15
	P. L. 1913, c. 558.	
Northampton	Dove and lark	Feb. 15 to Nov. 1
	Rev., s. 1886.	
	Robin	Apr. 1 to Nov. 1
	P. L. 1915, c. 272.	
Onslow	Dove and robin	Mar. 15 to Oct. 15
	P. L. 1913, c. 591.	
	Lark	No close season
	Rev., s. 1886.	
Pamlico	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Pasquotank	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Pender	Lark	Mar. 1 to Nov. 1
	Rev., s. 1886.	
	Dove and robin	Jan. 1 to Dec. 1
	P. L. 1915, c. 150.	
Perquimans	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Person	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Pitt	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Polk	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Randolph	-----	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Richmond	-----	Jan. 26 to Nov. 25
	P. L. 1915, c. 564.	

Robeson		Mar. 2 to Nov. 15
	P. L. 1917, c. 376.	
Rockingham		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Rowan		Feb. 1 to Dec. 1
	P. L. 1913, c. 591.	
Rutherford		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Sampson		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Scotland	Dove	Feb. 15 to Nov. 20
	P. L. 1913, c. 610; P. L., Ex. Sess. 1913, c. 175.	
	Robin and lark	Mar. 1 to Nov. 1
	Rev., s. 1886.	
Stanly		Feb. 1 to Dec. 1
	1909, c. 630.	
Stokes		Jan. 15 to Dec. 15
	P. L. 1917, c. 588.	
Surry		Jan. 15 to Dec. 1
	P. L. 1917, c. 47.	
Transylvania		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Tyrrell		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Union	Dove and lark	Jan. 15 to Dec. 15
	1907, c. 703.	
	Robin	No open season
	P. L. 1913, c. 816.	
Vance		Mar. 1 to Nov. 15
	1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.	
Wake	Dove and lark	Mar. 1 to Nov. 15
	P. L. 1913, c. 225; P. L. 1917, c. 552.	
	Robin	Mar. 1 to Nov. 15
	1909, c. 688.	
Warren		Feb. 1 to Aug. 1
	Rev., s. 1886.	
Washington		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Watauga		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Wayne		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Wilkes		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Yadkin		Mar. 1 to Nov. 1
	Rev., s. 1886.	
Yancey		Mar. 1 to Nov. 1
	Rev., s. 1886.	

NOTE. For punishment for violating above acts, see Acts.

38. Pheasant. The close season for each year during which no pheasant shall be shot, killed, wounded, or in any manner captured or taken, shall be as to the several counties specified as follows:

Alleghany	-----	Mar. 1 to Oct. 15
	P. L. 1913, c. 560.	
Ashe	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Avery	-----	No open season
	P. L. 1917, c. 555.	
Buncombe	-----	Jan. 15 to Nov. 14
	P. L. 1917, c. 658.	
Burke	-----	Feb. 15 to Dec. 1
	1909, c. 675.	
Caldwell	-----	Jan. 20 to Nov. 20
	P. L. 1911, c. 8.	
Caswell	-----	Mar. 1 to Nov. 15
	P. L. 1915, c. 129.	
Chatham	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Cherokee	-----	Feb. 15 to Nov. 15
	P. L. 1915, c. 608; P. L. 1917, cc. 156, 352.	
Chowan	-----	Mar. 1 to Dec. 1
	P. L. 1913, c. 591.	
Clay	-----	Feb. 15 to Nov. 25
	P. L. 1913, c. 206; P. L. 1917, c. 417.	
Davidson	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Davie	-----	Feb. 20 to Nov. 20
	P. L. 1917, c. 422.	
Forsyth	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Franklin	-----	No open season
	P. L. 1917, c. 399.	
Guilford	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Halifax	-----	Mar. 1 to Nov. 15
	P. L. 1913, c. 591.	
Haywood	-----	Jan. 1 to Nov. 1
	P. L. 1915, c. 566.	
Henderson	-----	Apr. 1 to Nov. 1
	Rev., s. 1887.	
Iredell	-----	No open season
	1917, c. 82.	
Lincoln	-----	Feb. 1 to Dec. 1
	P. L. 1913, c. 659; P. L., Ex. Sess. 1913, c. 75; P. L. 1915, c. 22.	
Macon	-----	Feb. 1 to Nov. 15
	P. L. 1915, cc. 252, 395.	
Madison	-----	Feb. 1 to Nov. 15
	1907, c. 104.	
Mecklenburg	-----	Jan. 20 to Dec. 1
	P. L. 1915, cc. 562, 758; P. L. 1917, c. 495.	
Mitchell	-----	No open season
	P. L. 1917, c. 555.	
Montgomery	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Moore	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Orange	-----	No open season
	1917, c. 82.	

Polk	-----	Feb. 15 to Dec. 1
	1909, c. 590.	
Randolph	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Richmond	-----	Mar. 1 to Nov. 20
	1913, c. 610.	
Robeson	-----	Mar. 1 to Nov. 15
	P. L. 1917, c. 376.	
Rockingham	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Rowan	-----	Feb. 1 to Dec. 1
	P. L. 1913, c. 591.	
Scotland	-----	Feb. 15 to Nov. 20
	P. L. 1913, c. 610; P. L. Ex. Sess. 1913, c. 175.	
Stanly	-----	Feb. 1 to Dec. 1
	1909, c. 630.	
Stokes	-----	Jan. 15 to Dec. 15
	P. L. 1917, c. 588.	
Surry	-----	closed until Jan. 15, 1922
	P. L. 1917, c. 47.	
Swain	-----	Jan. 15 to Oct. 15
	P. L. 1915, c. 772.	
Transylvania	-----	Mar. 1 to Nov. 1
	1907, c. 679.	
Vance	-----	Mar. 1 to Nov. 15
	1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.	
Wake	-----	Mar. 1 to Nov. 1
	1909, c. 723.	
Warren	-----	Mar. 1 to Nov. 1
	P. L. 1911, c. 61; P. L. 1913, c. 560; P. L., Ex. Sess. 256.	
Watauga	-----	closed until 1922
	P. L. 1917, c. 469.	
Wilkes	----- (Except Thanksgiving Day) -----	Feb. 10 to Dec. 1
	P. L. 1913, c. 77; P. L. 1917, c. 157.	
Yadkin	-----	except Nov. 1 to Nov. 15
	1907, c. 358.	
Yancey	-----	Jan. 1 to Nov. 1
	P. L. 1915, c. 136.	

NOTE. For punishment for violating above acts, see the Acts.

39. Woodcock. The close season for each year during which no woodcock shall be shot, killed, wounded, or in any manner captured or taken, shall be as to the several counties specified as follows:

Alamance	-----	Mar. 1 to Nov. 15
	1909, c. 715; P. L. 1911, c. 85.	
Anson	-----	Jan. 20 to Nov. 20
	P. L. 1917, c. 474.	
Avery	-----	No open season
	P. L. 1917, c. 555.	
Bladen	-----	Feb. 1 to Nov. 1
	P. L. 1911, c. 123.	
Brunswick	-----	Jan. 1 to Sept. 1
	Rev., s. 1888.	

Carteret -----	Mar. 1 to Nov. 1
P. L. 1915, c. 682.	
White Oak Township -----	Feb. 1 to Aug. 1
P. L. 1915, c. 682.	
Caswell -----	Mar. 1 to Nov. 15
P. L. 1915, c. 129.	
Chatham -----	Mar. 1 to Nov. 15
P. L. 1911, c. 129.	
Cherokee -----	Mar. 1 to Nov. 1
Rev., s. 1888.	
Chowan -----	Mar. 1 to Dec. 1
P. L. 1913, c. 591.	
Clay -----	Feb. 15 to Nov. 25
P. L. 1913, c. 206; P. L. 1917, c. 417.	
Craven -----	Feb. 1 to Nov. 1
1905, c. 183.	
Davie -----	Feb. 1 to Nov. 20
P. L. 1917, c. 422.	
Edgecombe -----	Mar. 1 to Nov. 1
Rev., s. 1888.	
Halifax -----	Mar. 1 to Nov. 15
P. L. 1913, c. 591.	
Henderson -----	No open season
Rev., s. 1888.	
Jones -----	Feb. 1 to Nov. 1
1905, c. 183.	
Lincoln -----	Feb. 1 to Dec. 1
P. L. 1913, c. 659; P. L., Ex. Sess. 1913, c. 75; P. L. 1915, c. 92.	
Mecklenburg -----	Jan. 20 to Dec. 1
P. L. 1915, c. 562.	
Mitchell -----	No open season
P. L. 1917, c. 555.	
Montgomery -----	Jan. 25 to Nov. 25
P. L. 1917, c. 564.	
Orange -----	Feb. 1 to Dec. 1
1909, c. 543.	
Pender -----	Jan. 1 to Dec. 1
P. L. 1915, c. 150.	
Randolph -----	Mar. 1 to Nov. 15
P. L. 1911, c. 198.	
Richmond -----	Jan. 25 to Nov. 25
P. L. 1915, c. 564.	
Robeson -----	Mar. 1 to Nov. 15
P. L. 1917, c. 376.	
Rowan -----	Feb. 1 to Dec. 1
P. L. 1913, c. 591.	
Stanly -----	Feb. 1 to Dec. 1
1909, c. 630.	
Stokes -----	Jan. 15 to Dec. 15
P. L. 1917, c. 588.	
Surry -----	Jan. 15 to Dec. 1
P. L. 1917, c. 47.	
Vance -----	Mar. 1 to Nov. 15
1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.	

Wake	-----	Mar. 1 to Nov. 1
	P. L. 1913, c. 225; P. L. 1917, c. 552.	
Warren	-----	Mar. 1 to Dec. 1
	P. L. 1915, c. 137; P. L. 1917, cc. 298, 348.	

NOTE. For punishment for violating above acts, see the Acts.

40. Snipe, shore birds, other game birds. The close season for each year during which no snipe, shore birds, or other game birds as indicated shall be shot, killed, wounded, or in any manner captured or taken, shall be as to the several counties specified as follows:

Alamance	Ducks	-----	Apr. 1 to Nov. 15
	P. L. 1913, c. 560.		
	Other game birds	-----	Mar. 1 to Nov. 15
	1909, c. 715; P. L. 1911, c. 85.		
Anson	Ducks, wild geese, snipe	-----	Jan. 20 to Nov. 20
	P. L. 1917, c. 474.		
Avery		-----	No open season
	P. L. 1917, c. 555.		
Beaufort	Summer duck	-----	Feb. 1 to Sept. 15
	1907, c. 384.		
Bladen	Wild duck—Colly, Cypress Creek, French Creek and Turnbull townships	-----	Feb. 1 to Dec. 1
	1909, c. 418.		
Brunswick	Snipe and shore birds	-----	Feb. 1 to Aug. 1
	1909, c. 757.		
Carteret	Snipe	-----	Mar. 1 to Dec. 1
	P. L. 1915, c. 682.		
	Other game birds	-----	Apr. 1 to Oct. 1
	1907, c. 895; 1909, c. 475.		
Caswell	Any game birds	-----	Mar. 1 to Nov. 15
	P. L. 1915, c. 129.		
Cherokee		-----	Mar. 1 to Nov. 15
	Rev., s. 1889.		
Chowan	Any game birds	-----	Mar. 1 to Dec. 1
	P. L. 1913, c. 591.		
Clay	Any game birds	-----	Feb. 15 to Nov. 25
	P. L. 1913, c. 206; P. L. 1917, c. 417.		
Craven	Wild duck and other water fowl	-----	Mar. 1 to Nov. 1
	Rev., s. 1889.		
	Summer duck	-----	Mar. 1 to Sept. 1
	1909, c. 519.		
Davie	Any game birds	-----	Feb. 1 to Nov. 20
	P. L. 1917, c. 422.		
Edgecombe	Any game birds, not otherwise regulated	-----	Mar. 1 to Nov. 15
	Rev., s. 1889.		
	No open season for mocking bird and bluebird.		
	1907, c. 823.		
Granville	Snipe and other game birds, not otherwise regulated	-----	Mar. 1 to Nov. 1
	Rev., s. 1889.		

Guilford	Summer duck	No open season
	1909, c. 338.	
	Any species of duck	Mar. 1 to Aug. 1
	P. L. 1911, c. 125.	
Halifax	Snipe	May 1 to Feb. 1
	Rev., s. 1889.	
	Any game birds	Mar. 1 to Nov. 15
	P. L. 1913, c. 591.	
Henderson	All the year, except snipe, as to which there is no close season	
	Rev., s. 1889.	
Jones	Wild duck and other waterfowls	Mar. 1 to Nov. 1
	Rev., s. 1889.	
Lincoln	Any game birds	Feb. 1 to Dec. 1
	P. L. 1913, c. 659; P. L., Ex. Sess 1913, c. 75; P. L. 1915, c. 92.	
Mecklenburg	Any game birds	Jan. 20 to Dec. 1
	P. L. 1915, c. 562.	
Mitchell		No open season
	P. L. 1917, c. 555.	
Montgomery		Jan. 21 to Nov. 25
	P. L. 1915, c. 564.	
Nash	Mocking bird and bluebird	No open season
	1907, c. 823.	
New Hanover		Feb. 1 to Aug. 1
	1909, c. 757.	
Orange	Any game bird	Feb. 1 to Nov. 30
	1909, c. 543.	
Pender		Feb. 1 to Aug. 1
	1909, c. 757.	
Richmond		Jan. 25 to Nov. 25
	P. L. 1915, c. 564.	
Robeson		Mar. 1 to Nov. 15
	P. L. 1917, c. 376.	
Rowan		Feb. 1 to Dec. 1
	P. L. 1913, c. 591.	
Stanly		Feb. 1 to Dec. 1
	1909, c. 630.	
Stokes		Jan. 15 to Dec. 15
	P. L. 1917, c. 588.	
Surry		Jan. 15 to Dec. 1
	P. L. 1917, c. 47.	
Vance		Mar. 1 to Nov. 15
	1909, c. 516; P. L. 1911, c. 364; P. L. 1913, c. 718.	
Wake		Mar. 1 to Nov. 1
	P. L. 1913, c. 225; P. L. 1917, c. 552.	
Warren	Snipe	May 1 to Feb. 1
	Rev., s. 1889.	

NOTE. For punishment for violating above acts, see the Acts.

ART. 5. GENERAL HUNTING LAWS

41. Hunting on Sunday or at night. If any person shall hunt or shoot any wild fowl, or game bird, on any day after the hour of sunset, or before the hour of daylight, or shall use any gun other than can be fired from the shoulder, or shall hunt or shoot wild fowl, birds or game of any kind on Sunday, he shall be guilty of a misdemeanor: Provided, that wild fowl may be hunted after sunset and before daylight and by firelight in that part of Bogue Sound in Carteret County, west of Sally Bell's shoal.

Rev., s. 3459; Code, s. 2837; 1903, c. 346.

42. Hunting wild fowls with aeroplane. It shall be unlawful to make use of any aeroplane, seaplane, or other kind of air machine in shooting, chasing, pursuing, or harassing wild ducks, geese, swan, or other wild waterfowl in and upon the sounds, rivers, creeks, or bays of the state of North Carolina. Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not less than sixty days nor more than six months.

1917, c. 85, ss. 12.

43. Hunting game birds with fire. If any person shall hunt wild fowl, or game birds of any kind, with fire, he shall be guilty of a misdemeanor and upon conviction be fined not less than twenty and not more than fifty dollars, or imprisoned not less than ten days and not more than thirty days.

Rev., s. 3479; Code, s. 2839.

44. Hunting deer by firelight. If any person shall hunt for deer with a gun in the woods in the night time, by firelight, or shall kill or catch any wild deer while swimming streams or other bodies of water, the person so offending shall be guilty of a misdemeanor and shall pay a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days. When more persons than one are engaged in committing the offense of fire-hunting, any one may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense.

This section shall not apply to Currituck County.

Rev., s. 3462; Code, ss. 1058, 1059; R. C., c. 34, ss. 95, 96; 1774, c. 103; 1784, c. 212, ss. 1, 3; 1801, c. 595; 1856-7, c. 24; 1879, c. 92; 1905, c. 388.

45. Nonresidents hunting otter, muskrats or mink. If any person who has not resided within the state two years shall hunt or trap otters, muskrats or minks, or shall sell the hides or skins from these animals in or out of the state, he shall be guilty of a misdemeanor and shall for each offense be fined not less than thirty dollars nor more than fifty dollars.

Rev., s. 3467; 1905, c. 394.

46. Hunting without landowner's permission. If any person shall, without having first obtained permission of the owner, hunt with gun or dogs on the land of another, or if he shall fish or attempt to catch fish from said lands after

being forbidden, either personally or by notices written or printed, posted at the courthouse door and at three places on said land, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3480; Code, s. 2831; 1895, c. 147; 1915, c. 271, s. 1.

NOTE. For local laws requiring landowner's permission in the counties named, see:

Alleghany, P. L. 1913, c. 560.

Avery, P. L. 1913, c. 560, s. 24.

Bertie, 1907, c. 142.

Iredell, P. L. 1915, c. 459.

Jackson, 1907, c. 763.

In Wake County prosecution can be maintained only upon complaint of the landowner 1909, c. 620.

ART. 6. LOCAL HUNTING LAWS

47. Local by counties; written permission of landowners required. In the counties and localities enumerated below, if any person shall hunt with dog or gun upon the land of another without the written consent of the owner of the land he shall be guilty of a misdemeanor and punishable as indicated:

Alexander, fine not more than fifty dollars, or imprisoned not to exceed thirty days.

P. L. 1911, c. 754.

Anson, fine not less than twenty-five dollars or not more than one hundred dollars, or imprisonment not less than thirty days, and not to exceed six months.

P. L. 1917, c. 474.

Carteret, Beaufort, Merrimon, Morehead City, Newport townships. In Beaufort and Merrimon fine not more than ten dollars, or worked on the roads of these townships not more than ten days. In Newport Township, fine not more than twenty-five dollars or imprisoned not more than fifteen days.

1907, c. 747; P. L. 1911, c. 386; P. L. 1913, c. 738.

Catawba, fine not less than five dollars nor more than fifty dollars, or imprisoned not more than thirty days.

Cherokee, forfeit twenty-five dollars and fine or imprisonment in the discretion of the court. Does not apply to hunting foxes or wolves.

P. L. 1907, c. 452.

Chowan, in Edenton Township, fine not less than one dollar nor more than ten dollars or imprisoned not less than one or more than ten days.

P. L. 1913, c. 591.

Clay, fine not less than five dollars nor more than ten dollars, for each offense.

P. L. 1907, c. 51.

Cleveland, fine not more than twenty dollars, or imprisoned not more than thirty days.

P. L. 1917, c. 426.

Craven, fine not less than five dollars or more than twenty-five dollars, or imprisoned not more than thirty days.

Rev., s. 3481.

Cumberland, punishment as in Craven.

Rev., s. 3481.

Currituck, fine not more than ten dollars, or imprisoned not more than ten days.

Rev., s. 3481.

Davidson, fine five dollars for each offense.

P. L. 1907, c. 348.

Guilford, fine not less than five dollars nor more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1915, c. 578.

Harnett, fine or imprisonment at discretion of court.

1907, c. 699; 1909, c. 746.

Haywood, fine not less than five dollars, or imprisoned, in the discretion of the court.

P. L. 1915, c. 566.

Henderson, fine not less than two dollars, nor more than twenty-five dollars, or imprisoned not less than five or more than ten days.

1907, c. 453.

Hertford, punishment as in Craven.

Rev. s. 3481.

Hoke, penalty of twenty-five dollars or imprisoned not to exceed twenty days.

P. L. 1915, c. 459.

Jackson, in Sylva Township, fine ten dollars, or imprisoned not more than thirty days.

1909, c. 534.

Jones, punishment as in Craven.

Rev., s. 3481.

Lincoln, fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1913, c. 659.

Macon, fine not more than ten dollars, or imprisoned in discretion of court, or both.

P. L. 1915, c. 565.

Madison, fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1915, c. 559.

Martin, Goose Nest, Poplar Point, and Hamilton townships, fine not over five dollars, or imprisonment not over ten days. Cross Roads Township, fine or imprisonment in discretion of the court.

Rev., s. 3481; 1907, c. 338.

Mecklenburg, fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1911, c. 543.

Montgomery, fine not less than ten dollars, nor more than fifty dollars, or imprisoned not more than thirty days.

Rev., s. 3481.

Nash, fine not less than five dollars, nor more than twenty-five.

Rev., s. 3481.

Pender, fine not less than five dollars, or more than ten dollars, or imprisoned not more than ten days.

1909, c. 170.

Polk, fine not more than fifty dollars, or imprisoned not more than thirty days.

1909, c. 590.

Randolph, quail, whole county, fine not more than fifty dollars or imprisoned not over thirty days. Any game, Asheboro and Cedar Grove townships, fine not less than five dollars, nor more than ten dollars, imprisoned not more than ten days. Back Bay Township, any game, fine not over five dollars, or imprisonment not over ten days.

Rev., s. 3481; P. L. 1913, c. 379; P. L. 1911, c. 693.

Richmond, in Mineral Springs, Steele and Wolf Pit townships, fine not less than five dollars nor more than fifty, or imprisoned not more than twenty days.

Rev., s. 3481; 1909, c. 766.

Robeson, fine not less than five dollars nor more than ten dollars.

Rev., s. 3481.

Rowan, punishment as in Craven.

Rev., s. 3481.

Rutherford, quail, whole county, fine not more than fifty dollars or imprisoned not more than thirty days. Rutherford Township, any game, fine five dollars.

Rev., s. 3481; P. L. 1917, c. 413.

Scotland, penalty of twenty-five dollars, or imprisoned not more than twenty days. Does not apply to hunting rabbits.

P. L. 1917, c. 57.

Stokes, fine not less than five dollars, nor more than twenty-five dollars for each offense.

P. L. 1917, c. 588.

Swain, for quail, fine not less than five dollars, nor more than ten dollars, or imprisoned not exceeding ten days for each offense.

P. L. 1915, c. 772.

Transylvania, fine not less than five dollars, nor more than one hundred dollars, or imprisoned in the discretion of the court.

1907, c. 842.

Union, fine not more than fifty dollars, or imprisoned not more than thirty days for each offense.

1907, c. 703.

Wayne, fine not less than five dollars, nor more than ten dollars for each offense.

Rev. s. 3481.

Wilkes, in certain sections south of Wilkesboro, fine not less than one dollar nor more than twenty-five dollars, or imprisoned for not more than thirty days, or both, in the discretion of the court.

P. L. 1913, c. 591.

Yadkin, fine not more than five dollars, or less than two dollars or imprisoned not more than ten days or less than five days.

1909, c. 612.

Yancey, fine not less than five dollars, nor more than ten dollars for each offense, or imprisoned at the discretion of the court.

P. L. 1915, c. 136.

NOTE. For statute regulating setting traps on another's land without written permission in Bertie County.

P. L. 1917, c. 53.

48. Local by counties; bag limit: In the counties enumerated below the various kinds of game and birds specified allowed to a hunter are as follows:

Beaufort, quail, partridges, ruffed grouse, pheasant, fifteen a day combined. Fine not more than twenty-five dollars, or imprisoned not more than twenty-five days.

1913, c. 430.

Brunswick, marsh hens, fifteen a day. Fine five dollars for each offense or imprisoned ten days.

1909, c. 757.

Buncombe, deer, two a season. Partridges, pheasants or wild doves, twenty-five a day. Fine not exceeding fifty dollars, or imprisoned not more than thirty days.

1907, c. 877; 1909, c. 570.

Cabarrus, quail, fifteen a day. Fine not less than ten dollars, nor more than fifty dollars for each offense.

1907, c. 586.

Clay, quail, twenty per day; three wild gobblers and two turkey hens a season. Fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1915, c. 271; P. L. 1917, c. 417.

Cleveland, quail, fifteen a day, fine not exceeding twenty dollars, or imprisoned not more than thirty days.

P. L. 1917, c. 426.

Dare, deer, five a season. Fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1911, c. 187.

Haywood, deer, two a season; pheasants, one; wild turkeys, one; other birds, fifteen a day. Fine not less than five dollars, or imprisonment, in the discretion of the court.

P. L. 1915, c. 566.

Henderson, bucks, two a season. First offense, fined twenty-five dollars, or imprisoned in the discretion of the court; second offense, fine of fifty dollars or imprisoned in the discretion of the court, or both.

1909, c. 471.

Jackson, bucks, two a season. Fine same as Henderson.

1909, c. 471.

Jones, quail, twelve a day; deer, one a day. Fine not less than five dollars, nor more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1917, c. 443.

Lenoir, quail, twenty-five a day for individual or party. Fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1913, c. 588.

Lincoln, quail, ten a day. Fine not over fifty dollars, or imprisoned not over thirty days.

P. L. 1913, c. 659.

Madison, quail, pheasant, grouse, wild turkeys or doves, twenty-five a day. Fine not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 104.

Mecklenburg, quail, partridge, fifteen a day. Fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1911, c. 543.

New Hanover, marsh hens, fifteen a day. Fine five dollars for each offense, or imprisoned for ten days.

1909, c. 757.

Pender, marsh hens, fifteen a day. Fine five dollars, or imprisoned ten days.

1909, c. 757.

Robeson, fifteen game birds a day; squirrels, ten a day. Fine not more than fifty dollars, or imprisoned not more than thirty days.

P. L. 1917, cc. 376, 537.

Transylvania, deer, three a season; squirrels, five; quail, partridge, twenty a day. Deer, fine not less than twenty-five dollars, or imprisoned, in the discretion of the court. Squirrels and partridges, fine not less than five dollars or more than one hundred dollars, or imprisoned, in the discretion of the court.

P. L. 1911, c. 348; 1907, c. 842.

Vance, game birds, fifteen a day, fine not less than five dollars, or not more than ten dollars, or imprisoned not less than ten nor more than thirty days.

P. L. 1915, c. 670.

49. Local by counties: exportation of game. Any person who shall export game and birds of the kinds indicated from the counties specified below shall be

guilty of a misdemeanor, punishable by fine not to exceed fifty dollars, or imprisonment not to exceed thirty days, except as otherwise indicated:

Alamance, quail, for sale, until March 8, 1919.

P. L. 1915, c. 563; P. L. 1917, c. 388.

Alexander, quail, for sale.

P. L. 1911, c. 754.

Anson, quail, for sale.

P. L. 1915, c. 162.

Avery, pine or gray squirrel, or any game bird. Fine not more than sixty dollars, or imprisoned not more than thirty days; or both, in the discretion of the court.

P. L. 1913, c. 560.

Bladen, quail, or wild turkey, for sale.

P. L. 1913, c. 457.

Catawba, quail, misdemeanor, punished in the discretion of the court.

Rev., s. 3472.

Chatham, quail, for sale.

P. L. 1915, c. 162.

Cherokee, quail, pheasant, partridge, dove, robin, snipe, woodcock, or deer. Penalty of twenty dollars; also fined or imprisoned in the discretion of the court.

1907, c. 452.

Clay, quail, not over twenty-five a season.

P. L. 1915, c. 271.

Craven, deer, woodcock, snipe, dove, wild turkey, or squirrels, until March 6, 1923. Fine not less than twenty-five dollars nor more than fifty, or imprisoned not more than thirty days.

P. L. 1911, c. 589; P. L. 1913, c. 384.

Cumberland, quail, snipe, or woodcock. Fine not more than fifty dollars, or imprisoned not more than twenty days.

P. L. 1915, c. 171.

Davidson, quail.

P. L. 1915, c. 162.

Davie, quail. Fine or imprisoned in the discretion of the court.

P. L. 1915, c. 140.

Duplin, quail, for sale. Fine not less than five dollars, nor more than ten dollars for each offense.

P. L. 1917, c. 668.

Guilford, quail, for sale.

P. L. 1915, c. 162.

Harnett, quail. Fined, or imprisoned, in the discretion of the court.

1907, c. 699.

Henderson, quail. Fined, or imprisoned, in the discretion of the court.

P. L. 1911, c. 184.

Hoke, quail, except nonresident landowner, may carry away quail killed on own land. Penalty twenty-five dollars or imprisonment not to exceed twenty days.

P. L. 1915, c. 459.

Hyde, Currituck Township, deer. Fine not less than ten dollars, or more than fifty.

P. L. 1911, c. 131.

Iredell, quail. Fined or imprisoned in the discretion of the court.

P. L. 1917, c. 459.

Jackson, quail. Fine ten dollars, or imprisoned not more than thirty days.

1909, c. 534.

Macon, quail.

P. L. 1915, c. 162.

Madison, quail, partridge, squirrel, or pheasant.

P. L. 1915, c. 559.

Mecklenburg, quail.

P. L. 1917, c. 414.

Montgomery, quail, partridge, pheasant, wild turkey, grouse, or dove, outside of county. Fine not more than twenty-five dollars, or imprisoned not more than thirty days for each offense.

1907, c. 689.

Pitt, quail.

P. L. 1917, c. 155.

Randolph, quail.

P. L. 1915, c. 162.

Robeson, any game bird.

P. L. 1917, c. 376.

Sampson, quail, except nonresident taking away quail killed on his own land. Fine not exceeding ten dollars.

P. L. 1913, c. 245.

Scotland, quail, except landowners. Penalty of not more than twenty-five dollars, or imprisoned not more than twenty days.

P. L. 1917, c. 57.

Stanly, any game birds. Fine not less than ten dollars or more than fifty dollars for each offense, or imprisoned not more than thirty days.

P. L. 1911, c. 359.

Stokes, any game bird, for sale. Fine not less than five dollars nor more than twenty-five dollars.

P. L. 1917, c. 588.

Surry, any game birds, for sale. Fine not less than ten dollars, nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days.

P. L. 1917, c. 47.

Union, lark, dove, quail, or partridge.

1907, c. 703; P. L. 1917, c. 416.

Warren, quail, partridge, wild turkey, woodcock; rabbits, squirrels; except nonresident hunters, allowed to take out twenty-five quail and one wild turkey during one season. Fine not less than ten dollars nor more than fifty dollars, or not more than thirty days imprisonment.

P. L. 1915, c. 137.

Wayne, bob-white, quail, partridge, snipe, or woodcock. Fine not more than fifty dollars, or imprisoned not exceeding twenty days.

P. L. 1915, c. 171.

Wilson, quail, except nonresident, may carry out of county game killed on own land. Fine not less than five dollars nor more than fifty dollars for each offense.

P. L. 1915, c. 738.

Yadkin, quail, for sale, fine not less than five dollars, nor more than ten dollars, or imprisoned not less than ten or more than twenty days for each offense.

1909, c. 698.

50. Local by counties; sale of game. Any person who shall sell, offer for sale, or have in his possession for sale, any game or birds as indicated in the counties enumerated, shall be guilty of a misdemeanor and punishable by a fine not to exceed fifty dollars, or imprisonment not to exceed thirty days, unless another punishment is specified.

P. L. 1915, c. 563.

Alamance, quail.

P. L. 1917, c. 388.

Alexander, quail, except to resident of county for own use.

P. L. 1911, c. 754.

Anson, quail.

P. L. 1915, c. 162.

Avery, pine, or gray squirrels, or any game birds. Fine not more than sixty dollars, or imprisoned not over thirty days.

P. L. 1913, c. 560, s. 24.

Beaufort, quail, or pheasant. Fine not to exceed twenty-five dollars, or imprisoned not more than twenty-five days.

P. L. 1913, c. 430.

Bladen, quail, or wild turkey.

P. L. 1913, c. 457.

Brunswick, snipe, woodcock, or summer duck; any wild fowl.

Rev., s. 3479; 1909, c. 577.

Buncombe, quail, pheasant, wild turkey, or dove.

Rev., s. 3472.

Catawba, quail, or squirrel, during close season. Fined, or imprisoned, in the discretion of the court.

P. L. 1913, c. 412.

Chatham, quail.

P. L. 1915, c. 162.

Cherokee, quail, pheasant, partridge, dove, robin, snipe, woodcock, or deer. Penalty of twenty dollars; also fined or imprisoned, in the discretion of the court.

1907, c. 452.

Clay, quail.

P. L. 1915, c. 271.

Craven, deer, woodcock, snipe, dove, wild turkey, or squirrels. Fine not less than twenty-five dollars nor more than fifty dollars, or imprisoned more than thirty days.

P. L. 1911, c. 589; P. L. 1913, c. 384.

Cumberland, quail, snipe, or woodcock. Fine not more than fifty dollars, or imprisoned not more than twenty days.

P. L. 1915, c. 171.

Dare, wild fowl.

Rev., s. 3477.

Davidson, quail.

P. L. 1915, c. 162.

Davie, quail. Fined or imprisoned, in the discretion of the court.

P. L. 1915, c. 140.

Durham, quail, except landowner.

P. L. 1913, c. 292.

Forsyth, quail, partridge, bob-white, snipe, woodcock, or other game birds.

P. L. 1917, c. 677.

Granville, quail, or partridge. Fine not less than five dollars, nor more than twenty dollars.

P. L. 1917, c. 598.

Guilford, quail.

P. L. 1915, c. 162.

Harnett, quail. Fine or imprisonment, in the discretion of the court.

1907, c. 699.

Haywood, deer, or hide of deer. Fine not less than five dollars, or imprisoned, in the discretion of the court.

P. L. 1915, c. 566.

Iredell, quail. Fine or imprisonment, in the discretion of the court.

P. L. 1917, c. 459.

Macon, quail.

P. L. 1915, c. 162.

Madison, quail, partridge, squirrel, rabbit, or pheasant.

P. L. 1915, c. 559.

Mecklenburg, quail.

P. L. 1917, c. 414.

Montgomery, quail, partridge, pheasant, wild turkey, goose, or dove, outside of county. Fine of not more than twenty-five dollars or imprisoned not more than thirty days for each offense.

1907, c. 689.

Moore, quail, or wild turkey. Fine of not more than thirty dollars and also a penalty of twenty dollars.

P. L. 1911, c. 130.

New Hanover, any game bird and squirrel.

Rev., s. 3477; P. L. 1913, c. 558; P. L. 1917, c. 677.

Orange, quail, except landowner, killed on his own land.

P. L. 1913, c. 292.

Pasquotank, quail. Fine not less than five dollars, nor more than ten for each offense.

P. L. 1913, c. 560.

Pender, Rockypoint Township, partridge, quail, woodcock, robins, doves, wild turkeys, or squirrels. Fine not more than ten dollars, or imprisoned not more than twenty days.

P. L. 1915, c. 150.

Pitt, quail.

P. L. 1917, c. 155.

Randolph, quail.

P. L. 1915, c. 162.

Robeson, any game birds.

P. L. 1917, c. 376.

Rowan, quail.

P. L. 1913, c. 591.

Rutherford, quail.

P. L. 1913, c. 556.

Sampson, quail. Fine not exceeding ten dollars.

P. L. 1913, c. 245.

Stanly, quail. Fine not less than ten dollars, nor more than fifty for each offense.

P. L. 1917, c. 516.

Surry, any game birds, during close season. Fine not less than ten dollars, nor more than fifty, or imprisoned not less than ten, nor more than thirty days.

P. L. 1917, c. 47.

Swain, quail.

Rev., s. 3472.

Transylvania, squirrels, not more than two a day. Fine not less than five nor more than one hundred dollars, or imprisoned, in the discretion of the court. 1907, c. 842; P. L. 1911, c. 193.

Union, lark, dove, quail, or partridge.

1907, c. 703; P. L. 1917, c. 416.

Vance, quail, woodcock, wild turkey, any game bird of market value. Fine of not less than five dollars nor more than ten, or imprisoned not more than thirty days.

P. L. 1915, c. 670.

Wake, quail, partridge, or wild turkeys.

P. L. 1913, c. 225.

Warren, quail, partridge, or woodcock, wild turkeys, rabbits, or squirrels, except nonresident hunters, may take away twenty-five quail and one turkey each season.

P. L. 1915, c. 137.

Wayne, bob-white, quail, partridge, snipe, or woodcock. Fine not more than fifty dollars, or imprisoned not to exceed twenty days.

P. L. 1915, c. 171.

Wilkes, quail, partridge, pheasant, or goose. Penalty of ten dollars.

P. L. 1913, c. 77.

Wilson, quail, except nonresident may carry out of county game killed on own land. Fine not less than five dollars nor more than fifty.

P. L. 1915, c. 738.

Yadkin, quail.

P. L. 1917, c. 132.

51. Local by counties: bird dogs running at large. It shall be unlawful for the owner or any person having the care of any pointer or setter dog to permit the same to run at large unmuzzled during the breeding season of quail, namely, from April the first to September first of any year. When any pointer or setter dog shall be found ranging unmuzzled in the field or woods it shall be prima facie evidence that the owner of such pointer or setter dog has violated the provisions of this section, and upon conviction such owner or his agent shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not longer than thirty days.

This act shall apply only to the counties of Davidson, Durham, Greene, Guilford, Forsyth, Iredell, Johnston, Moore, Transylvania and Yancey.

1909, c. 775.

NOTE. Clay, bird-dogs running at large prohibited, February 15 to November 15. Fine not less than ten dollars, nor more than twenty-five dollars. P. L. 1917, c. 417.

Catawba, bird-dogs running at large, April 1 to October 1. Misdemeanor, fine or imprisonment, in the discretion of the court. P. L. 1913, c. 412.

Mecklenburg, unlawful for person owning dogs to allow them to run at large from April 1 to October 1. May use dogs during this season for chasing or catching carnivorous animals, or for other legitimate purposes. Fine not less than two dollars, nor more than ten dollars for each offense. P. L. 1915, c. 562.

Orange, bird-dogs not allowed to run at large during the months of May, June, July and August, of each year. Fined or imprisoned, in the discretion of the court. 1909, c. 543.

Rowan, any dog, May 1 to September 1. Fine not more than ten dollars, or imprisoned not more than five days. P. L. 1911, c. 445.

Stanly, all dogs to be kept up during the bird-raising season in each year, such season to be set by the majority of the qualified voters of the county. P. L. 1913, c. 683.

Wilkes, dogs not allowed to run at large from May 1 to October 1. Penalty of one dollar for each offense, or imprisoned not less than ten, nor more than twenty days, or both, in the discretion of the court. P. L. 1915, c. 737.

Rutherford, bird-dogs, May 15 to August 15. Fine not exceeding fifty dollars, or imprisoned not exceeding thirty days. P. L. 1913, c. 513.

52. Local by counties: Netting quail. Any person who shall net or trap any quail or partridge in the counties specified below, shall be guilty of a misdemeanor, and punishable as indicated:

Brunswick, except on own land. Punished in the discretion of the court.
Rev., s. 3468.

Burke, except on own land. Punished in the discretion of the court.
Rev., s. 3468.

Davie, fined or imprisoned, in the discretion of the court.
P. L. 1917, c. 422.

Granville, fined not less than five dollars nor more than twenty dollars.
P. L. 1917, c. 598.

Guilford, fined not more than five dollars for each bird captured in violation of law.
1907, c. 345.

Lincoln, fine not more than fifty dollars, or imprisoned not more than thirty days.
P. L. 1913, c. 659.

Madison, except on own land. Punishable in the discretion of the court.
Rev., s. 3468.

McDowell, fined or imprisoned, in the discretion of the court.
1907, c. 886.

New Hanover, punishable in the discretion of the court.
P. L. 1913, c. 400.

Randolph, except on own land. Punishable in the discretion of the court.
Rev., s. 3468.

Richmond, except on own land. Punishable in the discretion of the court.
Rev., s. 3468.

Stokes, except on own land. Punishable in the discretion of the court.
Rev., s. 3468.

Surry, fined not less than ten nor more than fifty dollars for each offense, or imprisoned not less than ten nor more than thirty days.
P. L. 1917, c. 47.

53. Local by counties: Chasing deer. If any person shall chase deer with dogs in Clay, Graham, Macon, French's Creek, Cypress Creek, Colly, and Turnbull townships, in Bladen, or Swain counties, he shall be guilty of a misdemeanor.
Rev., s. 3460; 1903, c. 591; 1909, c. 418, s. 1.

54. Local by counties: Killing wild fowl for sale. If any person shall kill, for sale, any wild fowls in the waters of Dare, New Hanover or Brunswick counties between the tenth days of March and November of any year, or ship out of the state between said dates any wild fowl killed in the waters aforesaid, or if any nonresident shall in said counties, or in Currituck County, shoot any wild fowl from any blind, box or battery or float, not on land at the time, he shall be guilty of a misdemeanor and be fined not more than fifty dollars, or imprisoned not more than thirty days.

Rev., s. 3477; Code, s. 2840; 1889. c. 59.

55. Brunswick: Killing deer in water. If any person shall kill by shooting or drowning or knocking in the head any deer while swimming in any waters of Brunswick County, he shall be guilty of a misdemeanor, and be fined not less than five nor more than twenty dollars.

Rev., s. 3463; 1905, c. 413.

56. Carteret: Hunting wild fowl at night. If any person shall hunt or shoot wild fowl by firelight after the hour of sunset and before the hour of sunrise in Carteret County, except in that part of Bogue Sound west of Sally Bell Shoal, or use for such shooting any other gun than one that can be fired from the shoulder; or if any person shall hunt or shoot wild fowl in Carteret County with or from batteries or sneak boats from the first day of April to the first day of December of any year; or if any person shall hunt wild fowl with batteries or sneak boats, or shoot them therefrom in that part of Bogue Sound, Carteret County, west of Sally Bell Shoal, at any season, he shall be guilty of a misdemeanor and be fined not less than one hundred nor more than two hundred dollars for each offense. Lanterns and other equipment used in fire lighting and found in the possession of persons in the act of going hunting or returning from hunting shall be prima facie evidence that the persons have violated this act.

Rev., s. 3473; 1903. c. 346; 1907. c. 895.

57. Currituck: Wild fowl hunting regulated. If any person shall put bushes or blinds of any kind on their boats or floats of any kind with the intent to decoy or pursue ducks, or shall sail or row or propel a boat in any way after wild fowl in the waters of Currituck Sound, for the purpose of forcing them on the wing, or shoot them with rifle or shotgun from any boat while sailing, or shall place any sail, flag or other device upon any land bordering on the water to frighten any wild fowl, or shall leave more than one stationary bush or blind standing in the water between the hours of sunset and sunrise, or shall fail to anchor any decked boat or float-house or house built over the water and used to live in for the purpose of fishing or hunting wild-fowl, in shoal water not more than three hundred yards from the mainland on the west side of Currituck Sound, or at some public landing on the east side between the north end of Church's Island and the south end of Powell's Point, at dark, or shall at sunset fail to take up his decoy and proceed to go to some landing as aforesaid, or shall leave any landing or anchorage before sunrise in the morning for the purpose of hunting or fishing, or shall before sunrise put out any decoys of any kind, or nets, or shall continue to hunt or fish after sunset, or shall between the thirty-first day of March and the first day of November of any year shoot or capture any wild fowl over decoys, or shall between the first day of November of any year and the thirty-first day of March

of the next year, on any Wednesday, Saturday or Sunday, hunt, take, kill or capture any wild fowl, or on any of said days shall disturb or rout any raft of wild fowl unless the same be unavoidable in the usual course of navigation, or shall between the first day of November and the fifteenth day of February skiff or ring-shoot any boobies or ruddy duck, or shall between the thirty-first day of March and the first day of November ship out of the county any wild fowl, or shall sail or propel a boat on Sunday for the purpose of locating wild fowl, or if any hired or employed person shall sail or lay around anywhere near any person who may be gunning or fishing to damage his shooting or keep him from shooting, he shall be guilty of a misdemeanor: Provided, that nothing in this section shall prevent any person tending a battery or any person shooting from a bush blind from shooting winged or crippled fowls from his boat while sailing or in motion.

This section shall only apply to Currituck County.

1907, c. 376.

58. Dare: Hunting wild fowl; license and regulation. In the waters of Dare County north of a line running east and west through the northern end of Roanoke Island, shooting wild fowl by a nonresident of the state from blind, battery, box or float, is subject to a license tax of twenty-five dollars a year. In waters of county lying south of said line, a license fee of twenty-five dollars a year is required to be paid by each club house, shooting resort or other place of resort for sportsmen, the members and guests of which without further taxation, shall be entitled to shoot wild fowl afloat within four miles of the club, lodge or resort. In waters south of said line, nonresidents not more than two at a time may shoot wild fowl from a blind, battery, box or float, which is the property of a resident of Dare County and upon which a tax of five dollars a year has been paid.

The license above provided for shall be issued by the clerk of the court of Dare County, and the license taxes imposed shall be paid to him, and he shall pay them to the county treasurer for the benefit of the school fund. Any non-resident shooting wild fowl contrary to the provisions of this section and any person hunting wild fowl in any manner not authorized by law shall be guilty of a misdemeanor.

Rev., ss. 1877, 1878, 1879, 1880, 3475, 3476: 1897, c. 415: 1899, c. 133, ss. 2, 3: 1901, c. 157.

59. Hyde, Pamlico Sound: Wild fowl hunting regulated. If any person shall shoot any wild fowl in the waters of Pamlico Sound, in Hyde County, from any box, battery or float, not on land at the time, he shall be guilty of a misdemeanor: Provided, residents of the state may shoot from batteries not on land on Monday, Tuesday, Thursday and Friday of each week and on no other days.

Rev., s. 3478; 1897, c. 484.

60. New Hanover: Selling game evidence of illegal hunting. If any person shall offer for sale on the market, in New Hanover County, any quail, wild turkeys or ducks between the first day of March and the first day of September it shall be prima facie evidence of his having killed such game out of season.

Rev., s. 3465; 1905, c. 409.

CHAPTER 39

GAMING CONTRACTS AND FUTURES

ART. 1. GAMING CONTRACTS.

1. Gaming and betting contracts void.
2. Players and betters competent contracts.

ART. 2. CONTRACTS FOR "FUTURES."

3. Certain contracts as to "futures" void.
4. Prima facie evidence of illegal contract in futures.
5. Burden shifted by plea of illegality; pleadings not evidence in criminal action.
6. Entering into or aiding contracts for "futures" misdemeanor.
7. Opening office for sales of "futures" misdemeanor.
8. Evidence in prosecutions under this article.

ART. 1. GAMING CONTRACTS

1. **Gaming and betting contracts void.** 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, or to repay, or to secure any money, or property, or thing in action, lent or advanced for the purpose of such wagering, betting, or staking as aforesaid, shall be void.

Rev., s. 1687; Code, ss. 2841, 2842; R. C., c. 51, ss. 1, 2; 1810, c. 796.

2. **Players and betters competent witnesses.** No person shall be excused or incapacitated from confessing or testifying touching any money or property, or thing in action, so wagered, bet or staked, or lent for such purpose, by reason of his having won, played, bet or staked upon any game, lot or chance, casualty, or unknown or contingent event aforesaid; but the confession or testimony of such person shall not be used against him, in any criminal prosecution, on account of such betting, wagering or staking.

Rev., s. 1688; Code, s. 2843; R. C., c. 51, s. 3.

ART. 2. CONTRACTS FOR "FUTURES"

3. **Certain contracts as to "futures" void.** Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered; and every contract commonly called "futures" as to the several articles and things herein-

before specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void; and no action shall be maintained in any court to enforce any such contract, whether the same was made in or out of the state, or partly in and partly out of this state, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency; nor shall the courts of this state have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract. This section shall not be construed so as to apply to any person, firm, corporation or his or their agent engaged in the business of manufacturing or wholesale merchandising in the purchase or sale of the necessary commodities required in the ordinary course of their business.

Rev., s. 1689; 1889, c. 221, s. 1; 1905, c. 538, s. 7; 1909, c. 853, s. 1.

4. Prima facie evidence of illegal contract in "futures." Proof that anything of value agreed to be sold and delivered was not actually delivered at the time of making the agreement to sell and deliver, and that one of the parties to such agreement deposited or secured, or agreed to deposit or secure, what are commonly called "margins," shall constitute prima facie evidence of a contract declared void by the preceding section.

Rev., s. 1690; 1889, c. 221, s. 2; 1905, c. 538, ss. 5, 7.

5. Burden shifted by plea of illegality; pleadings not evidence in criminal action. When the defendant in any action pending in any court shall allege specifically in his answer that the cause of action alleged in the complaint is in fact founded upon a contract such as is by this chapter made void, and such answer shall be verified, then the burden shall be upon the plaintiff in such action to prove by the proper evidence, other than any written evidence thereof, that the contract sued upon is a lawful one in its nature and purposes; and the defendant may likewise produce evidence to prove the contrary: Provided, nevertheless, that any allegation or statement of fact made in any pleading in any such action, or the evidence produced on the trial in any such action, shall not be evidence against the party making or producing the same in any criminal action against such party.

Rev., s. 1691; 1889, c. 221, s. 2.

6. Entering into or aiding contract for "futures" misdemeanor. If any person shall become a party to any contract declared void in this article; or if any person shall be the agent, directly or indirectly, of any party in making or furthering or effectuating the same; or if any agent or officer of a corporation shall

in any manner, knowingly aid in making or furthering any such contract to which the corporation is a party, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the discretion of the court.

If any person shall, while in this state, consent to become a party to any such contract made in another state, and if any person shall, as agent of any person or corporation, become a party to any such contract made in another state, or in this state do any act or in any way aid in the making or furthering of any such contract so made in another state, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than two hundred dollars, and may be imprisoned in the discretion of the court.

Rev., ss. 3823, 3824; 1889, c. 221, ss. 3, 4.

7. Opening office for sales of "futures" misdemeanor. If any person, corporation or other association of persons, either as principals, or agents, shall establish or open an office or place of business in this state for the purpose of carrying on or engaging in making such contracts as are forbidden in this article, he shall be guilty of a misdemeanor, and shall on conviction be fined and imprisoned in the discretion of the court.

Rev., s. 3825; 1905, c. 538, ss. 1, 2.

8. Evidence in prosecutions under this article. No person shall be excused on any prosecution under the provisions of this article from testifying touching anything done by himself or others contrary to the provisions thereof, but no discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him. In all such prosecutions proof that the defendant was a party to a contract as agent or principal to sell and deliver any article, thing or property specified or named in this article, or that he was the agent, directly or indirectly of any party in making, furthering or effectuating the same, or that he was the agent or officer of any corporation or association or person in making, furthering or effectuating the same, and that the article, thing or property agreed to be sold and delivered was not actually delivered, and that settlement was made or agreed to be made upon the difference in value of said article, thing or property, shall constitute against such defendant prima facie evidence of guilt. Proof that any person, corporation or other association of persons, either as principals or agents, has established an office or place where are posted or published from information received the fluctuating prices of grain, cotton, provisions, stocks, bonds and other commodities, or of any one or more of the same, shall constitute prima facie evidence of being guilty of violating the provisions of this article.

Rev., s. 3826; 1905. ss. 3, 4, 5.

CHAPTER 40

GUARDIAN AND WARD

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- 50. Solicitor to prosecute bond of guardian removed without a successor.
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- 52. Receiver to pay over estate to infant or guardian.
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ART. 1. JURISDICTION IN MATTER OF GUARDIANSHIP

1. Jurisdiction in clerk of superior court. The clerks of the superior court within their respective counties have full power, from time to time, to take cognizance of all matters concerning orphans and their estate and to appoint guardians in all cases of infants, idiots, lunatics, inebriates, and inmates of the Caswell Training School.

Rev., s. 1766; Code, s. 1566; R. C., c. 54, s. 2; 1762, c. 69, ss. 5, 7; 1868-9, c. 201, s. 4; 1917, c. 41, s. 1.

ART. 2. CREATION AND TERMINATION OF GUARDIANSHIP

2. Appointment by parents; effect; powers and duties of guardian. Any father, though he be a minor, may, by deed executed in his lifetime and with the written consent and privy examination of the mother, if she be living, or by his last will and testament in writing, if the mother be dead, dispose of the custody and tuition of any of his infant children, being unmarried and whether born at his death or in ventre sa mere, for such time as the children may remain under twenty-one years of age, or for any less time. Or in case the father is dead and has not exercised his said right of appointment, then the mother, whether of full age or minor, may do so. Every such appointment shall be good and effectual against any person claiming the custody and tuition of such child or children. Every guardian by deed or will shall have the same powers and rights and be subject to the same liabilities and regulations as other guardians.

Rev., ss. 1762, 1763, 1764; Code, ss. 1562, 1563, 1564; R. C., c. 54; 1762, c. 69; 1868-9, c. 201; 1881, c. 64; 1911, c. 120.

3. Natural guardianship on death of father. In case of the death of the father of an infant, the mother of such child surviving such father shall immediately become the natural guardian of such child to the same extent and in the same manner, plight and condition as the father would be if living; and the mother in such case shall have all the powers, rights and privileges, and be subject to all the duties and obligations of a natural guardian. But this shall not be construed as abridging the powers of the courts over minors and their estates and to the appointment of guardians.

Rev., s. 1765; Code, s. 1565; 1883, c. 364.

4. Appointment on divorce of parents. When parents are divorced and a child is entitled to any estate, the court granting the divorce must certify that fact to the clerk of the superior court, to the end that he may appoint a fit and

proper person to take the care and management of such estate, whose powers and duties shall be the same in all respects as other guardians, except that a guardian so appointed shall not have any authority over the person of such child, unless the guardian be the father or mother.

Rev., s. 1770; Code, s. 1571; R. C., c. 54, s. 4; 1838, c. 16; 1868-9, c. 201, s. 9.

5. Appointment when father living. The clerk of the superior court may appoint a guardian of the estate of any minor, although the father of such minor be living. And the guardian so appointed shall be governed in all respects by the laws relative to guardians of the estate in other cases, but shall have no authority over the person of such minor.

Rev., s. 1771; Code, s. 1572; R. C., c. 54, ss. 4, 7; 1806, c. 707; 1868-9, c. 201, s. 10.

6. Separate appointment for person and estate; yearly support specified; payments allowed in accounting. Instead of granting general guardianship to one person, the clerk of the superior court may commit the tuition and custody of the person to one and the charge of his estate to another, whenever and at any time during minority, inebriety, idiocy or lunacy, it appears most conducive to the proper care of the orphan's, inebriate's, idiot's, or lunatic's estate, and to his suitable maintenance, nurture and education. In such cases the clerk must order what yearly sums of money or other provisions shall be allowed for the support and education of the orphan, or for the maintenance of the idiot, lunatic or inebriate, and must prescribe the time and manner of paying the same; but such allowance may, upon application and satisfactory proof made, be reduced or enlarged, or otherwise modified, as the ward's condition in life and the kind and value of his estate may require. All payments made by the guardian of the estate to the tutor of the person, according to any such order, shall be deemed just disbursements and be allowed in the settlement of his accounts; but for the payment thereof by the one and the receipt thereof by the other merely, no commissions shall be allowed to either, though commissions may be allowed to the tutor of the person on his disbursements only.

Rev., ss. 1767, 1768, 1769; Code, ss. 1567, 1568, 1569; R. C., c. 54, s. 3; 1840, c. 31; 1868-9, c. 201, ss. 6, 7.

7. Proceedings on application for guardianship. On application to any clerk of the superior court for the custody and guardianship of any infant, idiot, inebriate, lunatic, or inmate of the Caswell Training School, 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, idiot, inebriate, lunatic, or inmate of the Caswell Training School 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, idiot, inebriate, lunatic, or inmate of the Caswell Training School, and the value of the rents and profits of the real estate, and he may grant or refuse the application, or commit the guardianship to some other person, as he may think best for the interest of the infant, idiot, inebriate, lunatic, or inmate of the Caswell Training School.

Rev., s. 1772; Code, s. 1620; C. C. P., s. 474; 1917, c. 41, s. 2.

8. Letters of guardianship. The clerk of the superior court must issue to every guardian appointed by him a letter of appointment, which shall be signed by him and sealed with the seal of his office.

Rev., s. 1773; Code, s. 1621; C. C. P., s. 475.

9. Removal by clerk. The clerks of the superior court have power, on information or complaint made, at all times to remove guardians and appoint successors, to make and establish rules for the better ordering, managing and securing infants' estates, and for the better education and maintenance of wards; and it is their duty to do so in the following cases:

1. Where the guardian wastes or converts the money or estate of the ward to his own use.

2. Where the guardian in any manner mismanages the estate.

3. Where the guardian is about or intends to marry any ward in disparagement.

4. Where the guardian neglects to educate or maintain the ward in a manner suitable to his or her degree.

5. Where the guardian is legally disqualified to act as a person would be to be appointed administrator.

6. Where the guardian or his sureties are likely to become insolvent or non-residents of the state.

Rev., s. 1774; Code, s. 1583; R. C., c. 54, ss. 2, 13; 1762, c. 69; 1868-9, c. 201, s. 20; C. C. P., ss. 470, 476.

10. Interlocutory orders on revocation. In all cases where the letters of a guardian are revoked, the clerk of the superior court may, from time to time, pending any controversy in respect to such removal, make such interlocutory orders and decrees as will tend to the better securing the estate of the ward, or other party seeking relief by such revocation.

Rev., s. 1775; Code, s. 1607; 1868-9, c. 201, s. 44.

11. Resignation; effect; accounting on resignation. Any guardian wishing to resign his trust may apply in writing to the superior court, setting forth the circumstances of his case. If, at the time of making the application, he also exhibits his final account for settlement, and if the clerk of the superior court is satisfied that the guardian has been faithful and has truly accounted, and if a competent person can be procured to succeed in the guardianship, the clerk of the superior court may accept the resignation of the guardian and discharge him from the trust. But the guardian so discharged and his sureties are still liable in relation to all matters connected with the trust before the resignation.

Rev., s. 1776; Code, s. 1608; 1868-9, c. 201, s. 45.

ART. 3. GUARDIAN'S BOND

12. Bond to be given before receiving property. No guardian appointed for an infant, idiot, lunatic, insane person, or inebriate, shall be permitted to receive property of the infant, idiot, lunatic, insane person or inebriate until he shall have given sufficient security, approved by a judge, or the court, to account for and apply the same under the direction of the court.

Rev., s. 1777; Code, s. 1573; C. C. P., s. 355.

13. Terms and conditions of bond; increased on sale of realty. Every guardian of the estate, before letters of appointment are issued to him, must give a bond payable to the state, with two or more sufficient sureties, to be acknowledged before and approved by the clerk of the superior court, and to be jointly and severally bound. The penalty in such bond must be double, at least, the value of all personal property, and the rents and profits issuing from the real estate of the infant; which value is to be ascertained by the clerk of the superior court by the examination, on oath, of the applicant for guardianship, or of any other person. The bond must be conditioned that such guardian shall faithfully execute the trust reposed in him as such, and obey all lawful orders of the clerk or judge, touching the guardianship of the estate committed to him. If, on application by the guardian, the court or judge shall decree a sale for any of the causes prescribed by law of the property of such infant, idiot, lunatic or insane person, before such sale be confirmed, the guardian shall be required to file a bond as now required in double the amount of the real property so sold.

Rev., s. 1778; Code, s. 1574; 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.

14. To be recorded in clerk's office; action on bond. The bond so taken shall be recorded in the office of the clerk of the superior court appointing the guardian; and any person injured by a breach of the condition thereof, may prosecute a suit thereon, as in other actions.

Rev., s. 1779; Code, s. 1575; R. C., c. 54, s. 5; 1868-9, c. 201, s. 12.

15. Where several wards with estate in common, one bond sufficient. When the same person is appointed guardian to two or more minors, idiots, lunatics or insane persons possessed of one estate in common, the clerk of the superior court may take one bond only in such case, upon which each of the minors or persons for whose benefit the bond is given, or their heirs or personal representatives, may have a separate action.

Rev., s. 1780; Code, s. 1576; R. C., c. 54, s. 8; 1822, c. 1161; 1868-9, c. 201, s. 13.

16. Renewal of bond every three years; enforcing renewal. Every guardian shall renew his bond before the clerk of the superior court every three years, during the continuance of the guardianship. The clerk of the superior court shall issue a citation against every guardian failing to renew his bond, requiring such guardian to renew his bond within twenty days after service of the citation; and on return of the citation duly served and failure of the guardian to comply therewith, the clerk shall remove him and appoint a successor.

Rev., ss. 1781, 1782; Code, ss. 1581, 1582; R. C., c. 54, s. 10; 1762, c. 69, s. 15; 1868-9, c. 201, ss. 18, 19.

17. Relief of endangered sureties. Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may file his complaint before the clerk of the superior court where the guardianship was granted, setting forth the circumstances of his case and demanding relief; and thereupon the guardian shall be required to answer the complaint within twenty days after service of the summons. If, upon the hearing, the clerk of the superior court deem the surety entitled to relief, the same may be granted by compelling the guardian to give a new bond, or to indemnify the surety against apprehended loss, or by the

removal of the guardian from his trust; and in case the guardian fail to give a new bond or security to indemnify when required to do so within reasonable time, the clerk of the superior court must enter a peremptory order for his removal, and his authority as guardian shall thereupon cease.

Rev., s. 1783; Code, s. 1606; R. C., c. 54, s. 35; 1762, c. 69, ss. 21, 22; 1868-9, c. 201, s. 43.

18. Liability of clerk for taking insufficient bond. If any clerk of the superior court shall commit the estate of an infant, idiot, lunatic, insane person or inebriate to the charge or guardianship of any person without taking good and sufficient security for the same as directed by law, such clerk shall be liable, on his official bond, at the suit of the party aggrieved, for all loss and damages sustained for want of security being taken; but if the sureties were good at the time of their being accepted, the clerk of the superior court shall not be liable.

Rev., s. 1784; Code, s. 1614; R. C., c. 54, s. 2; 1762, c. 69, ss. 5, 6; 1868-9, c. 201, s. 51.

19. Liability of clerk for other defaults. If any clerk of the superior court shall willfully or negligently do, or omit to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, he shall be liable therefor as directed in the preceding section.

Rev., s. 1785; Code, s. 1615; 1868-9, c. 201, s. 52.

ART. 4. POWERS AND DUTIES OF GUARDIAN

20. To take charge of estate. Every guardian shall take possession, for the use of the ward, of all his estate, and may bring all necessary actions therefor.

Rev., s. 1786; Code, s. 1588; R. C., c. 54, s. 21; 1762, c. 69, s. 3; 1868-9, c. 201, s. 25.

21. To sell perishable goods on order of clerk. Every guardian shall sell, by order of the clerk of the superior court, all such goods and chattels of his ward as may be liable to perish or be the worse for keeping. Every such order shall be entered in the order record of the superior court and must contain a descriptive list of the property to be sold, with the terms of sale.

Rev., s. 1787; Code, s. 1589; R. C., c. 54, s. 22; 1762, c. 69, s. 10; 1868-9, c. 201, s. 26.

22. How sales and rentals made. All sales and rentings by guardians shall be publicly made, between the hours of ten o'clock a.m. and four o'clock p.m., after twenty days notice posted at the courthouse and four other public places in the county. But, upon petition by the guardian, the clerk of the superior court of the county in which the land of the ward is situated, or of the county wherein the guardian has qualified, may make an order, on satisfactory evidence, upon the oath of at least two disinterested freeholders acquainted with the said land, that the best interests of the said ward will be subserved by a private renting of said land, allowing the guardian to rent the land privately. The terms of all such rentings shall be reported to said clerk of the superior court and be approved by him. In cases where guardians have heretofore rented their ward's land at private rentings in good faith and for the benefit of the ward's estate, they shall not be liable to the penalty heretofore prescribed by law. The proceeds of all sales of personal estate and rentings of real property, except the rentings of lands leased for agricultural purposes, when not for cash, shall be secured by bond and good security.

Rev., s. 1788; Code, s. 1590; 1891, c. 83; 1901, c. 97; R. C., c. 54, s. 26; 1793, c. 391.

23. When lands may be leased. The guardian may lease the lands of an infant for a term not exceeding the end of the current year in which the infant shall come of age, or die in nonage. But no guardian without leave of the clerk of the superior court, shall lease any land of his ward without impeachment of waste, or for a term of more than three years, unless at a rent not less than three per centum on the assessed taxable value of the land.

Rev., s. 1789; Code, s. 1591; R. C., c. 54, s. 25; 1762, c. 69, s. 13; 1794, c. 413, s. 2.

24. When guardians to cultivate lands of wards. Where any parent of a minor child qualifies as guardian of such child, and the ward owns or is entitled to the possession of any real estate used or which may be used for agricultural purposes, such guardian may make application to the clerk of the superior court of the county wherein the land is situate for permission to cultivate it, and the petition shall set forth the nature, extent and location of the same. It shall then be the duty of the clerk to appoint three disinterested resident freeholders who shall go upon the land, and, after being sworn to act impartially, assess the annual rental value thereof. The commissioners shall report their proceedings and findings to the clerk within ten days after the notification of their appointment, and if the clerk shall deem the same to be the interest of the ward he shall make an order allowing the guardian to cultivate the land for a term not exceeding three years at the annual rental value assessed by the commissioners to be paid to the ward by the guardian. The term, however, shall not extend beyond the minority of the minor. The commissioners shall receive as compensation for said services the same fees as are allowed commissioners in partition of real estate.

1909, c. 57.

25. When timber may be sold. In case the land cannot be rented for enough to pay the taxes and other dues thereof, and there is not money sufficient for that purpose, the guardian, with the consent of the clerk of the superior court, may annually dispose of, or use so much of the lightwood, and box or rent so many pine trees, or sell so much of the timber on the same, as may raise enough to pay the taxes and other duties thereon and no more.

Rev., s. 1790; Code, s. 1596; R. C., c. 54, s. 27; 1762, c. 69, s. 14; 1868-9, c. 201, s. 33.

26. Plate and jewelry to be kept. All plate and jewelry shall be preserved and delivered to the ward at age, in kind, according to weight and quantity.

Rev., s. 1791; Code, s. 1597; 1895, c. 74; 1868-9, c. 201, s. 34.

27. Personal representative of guardian to pay over to clerk. In all cases where a guardian of any minor child or of an idiot, lunatic, inebriate or insane person dies, it is competent for the executor or administrator of such deceased guardian, at any time after the grant of letters testamentary or of administration, to pay into the office of the clerk of the superior court of the county where such deceased guardian was appointed, any moneys belonging to any such minor child, idiot, lunatic, insane person or inebriate, and any such payment shall have the effect to discharge the estate of said deceased guardian and his sureties upon his guardian bond to the extent of the amount so paid.

Rev., s. 1794; Code, s. 1622; 1881, c. 301, s. 2.

28. Collection of claims; duty and liability. Every guardian shall diligently endeavor to collect, by all lawful means, all bonds, notes, obligations or moneys due his ward when any debtor or his sureties are likely to become insolvent, on pain of being liable for the same.

Rev., s. 1795; Code, s. 1593; R. C., c. 54, s. 23; 1762, c. 69, s. 10; 1868-9, c. 201, s. 30.

29. Liability for lands sold for taxes. If any guardian suffer his ward's lands to lapse or become forfeited or be sold for nonpayment of taxes or other dues, he shall be liable to answer for the full value thereof to his ward.

Rev., s. 1796; Code, s. 1595; R. C., c. 54, s. 27; 1762, c. 69, s. 14; 1868-9, c. 201, s. 32.

30. Liability for costs. All fees and costs of the superior court for issuing orders, citations, summonses or other process against guardians for their supposed defaults, shall be paid by the party found in default.

Rev., s. 1797; Code, s. 1611; 1868-9, c. 201, s. 48.

NOTE. For duty of guardian to pay owelty, see Partition, s. 12.

ART. 5. SALES OF WARD'S ESTATE

31. Special proceedings to sell; judge's approval required. On application of the guardian by petition, verified upon oath, to the superior court, showing that the interest of the ward would be materially promoted by the sale or mortgage of any part of his estate, real or personal, the proceeding shall be conducted as in other cases of special proceedings; and the truth of the matter alleged in the petition being ascertained by satisfactory proof, a decree may thereupon be made that a sale or mortgage be had by such person, in such way and on such terms as may be most advantageous to the interest of the ward; but no sale or mortgage shall be made until approved by the judge of the court, nor shall the same be valid, nor any conveyance of the title made, unless confirmed and directed by the judge, and the proceeds of the sale or mortgage shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify. The guardian may not mortgage the property of his ward for a term of years exceeding the minority of the ward. The word "mortgage" wherever used herein shall be construed to include deeds in trust.

Rev., s. 1798; Code, s. 1602; R. C., c. 54, ss. 32, 33; 1827, c. 33; 1868-9, c. 201, s. 39; 1917, c. 258, s. 1.

32. Fund from sale has character of estate sold and subject to same trusts. Whenever, in consequence of any sale under the preceding section, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all such cases of sale, whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, alienated, devised or bequeathed, and shall descend and be distributed, as by law the property sold might and would have been, had it not been sold, until it be reconverted from the character thus impressed upon it by some act of the owner, and restored to its character proper.

Rev., s. 1799; Code, s. 1603; R. C., c. 54, s. 33; 1827, c. 33, s. 2; 1868-9, c. 201, s. 40.

33. Sale of ward's estate to make assets. When a guardian has notice of a debt or demand against the estate of his ward, he may apply by petition, setting

forth the facts to the clerk of the superior court wherein the guardianship was granted, for an order to sell so much of the personal or real estate as may be sufficient to discharge such debt or demand; and the order of the court shall particularly specify what property is to be sold and the terms of sale; but no real estate shall be sold under this section, in any case, without the revision and confirmation of the order therefor by the judge of the superior court. The proceeds of sale under this section shall be considered as assets in the hands of the guardian for the benefit of creditors, in like manner as assets in the hands of a personal representative; and the same proceedings may be had against the guardian with respect to such assets as might be taken against an executor, administrator or collector in similar cases.

Rev., ss. 1800, 1801; Code, ss. 1604, 1605; R. C., c. 54, s. 34; 1789, c. 311, s. 5; 1868-9, c. 201, ss. 41, 42.

ART. 6. RETURNS AND ACCOUNTING

34. Return within three months. Every guardian, within three months after his appointment, shall exhibit an account, upon oath, of the estate of his ward, to the clerk of the superior court; but such time may be extended by the clerk of the superior court, on good cause shown, not exceeding six months.

Rev., s. 1802; Code, s. 1577; R. C., c. 54, s. 11; 1762, c. 69, s. 9; 1868-9, c. 201, s. 14.

35. Procedure to compel return. In cases of default to exhibit the return required by the preceding section, the clerk of the superior court must issue an order requiring the guardian to file such return forthwith, or to show cause why an attachment should not issue against him. If, after due service of the order, the guardian does not, on the return day of the order, file such return, or obtain further time to file the same, the clerk of the superior court shall issue an attachment against him, and commit him to the common jail of the county, till he files such return.

Rev., s. 1803; Code, s. 1578; R. C., c. 54, s. 12; 1762, c. 69, s. 15; 1868-9, c. 201, s. 15.

36. Additional assets to be returned. Whenever further property of any kind, not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in the preceding section.

Rev., s. 1804; Code, s. 1579; 1868-9, c. 201, s. 16.

37. Annual accounts. Every guardian shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file, in the office of the clerk of the superior court, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The clerk of the superior court may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must

indorse his approval thereon, which shall be deemed *prima facie* evidence of correctness.

Rev., s. 1805; Code, s. 1617; R. C., c. 54, ss. 11, 12; 1762, c. 69, ss. 9, 15; 1871-2, c. 46.

38. Procedure to compel accounting. If any guardian omit 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.

Rev., s. 1806; Code, s. 1618; C. C. P., s. 479.

39. 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.

Rev., s. 1807; Code, s. 1619; C. C. P., s. 481.

40. Expenses and disbursements credited to guardian. Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he has really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward.

Rev., s. 1808; Code, s. 1612; R. C., c. 54, s. 28; 1762; c. 69, ss. 18, 19; 1799, c. 536, s. 2; 1868-9, c. 201, s. 49.

41. Commissions. The superior court shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors.

Rev., s. 1809; Code, s. 1613; R. C., c. 54, s. 28; 1762, c. 69, ss. 18, 19; 1868-9, c. 201, s. 50.

ART. 7. PUBLIC GUARDIANS

42. Appointment; term; oath. There may be in every county a public guardian to be appointed by the clerk of the superior court for a term of eight years. The public guardian shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties imposed upon him; the oath so taken and subscribed shall be filed in the office of the clerk of the superior court.

Rev., ss. 1758, 1759; Code, ss. 1556, 1560; 1874-5, c. 221, ss. 1, 5.

43. Bond of public guardian; increasing bond. The public guardian shall enter into bond with three or more sureties, approved by the clerk in the penal sum of six thousand dollars, payable to the state of North Carolina, conditioned faithfully to perform the duties of his office and obey all lawful orders of the superior or other courts touching said guardianship of all wards, money or estate

that may come into his hands. Whenever the aggregate value of the real and personal estate belonging to his several wards exceeds one-half the bond herein required the clerk of the superior court shall require him to enlarge his bond in amount so as to cover at least double the aggregate amount under his control as guardian.

Rev., ss. 321, 322; Code, ss. 1557, 1558; 1874-5, c. 221, ss. 2, 3.

44. Powers, duties, liabilities, compensation. The powers and duties of said public guardian shall be the same as other guardians, and he shall be subject to the same liabilities as other guardians under the existing laws; and shall receive the same compensation as other guardians.

Rev., s. 1761; Code, s. 1561; 1874-5, c. 221, ss. 6, 7.

45. When letters issue to public guardian. The public guardian shall apply for and obtain letters of guardianship in the following cases:

1. When a period of six months has elapsed from the discovery of any property belonging to any minor, idiot, lunatic, insane person or inebriate, without guardian.

2. When any person entitled to letters of guardianship shall request in writing the clerk of the superior court to issue letters to the public guardian; but it is lawful and the duty of the clerk of the superior court to revoke said letters of guardianship at any time after issuing the same upon application in writing by any person entitled to qualify as guardian, setting forth a sufficient cause for such revocation.

Rev., s. 1760; Code, s. 1561; 1874-5, c. 221, ss. 6, 7.

ART. 8. FOREIGN GUARDIANS

46. Right to removal of ward's personalty from state. Where any ward, idiot, lunatic or insane person, residing in another state or territory, or in the District of Columbia, or Canada, or other foreign country, is entitled to any personal estate in this state, or personal property substituted for realty by decree of court, or to any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this state, or of any executor, administrator or other person holding for the ward, idiot, lunatic or insane person, or if the same (not being adversely held and claimed) be not in the lawful possession or control of any person, the guardian of the ward, idiot, lunatic or insane person, duly appointed at the place where such ward, idiot, lunatic or insane person resides, may apply to have such estate removed to the residence of the ward, idiot, lunatic or insane person by petition filed before the clerk of the superior court of the county in which the property or some portion thereof is situated; which shall be proceeded with as in other cases of special proceedings.

Rev., s. 1816; Code, ss. 1598, 1601; R. C., c. 54, s. 29; 1820, c. 1044; 1842, c. 38; 1868-9, c. 201, ss. 35, 38; 1874-5, c. 168; 1913, c. 86, s. 1.

47. Contents of petition; parties defendant. The petitioner must show to the court a copy of his appointment as guardian and bond duly authenticated, and must prove to the court that the bond is sufficient, as well in the ability of the sureties as in the sum mentioned therein, to secure all the estate of the ward wherever situated. Any person may be made a party defendant to the proceed-

ing who may be made a party defendant in civil actions under the provisions of the chapter entitled Civil Procedure.

Rev., ss. 1817, 1818; Code, ss. 1599, 1600; R. C., c. 54, s. 30; 1820, c. 1044, s. 2; 1842, c. 38; 1868-9, c. 201, ss. 36, 37.

NOTE. For removal of trust funds from the state, see Trustees, ss. 3, 4, 5.

ART. 9. ESTATES WITHOUT GUARDIAN

48. Duty of grand jury as to orphan and guardians. The grand jury of every county is charged with, and shall present to the superior court the names of all orphan children that have no guardian or are not bound out to some trade or employment. They shall further inquire of all abuses, mismanagement and neglect of all such guardians as are appointed by the clerk of the superior court. The clerk of the superior court shall, at each term of the superior court, lay before the grand jury a list of all the guardians acting in his county or appointed by him.

Rev., s. 1810; Code, s. 1609; R. C., c. 54, s. 18; 1762, c. 69, s. 17; 1868-9, c. 201, s. 46.

49. Solicitor to apply for receiver for orphans' estates. Whenever an orphan, having any estate, is presented by a grand jury, for whom no suitable person will become guardian, the clerk of the superior court must give notice thereof forthwith to the solicitor of the state for the judicial district, who shall apply in behalf of the orphan to the judge of the superior court of the county where such presentment was made, to the end that a receiver be appointed.

Rev., s. 1811; Code, s. 1610; R. C., c. 54, s. 19; 1846, c. 43; 1868-9, c. 201, s. 47.

50. Solicitor to prosecute bond of guardian removed without a successor. Whenever any guardian is removed, and no person is appointed to succeed in the guardianship, the clerk of the superior court shall certify the name of such guardian and his sureties to the solicitor of the judicial district, who shall forthwith institute an action on the bond of the guardian in the superior court, for securing the estate of the ward.

Rev., s. 1812; Code, s. 1584; R. C., c. 54, s. 14; 1844, c. 41; 1868-9, c. 201, s. 21.

51. Judge to appoint receiver; his rights and duties. The judge of the superior court, either residing in or presiding over the courts of the district, before whom such action is brought, shall have power to appoint the clerk of the superior court or some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due to him, to secure, lend, invest or apply the same for the benefit and advantage of the ward, under the direction and subject to such rules and orders in every respect as the said judge may from time to time make in regard thereto; and the accounts of such receiver shall be returned, audited and settled as the judge may direct. The receiver shall be allowed such amounts for his time, trouble and responsibility as seem to the judge reasonable and proper; and such receivership may be continued until a suitable person can be procured to take the guardianship.

Rev., s. 1813; Code, s. 1585; R. C., c. 54, s. 15; 1844, c. 41, s. 2; 1868-9, c. 201, s. 22.

52. Receiver to pay over estate to infant or guardian. When another guardian is appointed, he may apply by motion, on notice, to the judge of the superior court for an order upon the receiver to pay over all the money, estate and effects

of the ward; and if no such guardian is appointed, then the ward, on coming of age, or in case of his death, his executor, administrator or collector, and the heir or personal representative of the idiot, lunatic or insane person, shall have the like remedy against the receiver.

Rev., s. 1814; Code, s. 1587; R. C., c. 54, s. 17; 1844, c. 41, s. 4; 1868-9, c. 201, s. 24.

53. Duties and compensation of solicitor. The solicitor shall prosecute the action and take all necessary orders therein, and for his services shall be allowed such reasonable compensation as may be just, not to exceed ten dollars; in passing on the returns of receivers, where the estate of the infant does not exceed five hundred dollars, not to exceed five dollars; and where the estate exceeds five hundred dollars, not to exceed ten dollars. The amount in each case to be fixed by the judge.

Rev., s. 1815; Code, s. 1586; 1895, c. 14; R. C., c. 54, s. 16; 1844, c. 41, s. 3; 1868-9, c. 201, s. 23.

CHAPTER 41

HABEAS CORPUS

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ART. 1. CONSTITUTIONAL PROVISIONS

1. Remedy without delay for restraint of liberty. Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed.

Rev., s. 1819; Const., Art. I., s. 18.

2. Habeas corpus not to be suspended. The privileges of the writ of habeas corpus shall not be suspended.

Rev., s. 1820; Const., Art. I., s. 21.

ART. 2. APPLICATION

3. Who may prosecute writ. Every person imprisoned or restrained of his liberty within this state, for any criminal or supposed criminal matter, or on any pretense whatsoever, except in cases specified in the succeeding section, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.

Rev., s. 1821; Code, s. 1623; 1868-9, c. 116, s. 1

4. When application denied. Application to prosecute the writ shall be denied in the following cases:

1. Where the persons are committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts.

2. Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such final order, judgment or decree.

3. Where any person has willfully neglected, for the space of two whole terms after his imprisonment, to apply for the writ to the superior court of the county in which he may be imprisoned, such person shall not have a habeas corpus in vacation time for his enlargement.

4. Where no probable ground for relief is shown in the application.

Rev., s. 1822; Code, s. 1624; 1868-9, c. 116, s. 2.

5. By whom application to be made. Application for the writ may be made either by the party for whose relief it is intended, or by any person in his behalf.

Rev., s. 1823; Code, s. 1625; 1868-9, c. 116, s. 3.

6. To judge of supreme or superior court; in writing. Application for the writ shall be made in writing, signed by the applicant—

1. To any one of the justices of the supreme court.

2. To any one of the superior court judges, either at term time or in vacation.

Rev., s. 1824; Code, s. 1626; 1868-9, c. 116, s. 4.

7. Contents of application. The application must state in substance, as follows:

1. That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known.

2. The cause or pretense of such imprisonment or restraint, according to the knowledge or belief of the applicant.

3. If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.

4. If the imprisonment or restraint is alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of habeas corpus, to the knowledge or belief of the applicant.

5. The facts set forth in the application must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits.

Rev., s. 1825; Code, s. 1627; 1868-9, c. 116, s. 5.

8. Issuance of writ without application. When the supreme or superior court, or any judge of either, has evidence from any judicial proceeding before such court or judge, that any person within this state is illegally imprisoned or restrained of his liberty, it is the duty of said court or judge to issue a writ of habeas corpus for his relief, although no application be made for such writ.

Rev., s. 1826; Code, s. 1632; 1868-9, c. 116, s. 10.

ART. 3. WRIT

9. Writ granted without delay. Any court or judge empowered to grant the writ, to whom such applications may be presented, shall grant the writ without delay, unless it appear from the application itself or from the documents annexed that the person applying or for whose benefit it is intended is, by this chapter, prohibited from prosecuting the writ.

Rev., s. 1827; Code, s. 1628; 1868-9, c. 116, s. 6.

10. Penalty for refusal to grant. If any judge authorized by this chapter to grant writs of habeas corpus refuses to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved two thousand five hundred dollars.

Rev., s. 1828; Code, s. 1631; 1868-9, c. 116, s. 9.

11. Sufficiency of writ; defects of form immaterial. No writ of habeas corpus shall be disobeyed on account of any defect of form. It shall be sufficient—

1. If the person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or, if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person.

2. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described by an assumed appellation or in any other way, so as to designate the person intended.

Rev., s. 1829; Code, ss. 1629, 1630; 1868-9, c. 116, ss. 7, 8.

12. **Service of writ.** The writ of habeas corpus may be served by any qualified elector of this state, thereto authorized by the court or judge allowing the same. It may be served by delivering the writ, or a copy thereof, to the person to whom it is directed; or, if such person cannot be found, by leaving it, or a copy, at the jail, or other place in which the party for whose relief it is intended is confined, with some under officer or other person of proper age; or, if none such can be found, or if the person attempting to serve the writ be refused admittance, by affixing a copy thereof in some conspicuous place on the outside, either of the dwelling-house of the party to whom the writ is directed, or of the place where the party is confined for whose relief it is sued out.

Rev., s. 1833; Code, s. 1657; 1868-9, c. 116, s. 32.

ART. 4. RETURN

13. **When writ returnable.** Writs of habeas corpus may be made returnable at a certain time, or forthwith, as the case may require. If the writ be returnable at a certain time, such return shall be made and the party shall be produced at the time and place specified therein.

Rev., s. 1830; Code, s. 1656; 1868-9, c. 116, s. 31.

14. **Contents of return; verification.** The person or officer on whom the writ is served must make a return thereto in writing, and, except where such person is a sworn public officer and makes his return in his official capacity, it must be verified by his oath. The return must state plainly and unequivocally—

1. Whether he has or has not the party in his custody or under his power or restraint.

2. If he has the party in his custody or power, or under his restraint, the authority and the cause of such imprisonment or restraint, setting forth the same at large.

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return; and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable.

4. If the person or officer upon whom such writ is served has had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place.

Rev., s. 1831; Code, s. 1633; 1868-9, c. 116, s. 11.

15. **Production of body if required.** If the writ requires 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.

Rev., s. 1832; Code, s. 1636; 1868-9, c. 116, s. 14.

ART. 5. ENFORCEMENT OF WRIT

16. Attachment for failure to obey. If the person or officer on whom any writ of habeas corpus has been duly served refuses or neglects 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 is shown for such refusal or neglect, it is the duty of the court or judge before whom the writ has 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. 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 has been issued.

Rev., s. 1834; Code, s. 1637; 1868-9, c. 116, s. 15.

17. Liability of judge refusing attachment. If any judge willfully refuses 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.

Rev., s. 1835; Code, s. 1638; 1870-1, c. 221, s. 2.

18. Attachment against sheriff to be directed to coroner; procedure. If a sheriff has 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.

Rev., s. 1836; Code, s. 1639; 1868-9, c. 116, s. 16.

19. Precept to bring up party detained. The court or judge, by whom any such attachment may be issued, may also at the same time, or afterwards, direct a precept to any sheriff, coroner, or other person to be designated therein, commanding him to bring forthwith, before such court or judge, the party, wherever to be found, for whose benefit the writ of habeas corpus has been granted.

Rev., s. 1837; Code, s. 1640; 1868-9, c. 116, s. 17.

20. Liability of judge refusing precept. If any judge refuses to grant the precept provided for in the preceding section, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.

Rev., s. 1838; Code, s. 1641; 1870-1, c. 221, s. 3.

21. Liability of judge conniving at insufficient return. If any judge grants the attachment, or the precept, and gives the officer or other person charged with the execution of the same verbal or written instructions not to execute the same, or to make any evasive or insufficient return, or any return other than that provided by law; or shall connive at the failing to make any return or any

evasive or insufficient return, or any return other than that provided by law, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.

Rev., s. 1839; Code, s. 1642; 1870-1, c. 221, s. 4.

22. Power of county to aid service. In the execution of any such attachment, precept or writ, the sheriff, coroner, or other person to whom it may be directed, may call to his aid the power of the county, as in other cases.

Rev., s. 1840; Code, s. 1643; 1868-9, c. 116, s. 18.

23. Obedience to order of discharge compelled. Obedience to a judgment or order for the discharge of a prisoner or person restrained of his liberty, pursuant to the provisions of this chapter, may be enforced by the court or judge by attachment in the same manner and with the same effect as for a neglect to make return to a writ of habeas corpus; and the person found guilty of such disobedience shall forfeit to the party aggrieved two thousand five hundred dollars, besides any special damages which such party may have sustained.

Rev., s. 1841; Code, s. 1649; 1868-9, c. 116, s. 24.

24. No civil liability for obedience. No officer or other person shall be liable to any civil action for obeying a judgment or order of discharge upon writ of habeas corpus.

Rev., s. 1842; Code, s. 1650; 1868-9, c. 116, s. 25.

24a. Recommittal after discharge; penalty. If any person shall knowingly again imprison or detain one who has been set at large upon any writ of habeas corpus, for the same cause, other than by the legal process or order of the court wherein he is bound by recognizance to appear, or of any other court having jurisdiction in the case, he shall be guilty of a misdemeanor.

Rev., s. 3581; Code, s. 1651; 1868-9, c. 116, s. 26.

24b. Disobedience to writ or refusing copy of process; penalty. If any person, to whom a writ of habeas corpus is directed, shall neglect or refuse to make due return thereto, or to bring the body of the party detained according to the command of the writ without delay, or shall not, within six hours after demand made therefor, deliver a copy of the commitment or cause of detainer, such person shall, upon conviction on indictment, be fined one thousand dollars, or imprisoned not exceeding twelve months, and if such person be an officer, shall moreover be removed from office.

Rev., s. 3597; Code, s. 1652; 1868-9, c. 116, s. 27.

24c. Penalty for false return. If any person shall make a false return to a writ of habeas corpus, he shall be guilty of a misdemeanor.

Rev., s. 3582; Code, s. 1653; 1868-9, c. 116, s. 28.

24d. Penalty for concealing party entitled to writ. If any one having in his custody, or under his power, any party, who, by law, would be entitled to a writ of habeas corpus, or for whose relief such writ shall have been issued, shall, with intent to elude the service of such writ, or to avoid the effect thereof transfer the party to the custody, or put him under the power or control, of another, or shall conceal or change the place of his confinement, or shall knowingly aid or abet another in so doing, he shall be guilty of a misdemeanor.

Rev., s. 3583; Code, s. 1654, 1655; 1868-9, c. 116, ss. 29, 30.

ART. 6. PROCEEDINGS AND JUDGMENT

25. Notice to interested parties. When it appears from the return to the writ that the party named therein is in custody on any process, or by reason of any claim of right, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it appears that the person so interested, or his attorney, if he have one, has had reasonable notice of the time and place at which such writ is returnable.

Rev., s. 1843; Code, s. 1634; 1868-9, c. 116, s. 12; 1870-1, c. 221, s. 1.

26. Notice to solicitor. 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 has been returned, or is made returnable, is given to the solicitor of the county in which the person prosecuting the writ is detained.

Rev., s. 1844; Code, s. 1635; 1868-9, c. 116, s. 13.

27. Subpœnas to witnesses. Any party to a proceeding on a writ of habeas corpus may procure the attendance of witnesses at the hearing, by subpœna, to be issued by the clerk of any superior court, under the same rules, regulations and penalties prescribed by law in other cases.

Rev., s. 1845; Code, s. 1659; 1868-9, c. 116, s. 34.

28. Proceedings on return; facts examined; summary hearing of issues. The court or judge before whom the party is brought on a writ of habeas corpus shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same has been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the allegations and proofs on both sides, and to do what to justice appertains in delivering, bailing or remanding such party.

Rev., s. 1846; Code, s. 1644; 1868-9, c. 116, s. 19.

29. When party discharged. If no legal cause is shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held. But if it appears on the return to the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

1. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.

2. Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

3. Where the process is defective in some matter of substance required by law, rendering such process void.

4. Where the process, though in proper form, has been issued in a case not allowed by law.

5. Where the person, having the custody of the party under such process, is not the person empowered by law to detain him.

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

Rev., s. 1847; Code, s. 1645; 1868-9, c. 116, s. 20.

30. When party remanded. It is the duty of the court or judge forthwith to remand the party, if it appears that he is detained in custody, either—

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction.

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree.

3. For any contempt specially and plainly charged in the commitment by some court, officer or body, having authority to commit for the contempt so charged.

4. That the time during which such party may be legally detained has not expired.

Rev., s. 1848; Code, s. 1646; 1868-9, c. 116, s. 21.

31. When party bailed or remanded. If it appears that the party has been legally committed for any criminal offense, or if it appears by the testimony offered with the return of the writ, or upon the hearing thereof, that the party is guilty of such an offense, although the commitment is irregular, the court or judge shall proceed to let such party to bail, if the case is bailable and good bail is offered; if not, the court or judge shall forthwith remand such party to the custody or place him under the restraint from which he was taken, if the person or officer, under whose custody or restraint he was, is legally entitled thereto; if not so entitled, the court or judge shall commit such party to the custody of the officer or person legally entitled thereto.

Rev., s. 1849; Code, s. 1647; 1868-9, c. 116, s. 22.

32. Party held in execution not to be discharged. When a writ of habeas corpus cum causa issues and the sheriff or other officer to whom it is directed returns upon the same that the prisoner is condemned, by judgment given against him, and held in custody by virtue of an execution issued against him, the prisoner shall not be let to bail, but shall be presently remanded, where he shall remain until discharged in due course of law.

Rev., s. 1850; Code, s. 937; R. C., c. 31, s. 111; 2 Hen. V., c. 2.

33. When party ill, cause determined in his absence. When, from the illness or infirmity of the person directed to be produced by a writ of habeas corpus, such person cannot, without danger, be brought before the court or judge, where the writ is made returnable, the party in whose custody he is may state the fact in his return to the writ; and if the court or judge is satisfied of the truth of the allegation and the return is otherwise sufficient the court or judge

shall proceed to decide on such return and to dispose of the matter in the same manner as if the body had been produced.

Rev., s. 1851; Code, s. 1648; 1868-9, c. 116, s. 23.

34. No second committal after discharged; penalty. No person who has been set at large upon any writ of habeas corpus shall be again imprisoned or detained for the same cause by any person whatsoever other than by the legal order or process of the court wherein he shall be bound by recognizance to appear or of any other court having jurisdiction in the case, under the penalty of two thousand five hundred dollars to the party aggrieved thereby.

Rev., s. 1852; Code, s. 1651; 1868-9, c. 116, s. 26.

ART. 7. HABEAS CORPUS FOR CUSTODY OF CHILDREN IN CERTAIN CASES

35. Custody as between parents in certain cases; modification of order. When a contest shall arise on a writ of habeas corpus between any husband and wife, who are living in a state of separation, without being divorced, in respect to the custody of their children, the court or judge, on the return of such writ, may award the charge or custody of the child or children so brought before it either to the husband or to the wife, for such time, under such regulations and restrictions, and with such provisions and directions as will, in the opinion of such court or judge, best promote the interest and welfare of the children. At any time after the making of such orders the court or judge may, on good cause shown, annul, vary or modify the same.

Rev., s. 1853; Code, s. 1661; 1858-9, c. 53; 1868-9, c. 116, s. 36.

NOTE. For consequence of divorce on right to custody of children, see Divorce and Alimony, s. 10.

For effect of abandonment, see Adoption of Minors, s. 8.

36. Appeal to supreme court. In all cases of habeas corpus, where a contest arises in respect to the custody of minor children, either party may appeal to the supreme court from the final judgment.

Rev., s. 1854; Code, s. 1662; 1858-9, c. 53, s. 2.

ART. 8. HABEAS CORPUS AD TESTIFICANDUM

37. Authority to issue the writ. Every court of record has power, upon the application of any party to any suit or proceeding, civil or criminal pending in such court, to issue a writ of habeas corpus, for the purpose of bringing before the said court any prisoner who may be detained in any jail or prison within the state, for any cause, except a prisoner under sentence for a capital felony, to be examined as a witness in such suit or proceeding, in behalf of the party making the application.

Such writ of habeas corpus may be issued by any justice of the peace or clerk of the superior court upon application as provided in this section, to bring any person confined in the jail or prison of the same county where such justice or clerk may reside, to be examined as a witness before such justice or clerk.

In cases where the testimony of any prisoner is needed in a proceeding before a justice of the peace, or a clerk, and such person is confined in a county in which such justice or clerk does not reside, application for habeas corpus to testify may be made to any judge of the supreme or superior court.

Rev., ss. 1855, 1856; Code, ss. 1663, 1664; 1868-9, c. 116, ss. 37, 38.

38. Contents of application. The application for the writ shall be made by the party to the suit or proceeding in which the writ is required, or by his agent or attorney. It must be verified by the applicant, and shall state—

1. The title and nature of the suit or proceeding in regard to which the testimony of such prisoner is desired.

2. That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes.

Rev., s. 1857; Code, s. 1665; 1868-9, c. 116, s. 39.

39. Service of writ. The writ of habeas corpus to testify shall be served by the same person, and in like manner in all respects, and enforced by the court or officer issuing the same as prescribed in this chapter for the service and enforcement of the writ of habeas corpus cum causa.

Rev., s. 1858; Code, s. 1666; 1868-9, c. 116, s. 40.

40. Applicant to pay expenses and give bond to return. The service of the writ shall not be complete, however, unless the applicant for the same tenders to the person in whose custody the prisoner may be, if such person is a sheriff, coroner, constable or marshal, the fees and expenses allowed by law for bringing such prisoner, nor unless he also gives bond, with sufficient security, to such sheriff, coroner, constable or marshal, as the case may be, conditioned that such applicant will pay the charges of carrying back such prisoner.

Rev., s. 1859; Code, s. 1667; 1868-9, c. 116, s. 41.

41. Duty of officer to whom writ delivered or on whom served. It is the duty of the officer to whom the writ is delivered or upon whom it is served, whether such writ is directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ according to the exigency thereof upon pain, on refusal or neglect, to forfeit to the party on whose application the same has been issued the sum of five hundred dollars.

Rev., s. 1860; Code, s. 1668; 1868-9, c. 116, s. 42.

42. Prisoner to be remanded. After having testified the prisoner shall be remanded to the prison from which he was taken.

Rev., s. 1861; Code, s. 1669; 1868-9, c. 116, s. 43.

NOTE. For costs of habeas corpus, see Costs, s. 19.

CHAPTER 42

INNS, HOTELS, AND RESTAURANTS

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24. Towels; roller towels forbidden.
25. Refrigerators, cold storage rooms, kitchen.
26. Tableware and kitchen utensils.
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29. Annual inspection and certificate by State Board of Health.
30. Special inspections by State Board authorized.
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32. Entry for inspection authorized.
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34. Violation of article or obstructing enforcement a misdemeanor.
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ART. 1. INNKEEPERS

1. **Must furnish accommodations.** Every innkeeper shall at all times provide suitable food, rooms, beds and bedding for strangers and travelers whom he may accept as guests in his inn or hotel.

Rev., s. 1909; 1903, c. 563.

2. **Liability for loss of baggage.** Innkeepers shall not be liable for loss, damage or destruction of the baggage or property of their guests except in case such loss, damage, or destruction results from the failure of the innkeeper to exercise ordinary, proper and reasonable care in the custody of such baggage and property, and in case of such loss, damage or destruction resulting from the negligence and want of care of the said innkeeper he shall be liable to the owner of the said baggage and property to an amount not exceeding one hundred dollars. Any guest may, however, at any time before a loss, damage or destruc-

tion of his property notify the innkeeper in writing that his property exceeds in value the said sum of one hundred dollars, and shall upon demand of the innkeeper furnish him a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for the loss, damage or destruction of said property because of any negligence on his part for the full value of the same. Proof of the loss of any such baggage, except in case of damage or destruction by fire, shall be *prima facie* evidence of the negligence of said hotel- or innkeeper.

Rev., s. 1910; 1903, c. 563, s. 2.

3. Safekeeping of valuables. It is the duty of innkeepers, upon the request of any guest, to receive from said guest and safely keep money, jewelry and valuables to an amount not exceeding five hundred dollars; and no innkeeper shall be required to receive and take care of any money, jewelry or other valuables to a greater amount than five hundred dollars: Provided, the receipt given by said innkeeper to said guest shall have plainly printed upon it a copy of this section. No innkeeper shall be liable for the loss, damage or destruction of any money or jewels not so deposited.

Rev., s. 1911; 1903, c. 563, s. 3.

4. Loss by fire. No innkeeper shall be liable for loss, damage or destruction of any baggage or property caused by fire not resulting from the negligence of the innkeeper or by any other force over which the innkeeper had no control. Nothing herein contained shall enlarge the limit of the amount to which the innkeeper shall be liable as provided in preceding sections.

Rev., s. 1912; 1903, c. 563, s. 4.

5. Negligence of guest. Any innkeeper against whom claim is made for loss sustained by a guest may show that such loss resulted from the negligence of such guest or of his failure to comply with the reasonable and proper regulations of the inn.

Rev., s. 1914; 1903, c. 563, s. 7.

6. Copies of this chapter to be posted. Every innkeeper shall keep posted in every room of his house occupied by guests, and in the office, a printed copy of this chapter and of all regulations relating to the conduct of guests. This chapter shall not apply to innkeepers, or their guests, where the innkeeper fails to keep such notices posted.

Rev., s. 1913; 1903, c. 563, ss. 5, 6.

NOTE. For lien of innkeepers on baggage and other property, see Liens, Art. 5.

ART. 2. SANITARY INSPECTION AND CONDUCT

7. Definitions: Hotel, restaurant; transient guest. A hotel within the meaning of this act is an inn or public lodging-house of more than fifteen bedrooms where transient guests are fed or lodged for pay in this state.

The term "restaurant" as used in this article shall include lunch counters and cafes.

The term "transient guest," within the meaning of this article shall mean one who puts up for less than one week at such hotel.

1917, c. 66, s. 1.

8. Rates for rooms to be posted. Every transient hotel shall keep posted in a conspicuous place in the office a list of its charges for rooms, with or without meals, in accordance with the plan or plans on which the hotel is operated, giving the exact transient rate, and shall also keep posted in each room the rate for that room, with or without meals, in accordance with its plan as stated above, giving the transient rate per day and week, and the rate for each person in the room.

1917, c. 66, s. 2.

9. Fire extinguishers. Every hotel shall provide each floor with one or more fire extinguishers of a type approved by the National Board of Fire Underwriters, which shall be kept in good working order at all times, with plain instructions thereon.

1917, c. 66, s. 3.

10. Stairways and fire-escapes. All hotels hereafter constructed in this state, over two stories in height and over one hundred feet in length, shall be constructed so that there shall be at least two stairs for the use of guests leading from the ground floor to the uppermost story, and for larger buildings such number as the state insurance commissioner shall designate. Every hotel in this state over two stories in height shall be provided, without delay, with permanent iron balconies with iron stairs leading from one balcony to the other, above the ground floor, and with stairway or ladder extending to the ground, in case such hotel is over one hundred and fifty feet in length, and in other cases such number as may be directed by the state insurance commissioner or agent: Provided, that where said hotels already built and only three stories in height are, in the opinion of the state insurance commissioner or agent, provided with sufficient inner stairways, so located as to furnish sufficient egress in case of fire, the aforesaid official may waive the requirement for outside iron balconies and stairs. Such balconies and iron stairs shall be constructed at the expense of the owner of said hotel: Provided, that where hotels are already built where fire-escapes are located so as to go through any room, this section shall not apply: Provided, that this act shall not apply to private residences at which lodgers are not received for hire.

1917, c. 66, s. 4.

11. Directions to fire-escapes. In every hotel having fire-escapes directions for reaching the fire-escapes shall be kept posted at the entrance of stairway, elevator shaft and in each bedroom above the ground floor. From eight o'clock in the evening until six o'clock in the morning the location and direction of the fire-escapes shall be indicated with red lights.

1917, c. 66, s. 5.

12. Inside courts to be provided with escapes. The owner or proprietor, or person in charge of every hotel now existing or hereafter constructed with an inside court or lightwell inclosed on all sides and with sleeping rooms or lodging apartments, the only windows of which open upon or into such court or lightwell, shall provide a proper escape from such inside court or lightwell through a room or rooms, or otherwise, on a level with the lowest floor to which the lightwell extends.

1917, c. 66, s. 6.

13. Life-lines at bathing beaches. Every keeper or proprietor of a hotel or boarding-house, and every person having for use a bathing-house upon any beach or shore of the ocean for the accommodation of his guests or of other persons for pay, shall provide and maintain for the safety of such bathers two lines of sound, serviceable, and strong manila or hemp rope, not less than one inch in diameter, securely anchored at some point above high water, at the same distance apart as the line of bathing houses or space fronting on such beach occupied by them is in width; and from the two points at which such life-lines are so anchored such lines shall be made to extend as far into the surf as bathing is ordinarily safe and free from danger of drowning to persons not expert in swimming; and at such points of safety such lines shall be anchored and buoyed. From the two points of lines so extended, and anchored and buoyed, a third line shall be extended, connecting the two extremities, and buoyed at such points as to be principally above the surface of the water, thereby inclosing a space within such lines and the beach within which bathing is believed to be safe. Every such keeper or proprietor or other person shall cause to be painted and put up, in some prominent place upon the beach near such bathing houses, the following words: "Bathing beyond the lines is dangerous." Such lines so placed, anchored and buoyed, and such notices so put up shall continue and be so maintained by every such keeper, proprietor, or other person during the entire season of bathing. The owner of the bathing-house shall not be subject to the provisions of this section where it is used, occupied, or maintained by a lessee for hire; but such lessee shall be deemed the keeper or proprietor thereof.

1917, c. 66, s. 7.

14. Water-closets and bath-rooms; sewer connections. In all cities, towns, or villages where a system of waterworks and sewerage is maintained for public use, every hotel therein accessible to water main and sewer main shall be equipped, within six months after the passage of this act, with suitable water-closets for the accommodation of its guests, which water-closets shall be connected and trapped by proper plumbing with such water and sewerage systems, and there shall be some adequate means of flushing said water-closets with the water in such manner as to prevent sewer gas from arising therefrom. The water-closets and bath-rooms must be sufficiently lighted to permit the reading of ten point roman type eighteen inches from the normal eye. The wash-bowls in the main wash-room of such hotel must be connected and trapped and equipped in similar manner, both as to method and time; all such equipment to be paid for by the owner.

1917, c. 66, s. 8.

15. Privies. In all towns and villages not having a system of waterworks and sewerage, every hotel not provided with waterworks and wash-rooms as in the preceding section provided shall have properly constructed privies as approved by the state board of health, the same to be kept in sanitary condition at all times.

1917, c. 66, s. 9.

16. Cisterns and tanks to be screened. The proprietor of every hotel shall keep all cisterns, tanks and other receptacles containing standing water screened

or otherwise so covered as to prevent the entrance of flies, mosquitoes, and other disease-carrying insects. The term "standing water" as used in this article shall mean water that remains for ten days or more in a cistern, tank, or other receptacle.

1917, c. 66, s. 10.

17. Water not from public water supply to be analyzed. A sample of water used in every hotel and restaurant, except in cases where the water is derived from some public water supply, shall be sent by the proprietor to the state laboratory of hygiene for analysis twice each year, with a certificate that it is the water used in such hotel or restaurant, and if the sample is found by said laboratory to be unfit for the use that is made of the water in the hotel or restaurant, the further use of such water shall be discontinued until permission is granted by the state board of health to resume the use of such water.

1917, c. 66, s. 11.

18. Prevention of flies; screens, etc. The proprietor or keeper of every hotel or restaurant shall keep screened the doors, windows and all openings of the kitchen and dining-room with suitable mesh-wire gauze from the first of April to the first of December. Every hotel must have all bed-room windows screened or else provide each bed with a mosquito bar for the use of its patrons for protection against flies, mosquitoes, and other insects, and it shall be the duty of the proprietor or keeper of every hotel and restaurant to use such other means as fly paper, fly traps, etc., as may be necessary to keep their restaurant, kitchen, and dining-rooms reasonably free from flies.

1917, c. 66, s. 12.

19. Bed-rooms; size and arrangement of beds. In every sleeping-room the minimum floor area shall be sixty square feet per bed, and under no circumstances shall there be provided less than five hundred cubic feet of air space per bed. There shall always be space in each room and the arrangement of each room shall be such that there may be a space of two feet between any beds in the room. All beds shall be so arranged that the air shall circulate freely under each. In no hotel shall beds or bunks in the same room or apartment be placed one above another: Provided, this section shall not apply in cases of emergency.

1917, c. 66, s. 13.

20. Windows and blinds for rooms. Each room in every hotel hereafter constructed shall be well lighted, with outside window space not less than one-eighth the floor space. Each window in each hotel now existing or hereafter constructed shall be provided with either blinds having hinges and shutters or slats freely movable and in good working order, or with a movable shade which effectively excludes the light when drawn.

1917, c. 66, s. 14.

21. Sheets and bed linen. All hotels shall hereafter provide each bed, bunk, cot, or other sleeping place for the use of guests with pillow-slips and under and top sheets of sufficient width to cover the mattress thereof, and to be at least ninety inches long. All pillow-slips and sheets after being used by one guest

must be washed and ironed before being used by another guest, a clean set being furnished each succeeding guest.

1917, c. 66, s. 15.

22. Vermin. All beds, bedclothing, mattresses, and pillows shall always be kept clean and free from vermin.

1917, c. 66, s. 16.

23. Diseased guests; disinfection. Every room after being occupied by any one known or suspected to be suffering from tuberculosis, diphtheria, or any contagious disease must be thoroughly disinfected as prescribed by the state board of health before further occupancy; and every room after being occupied by any one known or suspected to be suffering from measles or whooping cough must be thoroughly aired for twenty-four hours before subsequent occupancy.

1917, c. 66, s. 17.

24. Towels; roller towels forbidden. All hotels shall furnish each guest with a clean towel; and the use of the roller or other towels used in common is hereby prohibited in all hotels and restaurants.

1917, c. 66, s. 18.

25. Refrigerators, cold storage rooms, kitchen. The refrigerator, ice boxes, and cold storage rooms of all hotels or restaurants must be kept free from foul and unpleasant odors, mold, and slime. The kitchen must be well lighted and ventilated, the floor clean, and the side walls and ceilings free from cobwebs and accumulated dirt.

1917, c. 66, s. 19.

26. Tableware and kitchen utensils. All dishes, tableware, and kitchen utensils must be thoroughly washed and rinsed with clean water after using; food served to customers when part of same has been used must not again be served to other customers.

1917, c. 66, s. 20.

27. Garbage. All garbage must be kept covered and protected from flies, in barrels or galvanized iron cans, and removed at least twice a week.

1917, c. 66, s. 21.

28. Premises, walls, and fixtures. Every lodging-house and every part thereof shall at all times be kept free from filth and rubbish in or on the premises belonging to or connected with the same. All water-closets, wash-basins, baths, windows, fixtures, fittings, and painted surface shall at all times be kept clean and in good repair. The floors, walls, and ceilings of all rooms, passages, and stairways must at all times be clean and in good repair.

1917, c. 66, s. 22.

29. Annual inspection and certificate by state board of health. For the purpose of carrying out the provisions of this act the state board of health is authorized and required to inspect, through its officers or agents, without cost to the hotels, all hotels and restaurants in the state once a year. If upon inspection of any hotel or restaurant it shall be found that this article has been

fully complied with, the secretary of the state board of health shall issue a certificate to that effect to the person operating the same, and such certificate shall be kept posted in plain view in some conspicuous place in said hotel or restaurant.

1917, c. 66, s. 23.

30. Special inspections by state board authorized. No hotel or restaurant shall be inspected oftener than once a year, unless there is a change of proprietors, or unless it shall appear to the state board of health from the inspection made that additional inspections are necessary, or upon a verified complaint signed by three or more patrons, setting forth facts showing that such hotel is in an unsanitary condition or that fire-escapes and appliances are not kept and maintained in accordance with the provisions of law. Upon receipt of such complaint, the state board of health shall make, or cause to be made, an inspection or examination of the matters complained of, and if upon inspection such complaint is found to be justifiable, the actual cost of inspection shall be charged and collected from the proprietor of the hotel. In case the complaint is found to be without reasonable grounds, the actual cost for such inspection shall be chargeable against and collected from the person or persons making the complaint.

1917, c. 66, s. 24.

31. Inspection reports to be filed. The official representative or agent of the state board of health shall after inspection make a report of the condition of the hotel inspected upon blanks to be provided by the state board of health, showing in detail the condition of the hotel with reference to compliance with this article, which report shall be filed in the office of the board.

1917, c. 66, s. 25.

32. Entry for inspection authorized. The inspectors, officers, or agents of the state board of health are hereby empowered and authorized to enter any hotel at all reasonable hours to make such inspection; and it is hereby made the duty of every person in the management or control of such hotel to afford free access to every part of the hotel, and render all aid and assistance necessary to enable the inspector to make a full, thorough, and complete examination thereof; but no inspector shall violate the privacy of any guest without his or her consent.

1917, c. 66, s. 26.

33. Inspector to notify proprietor of violation of article. It shall be the duty of the inspector, upon ascertaining, by inspection or otherwise, that any hotel is being carried on contrary to any of the provisions of this article, to notify the manager, or proprietor, in what respect it fails to comply with the law, requiring such persons within a reasonable time to do or to cause to be done the things necessary to make it comply with the law, whereupon such proprietor or manager shall forthwith comply with such requirements.

1917, c. 66, s. 27.

34. Violation of article or obstructing enforcement a misdemeanor. Any owner or manager, agent or person in charge of a hotel, cafe, and restaurant, or any other person who shall willfully obstruct, hinder, or interfere with any

inspector in the proper discharge of his duty, or who shall willfully fail or neglect to comply with any of the provisions of this article after notice from the inspector or any other person in authority, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than ten dollars nor more than fifty dollars for each offense, and each day that he shall fail to comply shall be a separate and distinct offense.

1907, c. 66, s. 28.

35. Inspector to swear out warrants. It shall be the duty of the inspector, in case he shall have knowledge of any violation of this article to swear out a warrant against the person offending.

1917, c. 66, s. 29.

CHAPTER 43

INSANE PERSONS AND INCOMPETENTS

ART. 1. INEBRIATES DEFINED.

1. Inebriates defined.

ART. 2. GUARDIANSHIP AND MANAGEMENT OF ESTATES OF INCOMPETENTS.

2. Inquisition of lunacy; appointment of guardian.
3. Guardian appointed on certificate from hospital for insane.
4. Restoration to sanity or sobriety; effect; how determined.
5. Legal rights restored upon certificate of sanity by superintendent of hospital.
6. Estates without guardian managed by clerk.
7. Allowance to abandoned insane wife.

ART. 3. SALES OF ESTATES.

8. Clerk may order sale or renting.
9. Purposes for which estate sold; parties; disposition of proceeds.
10. Sale of land of wife of lunatic upon petition.
- 10a. A wife of insane person entitled to special proceedings for sale of his property.

ART. 4. SURPLUS INCOME AND ADVANCEMENTS.

11. Income of insane widowed mother used for children's support.
12. Advancement of surplus income to next of kin.
13. For what purpose and to whom advanced.
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15. Advancements to be equal; accounted for on death.
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17. Advancements to be secured against waste.
18. Appeal; removal to superior court.
19. Advancements only when insanity permanent.
20. Decrees suspended upon restoration of sanity.

ART. 1. INEBRIATES

1. Inebriates defined. Any person who habitually whether continuously or periodically, indulges in the use of intoxicating liquors, narcotics or drugs to such an extent as to stupefy his mind and to render him incompetent to transact ordinary business with safety to his estate, or who renders himself, by reason of the use of intoxicating liquors, narcotics or drugs, dangerous to person or property, or who, by the frequent use of liquor, narcotics or drugs, renders himself cruel and intolerable to his family, or fails from such cause to provide his family with reasonable necessities of life, shall be deemed an inebriate: Provided, the habit of so indulging in such use is at the time of inquisition of at least one year's standing.

Rev., s. 1892; Code, s. 1671; 1891, c. 15, s. 7; 1903, c. 543; 1879, c. 329.

NOTE. For rules for admission into hospitals, see Hospitals for Insane.

ART. 2. GUARDIANSHIP AND MANAGEMENT OF ESTATES OF INCOMPETENTS

2. Inquisition of lunacy; appointment of guardian. Any person, in behalf of one who is deemed an idiot, inebriate, or lunatic, or incompetent from want of understanding to manage his own affairs by reason of the excessive use of intoxicating drinks, or other cause, may file a petition before the clerk of the

superior court of the county where such supposed idiot, inebriate or lunatic resides, setting forth the facts, duly verified by the oath of the petitioner; whereupon such clerk shall issue an order, upon notice to the supposed idiot, inebriate or lunatic, to the sheriff of the county, commanding him to summon a jury of twelve men to inquire into the state of such supposed idiot, inebriate or lunatic. The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate, lunatic or incompetent person by inquisition of a jury, as in cases of orphans.

Rev., s. 1890; Code, s. 1670; C. C. P., s. 473.

3. Guardian appointed on certificate from hospital for insane. If any person is confined in any hospital for insane persons, in any state, territorial or governmental asylum or hospital, in this state or any other state or territory, or in the District of Columbia, the certificate of the superintendent of such hospital declaring such person to be of insane mind and memory, which certificate shall be sworn to and subscribed before the clerk of the superior court or any notary public, or the clerk of any court of record of the county in which such hospital is situated, and certified under the seal of court, shall be sufficient evidence to authorize the clerk to appoint a guardian for such idiot, lunatic or insane person.

Rev., ss. 1891, 4609; Code, s. 1673; 1860-1, c. 22; 1907, c. 232.

4. Restoration to sanity or sobriety; effect; how determined. When any insane person or inebriate becomes of sound mind and memory, or becomes competent to manage his property, he is authorized to manage, sell and control all his property in as full and ample a manner as he could do before he became insane or inebriate, and a petition in behalf of such person may be filed before the clerk of the superior court of the county of his residence, setting forth the facts duly verified by the oath of the petitioner, whereupon the clerk shall issue an order, upon notice to the person alleged to be no longer insane or inebriate, to the sheriff of the county, commanding him to summon a jury of six freeholders to inquire into the sanity of the alleged sane person, formerly a lunatic, or the sobriety of such alleged restored person, formerly an inebriate. The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same, and if the jury find that the person whose mental or physical condition inquired of is sane and of sound mind and memory, or is no longer an inebriate, as the case may be, the said person is authorized to manage his affairs, make contracts and sell his property, both real and personal, as if he had never been insane or inebriate.

Rev., s. 1893; Code, s. 1672; 1901, c. 191; 1903, c. 80; 1879, c. 324, s. 4.

5. Legal rights restored upon certificate of sanity by superintendent of hospital. Any person who has been declared of unsound mind and memory under the preceding section, and for whom a guardian has been appointed, may be fully restored to his rights to manage his or her property by a certificate from the superintendent of the hospital where such person of unsound mind and memory has been confined stating that such insane person has been restored to sound mind and memory. This certificate shall be sworn to and subscribed before the clerk of the superior court or notary public for the county in which the hospital

wherein such person has been confined is located, and certified under the seal of said court to the clerk of the superior court of the county wherein said person has his legal residence, immediately before being declared of unsound mind and memory. The clerk of such resident county shall record the certificate and immediately issue a notice to the guardian of such person, requiring him to file his final account within sixty days from the date of service of the notice. From the date of docketing the record of such certificate the person formerly of unsound mind and memory shall be restored to all his legal rights.

1909, c. 176.

6. Estates without guardian managed by clerk. When any person is declared to be of nonsane mind or inebriate, and no suitable person will act as his guardian, the clerk shall secure the estate of such person according to the law relating to orphans whose guardians have been removed.

Rev., s. 1894; Code, s. 1676; R. C., c. 57, s. 6; 1846; c. 43, s. 1.

7. Allowance to abandoned insane wife. When any insane wife is abandoned by her husband, she may, by her guardian, or next friend, in case there be no guardian, apply to the clerk of the superior court for support and maintenance, which the clerk may decree as in cases of alimony, out of any property or estate of her husband.

Rev., s. 1895; Code, s. 1686; 1858-9, c. 52, s. 1.

NOTE. See Divorce and Alimony.

ART. 3. SALES AND ESTATES

8. Clerk may order sale or renting. When it appears to any clerk of the superior court by report of the guardian of any idiot, inebriate or lunatic, that his personal estate has been exhausted, or is insufficient for his support, and that he is likely to become chargeable on the county, the clerk may make an order for the sale or renting of his personal or real estate, or any part thereof, in such manner and upon such terms as he may deem advisable. Such order shall specify particularly the property thus to be disposed of, with the terms of renting or sale, and shall be entered at length on the records of the court; and all sales and rentings made under this section shall be valid to convey the interest and estate directed to be sold, and the title thereof shall be conveyed by such person as the clerk may appoint on confirming the sale; or the clerk may direct the guardian to file his petition for such purpose.

Rev., s. 1896; Code, s. 1674; R. C., c. 57, s. 4; 1801, c. 589.

9. Purposes for which estate sold; parties; disposition of proceeds. When it appears to the clerk, upon the petition of the guardian of any idiot, inebriate or lunatic, that a sale of any part of his real or personal estate is necessary for his maintenance, or for the discharge of debts unavoidably incurred for his maintenance, or when the clerk is satisfied that the interest of the idiot, inebriate or lunatic would be materially and essentially promoted by the sale of any part of such estate; or when any part of his real estate is required for public purposes, the clerk may order a sale thereof to be made by such person, in such way and on such terms as he shall adjudge. The clerk, if it be deemed proper, may direct to be made parties to such petition the next of kin or presumptive

heirs of such nonsane person or inebriate. And if on the hearing the clerk orders such sale, the same shall be made and the proceeds applied and secured, and shall descend and be distributed in like manner as is provided for the sale of infants' estates decreed in like cases to be sold on application of their guardians, as directed in the chapter entitled Guardians.

Rev., s. 1897; Code, s. 1675; R. C., c. 57, s. 5.

10. Sale of land of wife of lunatic upon petition. Where the wife of a lunatic owns real estate in her own right the sale of which will promote her interest, a sale of the same may be made upon the order of the clerk of the superior court of the county where the land lies, upon the petition of the wife of said lunatic and the guardian of the lunatic husband, and the proceeds of said sale shall be paid to the wife of said lunatic.

Rev., s. 1898; Code, s. 1687; 1881, c. 361.

10a. Wife of insane person entitled to special proceeding to sell his property. Every woman whose husband is a lunatic or insane and is confined in an asylum in this state, and who was living with her husband at the time he was committed to such asylum, if she be in needy circumstances, the right to bring a special proceeding before the clerk of the superior court to sell the property of her insane husband, or so much thereof as is deemed expedient, and have the proceeds applied to her support: Provided, that said proceeding shall be approved by the judge of the superior court holding the courts of the judicial district where the said property is situated. When the deed of the commissioner appointed by the court, conveying the lands belonging to the insane husband is executed, probated, and registered, it conveys a good and indefeasible title to the purchaser.

1911, c. 142, ss. 1, 2.

ART. 4. SURPLUS INCOME AND ADVANCEMENTS

11. Income of insane widowed mother used for children's support. When a father dies leaving him surviving minor children and a widow who is the mother of such children, but leaving no sufficient estate for the support and maintenance and education of such minor children, and the mother is or becomes insane and is so declared according to law, and such insanity continues for twelve months thereafter, and she has an estate which is placed in the hands of a guardian or other person, as provided by law, the estate of such insane mother shall in such cases as are provided for in the succeeding section be made liable for the support, maintenance and education of the class of persons mentioned in said section to the same extent, in the same manner and under the same rules and regulations as applies to estates of fathers thereunder.

Rev., s. 1899; 1905, c. 546.

12. Advancement of surplus income to next of kin. When any nonsane person, of full age, and not having made a valid will, has children or grandchildren (such grandchildren being the issue of a deceased child), and is possessed of an estate, real or personal, whose annual income is more than sufficient abundantly and amply to support himself, and to support, maintain and educate the members of his family, with all the necessities and suitable comforts of life, it is

lawful for the clerk of the superior court for the county in which such person has his residence to order from time to time, and so often as may be judged expedient, that fit and proper advancements be made, out of the surplus of such income, to any such child, or grandchild, not being a member of his family and entitled to be supported, educated and maintained out of the estate of such person.

Rev., s. 1900; Code, s. 1677; R. C., c. 57, s. 9.

13. For what purpose and to whom advanced. Such advancements shall be ordered only for the better promotion in life of such as are of age, or married, and for the maintenance, support and education of such as are under the age of twenty-one years and unmarried; and in all cases the sums ordered shall be paid to such persons as, in the opinion of the clerk, will most effectually execute the purpose of the advancement.

Rev., s. 1901; Code, s. 1678; R. C., c. 57, s. 10.

14. Distributees to be parties to proceeding for advancement. In every application for such advancements, the guardian of the nonsane person, and all such other persons, shall be parties, as would at that time be entitled to a distributive share of his estate, if he were then dead.

Rev., s. 1902; Code, s. 1679; R. C., c. 57, s. 11.

15. Advancements to be equal; accounted for on death. The clerk, in ordering such advancements, shall, as far as practicable, so order the same, as that, on the death of the nonsane person, his estate shall be distributed among his distributees in the same equal manner as if the advancements had been made by the person himself; and on his death, every sum advanced to a child, or grandchild, shall be an advancement, and shall bear interest from the time it may be received.

Rev., s. 1903; Code, s. 1680; R. C., c. 57, s. 12.

16. Clerk may select those to advance. When the surplus aforesaid is not sufficient to make distribution among all the parties, the clerk may select and decree advancements to such of them as may most need the same, and may apportion the sum decreed in such amounts as are expedient and proper.

Rev., s. 1904; Code, s. 1681; R. C., c. 57, s. 13.

17. Advancements to be secured against waste. It is the duty of the clerk to withhold advancements from such persons as will probably waste them, or so to secure the same when they may have families, that it may be applied to their support and comfort, but any sum so advanced shall be regarded as an advancement to such persons.

Rev., s. 1905; Code, s. 1682; R. C., c. 57, s. 14.

18. Appeal; removal to superior court. Any person made a party may appeal from any order of the clerk; or may, when the pleadings are finished, require that all further proceedings shall be had in the superior court.

Rev., s. 1906; Code, s. 1683; R. C., c. 57, s. 15.

19. Advancements only when insanity permanent. No such application shall be allowed under this chapter but in cases of such permanent and continued

insanity, as that the nonsane person shall be judged by the clerk to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion.

Rev., s. 1907; Code, s. 1684; R. C., c. 57, s. 16.

20. Decrees suspended upon restoration of sanity. Upon such insane person being restored to sanity, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same.

Rev., s. 1908; Code, s. 1685; R. C., c. 57, s. 17.

CHAPTER 44

INTEREST

1. Legal rate is six per cent.
2. Penalty for usury; corporate bonds may be sold below par.
3. Time from which interest runs.
4. Obligations due guardians to bear compound interest.
5. Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.
6. Judgment by default final, clerk ascertains.
7. Interest from verdict to judgment added as costs.

1. Legal rate is six per cent. The legal rate of interest shall be six per cent per annum for such time as interest may accrue, and no more.

Rev., s. 1950; Code, s. 3385; 1895, c. 69; 1876-7, c. 91.

2. Penalty for usury; corporate bonds may be sold below par. The taking, receiving, reserving or charging a greater rate of interest than six per centum per annum, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid, may recover back twice the amount of interest paid, in an action in the nature of action for debt. In any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it is lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest. Nothing contained in the foregoing section, however, shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof. This section shall not apply to contracts executed prior to February twenty-first, one thousand eight hundred and ninety-five.

Rev., s. 1951; Code, s. 3386; 1895, c. 69; 1903, c. 154; 1876-7, c. 91.

For special usury statute for New Hanover and Guilford counties, see 1905, c. 819.

3. Time from which interest runs. Interest is due and payable on instruments, as follows:

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

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

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

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

Rev., s. 1952; Code, ss. 44, 45, 46, 47; R. C., c. 13; 1786, c. 248; 1828, c. 2.

4. **Obligations due guardians to bear compound interest.** Guardians shall have power to lend any portion of the estate of their wards upon bond with sufficient security, to be repaid with interest annually, and all the bonds, notes or other obligations which he shall take as guardian, shall bear compound interest, for which he must account, and he may assign the same to the ward on settlement with him.

Rev., s. 1953; Code, s. 1592; R. C., c. 54, s. 23; 1762, c. 69; 1816, c. 925; 1868-9, c. 201, s. 29.

5. **Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.** All sums of money due by contract of any kind, excepting money due on penal bonds, shall bear interest, and when a jury shall render a verdict therefor they shall distinguish the principal from the sum allowed as interest; and the principal sum due on all such contracts shall bear interest from the time of rendering judgment thereon until it is paid and satisfied. In like manner, the amount of any judgment or decree, except the costs, rendered or adjudged in any kind of action, though not on contract, shall bear interest till paid, and the judgment and decree of the court shall be rendered according to this section.

Rev., s. 1954; Code, s. 530; R. C., c. 31, s. 90; 1786, c. 253; 1789, c. 314, s. 4; 1807, c. 721.

6. **Judgment by default final, clerk ascertains.** When a suit is instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, and the defendant does not plead to issue thereon, upon judgment, the clerk of the court shall ascertain the interest due by law, without a writ of inquiry, and the amount shall be included in the final judgment of the court as damages, which judgment shall be rendered therein in the manner prescribed by the preceding section.

Rev., s. 1956; Code, s. 531; R. C., c. 31, s. 91; 1797, c. 475.

7. **Interest from verdict to judgment added as costs.** When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto.

Rev., s. 1955; Code, s. 529.

CHAPTER 45

JURORS

ART. 1. JURY LIST AND DRAWING OF ORIGINAL PANEL.

1. Jury list from taxpayers of good character.
2. Names on list put in box.
3. Manner of drawing panel for term from box.
4. Local modifications as to drawing panel.
5. Jurors having suits pending.
6. Disqualified persons drawn.
7. How drawing to continue.
8. Drawing when commissioners fail to draw.

ART. 2. PETIT JURORS; ATTENDANCE, REGULATIONS AND PRIVILEGES.

9. Summons to jurors drawn; to attend until discharged.
10. Summons to talesmen; their disqualifications.
11. How talesmen summoned, when sheriff interested.
12. Penalty for disobeying summons.
13. Jury sworn; judge decides competency.
- 13a. Questioning jurors without challenge.
- 13b. Causes of challenge to jurors or original panel.
14. Jurors empaneled to try case furnished with accommodations.
15. Exemption from civil arrest.
16. Exemptions from jury duty.
17. Clerk to keep record of jurors.

ART. 3. PEREMPTORY CHALLENGES IN CIVIL CASES.

18. Four peremptory challenges on each side.
19. Where several defendants; challenges apportioned; discretion of judge.

ART. 4. GRAND JURORS.

20. How grand jury drawn.
21. Exceptions for disqualifications.
22. Foreman may administer oaths to witnesses.
23. Grand jury to visit jail and county home.

ART. 5. SPECIAL VENIRE.

24. Special venire to sheriff in capital cases.
25. Drawn from jury box in court by judge's order.
26. Penalty on sheriff not executing writ or jurors not attending.

ART. 1. JURY LIST AND DRAWING OF ORIGINAL PANEL

1. **Jury list from taxpayers of good character.** The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year nineteen hundred and five and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list, and shall be preserved as such.

Rev., s. 1957; Code, ss. 1722, 1723; 1806, c. 694; 1889, c. 559; 1899, c. 729; 1897, cc. 117, 539; 1899, c. 729.

2. **Names on list put in box.** The commissioners at their regular meeting on the first Monday in July in the year nineteen hundred and five, and every

two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.

Rev., s. 1958; Code, s. 1726; 1868-9, c. 9, s. 5.

NOTE. For manner of drawing jury in Guilford, see 1905, c. 613; in Cleveland, see 1909, c. 356; Johnston, P. L. 1917, c. 31.

3. Manner of drawing panel for term from box. At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1 by a child not more than ten years of age, thirty-six scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week, shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

Rev., s. 1959; Code, ss. 1727, 1731; 1889, c. 559; 1897, c. 117; 1868-9, c. 175; 1868-9, c. 9, s. 6; 1806, c. 694; 1901, c. 636; 1901, c. 28, s. 3; 1903, c. 11; 1905, cc. 38, 76, s. 4; 1905, c. 285.

4. Local modifications as to drawing panel. In Buncombe County forty-eight jurors shall be drawn to serve the first week and twenty-four to serve the second week.

In Cumberland County the commissioners may, in their discretion, cause an additional twelve scrolls to be drawn, to serve as the jury for the first week.

In Forsyth County the board of county commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. At all civil terms, regular and special, for the first week thirty jurors shall be drawn and summoned, and likewise for the second week. At all criminal terms, regular and special, for the first week forty-two jurors shall be drawn and summoned. For the second week thirty jurors shall be drawn and summoned.

In Hertford County fifteen extra jurors shall be drawn and summoned for the second week.

In Iredell County twenty-four jurors shall be drawn and summoned for the second week.

In Randolph County forty-two scrolls shall be drawn for the first week and twenty-four for the second week. The commissioners may at the same time

and in the same manner draw the names of twenty-four other persons who shall serve as petit jurors for the week for which they are drawn and summoned.

In Rockingham County the board of county commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. At all civil terms, regular and special, for the first week thirty jurors shall be drawn and summoned; for the second week twenty-four jurors shall be drawn and summoned. At all criminal terms, regular and special, for the first week forty-two jurors shall be drawn and summoned; for the second week twenty-four jurors shall be drawn and summoned.

In Rowan County twenty-four jurors shall be drawn and summoned for the second week.

Rev., s. 1959; 1907, c. 239; Ex. Sess. 1913, c. 4; P. L. 1915, cc. 233, 744. 764.

NOTE. For special law applicable to Cleveland County, see 1909, c. 356.

5. Jurors having suits pending. If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury box.

Rev., s. 1960; Code, s. 1728; 1868-9, c. 9, s. 7; 1806, c. 694.

6. Disqualified persons drawn. If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

Rev., s. 1961; Code, s. 1729; 1889, c. 559; 1897, c. 117, s. 5; 1806, c. 694.

7. How drawing to continue. The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

Rev., s. 1962; Code, s. 1730; 1868-9, c. 9, s. 9; 1806, c. 6, s. 94.

8. Drawing when commissioners fail to draw. If the commissioners for any cause fail to draw a jury for any term of the superior court, regular or special, the sheriff of the county and the clerk of the commissioners in the presence of, and assisted by two justices of the peace of the county, shall draw such jury in the manner above prescribed; and if a special term continues for more than two weeks, then for the weeks exceeding two, a jury or juries may be drawn as in this section provided.

Rev., s. 1963; Code, s. 1732; 1868-9, c. 9, s. 11.

ART. 2. PETIT JURORS; ATTENDANCE, REGULATION AND PRIVILEGES

9. Summons to jurors drawn; to attend until discharged. The clerk of the board of county commissioners shall, within five days from the drawing, deliver the list of the jurors drawn for the superior court to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such court. The summons shall be served, personally, or by leaving a copy thereof at the house of the juror, at least five days before the sitting of the court to which he

may be summoned. Jurors shall appear and give their attendance until duly discharged.

Rev., s. 1976; Code, s. 1733; 1868-9, c. 9, s. 12; R. C., c. 31, s. 29; 1779, c. 157, ss. 4, 6.

NOTE. For provision for additional jurors from other counties, as a substitute for removal when a fair trial cannot be had, see Civil Procedure, s. 83.

10. Summons to talesmen; their disqualifications. That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be drawn from the jury box used in drawing the petit jury for the term, in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summon such jurors outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court.

Rev., s. 1967; Code, s. 1733; R. C., c. 31, s. 29; 1779, c. 156, s. 69; 1911, c. 15; 1915, c. 210.

11. How talesmen summoned when sheriff interested. When, in the trial of any action before a jury, the sheriff of the county in which the case is to be tried is a party to or has any interest in the action, or when the presiding judge finds upon investigation that the sheriff of the county is not a suitable person, on account of indirect interest in or relative to the cause of action, to be entrusted with the summoning of the tales jurors in any particular case pending, such judge shall appoint some suitable person to summon the jurors in place of the sheriff.

Rev., s. 1968; 1889, c. 441.

12. Penalty for disobeying summons. Every person on the original venire summoned to appear as a juror, who fails to give his attendance until duly discharged, shall forfeit and pay for the use of the county the sum of twenty dollars, to be imposed by the court; but each delinquent juryman shall have until the next succeeding term to make his excuse for his nonattendance, and, if he renders an excuse deemed sufficient by the court, he shall be discharged without costs. Every person summoned of the bystanders, who shall not appear and serve during the day as a juror, shall be fined in the sum of two dollars, unless he can show sufficient cause to the court; and the clerk shall forthwith issue an execution against the estate of the delinquent tales juror for such amercement and costs.

Rev., s. 1977; Code, ss. 1734, 405; R. C., c. 31, s. 30; 1779, c. 157, s. 4; 1783, c. 189; 1806, c. 694.

13. Jury sworn; judge decides competency. The clerk shall, at the beginning of the court, swear such of the petit jury as are of the original panel, to try all civil cases; and if there should not be enough of the original panel, the talesmen shall be sworn. The petit jurors of the original panel, as well as talesmen, shall be sworn as prescribed in the chapter entitled Oaths. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so

sworn or to any of them; and if by reason of such challenge, any juror is withdrawn, his place on the jury shall be supplied by any of the original venire, or from the bystanders qualified to serve as jurors. The judge or other presiding officer of the court shall decide all questions as to the competency of jurors in both civil and criminal actions.

Rev., s. 1966; Code, s. 405; R. C., c. 31, s. 34; 1790, c. 321; 1822, c. 1133, s. 1.

13a. Questioning jurors without challenge. The court, or any party to an action, civil or criminal, shall be allowed, in selecting the jury, to make inquiry as to the fitness and competency of any person to serve as a juror, without having such inquiry treated as a challenge of such person, and it shall not be considered by the court that any person is challenged as a juror until the party shall formally state that such person is so challenged.

1913, c. 31, s. 6.

13b. Causes of challenge to jurors of original panel. It shall not be a valid cause of challenge that a juror called from those whose names are drawn from the box is not a freeholder or has served upon the jury within two years prior to the court at which the case is tried. In other respects the cause of challenge shall be the same as now provided by law, and nothing herein shall modify any law authorizing jurors to be summoned from counties other than the county of trial.

1913, c. 31, ss. 5, 7.

14. Jurors empaneled to try case furnished with accommodations. When a jury, empaneled to try any cause, is put in charge of an officer of the court, the said officer shall furnish said jury with such accommodation as the court may order, and the same shall be paid for by the party east or by the county, under the order and in the discretion of the judge of said court.

Rev., s. 1978; Code, s. 1736; 1876-7, c. 173; 1889, c. 44.

15. Exemption from civil arrest. No sheriff or other officer shall arrest under civil process any juror during his attendance on or going to and returning from any court of record. All such service shall be void, and the defendant on motion shall be discharged.

Rev., s. 1979; Code, s. 1735; R. C., c. 31, s. 31; 1779, c. 157, s. 10.

16. Exemptions from jury duty. 1. All practicing physicians, licensed druggists, telegraph operators, who are in the regular employ of any telegraph company, or railroad company, train dispatchers who have the actual handling of either freight or passenger trains, regularly licensed pilots, regular ministers of the gospel, officers or employees of a state hospital for the insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, all millers of grist mills, all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers and railroad conductors in active service, and all members of the National Guard of North Carolina who comply with and perform all duties required of them as members of said National Guard shall be exempt from service as jurors.

Rev., s. 1980; Code, ss. 1723, 2269; 1885, c. 289; 1889, c. 255; 1897, c. 32; 1901, c. 118; 1909, cc. 333, 868; 1913, c. 38, s. 1; 1915, c. 260.

2. On the first day of January and July of each year, the commanding officer of each company, troop, battery or division of the National Guard of North Carolina shall file with the clerk of the superior court of the county in which said company, troop, battery or division is located a statement giving the names and rank of each member of his organization who has performed all military duties required of such member during the preceding six months, and any member of such military organization whose name shall not appear upon the statement shall not receive the benefit of the exemption provided above during the six months immediately following the filing of said statement.

1913, c. 38, s. 2.

3. The board of county commissioners of any county in North Carolina may, in their discretion, exempt any Ex-Confederate soldier in their county from jury duty, who shall apply to them for exemption.

1915, c. 228.

17. **Clerk to keep record of jurors.** The clerk of the superior court shall record alphabetically in a book kept for the purpose the names of all grand and petit jurors and talesmen who serve in his court, with the term at which they serve.

Rev., s. 1981; 1893, c. 52, s. 3.

ART. 3. PEREMPTORY CHALLENGES IN CIVIL CASES

18. **Four peremptory challenges on each side.** The clerk, before a jury is empaneled to try the issues in any civil suit, shall read over the names of the jury upon the panel in the presence and hearing of the parties or their counsel; and the parties, or their counsel for them, may challenge peremptorily four jurors upon the said panel, without showing any cause therefor, which shall be allowed by the court.

Rev., s. 1964; Code, s. 406; R. C., c. 31, s. 35; 1796, c. 452, s. 2; 1812, c. 833.

19. **Where several defendants; challenges apportioned; discretion of judge.** When there are two or more defendants in a civil action the judge presiding at the trial, if it appears to the court that there are divers and antagonistic interests between the defendants, may in his discretion apportion among the defendants the challenges now allowed by law to defendants, or he may increase the number of challenges to not exceeding four to each defendant or class of defendants representing the same interest. In either event, the same number of challenges shall be allowed each defendant or class of defendants representing the same interest. The decision of the judge as to the nature of the interests and number of challenges shall be final.

Rev., s. 1965; 1905, c. 357.

ART. 4. GRAND JURORS

20. **How grand jury drawn.** The judges of the superior court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the

first eighteen drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court.

Rev., s. 1969; Code, s. 404; R. C., c. 31, s. 33; 1779, c. 157, s. 11.

NOTE. For special terms, see Courts, s. 50.

21. Exceptions for disqualifications. All exceptions to grand jurors for and on account of their disqualifications shall be taken before the jury is sworn and empaneled to try the issue by motion to quash the indictment, and if not so taken, the same shall be deemed to be waived. But no indictment shall be quashed, nor shall judgment thereon be arrested, by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue.

Rev., s. 1970; Code, s. 1741; 1907, c. 36, s. 1.

22. Foreman may administer oaths to witnesses. The foreman of every grand jury duly sworn and empaneled in any of the courts has power to administer oaths and affirmations to persons to be examined before it as witnesses: Provided, that the said foreman shall not administer such oath or affirmation to any person except those whose names are endorsed on the bill of indictment by the officer prosecuting in behalf of the state, or by direction of the court. The foreman of the grand jury shall mark on the bill the names of the witnesses sworn and examined before the jury.

Rev., s. 1971; Code, s. 1742; 1879, c. 12.

23. Grand jury to visit jail and county home. Every grand jury, while the court is in session, shall visit the county home for the aged and infirm, the workhouse, if there is one, and the jail, examine the same, and especially the apartments in which inmates and prisoners shall be confined; and they shall report to the court the condition thereof and of the inmates and prisoners confined therein, and also the manner in which the jailer or superintendent has discharged his duties.

Rev., s. 1972; Code, s. 785; R. C., c. 30, s. 3; 1816, c. 911, s. 3.

NOTE. For duty of grand jury in reporting infants without guardian, see Guardian and Ward, s. 49.

ART. 5. SPECIAL VENIRE

24. Special venire to sheriff in capital cases. When a judge of the superior court deems it necessary to a fair and impartial trial of any person charged with a capital offense, he may issue to the sheriff of the county in which the trial may be a special writ of venire facias, commanding him to summon such number of persons qualified to act as jurors in said county as the judge may deem sufficient (such number being designated in the writ), to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ and return it to the clerk of the court on the day when it is returnable, with the names of the jurors summoned.

Rev., s. 1973; Code, s. 1738; R. C., c. 35, s. 30; 1830, c. 27; 1913, c. 31, s. 1.

NOTE. For special law applicable to New Hanover County, see 1909, c. 342.

25. Drawn from jury box in court by judge's order. When a judge deems a special venire necessary, he may, at his discretion, issue an order to the clerk of the board of commissioners for the county, commanding him to bring into

open court forthwith the jury boxes of the county, and he shall cause the number of scrolls as designated by him to be drawn from box number one by a child under ten years of age. The names so drawn shall constitute the special venire, and the clerk of the superior court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the sheriff. If the special venire is exhausted before the jury is chosen, the judge shall order another special venire until the jury has been chosen. The scrolls containing the names of the persons drawn as jurors from box number one shall, after the jury is chosen, be placed in box number two, and if box number one is exhausted before the jury is chosen, the drawing shall be completed from box number two after the same has been well shaken.

Rev., s. 1974; Code, s. 1739; 1897, c. 364; 1913, c. 31, s. 2.

26. Penalty on sheriff not executing writ or jurors not attending. If any sheriff fails duly to execute and return such writ of venire facias, he shall be fined by the court not exceeding one hundred dollars. All jurors so summoned shall attend until discharged by the court, under the same rules and penalties as are prescribed for other jurors.

Rev., ss. 1975, 3602; Code, s. 1740; R. C., c. 35, s. 31; 1830, c. 27, s. 2.

CHAPTER 46

LANDLORD AND TENANT

ART. 1. GENERAL PROVISIONS.

1. Lessor and lessee not partners.
2. Attornment unnecessary on conveyance of reversions, etc.
3. Forfeiture without demand for rent, where right of reentry exists.
4. Recovery for use and occupation.
5. Rent apportioned, where lease terminated by death.
6. Rents apportioned, where right to payment terminated by death.
7. In lieu of emblements, farm lessee holds out year with rents apportioned.
8. Grantees of reversion and assigns of lease have reciprocal rights under covenants.
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ART. 4. FORMS.

35. Forms sufficient.

ART. 1. GENERAL PROVISIONS

1. Lessor and lessee, not partners. 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.

Rev., s. 1982; Code, s. 1744; 1868-9, c. 156. s. 3.

2. Attornment unnecessary on conveyance of reversions, etc. Every conveyance of any rent, reversion, or remainder in lands, tenements or hereditaments, otherwise sufficient, shall be deemed complete without attornment by the holders of particular estates in said lands: Provided, no holder of a particular

estate shall be prejudiced by any act done by him as holding under his grantor, without notice of such conveyance.

Rev., s. 947; Code, s. 1764; 4 Anne, c. 16, s. 9; 1868-9, c. 156, s. 17.

3. Forfeiture without demand for rent, where right of reentry exists. When any half year's rent or more is in arrear from any tenant to his landlord, and the landlord has a subsisting right to reenter for the nonpayment 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 reentry on the demised premises, and if, on the trial of the cause, it appears that the landlord had a right to reenter the plaintiff shall have judgment to recover the demised premises and his costs.

Rev., s. 1983; Code, 1745; 1868-9, c. 156, s. 156.

4. Recovery for use and occupation. When any person occupies 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.

Rev., s. 1986; Code, s. 1746; 1868-9, c. 156, s. 5.

5. Rent apportioned, where lease terminated by death. If a lease of land, in which rent is reserved, payable at the end of the year or other certain period of time, is determined by the death of any person during one of the periods in which the rent was growing due, the lessor or his personal representative may recover a part of the rent which becomes due after the death, proportionate to the part of the period elapsed before the death, subject to all just allowances; and if any security was given for such rent it shall be apportioned in like manner.

Rev., s. 1987; Code, s. 1747; 1868-9, c. 156, s. 6.

6. Rents apportioned, where right to payment terminated by death. In all cases where rents, rent charges, annuities, pensions, dividends, or any other payments of any description, are made payable at fixed periods to successive owners under any instrument, or by any will, and where the right of any owner to receive payment is terminable by a death or other uncertain event, and where such right so terminates during a period in which a payment is growing due, the payment becoming due next after such terminating event, shall be apportioned among the successive owners according to the parts of such periods elapsing before and after the terminating event.

Rev., s. 1988; Code, s. 1748; 1868-9, c. 156, s. 7.

7. In lieu of emblements, farm lessee holds out year with rents apportioned. When any lease for years of any land let for farming on which a rent is reserved determines during a current year of the tenancy, by the happening of any uncertain event determining the estate of the lessor, the tenant in lieu of emblements shall continue his occupation to the end of such current year, and shall then give up such possession to the succeeding owner of the land, and shall pay to such succeeding owner a part of the rent accrued since the last payment

became due, proportionate to the part of the period of payment elapsing after the termination of the estate of the lessor, to the giving up such possession; and the tenant in such case shall be entitled to a reasonable compensation for the tillage and seed of any crop not gathered at the expiration of such current year from the person succeeding to the possession.

Rev., s. 1990; Code, s. 1749; 1868-9, c. 156, s. 8.

8. Grantees of reversion and assigns of lease have reciprocal rights under covenants. The grantee in every conveyance of reversion in lands, tenements or hereditaments, has the like advantages and remedies by action or entry against the holders of particular estates in such real property, and their assigns, for nonpayment of rent, and for the nonperformance of other conditions and agreements contained in the instruments by the tenants of such particular estates, as the grantor or lessor or his heirs might have; and the holders of such particular estates, and their assigns, have the like advantages and remedies against the grantee of the reversion, or any part thereof, for any conditions and agreements contained in such instruments, as they might have had against the grantor or his lessors or his heirs.

Rev., s. 1989; Code, s. 1765; 32 Hen. VIII, c. 34; 1868-9, c. 156, s. 18.

9. Agreement to rebuild, how construed in case of fire. An agreement in a lease to repair a demised house shall not be construed to bind the contracting party to rebuild or repair in case the house shall be destroyed or damaged to more than one-half of its value, by accidental fire not occurring from the want of ordinary diligence on his part.

Rev., s. 1985; Code, s. 1752; 1868-9, c. 156, s. 11.

10. Tenant not liable for accidental damage. A tenant for life, or years, or for a less term, shall not be liable for damage occurring on the demised premises accidentally, and notwithstanding reasonable diligence on his part; unless he so contract.

Rev., s. 1991; Code, s. 1751; 1868-9, c. 156, s. 10.

11. Willful destruction by tenant; misdemeanor. If any tenant shall, during his term or after its expiration, willfully and unlawfully demolish, destroy, deface, injure or damage any tenement house, uninhabited house or other out-house, belonging to his landlord or upon his premises by removing parts thereof or by burning, or in any other manner, or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other inclosure or any part thereof, built or standing upon the premises of such landlord, or shall willfully and unlawfully cut down or destroy any timber, fruit, shade or ornamental tree belonging to said landlord, he shall be guilty of a misdemeanor.

Rev., s. 3686; Code, s. 1761; 1883, c. 224.

12. Lessee may surrender, where building destroyed or damaged. If a demised house, or other building, is destroyed during the term, or so much damaged that it cannot be made reasonably fit for the purpose for which it was hired, except at an expense exceeding one year's rent of the premises, and the damage occur without negligence on the part of the lessee or his agents or servants, and there is no agreement in the lease respecting repairs, or providing for

such a case, and the use of the house damaged was the main inducement to the hiring, the lessee may surrender his estate in the demised premises by a writing to that effect delivered or tendered to the landlord within ten days from the damage, and by paying or tendering at the same time all rent in arrear, and a part of the rent growing due at the time of the damage, proportionate to the time between the last period of payment and the occurrence of the damage, and the lessee shall be thenceforth discharged from all rent accruing afterwards; but not from any other agreement in the lease. This section shall not apply if a contrary intention appear from the lease.

Rev., s. 1992; Code, s. 1753; 1868-9, c. 156, s. 12.

13. Wrongful surrender to other than landlord misdemeanor. Any tenant or lessee of lands who shall willfully, wrongfully and with intent to defraud the landlord or lessor, give up the possession of the rented or leased premises to any person other than his landlord or lessor, shall be guilty of a misdemeanor.

Rev., s. 3682; Code, s. 1760; 1883, c. 138.

14. Notice to quit in certain tenancies. A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days.

Rev., s. 1984; Code, s. 1750; 1891, c. 227; 1868-9, c. 156, s. 9.

ART. 2. AGRICULTURAL TENANCIES

15. Landlord's lien on crops for rents, advances, etc.; enforcement. When lands are rented or leased by agreement, written or oral, for agricultural purposes, or are cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or his assigns at all times, until the rents for said lands are paid and until all the stipulations contained in the lease or agreement are performed, or damages in lieu thereof paid to the lessor or his assigns, and until said party or his assigns is paid for all advancements made and expenses incurred in making and saving said crops. A landlord to entitle himself to the benefit of the lien herein provided for, must conform as to the prices charged for the advance to the provisions of the article Agricultural Liens, in the chapter Liens.

This lien shall be preferred to all other liens, and the lessor or his assigns is entitled, against the lessee or cropper or the assigns of either who removes the crop or any part thereof from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop or any part thereof, to the remedies given in an action upon a claim for the delivery of personal property.

Rev., s. 1993; Code, s. 1754; 1876-7, c. 283; 1917, c. 134.

16. Rights of tenants. When the lessor or his assigns gets the actual possession of the crop or any part thereof otherwise than by the mode prescribed in the preceding section, and refuses or neglects, upon a notice, written or oral, of five days, given by the lessee or cropper or the assigns of either, to make a fair division of said crop, or to pay over to such lessee or cropper or the assigns of either,

such part thereof as he may be entitled to under the lease or agreement, then and in that case the lessee or cropper or the assigns of either is entitled to the remedies against the lessor or his assigns given in an action upon a claim for the delivery of personal property to recover such part of the crop as he, in law and according to the lease or agreement, may be entitled to. The amount or quantity of such crop claimed by said lessee or cropper or the assigns of either, together with a statement of the grounds upon which it is claimed, shall be fully set forth in an affidavit at the beginning of the action.

Rev., s. 1994; Code, s. 1755; 1876-7, c. 283, s. 2.

17. Action to settle disputes between parties; undertaking of tenant in certain cases. When any controversy arises between the parties, and neither party avails himself of the provisions of this chapter, it is competent for either party to proceed at once to have the matter determined in the court of a justice of the peace, if the amount claimed is two hundred dollars or less, and in the superior court of the county where the property is situate if the amount so claimed is more than two hundred dollars. In case there is a continuance or an appeal from the justice's decision to the superior court, the lessee or cropper, or the assigns of either, shall be allowed to retain possession of said property upon his giving an undertaking to the lessor or his assigns, or the adverse party, in a sum double the amount of the claim, if such claim does not amount to more than the value of such property, otherwise to double the value of such property, with good and sufficient surety, to be approved by the justice of the peace or the clerk of the superior court, conditioned for the faithful payment to the adverse party of such damages as he shall recover in said action.

Rev., s. 1995; Code, s. 1756; 1876-7, c. 283, s. 3.

18. Crops delivered to landlord on his undertaking. In case the lessee or cropper, or the assigns of either, at the time of the appeal or continuance mentioned in the preceding section, fails to give the undertaking therein required, then the constable or other lawful officer shall deliver the property into the actual possession of the lessor or his assigns, upon the lessor or his assigns giving to the adverse party an undertaking in double the amount of said property, to be justified as required in the preceding section, conditioned for the forthcoming of such property, or the value thereof, in case judgment is pronounced against him.

Rev., s. 1996; Code, s. 1757; 1876-7, c. 283, s. 4.

19. Crops sold, if neither party gives undertaking. If neither party gives the undertaking described in the two preceding sections, it is the duty of the justice of the peace or the clerk of the superior court, to issue an order to the constable or sheriff, or other lawful officer, directing him to take into his possession all of said property, or so much thereof as may be necessary to satisfy the claimant's demand and costs, and to sell the same under the rules and regulations prescribed by law for the sale of personal property under execution, and to hold the proceeds thereof subject to the decision of the court upon the issue or issues pending between the parties.

Rev., s. 1997; Code, s. 1758; 1876-7, c. 283, s. 5.

20. Tenant's crop not subject to execution against landlord. Whenever servants and landlords in agriculture shall by their contracts orally or in writing be

entitled, for wages, to a part of the crops cultivated by them, such part shall not be subject to sale under executions against their employers, or the owners of the land cultivated.

Rev., s. 1998; Code, s. 1796.

21. Unlawful seizure by landlord or removal by tenant misdemeanor. If any landlord shall unlawfully, willfully, knowingly and without process of law, and unjustly seize the crop of his tenant when there is nothing due him, he shall be guilty of a misdemeanor. If any lessee or cropper, or the assigns of either, or any other person, shall remove a crop, or any part thereof, from land without the consent of the lessor or his assigns, and without giving him or his agent five days notice of such intended removal, and before satisfying all the liens held by the lessor or his assigns, on said crop, he shall be guilty of a misdemeanor.

Rev., ss. 3664, 3665; Code, s. 1759; 1876-7, c. 283, s. 6; 1883, c. 83.

22. Turpentine and lightwood leases. This chapter shall apply to all leases or contracts to lease turpentine trees, or use lightwood for purposes of making tar, and the parties thereto shall be fully subject to the provisions and penalties of this chapter.

Rev., s. 1999; Code, s. 1762; 1893, c. 517; 1876-7, c. 283, s. 7.

23. Mining and timber land leases. If in a lease of land for mining, or of timbered land for the purpose of manufacturing the timber into goods, rent is reserved, and if it is agreed in the lease that the minerals, timber or goods, or any portion thereof, shall not be removed until the payment of the rent, in such case the lessor shall have the rights and be entitled to the remedy given by this chapter.

Rev., s. 2000; Code, s. 1763; 1868-9, c. 156, s. 16.

ART. 3. SUMMARY EJECTMENT

24. Tenant holding over may be dispossessed in certain cases. Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in either of the following cases:

1. When a tenant in possession of real estate holds over after his term has expired.

2. When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

3. When any tenant or lessee of lands or tenements, who is in arrear for rent, or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

Rev., s. 2001; Code, ss. 1766, 1777; 4 Geo. II, c. 28; 1868-9, c. 156, s. 19; 1905, cc. 297, 299, 820.

25. Local: Refusal to perform contract ground for dispossession. When any tenant or cropper who enters into a contract for the rental of land for the cur-

rent or ensuing year willfully neglects or refuses to perform the terms of his contract without just cause, he shall forfeit his right of possession to the premises. This section applies only to the following counties: Alleghany, Anson, Beaufort, Bertie, Bladen, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Duplin, Edgecombe, Franklin, Gaston, Gates, Greene, Halifax, Harnett, Hertford, Hyde, Jackson, Johnston, Jones, Lenoir, Martin, Mecklenburg, Montgomery, Nash, Northampton, Onslow, Pender, Perquimans, Pitt, Randolph, Robeson, Rockingham, Rowan, Sampson, Swain, Tyrrell, Union, Wake, Wayne, Washington, Wilson, Yadkin.

Rev., s. 2001, subsec. 4; Code, ss. 1766, 1777; 4 Geo. II, c. 28; 1868-9, c. 156, s. 19; 1905 cc. 297, 299, 820; 1907, cc. 43, 153; 1909, cc. 40, 550.

26. Summons issued by justice on verified complaint. When the lessor or his assigns, or his or their agent or attorney, makes oath in writing, before any justice of the peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases above described, and describing the premises and asking to be put in possession thereof, the justice shall issue a summons reciting the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney), to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrear, and damage for the occupation of the premises since the cessation of the estate of the lessee: Provided, the sum claimed shall not exceed two hundred dollars; but if he omits to make such claim, he shall not be thereby prejudiced in any other action for their recovery.

Rev., s. 2002; Code, s. 1767; 1868-9, c. 156, s. 20; 1869-70, c. 212.

27. Service of summons. The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there; or, if the defendant has no usual place of residence in the county and cannot be found therein, by fixing a copy on some conspicuous part of the premises claimed.

Rev., s. 2003; Code, s. 1768; 1868-9, c. 156, s. 21.

28. Judgment by default or confession. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if the defendant fails to appear, or admits the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be.

Rev., s. 2004; Code, s. 1769, c. 156, s. 22.

29. Trial by justice; jury trial; judgment; execution. If the defendant by his answer denies any material allegation in the oath of the plaintiff, the justice

shall hear the evidence and give judgment as he shall find the facts to be. If either party demands a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury finds that the allegation in the plaintiff's oath, which entitles him to be put in possession, is true, the justice shall give judgment that the defendant be removed from and the plaintiff put in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury and for costs; and shall issue his execution to carry the judgment into effect.

Rev., s. 2005; Code, s. 1770; 1868-9, c. 156, s. 23.

30. Damages assessed to trial. On appeal to the superior court, the jury trying the issue joined shall assess the damages of the plaintiff for the detention of his possession to the time of the trial in that court, and judgment for the rent in arrear and for the damages assessed may, on motion, be rendered against the sureties to the appeal.

Rev., s. 2006; Code, s. 1775; 1868-9, c. 156, s. 28.

31. Rent and costs tendered by tenant. If, in any action brought to recover the possession of demised premises upon a forfeiture for the nonpayment of rent, the tenant, before judgment given in such action, pays or tenders the rent due and the costs of the action, all further proceedings in such action shall cease. If the plaintiff further prosecutes his action, and the defendant pays into court for the use of the plaintiff a sum equal to that which shall be found to be due, and the costs, to the time of such payment, or to the time of a tender and refusal, if one has occurred, the defendant shall recover from the plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into court for his use, and the proceedings shall be stayed.

Rev., s. 2007; Code, s. 1773; 4 Geo. II, c. 28, s. 4; 1868-9, c. 156, s. 26.

32. Undertaking on appeal; when to be increased. Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed.

Rev., s. 2008; Code, s. 1772; 1868-9, c. 156, s. 25; 1883, c. 316.

33. Restitution of tenant, if case quashed, etc., on appeal. If the proceedings before the justice are brought before a superior court and quashed, or

judgment is given against the plaintiff, the superior or other court in which final judgment is given, shall, if necessary, restore the defendant to the possession, and issue such writs as are proper for that purpose.

Rev., s. 2009; Code, s. 1774; 1868-9, c. 156, s. 27.

34. Damages to tenant for dispossession, if proceedings quashed, etc. If, by order of the justice, the plaintiff is put in possession, and the proceedings shall afterwards be quashed or reversed, the defendant may recover damages of the plaintiff for his removal.

Rev., s. 2010; Code, s. 1776; 1868-9, c. 156, s. 30.

ART. 4. FORMS

35. Forms sufficient. The following forms, or substantially similar, shall be sufficient in all proceedings under this chapter:

OATH OF PLAINTIFF

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 possession of a piece of land in said county (describe the land) as a lessee of the plaintiff (or as lessee of E. F., who, after the making of the lease, assigned his estate to the plaintiff, or otherwise, as the fact may be); that the term of the defendant expired on the ____ day of -----19____ (or that his estate has ceased by nonpayment of rent, or otherwise, as the fact may be); that the plaintiff has demanded the possession of the premises of the defendant, who refused to surrender it, but holds over; that the estate of the plaintiff is still subsisting, and the plaintiff asks to be put in possession of the premises.

The plaintiff claims ----- dollars for rent of the premises from the ----- day of -----19____ to the ____ day of -----19____, and also ----- dollars for the occupation of the premises since the ____ day of -----19____ to the date hereof.

A. B., plaintiff.

Subscribed and sworn to before me, this ____ day of -----19____

J. K., J. P.

SUMMONS

North Carolina,-----County.

A. B., plaintiff,

against

C. D., defendant.

Summary proceedings in ejectment.

A. B. (his agent or attorney) having made and subscribed before me the oath, a copy of which is annexed, you are required to appear before me on the ____ day of -----, 19____, 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 -----, 19____

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 varies it according to the facts.

DOCKET ENTRIES

A. B., plaintiff,
against
C. D., defendant.

Summary proceedings in ejectment for (describe the premises).

Oath of plaintiff (his agent or attorney) filed on the ____ day of _____ 19____
Plaintiff claims _____ dollars for rent from _____ to _____, and _____
dollars for occupation from _____ to _____

Summons issued the ____ day of _____, 19____, to _____, constable
(or sheriff, as the case may be).

The officer serves the summons and returns it to the justice with the oath
of the plaintiff, and with his return indorsed:

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 _____, 19____

RECORD TO BE ENTERED ON DOCKET

A. B., plaintiff,
against
C. D., defendant.

Summary proceedings in ejectment.

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 _____, 19____ to the ____ day of _____, 19____, and _____
dollars for damages for occupation of the premises from the ____ day of _____,
19____, to this day, and _____ dollars for his costs; the ____ day of _____, 19____.

If the defendant admits part of the allegations of plaintiff, but not all, the
judgment must be varied accordingly; for example: follow the foregoing to the
asterisk (*), and then proceed:

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 findings 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 the asterisk (*)).

If either party demands a jury the record will proceed from the asterisk (*),
as follows:

And whereas, the plaintiff (or defendant, as the case may be) demanded a trial of the
issues joined by a jury, I caused a jury to be summoned, to wit: (here give the names of
the jurors summoned) from whom the following jury was duly empaneled, to wit: (here
state the names of the six jurors empaneled), 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,
etc. (as in form No. 5, from asterisk (*)).

If either party appeals, the justice will enter on his docket as follows, altering the entry according to the facts:

RECORD OF APPEAL

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.

EXECUTION ON JUDGMENT FOR 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 the goods and chattels, lands and tenements, of said defendant ----- dollars, with interest from the ----- day of -----, 19----, 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 -----, 19----
----- (Seal.)

BOND TO STAY 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. 19----

Whereas on the ----- day of -----, A. D. 19----, before ----- a justice of the peace for ----- county, A. B. recovered a judgment against C. D. for ----- and for ----- dollars damages for the detention of said real estate from the ----- day of -----, A. D. 19----, to the ----- day of -----, A. D. 19----; and whereas, the said ----- has 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.)

STAY 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 -----, 19----
C. D., defendant. -----, J. P. (Seal.)

CERTIFICATE ON RETURN OF APPEAL

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. (Seal.)

(Here state all the costs, to whom paid or due, and by whom.)

(All the papers must be attached.)

Rev., s. 2011; Code, s. 1780.

NOTE. For requirement of leases in writing, see Contracts Requiring Writing. s. 2.

CHAPTER 47

LAND REGISTRATION

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ART. 1. NATURE OF PROCEEDING

1. Jurisdiction in superior court. For the purpose of enabling all persons owning real estate within this state to have the title thereto settled and registered, as prescribed by the provisions of this chapter, the superior court of the county in which the land lies in the state shall have exclusive original jurisdiction of all petitions and proceedings had thereupon, under the rules of practice and procedure prescribed for special proceedings except as herein otherwise provided.

1913, c. 90, s. 1.

2. Proceedings in rem; vests title. The proceedings under any petition for the registration of land, and all proceedings in the court in relation to registered land, shall be proceedings in rem against the land, and the decrees of the court shall operate directly on the land, and vest and establish title thereto in accordance with the provisions of this chapter.

1913, c. 90, s. 2.

3. Rules of practice prescribed by attorney-general. The attorney-general, with the approval of the supreme court, shall from time to time, make, change, revise and revoke rules of practice in the superior court for the administration of this chapter. He shall in like manner prescribe forms for use in such court, and in the notation of the registry of titles of memorials, claims, liens, lis pendens, and all other involuntary charges upon and to such registered lands. Whenever a question shall arise in the administration of this chapter as to the proper method of protecting or asserting any right or interest under the law and the method of procedure is in doubt it shall be the duty of the clerk or register of deeds to notify the attorney-general, who, with the approval of the supreme court, shall prescribe a rule covering such case.

1913, c. 90, s. 31.

ART. 2. OFFICERS AND FEES

4. Examiners appointed by clerk. The clerk of the superior court of each county, shall appoint three or more examiners of titles, who shall be licensed attorneys at law, residing in the state of North Carolina. They shall qualify by taking oath before the clerk to faithfully discharge the duties of such office, which oath shall be filed in the office of the clerk. The term of office shall be two years. Examiners of titles shall have and exercise the jurisdiction and perform the duties hereinafter prescribed, and receive the fees herein provided. They shall not appear in or have any connection with any proceeding instituted under the provisions of this chapter, and they shall be subject to removal at will by such clerk or judge of the superior court.

1913, c. 90, s. 3; 1917, c. 63.

5. Fees of officers. The fees to be allowed the clerks and sheriffs in this proceeding shall be the same as now allowed by law to clerks and sheriffs in other special proceedings. The examiner hereinbefore provided for shall receive, as may be allowed by the clerk, a minimum fee of five dollars for such examination of each title of property assessed upon the tax books at the amount of five

thousand dollars or less; for each additional thousand dollars of assessed value of property so examined he shall receive fifty cents; for examination outside of the county he shall receive a reasonable allowance. There shall be allowed to the register of deeds for copying the plot upon registration of titles book one dollar; for issuing the certificate and new certificates under this chapter, fifty cents for each; for noting the entries or memorandum required and for the entries noting the cancellation of mortgages and all other entries, if any, herein provided for, a total of twenty-five cents for the entry or entries connected with one transaction. The county or other surveyor employed under the provisions of this chapter shall not be allowed to charge more than forty cents per hour for his time actually employed in making the survey and the map, except by agreement with the petitioner: Provided, however, that a minimum fee of two dollars in any case may be allowed.

There shall be no other fees allowed of any nature except as herein provided, and the bond of the register, clerk and sheriff shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this chapter in as full a manner as such bond is now liable by law.

1913, c. 90, s. 30.

ART. 3. PROCEDURE FOR REGISTRATION

6. Who may institute proceedings. Any person, being in the peaceable possession of land within the state and claiming an estate of inheritance therein, may prosecute a special proceeding in rem against all the world in the superior court for the county in which such land is situate, to establish his title thereto, to determine all adverse claims and have the title registered. Any number of the separate parcels of land claimed by the petitioner may be included in the same proceeding, and any one parcel may be established in several parts, each of which shall be clearly and accurately described and registered separately, and the decree therein shall operate directly upon the land and establish and vest an indefeasible title thereto. Any person in like possession of lands within the state, claiming an interest or estate less than the fee therein, may have his title thereto established under the provisions of this chapter, without the registration and transfer features herein provided.

1913, c. 90, s. 4.

7. Petition filed; contents. Suit for registration of title shall be begun by a petition to the court by the persons claiming, singly or collectively, to own or have the power of appointing or disposing of an estate in fee simple in any land, whether subject to liens or not. Infants and other persons under disability may sue by guardian or trustee, as the case may be, and corporations as in other cases now provided by law; but the person in whose behalf the petition is made shall always be named as petitioner. The petition shall be signed and sworn to by each petitioner, and shall contain a full description of the land to be registered as hereinafter provided, together with a plot of same by metes and bounds, corners to be marked by permanent markers of iron, stone or cement; it shall show when, how and from whom it was acquired, and whether or not it is now occupied, and if so, by whom; and it shall give an account of all known liens, interest, equities and claims, adverse or otherwise, vested or contingent, upon such land. Full names and addresses if known, of all persons who may

be interested by marriage or otherwise, including adjoining owners and occupants, shall be given. If any person shall be unable to state the metes and bounds, the clerk may order a preliminary survey.

1913, c. 90, s. 5.

8. Summons issued and served; disclaimer. The clerk of the court shall issue a summons directed to the sheriff of every county in which persons named as interested may reside, such persons being made defendants, and the summons shall be returnable as in other cases of special proceedings, except that the return shall be at least sixty days from the date of the summons. The summons shall be served at least ten days before the return thereof and the return recorded, in the same manner as in other special proceedings; and all parties under disabilities shall be represented by guardian, either general or ad litem. If the persons named as interested are not residents of the state of North Carolina, and their residence is known, which must appear by affidavit, the summons must be served on such nonresidents as is now prescribed by law for service of summons on nonresidents.

Any party defendant to such proceeding may file a disclaimer of any claim or interest in the land described in the petition, which shall be deemed an admission of the allegations of the petition, and the decree shall bar such party and all persons thereafter claiming under him, and such party shall not be liable for any costs or expenses of the proceeding except such as may have been incurred by reason of his delay in pleading.

1913, c. 90, s. 6.

9. Notice of petition published. In addition to the summons issued, prescribed in the foregoing section, the clerk of the court shall, at the time of issuing such summons, publish a notice of the filing thereof containing the names of the petitioners, the names of all persons named in the petition, together with a short but accurate description of the land and the relief demanded, in some secular newspaper published in the county wherein the land is situate, and having general circulation in the county; and if there be no such paper, then in a newspaper in the county nearest thereto, and having general circulation in the county wherein the land lies, once a week for eight issues of such paper: Provided, such advertisement shall not cost more than five dollars. The notice shall set forth the title of the cause and in capital letters the words "To whom it may concern," and shall give notice to all persons of the relief demanded and the return day of the summons: Provided, that no final order or judgment shall be entered in the cause until there is proof and adjudication of publication as in other cases of publication of notice of summons. The provisions of this section, in respect to the issuing and service of summons and the publication of the notice, shall be mandatory and essential to the jurisdiction of the court to proceed in the cause: Provided, that the recital of the service of summons and publication in the decree or in the final judgment in the cause, and in the certificate issued to the petitioner as hereinafter provided, shall be conclusive evidence thereof.

1913, c. 90, s. 7; 1915, c. 128, s. 1.

10. Hearing and decree:

1. Referred to examiner. Upon the return day of the summons the petition shall be set down for hearing upon the pleadings and exhibits filed. If any

person claiming an interest in the land described in the petition, or any lien thereon, shall file an answer, the petition and answer, together with all exhibits filed, shall be referred to the examiner of titles who shall proceed, after notice to the petitioner and the persons who have filed answer or answered, to hear the cause upon such parol or documentary evidence as may be offered or called for and taken by him, and in addition thereto make such independent examination of the title as may be necessary. Upon his request the clerk shall issue a commission under the seal of the court for taking such testimony as shall be beyond the jurisdiction of such examiner.

2. *Examiner's report.* The examiner shall, within thirty days after such hearing, unless for good cause the time shall be extended, file with the clerk a report of his conclusions of law and fact, setting forth the state of such title, any liens or encumbrances thereon, by whom held, amount due thereon, together with an abstract of title to the lands and any other information in regard thereto affecting its validity.

3. *Exceptions to report.* Any of the parties to the proceeding may, within twenty days after such report is filed, file exceptions, either to the conclusions of law or fact. Whereupon the clerk shall transmit the record to the judge of the superior court for his determination thereof; such judge may on his own motion certify any issue of fact arising upon any such exceptions to the superior court of the county in which the proceeding is pending for a trial of such issue by jury, and he shall so certify such issue of fact for trial by jury upon the demand of any party to the proceeding. If, upon consideration of such record, or the record and verdict of issues to be certified and tried by jury, the title be found in the petitioner, the judge shall enter a decree to that effect, ascertaining all limitations, liens, etc., declaring the land entitled to registration accordingly, and the same, together with the record, shall be docketed by the clerk of the court as in other cases, and a copy of the decree certified to the register of deeds of the county for registration as hereinafter provided. Any of the parties may appeal from such judgment to the supreme court, as in other special proceedings.

4. *No judgment by default.* No judgment in any proceeding under this chapter shall be given by default, but the court must require an examination of the title in every instance except as respects the rights of parties who, by proper pleadings, admit the petitioner's claim. If, upon the return day of the summons and the day upon which the petition is set down for hearing, no answer be filed, the clerk shall refer the same to the examiner of titles, who shall, after notice to the petitioner, proceed to examine the title, together with all liens or encumbrances set forth or referred to in the petition and exhibits, and shall examine the registry of deeds, mortgages, wills, judgments, mechanic liens and other records of the county, and upon such examination he shall, as hereinbefore provided, report to the clerk the conditions of the title, with a notice of liens or encumbrances thereon. The examiner shall have power to take and call for evidence in such case as fully as if the application were being contested. If the title shall be found to be in the petitioner, the clerk shall enter a decree to that effect and declaring the land entitled to registration with entry of any limitations, liens, etc., and shall certify the same for registration, as hereinbefore provided, after approval by the judge of the superior court.

11. Effect of decree; approval of judge. Every decree rendered as hereinbefore provided shall bind the land and bar all persons claiming title thereto or interest therein; quiet the title thereto and shall be forever binding and conclusive upon and against all persons, including the state of North Carolina, whether mentioned by name in the order of publication or included under the general description "To whom it may concern." It shall not be an exception to such conclusiveness that the person is an infant, lunatic or is under any disability, but such person may have recourse upon the indemnity fund hereinafter provided for, for any loss he may suffer by reason of being so concluded. Such decree shall, in addition to being signed by the clerk of the court, be approved by the judge of the superior court, who shall review the whole proceeding and have power to require any reformation of the process, pleading, decrees or entries.

1913, c. 90, s. 9.

ART. 4. REGISTRATION AND EFFECT

12. Manner of registration. The county commissioners of each county shall provide for the register of deeds in the county a book, to be called Registration of Titles, in which the register shall enroll, register and index, as hereinafter provided, the decree of title before mentioned and the copy of the plot contained in the petition, and all subsequent transfers of title, and note all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered thereon. If the title be subject to a trust condition, encumbrance or the like, the words "in trust," "upon condition," "subject to encumbrance," or like appropriate insertion shall indicate the fact and fix any person dealing with such certificate with notice of the particulars of such limitations upon the title as appears upon the registry.

1913, c. 90, s. 10.

13. Certificate issued. Upon the registration of such decree the register of deeds shall issue an owner's certificate of title, under the seal of his office, which shall be delivered to the owner or his agent duly authorized, and shall be substantially as follows:

STATE OF NORTH CAROLINA—COUNTY OF _____

The certificate of _____

I hereby certify that the title is registered in the name of _____ to and situate in said county and State, described as follows: (Here describe land as in decree.)

Estate _____ (here name the estate and any limitation or encumbrance thereon, as fee simple, upon condition, in trust, subject to encumbrance, and the like). Under decree of the land court of _____ county, entitled _____

Registered No. _____, Book No. _____, page _____

Witness my hand and seal, at office at _____, this _____ day of _____, A. D. 19____

(SEAL)

_____, Register of Deeds.

1913, c. 90, s. 10.

14. Certificates numbered; entries thereon. All certificates of title to land in the county shall be numbered consecutively, which number shall be retained as long as the boundaries of the land remain unchanged, and a separate page or

more, with appropriate space for subsequent entries, shall be devoted to each title in the registration of titles book for the county. Every entry made upon any certificate of title in such book or upon the owner's certificate, under any of the provisions of this chapter, shall be signed by the register of deeds and minutely dated in conformity with the dates shown by the entry book.

1913, c. 90, s. 11.

15. New certificate issued, if original lost. Whenever an owner's certificate of title is lost or destroyed, the owner or his personal representative may petition the court for the issuance of a new certificate. Notice of such petition shall be published once a week for four successive weeks, under the direction of the court, in some convenient newspaper, and noted upon the registry of titles, and upon satisfactory proof having been exhibited before it that the certificate has been lost or destroyed the court may direct the issuance of a new certificate, which shall be approximately designated and take the place of the original, but at least thirty full days shall elapse between the filing of the petition and making the decree for such new certificate.

1913, c. 90, s. 24.

16. Registered owner's estate free from adverse claims; exceptions. Every registered owner of any estate or interest in land bought under this chapter shall, except in cases of fraud, to which he is a party or in which he is a privy without valuable consideration paid in good faith, and except when any registration has been procured through forgery, hold the land, free from any and all adverse claims, rights or encumbrances not noted on the certificate of title, except (1) liens, claims or rights arising or existing under the laws or constitution of the United States which the statutes of this state cannot require to appear of record under registry laws; (2) taxes and assessments thereon due the state or any county, city or town therein, but not delinquent; (3) any lease for a term not exceeding three years, under which the land is actually occupied.

1913, c. 90, s. 25.

17. Affidavit of adverse claim filed and noted; limitation of action. Any person making any claim to or asserting any lien or charge upon registered land existing at the initial registry of the same and not shown upon the register, or adverse to the title of the registered owner, and for which no other provision is herein made for asserting the same in the registry of titles, may make an affidavit thereof setting forth his interest, right, title, lien or demand and how and under whom derived, and the character and nature thereof. The affidavit shall state his place of residence and designate a place at which all notices relating thereto may be served. Upon the filing of such affidavit in the office of the clerk of the superior court, the clerk shall order a note thereof as in the case of charges or encumbrances, and the same shall be entered by the register of deeds. Action shall be brought upon such claim within six months after the entry of such note, unless for cause shown the clerk shall extend the time. Upon failure to commence such action within the time prescribed therefor, the clerk shall order a cancellation of such note. If any person shall wantonly or maliciously or without reasonable cause procure such notation to be entered

upon the registry of titles, having the effect of a cloud upon the registered owner's title, he shall be liable for all damages the owner may suffer thereby.

1913, c. 90, s. 25.

18. Decree and registration run with the land. The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and the same shall ever remain registered land, subject to the provisions of this chapter, and all amendments thereof.

1913, c. 90, s. 26.

19. No right by adverse possession. No title to nor right or interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

1913, c. 90, s. 27.

20. Jurisdiction of courts; registered land affected only by registration. Except as otherwise specially provided by this chapter, registered land and ownership therein shall be subject to the jurisdiction of the courts in the same manner as if it had not been registered; but the registration shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument or record to be registered is duly filed in the office of the register of deeds, subject to the provisions of this chapter; no voluntary or involuntary transaction shall affect the title to registered lands until registered in accordance with the provisions of this chapter: Provided, that all mortgages, deeds, surrendered and canceled certificates, when new certificates are issued for the land so deeded, the other paper-writings, if any, pertaining to and affecting the registered estate or estates herein referred to, shall be filed by the register of deeds for reference and information, but the registration of titles book shall be and constitute sole and conclusive legal evidence of title, except in cases of mistake and fraud, which shall be corrected in the methods now provided for the correction of papers authorized to be registered.

1913, c. 90, s. 28.

21. Priority of right. In case of conflicting claims between the registered owners the right, title or estate derived from or held under the older certificate of title shall prevail.

1913, c. 90, s. 29.

22. Compliance with this chapter due registration. When the provisions of this chapter have been complied with, all conveyances, deeds, contracts to convey or leases shall be considered duly registered, as against creditors and purchasers, in the same manner and as fully as if the same had been registered in the manner heretofore provided by law for the registration of conveyances.

1913, c. 90, s. 32.

ART. 5. METHOD OF TRANSFER

23. When whole of land conveyed. Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance upon or attached to the certificate substantially as follows:

A B and wife (giving the names of the parties owning land described in the certificate and their wives) hereby, in consideration of ----- dollars, sell and convey to C D (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached.

The same shall be signed and properly acknowledged by the parties and their wives and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition with power to sell or other unusual form of conveyance, the same shall be set out in the deed, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this chapter and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled.

1913, c. 90, s. 12.

24. When part of registered land is conveyed. Whenever a part of any registered estate is transferred or conveyed the same shall be by the form of transfer hereinbefore referred to, setting out the portion of estate transferred, if it be undivided, and if it be divided portion the same; in addition, it shall be accompanied by a plot showing the divisions and the part to be sold. Upon presentation of such transfer, together with the certificate of title and the plot, it shall be the duty of the register of deeds to cancel the certificate so presented and to issue to the holder of the certificate canceled a new certificate, bearing the number of the original and setting out the part of interest in the land retained by the owner or vendor; and the register shall also issue to the purchaser of undivided or separate portion of the estate so transferred a new certificate bearing same number, setting out the part or amount of land transferred to him, as the case may be; if the transfer be of a divided part of the land, plots of each and every portion thereof shall be the subject of a newly registered title, the old certificate shall be canceled and a new certificate issued to each owner; the register shall note upon the registration of titles book and the certificate of title therein the references and cross-references to the certificates herein referred to. The provisions of this section shall apply to an owner who desires to subdivide any tract either at the time of the initial registration or subsequently, upon the payment of necessary surveyor's fees, if they are required, and payment to the proper officer of the amount herein provided for issuing the necessary certificates and recording the map.

1913, c. 90, s. 13.

25. When land conveyed as security:

1. Whole land conveyed. Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

A B and wife (giving names of all owners or holders of certificates and their wives) hereby transfer to C. D. the tract or lot of land described as No. ----- in registration of titles book for ----- county, a certificate for the title for same being hereto attached, to secure a debt of ----- dollars, due to -----

of ----- county and state, on the ----- day of -----, 19-----, evidenced by bond (or otherwise as the case may be) dated the ----- day of -----, 19-----. In case of default in payment of said debt with accrued interest, ----- days notice of sale required.

The same shall be signed and properly acknowledged by the parties making same, and shall be presented, together with the owner's certificate, to the register of deeds, whose duty it shall be to note upon the owner's certificate and upon the certificate of title in the registration of titles book the name of the trustee, the amount of debt, and the date of maturity of same.

2. *Part of land conveyed.* When a part of the registered estate shall be so conveyed, the register of deeds shall note upon the book and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his hand and seal, setting out the portion so conveyed.

3. *Effect of transfer.* All transfers by such short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county, or adjoining county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein.

4. *Other encumbrances noted.* All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue to be noted, not only upon the certificate of title in the registration book, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certificate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided in this article.

5. *Other forms of conveyance may be used.* Nothing in this section nor this chapter shall be construed to prevent the owner from conveying such land, or any part of the same, as security for a debt by deed of trust or mortgage in any form which may be agreed upon between the parties thereto, and having such deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: Provided, that the book and page of the record at which such deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on the registration of titles book.

1913, c. 90, s. 14; 1915, c. 245.

26. **Owner's certificate presented with transfer.** In voluntary transactions the owner's certificate of title must be presented along with the writing or instrument conveying or effecting the sale, and thereupon and not otherwise the register shall be authorized to register the conveyance or other transaction upon proof of payment of all delinquent taxes or liens, if any, or if such payment be not shown the entry and new certificate shall note such taxes or liens as having priority thereto.

1913, c. 90, s. 15.

27. **Transfers probated; partitions; contracts.** All transfers of registered land shall be duly executed and probated as required by law upon like conveyances of other lands, and in all cases of change in boundary by partition,

subtraction or addition of land, there shall be an accurate survey and permanent marking of boundaries and accurate plots, showing the courses, distances and markings of every portion thereof, which shall be duly proved and registered as upon the initial registration. Such transfers shall be presented to the register of deeds for entry upon the registration of titles book and upon the owner's certificate within thirty days from the date thereof, or become subject to any rights which may accrue to any other person by a prior registration. All leases or contracts affecting land for a period exceeding three years shall be in writing, duly proved before the clerk of the superior court, recorded in the register's office, and noted upon the registry and upon the owner's certificate.

1913, c. 90, ss. 15, 32.

28. Certified copy of order of court noted. In voluntary transactions a certificate from the proper state, county or court officer, or certified copy of the order, decree or judgment of any court of competent jurisdiction shall be authority for him to order a proper notation thereof upon the registration of titles book, and for the register of deeds to note the transaction under the direction of the court.

1913, c. 90, s. 16.

29. Production of owner's certificate required. Whenever owner's certificate is not presented to the register along with any writing, instrument or record filed for registration under this chapter, he shall forthwith send notice by registered mail to the owner of such certificate, requesting him to produce the same in order that a memorial of the transaction may be made thereon; and such production may be required by subpoena duces tecum or by other process of the court, if necessary.

1913, c. 90, s. 17.

30. Registration notice to all persons. Every voluntary or involuntary transaction, which if recorded, filed or entered in any clerk's office would affect unregistered land, shall, if duly registered in the office of the proper register as the case may be, and not otherwise, be notice to all persons from the time of such registration, and operate, in accordance with law and the provisions of this chapter, upon any registered land in the county of such registration.

1913, c. 90, s. 18.

31. Conveyance of registered land in trust. Whenever a writing, instrument or record is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate, but it shall be sufficient to enter in the book and upon the certificates a memorial thereof by the terms "in trust" or "upon condition" or in other apt words, and to refer by number to the writing, instrument or record authorizing or creating the same. And if express power is given to sell, encumber or deal with the land in any manner, such power shall be noted upon the certificates by the term "with power to sell" or "with power to encumber," or by other apt words.

1913, c. 90, s. 19.

32. Authorized transfers of equitable interests registered. No writing or instrument for the purpose of transferring, encumbering or otherwise dealing with equitable interests in registered land shall be registered unless the power thereto enabling has been expressly conferred by or has been reserved in the writing or instrument creating such equitable instrument, or has been declared to exist by the decree of some court of competent jurisdiction, which decree must also be registered.

1913, c. 90, s. 20.

ART. 6. LIENS UPON REGISTERED LANDS

33. Docketed judgments. Whenever any judgment of the superior court of the county in which the registered estate is situated shall be duly docketed in the office of the clerk of the superior court, it shall be the duty of the clerk to certify the same to the register of deeds. The register of deeds shall thereupon enter the certificate of title, the date, and the amount of the judgment, and the same shall be a lien upon such land as fully as such docketed judgment would be a lien upon unregistered lands of the judgment debtor.

1913, c. 90, s. 22.

34. Notice of delinquent taxes filed. It shall be the duty of the sheriff or other collector of taxes or assessments of each county and town, not later than the first day of March in each year, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including the penalty therefor, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and such sheriff or other collector of taxes and his sureties shall be liable for the payment of the taxes and assessments with the penalty and interest thereon.

1913, c. 90, s. 21.

35. Sale of land for taxes; redemption. Whenever any sale of registered land is made for delinquent taxes or levies, it shall be the duty of the sheriff or other officer to make such sale forthwith, to file a memorandum thereof for registration in the office of the register of deeds; and thereupon the registered owner shall be required to produce his certificate for cancellation, and a new owner's certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within ninety days after date of such sale; but a note shall be entered upon the certificate of title and also upon any such new owner's certificate, reserving the privilege of redemption in accordance with the law. In case of any redemption under this section of land sold for taxes, a note of the fact shall be duly registered, and if an owner's certificate has been issued to any purchaser, the same shall be canceled and a new one shall be issued to the person who has redeemed.

1913, c. 90, ss. 22, 23.

36. Sale of unredeemed land; application of proceeds. If there be no redemption of land under the preceding section, in accordance with the law, it shall be

the duty of the sheriff or other collector of taxes in the county or town in which the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the state, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars; third, to the payment of a commission to the officer making the sale of five per centum on the first three hundred dollars and two per centum on the residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon.

1913, c. 90, s. 23.

ART. 7. ASSURANCE FUND

37. Assurance fund provided; investment. Upon the original registration of land and also upon the entry of certificate showing the title as registered owners in heirs or devisees, there shall be paid to the clerk of the court one-tenth of one per cent of the assessed value of the land for taxes, as an assurance fund, which shall be paid over to the state treasurer, who shall be liable therefor upon his official bond as for other moneys received by him in his official capacity. He shall keep all the principal and interest of such fund invested except as required for the payment of indemnities, in bonds and securities of the United States, of this state, or of counties and other municipalities within the state. Such investment shall be made upon the advice and concurrence of the governor and council of state, and he shall make report of such funds and the investment thereof to the general assembly biennially.

1913, c. 90, s. 33.

38. Action for indemnity. Any person who, without negligence on his part, sustains loss or damage or is deprived of land, or of any estate or interest therein, through fraud or negligence or in consequence of any error, omission, mistake, misfeasance, or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who, by the provisions of this chapter, is barred or in any way precluded from bringing an action for the recovery of such land or interest or estate therein or claim upon same, may bring an action in the superior court of the county in which the land is situate for the recovery of compensation for such loss or damage from the assurance fund. Such action shall be against the state treasurer and all other persons who may be liable for the fraud, negligence, omission, mistake or misfeasance; but if such claimant has the right of action or other remedy for the recovery of the land, or of the

estate or interest therein, or of the claim upon same, he shall exhaust such remedy before resorting to the assurance fund.

1913, c. 90, s. 34.

39. Satisfaction by third person or by treasurer. If there are defendants other than the state treasurer, and judgment is rendered in favor of the plaintiff and against the treasurer and some or all of the other defendants, execution shall first be issued against the other defendants, and if such execution is returned unsatisfied in whole or in part, and the officer returning the same shall certify that it cannot be collected from the property and effects of the other defendants, or if the judgment be against the treasurer only, the clerk of the court shall certify the amount due on the execution to the state auditor, who shall issue his warrant therefor upon the state treasurer, and the same shall be paid. In all such cases the treasurer may employ counsel who shall receive reasonable compensation for his services from the assurance fund.

1913, c. 90, s. 35.

40. Payment by treasurer, if assurance fund insufficient. If the assurance fund shall be insufficient at any time to meet the amount called for by any such certificate, the treasurer shall pay the same from any funds in the treasury not otherwise appropriated; and in such case any amount thereafter received by the treasurer on account of the assurance fund shall be transferred to the general funds of the treasury until the amount advanced shall have been paid.

1913, c. 90, s. 36.

41. Treasurer subrogated to rights of claimant. In every case of payment by the treasurer from the assurance funds under the provisions of this chapter the treasurer shall be subrogated to all the rights of the plaintiff against all and every other person or property or securities to a trustee, or by the improper exercise of any power of sale in benefit of the assurance fund.

1913, c. 90, s. 37.

42. Assurance fund not liable for breach of trust; limit of recovery. The assurance fund shall not be liable to pay any loss, damage or deprivation occasioned by a breach of trust, whether expressed, constructive or implied, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage or deed of trust. Nor shall any plaintiff recover as compensation under the provisions of this chapter more than the fair market value of the land at the time when he suffered the loss, damage or deprivation thereof.

1913, c. 90, s. 38.

43. Statutes of limitation. Action for compensation from the assurance fund shall be begun within three years from the time the cause of action accrued. In cases of infancy or other disability now recognized by law, persons under such disability shall have one year after the removal of such disability within which to begin the action.

1913, c. 90, s. 39.

CHAPTER 48

LIBEL AND SLANDER

1. Libel against newspaper; notice before action.
2. Effect of publication in good faith and retraction.
3. Anonymous communications.
4. Charging innocent woman with incontinency.

1. Libel against newspaper; notice before action. Before any action either civil or criminal, is brought for the publication, in a newspaper or periodical, of a libel, the plaintiff or prosecutor shall at least five days before instituting such action serve notice in writing on the defendant specifying the article and the statements therein which he alleges to be false and defamatory.

Rev., s. 2012; 1901, c. 557.

2. Effect of publication in good faith and retraction. If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case, if a civil action, shall recover only actual damages, and if, in a criminal proceeding, a verdict of "guilty" is rendered on such a state of facts, the defendant shall be fined a penny and the costs, and no more.

Rev., s. 2013; 1901, c. 557.

3. Anonymous communications. The two preceding sections shall not apply to anonymous communications and publications.

Rev., s. 2014; 1901, c. 557, s. 3.

4. Charging innocent woman with incontinency. 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.

Rev., s. 2015; Code, s. 3763; R. C., c. 106; 1808, c. 478.

NOTE. For criminal libel and slander, see Crimes and Punishments, Art. 13.

CHAPTER 49

LIENS

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2. Buildings on married woman's land.
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4. Laborer's lien on lumber and its products.

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6. Notice to owner; liability.
7. Statement of contractor's indebtedness to be furnished to owner; effect.
8. Laborer, etc., may furnish statement of claim to owner; effect.
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ART. 1. MECHANICS', LABORERS' AND MATERIALMEN'S LIENS

1. On buildings and property, real and personal. Every building built, rebuilt, repaired or improved, together with the necessary lots on which such building is situated, and every lot, farm or vessel, or any kind of property, real or personal, not herein enumerated, shall be subject to a lien for the payment of all debts contracted for work done on the same, or material furnished.

Rev., s. 2016; Code, s. 1781; 1901, c. 617; 1869-70, c. 206, s. 1.

2. Buildings on married woman's land. The preceding section applies to the property of married woman when it appears that such building was built or repaired on her land with her consent or procurement. In such case she shall be deemed to have contracted for such improvements.

Rev., s. 2016; Code, s. 1781; 1869-70, c. 206; 1901, c. 617.

3. On personal property repaired. Any mechanic or artisan who makes, alters or repairs any article of personal property at the request of the owner or legal possessor of such property, has a lien on such property so made, altered or repaired for his just and reasonable charge for his work done and material furnished, and may hold and retain possession of the same until such just and reasonable charges are paid; and if not paid for within thirty days, if it does not exceed fifty dollars, or within ninety days if over fifty dollars, after the work was done, such mechanic or artisan may proceed to sell the property so made, altered or repaired at public auction, by giving two weeks public notice of such sale by advertising in some newspaper in the county in which the work may have been done, or if there is no such newspaper, then by posting up notice of such sale in three of the most public places in the county, town or city in which the work was done, and the proceeds of the said sale shall be applied first to the discharge of the said lien and the expenses and costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Rev., s. 2017; Code, s. 1783; 1869-70, c. 206, s. 3.

4. Laborer's lien on lumber and its products. Every person doing the work of cutting or sawing logs into lumber, getting out wood pulp, acid wood or tan

bark, has a lien upon the said lumber for the amount of wages due them, and the said lien shall have priority over all other claims or liens upon said lumber, except as against a purchaser for full value and without notice thereof: Provided, any such laborer whose wages for thirty or less number of days performed are due and unpaid shall file notice of such claim before the nearest justice of the peace in the county in which said work has been done, stating the number of days of labor performed, the price per day, and the place where the lumber is situate, and the person for whom said labor was performed, which said statement shall be signed by the said laborer or his attorney, and the said laborer shall also give to the owner thereof, within five days after the lien has been filed with the justice of the peace, as aforesaid, a copy of said notice as filed with the said justice of the peace. If the owner cannot be located, that notice shall be given by attaching said notice on the logs or lumber, wood pulp, acid wood or tan bark upon which the labor sued for was performed, and any person buying said lumber or logs, wood pulp, acid wood or tan bark after such notice has been filed with the nearest justice of the peace, shall be deemed to have bought the same with notice thereof, but no action shall be maintained against the owner of said logs or lumber, wood pulp, acid wood or tan bark or the purchaser thereof under the provisions of this section unless same is commenced within thirty days after notice is filed with the justice of the peace by such laborer, as above provided."

1913, c. 150, s. 6.

ART. 2. SUBCONTRACTORS', ETC., LIENS AND RIGHTS AGAINST OWNERS

5. Lien given subcontractors, etc., on real estate. All subcontractors and laborers who are employed to furnish or who do furnish labor or material for the building, repairing or altering any house or other improvement on real estate, have a lien on said house and real estate for the amount of such labor done or material furnished, which lien shall be preferred to the mechanics' lien now provided by law, when notice thereof shall be given as hereinafter provided, which may be enforced as other liens in this chapter, except where it is otherwise provided; but the sum total of all the liens due subcontractors and material men shall not exceed the amount due the original contractor at the time of notice given.

Rev., s. 2019; Code, ss. 1801, 1803; 1880, c. 44, ss. 1, 3.

6. Notice to owner; liability. Any subcontractor, laborer or material man, who claims a lien as provided in the preceding section, may give notice to the owner or lessee of the real estate who makes the contract for such building or improvement at any time before the settlement with the contractor, and if the said owner or lessee refuses or neglects to retain out of the amount due the said contractor under the contract as much as is due or claimed by the subcontractor, laborer or material man, the subcontractor, laborer or material man may proceed to enforce his lien, and after such notice is given, no payment to the contractor shall be a credit on or discharge of the lien herein provided.

Rev., s. 2020; Code, s. 1802; 1880, c. 44, s. 2.

7. Statement of contractor's indebtedness to be furnished to owner; effect.

When any contractor, architect or other person makes a contract for building, altering or repairing any building or vessel, or for the construction or repair of a railroad, with the owner thereof, it is his duty to furnish to the owner or his agent, before receiving any part of the contract price, as it may become due, an itemized statement of the amount owing to any laborer, mechanic or artisan employed by such contractor, architect or other person, or to any person for materials furnished, and upon delivery to the owner or his agent of the itemized statement aforesaid, it is the duty of the owner to retain from the money then due the contractor a sum not exceeding the price contracted for, which will be sufficient to pay such laborer, artisan or mechanic for labor done, or such person for material furnished, which said amount the owner shall pay directly to the laborer, mechanic, artisan or person furnishing materials. The owner may retain in his hands until the contract is completed, such sum as may have been agreed on between him and the contractor, architect or other person employing laborers, as a guaranty for the faithful performance of the contract by such contractor. When such contract has been performed by the contractor such fund reserved as a guaranty shall be liable to the payment of the sum due the laborer, mechanic or artisan for labor done, or the person furnishing the materials as hereinbefore provided.

Rev., s. 2021; 1887, c. 67; 1891, c. 203; 1899, c. 335; 1903, c. 478.

8. Laborer, etc., may furnish statement of claim to owner; effect.

Any laborer, mechanic, artisan or person furnishing materials may furnish to such owner or his agents before he shall have paid the contractor an itemized statement of the amount owing to such laborer, mechanic or artisan employed by said contractor, architect or other person for work or labor on such building, vessel or railroad, and any person may furnish to such owner or his agents an itemized statement of the amount due him for materials furnished for such purposes. Upon the delivery of such notice to such owner or his agent the person giving such notice is entitled to all the liens and benefits conferred by law in as full and ample a manner as though the statement was furnished by the contractor, architect or such other person. And after the notice herein provided is given, no payment to the contractor shall be a credit or a discharge of the lien herein provided.

Rev., s. 2021; 1887, c. 67; 1891, c. 203; 1899, c. 335; 1903, c. 478; 1913, c. 150, s. 4.

9. Sums due by statement to constitute lien. The sums due to the laborer, mechanic or artisan for labor done, or due the person furnishing materials, as shown in the itemized statement rendered to the owner, shall be a lien on the building, vessel or railroad built, altered or repaired, without any lien being filed before a justice of the peace or the superior court.

Rev., s. 2022; 1887, c. 67, s. 2.

10. Where sums due contractor from owner insufficient; payment pro rata.

If the amount due the contractor by the owner is insufficient to pay in full the laborer, mechanic or artisan, for his labor, and the person furnishing materials for materials furnished, it is the duty of the owner to distribute the amount

pro rata among the several claimants, as shown by the itemized statement furnished the owner, or of which notice has been given the owner by the claimant.

Rev., s. 2023; 1887, c. 67, s. 3; 1913, c. 150, s. 5.

10a. Contractor failing to furnish statement or not applying owner's payments to laborer's claims misdemeanor. If any contractor or architect shall fail to furnish to the owner an itemized statement of the sums due to every one of the laborers, mechanics or artisans employed by him, or the amount due for materials, before receiving any part of the contract price, he shall be guilty of a misdemeanor. If any contractor shall fail to apply the contract price paid him by the owner or his agent to the payment of bills for labor and material, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.

Rev., s. 3663; 1887, c. 67, s. 4; 1913, c. 150, s. 8.

11. Laborer for railroad contractor may sue company; conditions of action. As often as any contractor for the construction of any part of a railroad which is in progress of construction is indebted to any laborer for thirty or less number of days labor performed in constructing said road, or is indebted for more than thirty days to any person furnishing material for the construction of said road, such laborer or material man may give notice of such indebtedness to said company in a manner herein provided, and said company shall thereupon become liable to pay such laborer or material man the amount so due for labor or material, and action may be maintained against said company therefor. Such notice shall be given by said laborer to said company within twenty days after the performance of the number of days labor for which the claim is made, and such notice shall be given by the material man to said company within thirty days after the materials have been furnished. Such notice to be given by the laborer shall be in writing and shall state the amount and number of days labor and the time when the labor was performed for which the claim is made, and the name of the contractor from whom due, and shall be signed by such laborer or his attorney; and such notice of the material man shall be in writing and shall state the amount of material furnished and when furnished, and the name of the contractor to whom furnished and by whom due, and shall be signed by such material man or his attorney. The notice shall be served on an engineer, agent or superintendent employed by said company having charge of the section of road on which such labor was performed or material furnished, personally or by leaving the same at the office or usual place of business of said engineer, agent, or superintendent, with some person of suitable age. But no action shall be maintained against any company under the provisions of this section unless the same is commenced within ninety days after notice is given to the company by such laborer or material man as above provided.

Rev., s. 2018; Code, s. 1942; 1871-2, c. 138, s. 12; 1913, c. 150, s. 1.

12. Contractor on municipal building to give bond; action on bond. Every county, city, town or other municipal corporation which lets a contract for the building, repairing or altering any building, public road, or street, shall require the contractor for such work (when the contract price exceeds five hundred dollars) to execute bond with one or more solvent sureties before beginning any

work under said contract, payable to said county, city, town or other municipal corporation, and conditioned for the payment of all labor done on and material and supplies furnished for the said work. The amount of the said bond to be given by said contractor shall be equal to the contract price up to two thousand dollars, and when the contract price is between two and ten thousand dollars the amount of said bond shall be two thousand dollars plus thirty-five per cent of the excess of the contract price over two thousand dollars and under ten thousand; when the contract is over ten thousand dollars, the amount of the said bond shall be two thousand dollars plus twenty-five per cent of the excess of the contract price over the sum of two thousand dollars. If the official of the said county, city, town or other municipal corporation, whose duty it is to take said bond, fails to require the said bond herein provided to be given, he is guilty of a misdemeanor. Any laborer doing work on said building and material man furnishing material therefor and used therein, has the right to sue on said bond, the principal and sureties thereof, in the courts of this state having jurisdiction of the amount of said bond, and any number of laborers or material men whose claims are unpaid for work done and material furnished in said building, have the right to join in one suit upon said bond for the recovery of the amounts due them respectively.

1913, c. 150, s. 2; 1915, c. 191, s. 1.

ART. 3. LIENS ON VESSELS

13. For towage and for supplies at home port. Every vessel, boat, scow, lighter, flat, raft or other water craft is subject to a lien for the payment of towage done by any steamboat or tug boat; and every vessel and boat is subject to a lien for debts due for materials and supplies furnished to such vessel or boat in her home port. These liens shall be filed and enforced as is provided for other liens.

Rev., s. 2040; 1893, c. 357; 1909, c. 147.

14. For labor in loading and unloading. Every vessel, her tackle, apparel and furniture is subject to a lien for all labor done by contractors or others in loading or discharging the cargo of such vessel, and also for all labor done by any subcontractor or laborer employed in discharging or loading any such vessel, when such labor is done under contract with a contractor or stevedore who may be employed by the master, agent or owner of such vessel.

Rev., s. 2041; Code, s. 1804; 1881, c. 356, s. 1.

15. Filing lien; laborer's notice to master. The liens provided for in the preceding sections shall be filed as is provided for other liens. The subcontractor or laborer may give notice to the master, agent or owner of such vessel, that the contractor or stevedore is or will become indebted to him. It shall then be the duty of such master, agent or owner of such vessel to retain out of the amount due to such contractor or stevedore under his contract, as much as is due or claimed by the person giving the notice, and after such notice is given no payment to the contractor or stevedore shall be a credit on or a discharge of the lien herein provided.

Rev., s. 2042; Code, s. 1805; 1881, c. 356, s. 2.

16. Enforcement of lien. The enforcement of such lien shall be by summons against the contractor or stevedore, and also against the master, agent or owner of such vessel, who made the contract with such contractor or stevedore, if over two hundred dollars, to be issued by the clerk of the superior court, and if under two hundred dollars, by a justice of the peace.

Rev., s. 2043; Code, s. 1806; 1881, c. 356, s. 3.

17. Judgment against contractor binds master and vessel. The judgment against the contractor or stevedore shall also be a judgment against the master, agent or owner of such vessel, and also against such vessel itself, her tackle, apparel and furniture, which shall be seized, held and sold under execution for the satisfaction of such judgment.

Rev., s. 2044; Code, s. 1807; 1881, c. 356, s. 4.

18. Liens not to exceed amount due contractor. The sum total of all the liens due to different subcontractors and laborers, performed for any contractor or stevedore under any contract with any master, agent or owner of any vessel, shall not exceed the amount due to the contractor or stevedore at the time of notice given to the owner, agent or master, or the amount due to the contractor or stevedore at the time of the service of summons upon the master, agent or owner when no notice has been given.

Rev., s. 2045; Code, s. 1808; 1881, c. 356, s. 5.

19. Owner to see laborers paid. In all cases where steamships or vessels of any kind are loaded or unloaded or where any work is done in or about the same by the contractors to do the same known as stevedores or "boss stevedores," who in doing the same employ laborers to assist or do the work by the hour, day, week or month, it is the duty of the owner or agent of the vessel to see that the laborers employed in or about the same by the stevedore, contractor or "boss stevedore" are fully paid the wages that may be due such laborer before he makes final settlement with the contractor, stevedore or "boss stevedore."

Rev., s. 2046; 1887, c. 145, s. 1.

20. Owner may refuse to settle with contractor till laborers paid. Any owner or agent referred to in the preceding section may refuse final settlement with the "boss stevedore" or contractor until he or they satisfy the said owner or agent, by written oath if necessary, that the same has been done.

Rev., s. 2047; 1887, c. 145, s. 2.

21. Owner may pay orders for wages. It is lawful for the owner or agent of such vessel to pay off from time to time such orders for wages as may be due and given therefor in favor of the laborers by the contractor or stevedore, which on final settlement may be deducted from the contract price.

Rev., s. 2048; 1887, c. 145, s. 3.

22. Laborer's right of action against owner. Any owner or agent of such vessel who neglects or refuses to comply with the preceding provisions is liable to such laborer in a civil action for the amount of the wages so due him by the contractor, stevedore or "boss stevedore."

Rev., s. 2049; 1887, c. 145, s. 4.

22a. Stevedore's false oath punishable as perjury. If any contractor, stevedore or boss stevedore shall make any false oath or false representation with intent to wrong, cheat or defraud any laborer in violation of the four preceding sections he shall be guilty of a misdemeanor, and on conviction thereof shall be punished as is now prescribed by law for perjury.

Rev., s. 3613; 1887, c. 145, s. 5.

23. Stevedores to be licensed; omission misdemeanor. No person shall engage in the business of loading or unloading vessels upon contract, nor shall any person solicit or make any contract for himself or for any other person to load or unload any vessel either by day's work or by the job, without having previously obtained a license therefor, in the manner provided by law for other licenses for trades and occupations. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court.

Rev., ss. 2650, 3791; 1891, c. 450; 1899, c. 595.

24. Tax and bond on procuring license. Before the sheriff shall issue the said license the applicant shall pay to the sheriff an annual tax of fifty dollars, and shall execute a bond with two or more approved sureties in the sum of two thousand dollars, payable to the state of North Carolina, and conditioned for the faithful performance of his duties and the due and lawful payment of all sums due to laborers assisting in the work of loading or unloading any vessels upon which the applicant may be engaged. And every bond so taken shall be renewed annually, and shall be filed with and preserved by the register of deeds in trust for every person that shall be injured by the breach of his contracts, who may severally bring suit thereon for the damages by each one sustained.

Rev., s. 2051; 1891, c. 450.

ART. 4. WAREHOUSE STORAGE LIENS

25. Liens on goods stored for charges. Every person, firm or corporation who furnishes storage room for furniture, tobacco, goods, wares or merchandise and makes a charge for storing the same, has the right to retain possession of and a lien upon all furniture, tobacco, goods, wares or merchandise until such storage charges are paid.

1913, c. 192, s. 1; 1915, c. 190, s. 1.

26. Enforcement by public sale. If such charges are not paid within ten days after they become due then such person, firm or corporation is authorized to sell said furniture, tobacco, goods, wares or merchandise at the county courthouse door, after first advertising such sale for ten days at said courthouse door and three other public places in said county, or in some newspaper published in said county where the goods or tobacco are stored, and out of the proceeds of such sale to pay the costs and expenses of sale and all costs and charges due for storage, and the surplus, if any, pay to the owner of such furniture, tobacco, goods, wares or merchandise.

1913, c. 192, s. 2; 1915, c. 190, s. 2.

ART. 5. LIENS OF HOTEL, BOARDING- AND LODGING-HOUSE KEEPER

27. Lien on baggage. Every hotel, boarding-house keeper and lodging-house keeper who furnishes board, bed or room to any person has the right to retain possession of and a lien upon all baggage or other property of such person that may have been brought to such hotel, boarding-house or lodging house, until all reasonable charges for such room, bed and board are paid.

Rev., s. 2037; 1899, c. 645, s. 1; 1917, c. 26, s. 1.

28. Baggage may be sold. If such charges are not paid within ten days after they become due then the hotel, boarding-house or lodging-house keeper is authorized to sell said baggage or other property at the courthouse door, after first advertising such sale for ten days at said courthouse door and three other public places in the county, and out of the proceeds of sale to pay the costs and expenses of sale and all costs and charges due for said board, bed or room, and the surplus, if any, pay to the owner of said baggage or other property.

Rev., s. 2038; 1899, c. 645, s. 2; 1917, c. 26, s. 2.

29. Notice of sale. Written notice of such sale shall be served on the owner of such baggage or other property ten days before such sale, if he is a resident of the state; but if he is a nonresident of the state, or if his residence is unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same.

Rev., s. 2039; 1887, c. 645, s. 3.

ART. 6. LIENS OF LIVERY-STABLE KEEPERS

30. Lien for ninety days keep on animals in possession. Every keeper of livery, sale, or boarding stables has a lien upon and the right to retain the possession of every horse, mule, or other animal belonging to the owner or person contracting for the board and keep of any horse, mule, or other animal, for any and all unpaid amounts due for board of any horse, mule, or other animal. This lien shall not attach for amounts accruing for a longer period than ninety days from the reception of such property or from the last full settlement; nor does this lien apply if the property is removed from the possession of said keeper of said livery, sale, or boarding stable.

1911, c. 141, s. 1.

31. Enforcement by public sale. If such charges are not paid within fifteen days after they become due and demand is made for the same, then the keeper of such livery, sale or boarding stable is authorized to sell the property at the county courthouse door, after first advertising said sale for ten days at the county courthouse door and three other public places in said county, and out of the proceeds of such sale to pay the costs and charges due for the board and keep of said horse, mule, or other animal, including the charges for keeping said animal until said sale, and the surplus, if any, pay to the owner of said animal.

1911, c. 141, s. 2.

32. Notice of sale to owner. Written notice of such sale shall be served on the owner of such horse, mule, or other animal ten days before such sale, if he

is a resident of the state; but if he be a nonresident of the state, or if his residence is unknown, the publication of such notice for ten days at the county courthouse door and three other public places in the county shall be sufficient service of the same.

1911, c. 141, s. 3.

ART. 7. LIENS ON COLTS, CALVES AND PIGS

33. Season of sire a lien. In all cases where the owner, or any agent for or employee of the owner, of any mare, jennet, cow or sow, turns the same to a studhorse, jack, bull, or boar, for the purpose of raising colts, calves, or pigs, the price charged for the season of the studhorse, jack, bull, or boar, constitutes a lien on the colt, calf, or pigs, until the price so charged for the season is paid.

Rev., s. 2024; Code, s. 1797; 1885, c. 72; 1887, c. 14; 1872-3, c. 94, s. 1; 1915, c. 18, s. 1.

34. Colts, etc., not exempt from execution for season price. The colt, calf, or pigs, shall not be exempt from execution for the payment of said season price by reason of the operation of the personal property exemption: Provided, the person claiming such lien institutes action to enforce the same within twelve months from the foaling of the colt, dropping the calf, or farrowing of the pigs.

Rev., s. 2025; Code, s. 1798; 1885, c. 72; 1872-3, c. 94, s. 2; 1879, c. 47; 1915, c. 18; 1917, c. 229.

ART. 8. PERFECTING, ENFORCING AND DISCHARGING LIENS

35. Claim of lien to be filed; place of filing. All claims against personal property, of two hundred dollars and under, may be filed in the office of the nearest justice of the peace; if over two hundred dollars or against any real estate or interest therein, in the office of the superior court clerk in any county where the labor has been performed or the materials furnished; but all claims shall be filed in detail, specifying the materials furnished or labor performed, and the time thereof. If the parties interested make a special contract for such labor performed, or if such material and labor are specified in writing, in such cases it shall be decided agreeably to the terms of the contract, provided the terms of such contract do not affect the lien for such labor performed or materials furnished.

Rev., s. 2026; Code, s. 1784; 1869-70, c. 206, s. 4; 1876-7, c. 53, s. 1.

NOTE. For local variation as to justice's jurisdiction in Johnston County, see 1907, c. 148.

36. Time of filing notice. Notice of lien shall be filed, as hereinbefore provided, except in those cases where a shorter time is prescribed, at any time within six months after the completion of the labor or the final furnishing of the materials, or the gathering of the crops.

Rev., s. 2028; Code, s. 1789; 1868-9, c. 117, s. 4; 1876-7, c. 53, s. 2; 1881, c. 65; 1883, c. 101; 1909, c. 32; 1913, c. 150, s. 7.

37. Date of filing fixes priority. The liens created and established by this chapter shall be paid and settled according to the priority of the notice of the lien filed with the justice or the clerk.

Rev., s. 2035; Code, s. 1792; 1868-9, c. 117, s. 11.

38. Laborer's crop lien dates from work begun. The lien for work on crops given by this chapter shall be preferred to every other lien or incumbrance which attached to the crops subsequent to the time at which the work was commenced.

Rev., s. 2034; Code, s. 1782; 1869-70, c. 206, s. 2.

39. Duly filed claims of prior creditors not affected. Nothing in this chapter shall be construed to affect the rights of any person to whom any debt may be due for any work done for which priority of claim is filed with the proper officer.

Rev., s. 2036; Code, s. 1786; 1869-70, c. 206, s. 6.

40. Action to enforce lien. Action to enforce the lien created must be commenced in the court of a justice of the peace, and in the superior court, according to the jurisdiction thereof, within six months from the date of filing the notice of the lien. But if the debt is not due within six months but becomes due within twelve months, suit may be brought or other proceedings instituted to enforce the lien in thirty days after it is due.

Rev., s. 2027; Code, ss. 1785, 1790; 1868-9, c. 117, s. 7; 1869-70, c. 206, s. 5; 1876-7, c. 250; 1876-7, c. 251.

41. When attachment available to plaintiff. In all cases where the owner or employer attempts to remove the crop, houses or appurtenances from the premises, without the permission, or with the intent to defraud the lienee of his lien, the claimant may have a remedy by attachment.

Rev., s. 2031; Code, s. 1795; 1868-9, c. 117, s. 14.

42. Defendant entitled to counterclaim. The defendant in any suit to enforce the lien is entitled to any setoff arising between the contractors during the performance of the contract, or counterclaim allowed by law.

Rev., s. 2032; Code, s. 1788; 1869-70, c. 206, s. 8.

43. Execution. Upon judgment rendered in favor of the claimant, an execution for the collection and enforcement thereof shall issue in the same manner as upon other judgments in actions arising on contract for the recovery of money only, except that the execution shall direct the officer to sell the right, title and interest which the owner had in the premises or the crops thereon, at the time of filing notice of the lien, before such execution shall extend to the general property of the defendant.

Rev., s. 2029; Code, s. 1791; 1868-9, c. 117, s. 9.

44. No justice's execution against land. No execution issued by a justice of the peace, under this chapter, shall be enforced against real estate or any interest therein, but justices' judgments may be docketed on the judgment docket of superior court for the purpose of selling such estate or any interest therein.

Rev., s. 2030; Code, s. 1794; 1868-9, c. 117, s. 13.

45. Discharge of liens. All liens created by this chapter may be discharged as follows:

1. By filing with the justice or clerk a receipt or acknowledgment, signed by the claimant, that the lien has been paid or discharged.

2. By depositing with the justice or clerk money equal to the amount of the claim, which money shall be held by said officer for the benefit of the claimant.

3. By an entry in the lien docket that the action on the part of the claimant to enforce the lien has been dismissed, or a judgment rendered against the claimant in such action.

4. By a failure of the claimant to commence an action for the enforcement of the lien within six months from the notice of lien filed.

Rev., s. 2033; Code, s. 1793; 1868-9, c. 117, s. 12.

ART. 9. AGRICULTURAL LIENS FOR ADVANCES

46. Lien on crops for advances. If any person makes any advance either in money or supplies to any person who is engaged in or about to engage in the cultivation of the soil, the person making the advance is entitled to a lien on the crops made during the year upon the land in the cultivation of which the advance has been expended, in preference to all other liens, except the laborer's and landlord's liens, to the extent of such advance. Before any advance is made an agreement in writing for the advance shall be entered into, specifying the amount to be advanced, or fixing a limit beyond which the advance, if made from time to time during the year, shall not go; and this agreement shall be registered in the office of the register of the county where the person advanced resides within thirty days after its date.

Rev., s. 2052; Code, s. 1799; 1893, c. 9; 1866-7, c. 1, s. 1; 1872-3, c. 133, s. 1.

47. Contract for advances by mortgagor in possession. The preceding section shall apply to all contracts made for the advancement of money and supplies, or either, for the purposes herein specified by mortgagors or trustors who may be in possession of the lands mortgaged or conveyed in trust at the time of the making of the contract for such advancement of money or supplies, either in case the debts secured in said mortgage or deed of trust is due or not.

Rev., s. 2053; 1889, c. 476.

48. Price to be charged for articles advanced limited. In order to be entitled to the benefits of the lien on crops in favor of landlords and other persons advancing supplies under the article, Agricultural Tenancies, of the chapter, Landlord and Tenant, and under the present article, or on a chattel mortgage on crops, such landlord or person shall charge for such supplies a price or prices of not more than ten per cent over the retail cash price or prices of the article or articles advanced, and the said ten per cent shall be in lieu of interest on the debt for such advances. If more than ten per cent over the retail cash price is charged on any advances made under the lien or mortgage given on the crop, then the lien or mortgage shall be null and void as to the article or articles upon which such overcharge is made. At the time of each sale there shall be delivered to the purchaser a memorandum showing the cash prices of the articles advanced.

1917, c. 134, s. 1.

49. "Cash prices" defined and determined. In the case of retail merchants, the retail cash price or prices shall be the regular cash price or prices charged by the same merchant to cash customers for the same article or articles in like quantities at the same time. In the case of advances of supplies by landlords or

other persons not engaged in business as retail merchants, or by retail merchants who have no regular cash prices, if the prices charged are called into question by the purchaser the retail cash price or prices of the supplies advanced may be determined by taking the average between the cash price or prices for the same class or classes of goods of two neighboring merchants, one selected by the landlord or other person making the advance and the other by the one to whom the advance is made.

1917, c. 134, s. 2.

50. Person advanced not estopped by agreement. No agreement or understanding between the parties as to the price or prices to be charged shall work an estoppel against the person to whom supplies have been advanced from showing that the price or prices charged were in fact more than ten per cent over the average retail cash price or prices in that locality at the time the advance or advances were made. If the price or prices charged by the merchants or landlord were in fact more than ten per cent then the lien shall be null and void as to the article or articles upon which such overcharge is made.

1917, c. 134, s. 2.

51. Commission in lieu of interest, where advance in money. Any person, firm, or corporation, including any bank or credit union, making any advancement in money to any person for the purpose of enabling such person to cultivate a crop, and taking as sole security for the advance so made a lien or mortgage on the crops to be cultivated and the personal property of the person to whom the advances are made, may charge, in lieu of interest, a commission of not more than ten per cent of the amount of money actually advanced: Provided, that money advanced under the provisions of this section shall be advanced in installments agreed upon at the time of the contract, and the ten per cent commission herein allowed shall not be deducted, but shall be added to the amount of money agreed to be advanced.

1917, c. 134, s. 3.

52. Disposition of commission, where advanced by credit union. In case the money is advanced by a credit union, the funds derived from the ten per cent commission allowed in the preceding section shall be used to pay such interest as the union may pay for the money borrowed by it for the benefit of its members, and to cover losses sustained by the union on account of loans made to members, and to further cover any reasonable expenses incurred by the union in connection with the loans made to members, and the balance of said fund shall be returned to the borrowers at the end of each year.

1917, c. 134, s. 4.

53. Purchasers for value protected. All liens or mortgages made under the provisions of this article shall be valid for their face value in the hands of purchasers for value and before maturity, even though the charges made are in excess of those allowed herein; but in such cases the party to whom the advances are made has the right to recover from the party making the advances any sum he may be compelled to pay a third party in excess of the charges allowed by this act.

1917, c. 134, ss. 5, 6.

54. Crop seized and sold to preserve lien. If the person making such advances makes an affidavit before the clerk of the superior court of the county in which such crops are, that the amount secured by said lien for such advances, or any part thereof, is due and unpaid, that the person to whom such advances have been made, or any other person having the said crop in his possession, is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it is lawful for him to issue his warrant, directed to any of the sheriffs of this state, requiring them to seize the said crop, and, after due notice, sell the same for cash and pay over the net proceeds thereof, or so much thereof as may be necessary in the extinguishment of the amount then due. This proceeding shall not affect the rights of landlords or laborers.

Rev., s. 2054; Code, s. 1800; 1893, c. 9; 1866-7, c. 1, s. 2; 1872-3, c. 133, s. 2; 1883, c. 88.

55. Lienor's claim disputed; proceeds of sale held; issue made for trial. If the person to whom the advances have been made, or who claims an interest in the crops, within thirty days after such sale has been made, gives notice in writing to the sheriff, accompanied with an affidavit, to the effect that the amount claimed is not justly due, it is the duty of the sheriff to hold the proceeds of such sale subject to the decision of the court upon an issue which shall be made up and set for trial at the next succeeding term of the superior court for the county in which the person to whom such advances have been made resides.

Rev., s. 2054; Code, s. 1800; 1866-7, c. 1, s. 2; 1872-3, c. 133, s. 2; 1883, c. 88; 1893, c. 9.

56. Local: Short form of liens. For the purpose of creating a valid agricultural lien under the preceding sections for supplies to be advanced and also to constitute a valid chattel mortgage as additional security thereto, and to secure a preexisting debt, the following or a substantially similar form shall be deemed sufficient, and for those purposes legally effective, in the counties of Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Davie, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pender, Pamlico, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Transylvania, Tyrrell, Union, Vance, Wake, Watauga, Washington, Wayne and Wilson:

North Carolina, _____ County.

Whereas, _____ ha_____ agreed to make advances to _____ for the purpose of enabling said _____ to cultivate the lands herein-after described during the year 19____, the amount of said advances not to exceed _____ dollars; and,

Whereas, said _____ is indebted to said _____ in the further sum of _____ dollars now due; now, therefore, in order to secure the payment of the same the said _____ do_____ hereby convey to said _____ all the crops of every description which may be raised during the year 19____ on the following lands in _____ County, North Carolina, _____ Township, adjoining the lands of _____ and also the following other property, viz.: _____

And if by the _____ day of _____, 19____, said _____ fail to pay said indebtedness, then said _____ may foreclose this lien as

provided in section two thousand and fifty-four or otherwise, and may sell said crops and other property after ten days notice posted at the courthouse door and three other public places in said county, and apply the proceeds to the payment of said indebtedness and all costs and expenses of executing this conveyance, and pay the surplus to said _____, and the said _____ hereby represents that said crops and other property are the absolute property of _____ and free from incumbrance. _____
 Witness _____ hand _____ and seal, _____ this the _____ day of _____, 19____
 Witness : _____

_____, owner of the lands described in the foregoing instrument, in consideration of the advances to be made, as therein provided, do____ hereby agree to waive and release my lien as landlord upon said crops to the extent of said advances made to said _____.

This the _____ day of _____, 19____

Witness : _____ (Seal.)

North Carolina, _____ County.

The due execution of the foregoing instrument was this day proven before me by the oath and examination of _____, the subscribing witness thereto.

This the _____ day of _____, 19____

_____ (Seal.)

North Carolina, _____ County.

The foregoing certificate of _____, a _____ of _____ County, is adjudged to be correct. Let the instrument with the certificate be registered.

This the _____ day of _____, 19____

_____, Clerk Superior Court.

Rev., s. 2055; 1899, cc. 17, 247; 1901, cc. 329, 704; 1903, c. 489; 1905, cc. 226, 319; 1907, c. 843; 1909, c. 532; P. L. 1913, c. 49.

57. Local: Rights on lienor's failure to cultivate. If any person in the counties mentioned in the preceding section, after executing a lien as aforesaid for advances, fails to cultivate the lands described therein, or does any other act calculated to impair the security therein given, then the person to whom the lien was executed is relieved from any further obligation to furnish supplies, and the debts and advances theretofore made become due and collectible at once, and the person to whom the instrument was executed may proceed to take possession of, cultivate and harvest said crops, and to sell the other property described therein. It is not necessary to incorporate such power in the instrument, but this section is sufficient authority for the same. The sale of any property described in any instrument executed under the provisions of this chapter may be made at any place in the county where such property is situated after ten days notice published at the courthouse door and three other public places in said county.

Rev., s. 2056; 1899, c. 17, s. 3; 1901, c. 329, s. 3.

58. Local: Commissioners to furnish blank records. The board of commissioners of the said counties shall have record books made with the aforesaid forms printed therein, and the cost of said books and of the printing of said forms, and of such other said books as may be hereafter required, shall be paid by the respective counties, and furnished to the register of deeds.

Rev., s. 2057; 1899, c. 17, s. 4; 1901, c. 329, s. 4.

CHAPTER 50

MARRIAGE

ART. 1. GENERAL PROVISIONS.

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2. Capacity to marry.
3. Want of capacity; void and voidable marriages.
4. Prohibited degrees of kinship.
5. Marriages between slaves validated.

ART. 2. MARRIAGE LICENSE.

6. Solemnization without license unlawful.
7. Penalty for solemnizing without license.
8. License issued by register of deeds.
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9. Form of license.
10. Penalty for issuing license unlawfully.
11. Record of licenses and returns; originals filed.
12. Penalty for failure to record.

ART. 1. GENERAL PROVISIONS

1. Requisites of marriage; solemnization. The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, or of a justice of the peace, and the consequent declaration by such minister or officer that such persons are man and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves shall not be interfered with by the provisions of this chapter: Provided further: marriages solemnized before March 9, 1909, by ministers of the gospel licensed but not ordained are validated from their consummation.

Rev., s. 2081; Code, s. 1812; 1871-2, c. 193, s. 3; 1909, c. 704, s. 2; 1909, c. 897.

2. Capacity to marry. All unmarried male persons of sixteen years, or upwards, of age, and all unmarried females of fourteen years, or upwards, of age, may lawfully marry, except as hereinafter forbidden.

Rev., s. 2082; Code, s. 1809; R. C., c. 68, s. 14; 1871-2, c. 193.

3. Want of capacity; void and voidable marriages. All marriages between a white person and a negro or Indian, or between a white person and person of negro or Indian descent to the third generation, inclusive, or between a Croatan Indian and a negro, or between a Croatan Indian and a person of negro descent to the third generation, inclusive, or between any two persons nearer of kin than first cousins, or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time physically impotent, or is incapable of contracting from want of will or understanding, shall be void: Provided, double first cousins may not marry and: Provided

further, that no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except for that one of the parties was a white person, and the other a negro or Indian, or of negro or Indian descent to the third generation, inclusive, and for bigamy.

Rev., s. 2083; Code, s. 1810; R. C., c. 68, ss. 7, 8, 9; 1871-2, c. 193, s. 2; 1887, c. 245; 1917, c. 135.

4. Prohibited degrees of kinship. When the degree of kinship is estimated with a view to ascertain the right of kinspeople to marry, the half-blood shall be counted as the whole-blood: Provided, that nothing herein contained shall be so construed as to invalidate any marriage heretofore contracted in case where by counting the half-blood as the whole-blood the persons contracting such marriage would be nearer of kin than first cousins; but in every such case the kinship shall be ascertained by counting relations of the half-blood as being only half so near kin as those of the same degree of the whole-blood.

Rev., s. 2084; Code, s. 1811; 1879, c. 78.

5. Marriages between slaves validated. Persons, both or one of whom were formerly slaves, who have complied with the provisions of section five, chapter forty, of the acts of the general assembly, ratified March tenth, one thousand eight hundred and sixty-six, shall be deemed to have been lawfully married.

Rev., s. 2085; Code, s. 1842; 1866, c. 40, s. 5.

ART. 2. MARRIAGE LICENSE

6. Solemnization without license unlawful. No minister or officer shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there is delivered to him a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage is intended to take place, or by his lawful deputy.

Rev., s. 2086; Code, s. 1813; 1871-2, c. 193, s. 4.

7. Penalty for solemnizing without license. Every minister or officer who marries any couple without a license being first delivered to him, as required by law, or after the expiration of such license, or who fails 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 sues therefor, and he shall also be guilty of a misdemeanor.

Rev., ss. 2087, 3372; Code, s. 1817; R. C., c. 68, ss. 6, 13; 1871-2, c. 193, s. 8.

8. License issued by register of deeds. Every register of deeds shall, upon application, issue a license for the marriage of any two persons, if it appears to him probable that there is no legal impediment to such marriage. Where either party to the proposed marriage is under eighteen years of age, and resides with the father, or mother, or uncle, or aunt, or brother, or elder sister, or resides at a school, or is an orphan and resides with a guardian, the register shall not issue a license for such marriage until the consent in writing of the relation with whom such infant resides, or, if he or she resides at a school, of the person by whom said

infant was placed at school, and under whose custody and control he or she is, is delivered to him, and such written consent shall be filed and preserved by the register. When it appears to the register of deeds that it is probable there is a legal impediment to the marriage of any person for whom a license is applied he has power to administer to the person so applying an oath touching the legal capacity of said parties to contract a marriage.

Rev., s. 2088; Code, s. 1814; 1887, c. 331; 1871-2, c. 193, s. 5.

8a. Obtaining license by false representation, misdemeanor. If any person shall obtain a marriage license for the marriage of persons under the age of eighteen years by misrepresentation or false pretenses, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days or both at the discretion of the court.

Rev., s. 3371; 1885, c. 346.

9. Form of license. License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by his church, 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 (race, 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 ____ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties is under eighteen years of age, the license shall here contain the following:) And the written consent of G. H., father (or mother, etc., as the case may be) to the proposed marriage having been filled with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within sixty days from the date hereof, to celebrate the proposed marriage at any place within the said county. You are required, within sixty days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars to the use of any person who shall sue for the same.

Issued this ____ day of _____, 19____

L. M.,

Register of Deeds of _____ County.

Every register of deeds shall designate in every marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white," "colored" or "Indian" as the case may be. The certificate shall be filled up and signed by the minister or officer celebrating the marriage, and also be signed by one or more witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N. O., an ordained or authorized 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 _____, 19____, at the house of P. R., in (here name the town, if any, the township and county), according to law.

Witness present at the marriage:

_____, N. O.

S. T., of (here give residence).

Rev., s. 2089; Code, s. 1815; 1899, c. 541, ss. 1, 2; 1871-2, c. 193, s. 6; 1909, c. 704, s. 3; 1917, c. 38.

10. Penalty for issuing license unlawfully. Every register of deeds who knowingly or without reasonable inquiry, personally or by deputy, issues 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 law, shall forfeit and pay two hundred dollars to any parent, guardian, or other person standing in loco parentis who sues for the same.

Rev., s. 2090; Code, s. 1816; 1895, c. 387; 1901, c. 722; R. C., c. 68, s. 13; 1871-2, c. 193, s. 7.

11. Record of licenses and returns; originals filed. 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 _____, 19____, to the ____ day of _____, 19____, both inclusive.

In said book shall be entered alphabetically, according to the names of the proposed husbands, the substance of each marriage license and 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 race and color; in the fifth, the name in full of the intended wife, with her residence; in the sixth, her age; in the seventh, her race and 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.

Rev., s. 2091; Code, s. 1818; 1899, c. 541, s. 3; 1871-2, c. 193, s. 9.

12. Penalty for failure to record. Any register of deeds who fails to record, in the above manner above prescribed, the substance of any marriage license issued by him, or who fails to record, in the manner above prescribed, the substance of any return made thereon, within ten days after such return made, shall forfeit and pay two hundred dollars to any person who sues for the same.

Rev., s. 2092; Code, s. 1819; 1871-2, c. 193, s. 10.

CHAPTER 51

MARRIED WOMEN

ART. 1. POWERS AND LIABILITIES OF MARRIED WOMEN.

1. Property of married woman secured to her.
2. Capacity to contract.
3. Capacity to draw checks.
4. Conveyance or lease of wife's land requires husband's joinder.
5. Husband cannot convey, etc., wife's land without her consent; not liable for his debts.
6. Capacity to make will.
7. May insure husband's life.
8. Earnings and damages from personal injury are wife's property.
9. Savings from separate property; liability of husband for income.
10. Contracts of wife with husband affecting corpus or income of estate.
11. Contracts between husband and wife generally; releases.
12. Wife's antenuptial contracts and torts.
13. For wife's torts, husband jointly liable.
14. Estate by the curtesy.
15. In actions against wife, husband served and may defend.
16. Discharge of husband from defense; liability for costs.

ART. 2. ACTS BARRING RECIPROCAL PROPERTY RIGHTS OF HUSBAND AND WIFE.

17. Divorce a vinculo and felonious slaying a bar.
18. Wife's elopement or divorce a mensa at husband's suit a bar.
19. Husband's living in adultery, etc., or divorce a mensa at wife's suit a bar.

ART. 3. FREE TRADERS.

20. Requisites of writing to make her trader.
21. Writing effective from registration.
22. Certified copy as evidence.
23. Revocation by entry on record and publication.
24. Separation by divorce or deed; husband non compos.
25. Abandonment by husband.

ART. 1. POWERS AND LIABILITIES OF MARRIED WOMEN

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

Rev., s. 2093; Const., Art. X, s. 6.

NOTE. For purchase money mortgage executed by husband alone, see Widows, s. 6.

2. **Capacity to contract.** Subject to the provisions of section 10 of this chapter, regulating contracts of wife with husband affecting corpus or income of estate, every married woman is authorized to contract and deal so as to affect her real and personal property in the same manner and with the same effect as if she were unmarried, but no conveyance of her real estate shall be valid unless made with the written assent of her husband as provided by section six of article ten of the constitution, and her privy examination as to the execution of the same taken and certified as now required by law.

Rev., s. 2094; Code, s. 1826; 1871-2, c. 193, s. 17; 1911, c. 109.

3. Capacity to draw checks. Bank deposits made by or in the name of a married woman shall be paid only to her or on her order, and her check, receipt or acquittance shall be valid in law to fully discharge the bank from any and all liability on account thereof.

Rev., s. 2095; 1891, c. 221, s. 30; 1893, c. 344.

4. Conveyance or lease of wife's land requires husband's joinder. No lease or agreement for a lease or sublease or assignment by any married woman, not a free trader, of her lands or tenements, or chattels real, to run for more than three years, or to begin in possession more than six months after its execution, or any conveyance of any freehold estate in her real property, shall be valid, unless the same be executed by her and her husband, and proved or acknowledged by them, and her free consent thereto, appear on her examination separate from her husband, as is now or may hereafter be required by law in the probate of deeds of *femes covert*.

Rev., s. 2096; Code, s. 1834; 1871-2, c. 193, s. 26.

5. Husband cannot convey, etc., wife's land without her consent; not liable for his debts. No real estate belonging at the time of marriage to females, married since the third Monday of November, one thousand eight hundred and forty-eight, nor any real estate by them subsequently acquired, nor any real estate acquired on and since the first day of March, one thousand eight hundred and forty-nine, by *femes covert*, who were such on the said third Monday of November, one thousand eight hundred and forty-eight, shall be subject to be sold or leased by the husband for the term of his own life or any less term of years, except by and with the consent of his wife, first had and obtained, to be ascertained and effectuated by deed and privy examination, according to the rules required by law for the sale of lands belonging to *femes covert*. And no interest of the husband whatever in such real estate shall be subject to sale to satisfy any execution obtained against him; and every such sale is hereby declared null and void.

Rev., s. 2097; Code, s. 1840; R. C., c. 56; 1848, c. 41.

6. Capacity to make will. Every married woman has power to devise and bequeath her real and personal estate as if she were a *feme sole*; and her will shall be proved as is required of other wills.

Rev., s. 2098; Code, s. 1839; 1871-2, c. 193, s. 31.

7. May insure husband's life. Any *feme covert* in her own name, or in the name of a trustee with his assent, may cause to be insured for any definite time the life of her husband, for her sole and separate use, and she may dispose of the interest in the same by will, notwithstanding her coverture.

Rev., s. 2099.

8. Earnings and damages from personal injury are wife's property. The earnings of a married woman by virtue of any contract for her personal service, and any damages for personal injuries, or other tort sustained by her, can be recovered by her suing alone, and such earnings or recovery shall be her sole and separate property as fully as if she had remained unmarried.

1913, c. 13, s. 1.

9. Savings from separate property; liability of husband for income. The savings from the income of the separate estate of the wife are her separate property. But no husband who, during the coverture (the wife not being a free trader under this chapter), has received, without objection from his wife, the income of her separate estate, shall be liable to account for such receipt, for any greater time than the year next preceding the date of a summons issued against him in an action for such income, or next preceding her death.

Rev., s. 2100; Code, s. 1837; 1871-2, c. 193, s. 29.

10. Contracts of wife with husband affecting corpus or income of estate. No contract between a husband and wife made during coverture shall be valid to affect or change any part of the real estate of the wife, or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, or to impair or change the body or capital of the personal estate of the wife, or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, unless such contract is in writing, and is duly proved as is required for conveyances of land; and upon the examination of the wife separate and apart from her husband, as is now or may hereafter be required by law in the probate of deeds of *femes covert*, it shall appear to the satisfaction of such officer that the wife freely executed such contract, and freely consented thereto at the time of her separate examination, and that the same is not unreasonable or injurious to her. The certificate of the officer shall state his conclusions, and shall be conclusive of the facts therein stated. But the same may be impeached for fraud as other judgments may be.

Rev., s. 2107; Code, s. 1835; 1871-2, c. 193, s. 27.

11. Contracts between husband and wife generally; releases. Contracts between husband and wife not forbidden by the preceding section and not inconsistent with public policy are valid, and any persons of full age about to be married, and, subject to the preceding section, any married persons may release and quitclaim dower, tenancy by the curtesy, and all other rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estates so released.

Rev., s. 2108; Code, s. 1836; 1871-2, c. 193, s. 28.

12. Wife's antenuptial contracts and torts. The liability of a *feme sole* for any debts owing, or contracts made or damages incurred by her before her marriage shall not be impaired or altered by such marriage. No man by marriage shall incur any liability for any debts owing, or contracts made, or for wrongs done by his wife before the marriage.

Rev., ss. 2101, 2106; Code, ss. 1822, 1823; 1871-2, c. 193, ss. 13, 14.

13. For wife's torts, husband jointly liable. Every husband living with his wife is jointly liable with her for all damages accruing from any tort committed by her and for all costs and fines incurred in any criminal proceeding against her.

Rev., s. 2105; Code, s. 1833; 1871-2, c. 193, s. 25.

14. Estate by the curtesy. Every man who has married, or shall marry a woman, and by her has issue born alive, shall, after her death intestate as to the

lands, tenements and hereditaments hereinafter mentioned, be entitled to an estate as tenant by the curtesy during his life, in all the lands, tenements and hereditaments whereof his said wife was beneficially seized in deed during the coverture, wherein the said issue was capable of inheriting, whether the said seizin was of a legal or of an equitable estate; except that when the wife has obtained a divorce a mensa et thoro, and is not living with her husband at her death, or when the husband has abandoned his wife, or has maliciously turned her out of doors, and they are not living together at her death; or if the husband has separated himself from his wife, and is living in adultery at her death, he shall not be tenant by the curtesy of her lands, tenements and hereditaments.

Rev., s. 2102; Code, s. 1838; 1871-2, c. 193, s. 30.

15. In actions against wife, husband served and may defend. In all actions brought against a married woman, who is not a free trader (as hereinafter provided for), the summons shall be served upon the husband also, and on motion to the court in which the action is pending, he may be allowed, with her consent, to defend the same in her name and behalf, but no judgment shall be given against him, upon any liability claimed against her arising before the marriage or upon any contract made by her alone after her marriage.

Rev., s. 2103; Code, s. 1824; 1871-2, c. 193, s. 15.

16. Discharge of husband from defense; liability for costs. When a husband is allowed to defend for his wife, he may be ordered to pay costs for any misconduct, and may be discharged from the conduct of her defense, if it appears to the court that his defense is not bona fide in her interest.

Rev., s. 2104; Code, s. 1825; 1871-2, c. 193, s. 16.

ART. 2. ACTS BARRING RECIPROCAL PROPERTY RIGHTS OF HUSBAND AND WIFE

17. Divorce a vinculo and felonious slaying a bar. When a marriage is dissolved a vinculo, the parties respectively, or when either party is convicted of the felonious slaying of the other or of being accessory before the fact of such felonious slaying, the party so convicted, shall thereby lose all his or her right to an estate by the curtesy, or dower, and all right to any year's provision or distributive share in the personal property of the other, and all right to administer on the estate of the other, and every right and estate in the real or personal estate of the other party, which by settlement before or after marriage was settled upon such party in consideration of the marriage only.

Rev., s. 2109; Code, s. 1843; 1871-2, c. 193, s. 42.

NOTE. See also, Administration, s. 10.

18. Wife's elopement or divorce a mensa at husband's suit a bar. If a married woman elopes with an adulterer, or willfully and without just cause abandons her husband and refuses to live with him, and is not living with her husband at his death, or if a divorce from bed and board is granted on the application of the husband, she shall thereby lose all right to dower in the lands and tenements of her husband, and also all right to a year's provision, and to a distributive share from the personal property of her husband, and all right to administration on his estate, and also all right and estate in the property of her husband, settled

upon her upon the sole consideration of the marriage, before or after marriage; and such elopement may be pleaded in bar of any action, or proceeding, for the recovery of such rights and estates; and in case of such elopement, abandonment, or divorce, the husband may sell and convey his real estate as if he were unmarried, and the wife shall thereafter be barred of all claim and right of dower therein.

Rev., s. 2110; Code, s. 1844; 1893, c. 153, ss. 1, 2, 3; 1871-2, c. 193, s. 44.

NOTE. See also, Administration, ss. 10-13.

19. Husband's living in adultery, etc., or divorce a mensa at wife's suit a bar. If a husband separates from his wife and lives in adultery, or willfully and without just cause abandons his wife and refuses to live with her, and such conduct on his part is not condoned by her, or if a divorce from bed and board is granted on the application of the wife, he shall thereby lose all right to curtesy in the real property of the wife, and also all right and estate of whatever character in and to her personal property, as administrator, or otherwise; and also any right and estate in the property of the wife which may have been settled upon him solely in consideration of the marriage by any settlement before, or after marriage, and in case of such adultery and abandonment or divorce, the wife may sell and convey her real property as if she were unmarried, and the husband, if there has been no condonation at the time of the conveyance, shall thereafter be barred of all claim and right to curtesy in such real property.

Rev., s. 2111; Code, s. 1845; 1893, c. 153, s. 4; 1871-2, c. 193, s. 45.

NOTE. See Divorce and Alimony.

ART. 3. FREE TRADERS

20. Requisites of writing to make her free trader. Every married woman of the age of twenty-one years or upwards, with the consent of her husband, may become a free trader in the manner following:

1. By antenuptial contract, proved and registered, as hereinafter required; or,
2. By her and her husband signing a writing in the following or some equivalent form:

A. B., of the age of twenty-one years or upwards, wife of C. D., of _____ county, with his consent, testified by his signature hereto, enters herself as a free trader from the date of the registration hereof.

(Signed)

A. B.

C. D.

Witness: E. F.

Registered this _____ day of _____, 19____

The said writing may be proved by the subscribing witness or acknowledged by the parties before any officer authorized to take the probate of deeds, and shall be filed and registered in the office of the register of deeds for the county in which the woman proposes to have her principal or only place of business.

Rev., s. 2112; Code, s. 1827; 1871-2, c. 193, ss. 18, 19.

21. Writing effective from registration. From the time of the registration of the writing mentioned in the preceding section, the married woman therein mentioned shall be a free trader, and authorized to contract and deal as if she were a feme sole.

Rev., s. 2113; Code, s. 1828; 1871-2, c. 193, s. 20.

22. Certified copy as evidence. A copy of such writing, duly proved and registered and certified by the register of the county in which the same is registered, is admissible in evidence as certified copies of registered deeds are or may be allowed to be.

Rev., s. 2114; Code, s. 1829; 1871-2, c. 193, s. 21.

23. Revocation by entry on record and publication. The right of a married woman to act as a free trader may be ended at any time by an entry by her, or by her attorney, in the margin of the registration of the writing above mentioned, to the effect that from the date of such marginal entry, she ceases so to act, and by publication to that effect weekly for three weeks in some newspaper published in the county in which she had her principal or only place of business, or if there is none so published, then in any other convenient newspaper. But such entry and publication shall not impair any liabilities incurred previously thereto, nor prevent such married woman from becoming liable afterwards to any person whom she may fraudulently induce to deal with her as a free trader.

Rev., s. 2115; Code, s. 1830; 1871-2, c. 193, s. 22.

24. Separation by divorce or deed; husband non compos. Every woman who is living separate from her husband, either under a judgment of divorce by a competent court, or under a deed of separation, executed by said husband and wife, and registered in the county in which she resides, or whose husband has been declared an idiot or a lunatic, shall be deemed and held, from the docketing of such judgment, or from the registration of such deed, or from the date of such idiocy or lunacy and during its continuance, a free trader, and may convey her personal estate and her real estate without the assent of her husband.

Rev., s. 2116; Code, s. 1831; 1871-2, c. 193, s. 23; 1880, c. 35.

25. Abandonment by husband. Every woman whose husband abandons her, or maliciously turns her out of doors, shall be deemed a free trader, so far as to be competent to contract and be contracted with, and to bind her separate property, but the liability of her husband for her reasonable support shall not thereby be impaired. She may also convey her personal estate and her real estate without the assent of her husband.

Rev., s. 2117; Code, s. 1832; 1871-2, c. 193, s. 24.

NOTE. For married women trading without disclosing name, see Partnership, Art. 3, s. 34.

For marriage settlements, see Conveyances, ss. 18, 19, and this chapter, s. 11.

For judgment entered against married women, see Civil Procedure, ss. 206, 207.

CHAPTER 52

MILLS

ART. 1. PUBLIC MILLS.

1. Public mills defined.
2. Miller to grind according to turn; tolls regulated.
3. Measures to be kept; tolls by weight or measure.
- 3a. Keeping false toll-dishes misdemeanor.

ART. 2. CONDEMNATION FOR MILL BY OWNER OF ONE BANK OF STREAM.

4. Special proceedings; parties; summons.
5. Commissioners to be appointed.
6. Meeting to be appointed and notified; witnesses examined.
7. Oath and duty of commissioners.
8. Contents of commissioners' report.
9. When building not to be allowed.
10. Power of court on return of report.
11. Time for beginning and building mill; to be kept up.
12. Rebuilding mill after destruction.

ART. 3. CONDEMNATION FOR RACES, WATERWAYS, ETC., BY OWNER OF MILL OR MILLSITE.

13. Special proceedings; summons.
14. Contents of petition.
15. Commissioners to be appointed.
16. Oath and duty of commissioners.
17. Assessment of damages.
18. When commissioners' report not to be affirmed.
19. When petitioner may enter on lands.
20. Owner of mills and millsites protected.
21. Report to be registered.
22. Fees of appraisers.
- 22a. Obstructing mill races or dams a misdemeanor.

ART. 4. RECOVERY OF DAMAGES FOR ERECTION OF MILL.

23. Action in superior court; procedure.
24. When dams abated as nuisances.
25. Judgment for annual sum as damages.
26. Final judgment; costs and execution.

ART. 1. PUBLIC MILLS

1. Public mills defined. Every water grist-mill, steam mill, or wind-mill, that grinds for toll, is a public mill.

Rev., s. 2119; Code, s. 1846; R. C., c. 71, s. 1; 1777, c. 122, s. 1.

2. Miller to grind according to turn; tolls regulated. All millers of public mills shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one-eighth part of the Indian corn and wheat, and one-fourteenth part for chopping grain of any kind; and every miller and keeper of a mill making default therein shall, for each offense, forfeit and pay five dollars to the party injured: Provided, that the owner may grind his own grain at any time.

Rev., s. 2120; Code, s. 1847; R. C., c. 71, s. 6; 1777, c. 122, s. 10; 1793, c. 402; 1905, c. 694; 1907, c. 367.

3. Measures to be kept; tolls by weight or measure. All millers shall keep in their mills the following measures, namely, a half-bushel and peck of full

measure, and also proper toll-dishes for each measure; but the toll allowed by law may be taken by weight or measure at the option of the miller and customer.

Rev., s. 2121; Code, s. 1848; 1885, c. 202; R. C., c. 71, s. 7; 1777, c. 122, s. 11.

3a. Keeping false toll-dishes misdemeanor. If any owner, by himself or servant, keeping any mill, shall keep any false toll-dishes, he shall be guilty of a misdemeanor.

Rev., s. 3679; Code, s. 1848; R. C., c. 71, s. 7; 1777, c. 122, s. 11.

ART. 2. CONDEMNATION FOR MILL BY OWNER OF ONE BANK OF STREAM

4. Special proceedings; parties; summons. Any person wishing to build a water mill, who has land on only one side of a stream, shall issue a summons returnable to the superior court of the county in which the land sought to be condemned, or some part of it, lies, against the persons in possession and the owners of the land on the opposite side of the stream, and against such others as have an interest in the controversy, and the procedure shall be as is provided in other special proceedings, except so far as the same may be modified by this chapter.

Rev., s. 2122; Code, s. 1849; 1868-9, c. 158, s. 1.

5. Commissioners to be appointed. If no just cause is shown against the building of such mill, the court shall appoint three freeholders, one of whom shall be chosen by the plaintiff, another by the defendants, and the third by the court, or if the plaintiff or defendants refuse or fail, or unreasonably delay to name a commissioner, the court shall name one in lieu of such delinquent party. These commissioners may be changed from time to time by permission of the court for just cause shown.

Rev., s. 2123; Code, s. 1850; 1868-9, c. 158, s. 2.

6. Meeting to be appointed and notified; witnesses examined. The third commissioner shall cause the others to be notified of the time and place of meeting, and shall preside at their meetings. They may, if necessary, summon and examine witnesses, who shall be sworn by the presiding commissioner. Any commissioner named by or for either of the parties, who, without just cause, fails to attend any meeting notified by the president, shall forfeit and pay to the opposite party fifty dollars; and if the president, in like manner, unreasonably delays to notify the other commissioners of a meeting, or fails to attend one that is appointed, he shall forfeit and pay to the plaintiff fifty dollars, and to the defendant a like sum.

Rev., s. 2124; Code, s. 1851; 1868-9, c. 158, s. 3.

7. Oath and duty of commissioners. The commissioners shall be sworn by some officer qualified to administer an oath to act impartially between the parties, and to perform the duties herein imposed on them honestly and to the best of their ability. They shall view the premises where the mill is proposed to be built, and shall lay off and value a portion of the land of the plaintiff, not to exceed one acre in area, and an equal area of the land of the defendants opposite

thereto, and report their proceedings to the court within a reasonable time, not exceeding sixty days.

Rev., s. 2125; Code, s. 1852; 1868-9, c. 158, s. 4.

8. Contents of commissioners' report. The report of the commissioners shall set forth:

1. The location, quantities and value of the several areas laid off by them.

2. Whether either of them includes houses, gardens, orchards or other immediate conveniences.

3. Whether the proposed mill will overflow another mill or create a nuisance in the neighborhood.

4. Any other matter upon which they have been directed by the court to report, or which they may think necessary to the doing of full justice between the parties.

Rev., s. 2126; Code, s. 1853; 1868-9, c. 158, s. 5.

9. When building not to be allowed. If the area laid off on the land of either party take away houses, gardens, orchards, or other immediate conveniences; or if the mill proposed will overflow another mill, or will create a nuisance in the neighborhood, the court shall not allow the proposed mill to be built.

Rev., s. 2127; Code, s. 1854; 1868-9, c. 158, s. 6.

10. Power of court on return of report. If the report is in favor of building the proposed mill, and is confirmed, then the court may, in its discretion, allow either the plaintiff or defendant to erect such mill at the place proposed, and shall order the costs, and the value of the opposite area, to be paid by the party to whom such leave is granted; and upon such payment, the party to whom such leave is granted shall be vested with title in fee to the opposite area. Such payment may be made into court for the use of the parties entitled thereto.

Rev., s. 2128; Code, s. 1855; 1868-9, c. 158, s. 7.

11. Time for beginning and building mill; to be kept up. The person to whom leave is granted shall, within one year, begin to build such water mill, and shall finish the same within three years; and thereafter keep it up for the use and ease of its customers, or such as shall be customers to it; otherwise, the said land shall return to the person from whom it was taken, or to such other person as shall have his right, unless the time for finishing the mill, for reasons approved by the court, be enlarged.

Rev., s. 2129; Code, s. 1856; 1868-9, c. 158, s. 8.

12. Rebuilding mill after destruction. If a water mill belonging to a married woman, or a minor, a person of unsound mind, or imprisoned, falls, burns, or is otherwise destroyed, such person and his heirs shall have three years to rebuild and repair the same, and any person under any disability aforesaid shall have three years from the removal of the disability.

Rev., s. 2130; Code, s. 1857; 1903, c. 74, ss. 1, 2; 1868-9, c. 158, s. 9.

ART. 3. CONDEMNATION FOR RACES, WATER-WAYS, ETC., BY OWNER OF MILL OR MILLSITE

13. Special proceedings; summons. Any person who has land on one or both sides of a stream and wishes to build a water mill or has a water mill

already built and may find it necessary for the better operation of said mill or the building of the said mill to convey water either to or from his mill by ditch, waterway, drain, mill-race or tail-race, or in any other manner, over the lands of any other person, or erect a dam to pond said water over the lands of any other person, or raise any dam already built, may make application by petition in writing to the clerk of the superior court of the county in which the said lands to be affected, or a greater part thereof, are situated, for the right to so convey the said water or pond the same by the erection of a dam or the raising of any dam already built; and the procedure shall be as in other special proceedings.

Rev., s. 2131; 1905, c. 534, s. 1a, k.

14. Contents of petition. The petition shall specify the lands to be affected, the name of the owner of said lands and the character of the ditch, race, waterway or drain or pond intended to be made, and said owner or owners shall be made parties defendant. The petition shall state the distance desired to be condemned on each side of the ditch, waterway or drain to be constructed or erected, and not more than thirty feet from each bank can be condemned.

Rev., s. 2132; 1905, c. 534, s. 1b.

15. Commissioners to be appointed. Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the said lands by the contemplated work, and shall issue a notice to them to meet upon the premises on a day specified, not to exceed ten days from the date of said notice.

Rev., s. 2133; 1905, c. 534, s. 1c.

16. Oath and duty of commissioners. The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by the said work and assess the damage thereto and make report thereof under their hands and seals to the clerk from whom the notice issued, who shall have power to confirm the same.

Rev., s. 2134; 1905, c. 534, s. 1d.

17. Assessment of damages. In determining the amount of such compensation to be paid to the owners of the said lands and assessing the damages thereto by reason of the erection or construction of such waterway, ditch, drain or dam they shall make an allowance or deduction on account of any benefits which the parties in interest may derive from the construction or erection of such waterway, ditch, drain or dam, and shall ascertain the damages, as near as may be, to the extent it may damage each acre of land so appropriated or occupied by the said mill-owner. The damage assessed by the appraisers under this article shall include all damages that the owners shall thereafter suffer or be entitled to by reason of the construction of the said waterways, races, ditches or dams.

Rev., s. 2135; 1905, c. 534, s. 1e, m.

18. When commissioners' report not to be affirmed. If the area laid off on the lands of either party take away houses, gardens, orchards or immediate con-

veniences, or if the mill proposed or erected will overflow another mill or pond water within two hundred feet of another mill, or will overflow or pond water within two hundred feet of the millsite or premises of a person who has the right under this chapter, or by the authority of law, to rebuild a mill after its destruction, or if the mill create a nuisance in the neighborhood, the court shall not allow the report of the appraisers to be affirmed.

Rev., s. 2136; 1905, c. 534, s. 1g.

19. When petitioner may enter on lands. After the return of the appraisers and the confirmation thereof the petitioner shall have full right and power to enter upon said lands and make such ditches, waterways, drains, races or other necessary works and construct such dams: Provided, he has first paid or tendered the damage assessed as above to the owner of such lands or his known or recognized agent in this state. If the owner is a nonresident and has no known agent in this state the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner: Provided further, that the mill-owner shall not be compelled to pay said damages so assessed unless he shall enter upon such lands and make ditches, drains or other works or erect such dam.

Rev., s. 2137; 1905, c. 534, s. 11.

20. Owner of mills and millsites protected. No other person shall have the right to erect or maintain any dam, ditch, waterway, drain or race that will overflow or pond water within two hundred feet of the millsite or premises of any person or body corporate who shall have erected a mill, dam, ditch, drain or race under the provisions of this chapter, or of any millsite owned by any person who has the right under this chapter, or by the authority of law, to rebuild a mill after its destruction. When any person violates the provisions of this section the owner of said mill or millsite shall have a right of action against said person to tear down said dam or other works so built or erected to the extent herein forbidden and to abate the same as prescribed by law for the abatement of nuisances.

Rev., s. 2138; 1905, c. 534, s. 1h.

21. Report to be registered. The petitioner, or any other person interested, may have the said assessment registered upon the certificate of the clerk and shall pay the register the usual legal fees for registering such instruments in his office.

Rev., s. 2139; 1905, c. 534, s. 1i.

22. Fees of appraisers. Each appraiser shall be entitled to a fee of one dollar for each day actually employed in making said assessment, to be paid by the petitioner.

Rev., s. 2140; 1905, c. 534, s. 1j.

22a. Obstructing mill races or dams a misdemeanor. Any person who shall obstruct any drain, ditch or dam constructed under this article shall be guilty of a misdemeanor.

Rev., 3381; 1905, c. 534, s. 11.

ART. 4. RECOVERY OF DAMAGES FOR ERECTION OF MILL

23. Action in superior court; procedure. Any person conceiving himself injured by the erection of any grist-mill, or mill for other useful purposes, may issue his summons returnable before the judge of the superior court of the county where the damaged land, or any part thereof lies, against the persons authorized to be made parties defendant. In his complaint he shall set forth in what respect and to what extent he is injured, together with such other matters as may be necessary to entitle him to the relief demanded. The court shall then proceed to hear and determine all the questions of law and issues of fact arising on the pleadings as in other civil actions.

Rev., s. 2141; Code, s. 1858; 1876-7, c. 197, s. 1.

24. When dams abated as nuisances. When damages are recovered in final judgment in such civil actions and execution issues and is returned unsatisfied, and the plaintiff is not able to collect the same either because of the insolvency of the defendant or by reason of the exemptions allowed to defendant, the judge shall, on the facts being made to appear before him by affidavit or other evidence, order that the dam, or portion of the dam, or other cause creating the injury, shall be abated as a nuisance, and he shall have power to make all necessary orders to effect this purpose.

Rev., s. 2142; Code, s. 1859; 1876-7, c. 197, s. 3.

25. Judgment for annual sum as damages. A judgment giving to the plaintiff an annual sum by way of damages shall be binding between the parties for five years from the issuing of the summons, if the mill is kept up during that time, unless the damages are increased by raising the water or otherwise.

In all cases where the final judgment of the court assesses the yearly damage of the plaintiff as high as twenty dollars, nothing contained in this chapter shall be construed to prevent the plaintiff, his heirs or assigns, from suing as heretofore, and in such case, the final judgment aforesaid shall be binding only for the year's damage preceding the issuing of the summons.

Rev., ss. 2143, 2144; Code, ss. 1860, 1861; 1868-9, c. 158, ss. 12, 14.

26. Final judgment; costs and execution. If the final judgment of the court is that the plaintiff has sustained no damage, he shall pay the costs of his proceeding; but if the final judgment is in favor of the plaintiff, he shall have execution against the defendant for one year's damage, preceding the issuing of the summons, and for all costs: Provided, that if the damage adjudged does not amount to five dollars, the plaintiff shall recover no more costs than damages. And if the defendant does not annually pay the plaintiff, his heirs or assigns, before it falls due, the sum adjudged as the damages for that year, the plaintiff may sue out execution for the amount of the last year's damage, or any part thereof which may remain unpaid.

Rev., s. 2145; Code, s. 1862; 1868-9, c. 158, s. 15.

CHAPTER 53

MONOPOLIES AND TRUSTS

1. Combinations in restraint of trade illegal.
2. Any restraint in violation of common law included.
3. Burden of proof as to reasonableness on defendant.
4. Contracts to be in writing.
5. Particular acts defined.
6. Violation a misdemeanor; punishment.
7. Persons encouraging violation guilty.
8. Continuous violations separate offenses.
9. Duty of attorney general to investigate.
10. Power to compel examination.
11. Person examined exempt from prosecution.
12. Refusal to furnish information; false swearing.
13. Criminal prosecutions; solicitors to assist; expenses.
14. Remedy by civil action.
15. In what name civil action prosecuted.
16. Civil action by person injured; treble damages.

1. Combinations in restraint of trade illegal. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the state of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy, shall be guilty of a misdemeanor, and upon conviction thereof such person shall be fined or imprisoned or both in the discretion of the court, whether such person entered into such contract individually or as an agent representing a corporation, and such corporation shall be fined in the discretion of the court not less than one thousand dollars.

1913, c. 41, s. 1.

2. Any restraint in violation of common law included. Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of section one of this chapter.

1913, c. 41, s. 2.

3. Burden of proof as to reasonableness on defendant. All contracts, combinations in the form of trust, and conspiracies in restraint of trade or commerce prohibited in sections one and two of this chapter, are hereby declared to be unreasonable and illegal, unless the persons entering into such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce can show affirmatively upon an indictment or civil action for violation of sections one and two of this chapter that such contract, combination in the form of trust, conspiracy in restraint of trade or commerce does not injure the business of any competitor, or prevent any one from becoming a competitor because his or its business will be unfairly injured by reason of such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce.

1913, c. 41, s. 3.

4. Contracts to be in writing. No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the state of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: Provided, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the state of North Carolina, or at any point in the state of North Carolina, which contract is now illegal, or which contract is made illegal by any other section of this chapter.

1913, c. 41, s. 4.

5. Particular acts defined. In addition to the matters and things hereinbefore declared to be illegal, the following acts are declared to be unlawful, that is, for any person, firm, corporation, or association directly or indirectly to do or to have any contract, express or knowingly implied, to do, any of the acts or things specified in any of the subsections of this section.

1. To agree or conspire with any other person, firm, corporation or association to put down or keep down the price of any article produced in this state by the labor of others, which article the person, firm, corporation or association intends, plans or desires to buy.

2. To make a sale of any goods, wares, merchandise, articles or things of value whatsoever in North Carolina, whether directly or indirectly, or through any agent or employee, upon the condition that the purchaser thereof shall not deal in the goods, wares, merchandise, articles or things of value of a competitor or rival in the business of the person, firm, corporation or association making such sales.

3. To willfully destroy or injure, or undertake to destroy or injure, the business of any opponent or business rival in the state of North Carolina with the purpose or intention of attempting to fix the price of anything of value when the competition is removed.

4. Who directly or indirectly buys or sells within the state, through himself or itself, or through any agent of any kind or as agent or principal, or together with or through any allied, subsidiary or dependent person, firm, corporation or association, any article or thing of value which is sold or bought in the state to injure or destroy or undertake to injure or destroy the business of any rival or opponent, by lowering the price of any article or thing of value sold, so low, or by raising the price of any article or thing of value bought, so high as to leave an unreasonable or inadequate profit for a time, with the purpose of increasing the profit on the business when such rival or opponent is driven out of business, or his, or its business is injured.

5. Who deals in any thing of value within the state of North Carolina, to give away or sell, at a place where there is competition, such thing of value at a price lower than is charged by such person, firm, corporation or association, for the same thing at another place, where there is not good and sufficient reason, on account of transportation or the expense of doing business, for charging less at the one place than at the other, with the view of injuring the business of another.

6. Who is engaged in buying or selling any thing of value in North Carolina, to make or have any agreement or understanding, express or implied, with any other person, firm, corporation or association, not to buy or sell such things of value within certain territorial limits within the state, with intention of pre-

venting competition in selling or to fix the price or prevent competition in buying of such things of value within these limits: Provided, nothing herein shall be construed to prevent an agent from representing more than one principal. But nothing in this proviso shall be construed to authorize two or more principals to employ a common agent for the purpose of suppressing competition or lowering prices: Provided further, that nothing herein shall be construed to prevent a person, firm or corporation from selling his or its business and good will to a competitor, and agreeing in writing not to enter the business in competition with the purchaser in a limited territory, as is now allowed under the common law: Provided, such agreement shall not violate the principles of the common law against trusts and shall not violate the provisions of this chapter.

1913, c. 41, s. 5.

6. Violation a misdemeanor; punishment. Any corporation, either as agent or principal, violating any of the provisions of preceding section shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person, whether acting for himself or as officer of any corporation or as agent of any corporation or person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

1913, c. 41, s. 5.

7. Persons encouraging violation guilty. Any person, being either within or without the state, who encourages or willfully allows or permits any agent or associates in business in this state to violate any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in the preceding section.

1913, c. 41, s. 6.

8. Continuous violations separate offenses. Where the things prohibited in this chapter are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense.

1913, c. 41, s. 7.

9. Duty of attorney-general to investigate. The attorney-general of the state of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations doing business in this state, which are or may be embraced within the meaning of the statutes of this state defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations in North Carolina doing business in violation of law; and all other corporations of every character engaged in this state in the business of transporting property or passengers, or transmitting messages, and all other public service corporations of any kind or nature whatever which are doing business in the state for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the North Carolina corporation commission is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be neces-

sary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted.

1913, c. 41, s. 8.

10. Power to compel examination. In performing the duty required in the preceding section, the attorney-general shall have power, at any and all times, to require the officers, agents or employees of any such corporation, and all other persons having knowledge with respect to the matters and affairs of such corporations, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations, or which are in any way connected with the business thereof; and the attorney-general is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any judge of the supreme or superior court, after five days notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge.

1913, c. 41, s. 9.

11. Person examined exempt from prosecution. No person examined, as provided in the preceding section, shall be subject to indictment, prosecution, punishment or penalty by reason or on account of anything disclosed by him upon such examination, and full immunity from prosecution and punishment by reason or on account of anything so disclosed is hereby extended to all persons so examined.

1913, c. 41, s. 9.

12. Refusal to furnish information; false swearing. Any corporation unlawfully refusing or willfully neglecting to furnish the information required by this chapter, when it is demanded as herein provided, shall be guilty of a misdemeanor and fined not less than one thousand dollars: Provided, that if any corporation shall in writing notify the attorney-general that it objects to the time or place designated by him for the examination or inspection provided for in this chapter, it shall be his duty to apply to a judge of the supreme or superior court who shall fix an appropriate time and place for such examination or inspection, and such corporation shall, in such event, be guilty under this section, only in the event of its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish the information required by this chapter. False swearing by any person examined under the provisions of this chapter shall constitute perjury, and the person guilty of it shall be punishable as in other cases of perjury.

1913, c. 41, s. 10.

13. Criminal prosecution; solicitor to assist; expenses. The attorney-general in carrying out the provisions of this chapter shall have a right to send bills of indictment before any grand jury in any county in which it is alleged this chapter has been violated or in any adjoining county, and may take charge of and prosecute all cases coming within the purview of this chapter, and shall

have the power to call to his assistance in the performance of any of these duties of his office which he may assign to them any of the solicitors in the state, who shall, upon being required to do so by the attorney-general, send bills of indictment and assist him in the performance of the duties of his office: Provided, that the state shall pay the actual and necessary expenses of the solicitor incurred while performing such duties and not over one hundred dollars as an extra fee when the expense account is approved by the attorney-general and governor and duly audited, and the amount of the fee is fixed by them.

The necessary expenses incident to carrying out the provisions of this chapter shall, when approved by the governor and audited, be paid out of any money in the state treasury not otherwise appropriated.

1913, c. 41, s. 13.

14. Remedy by civil action. If it shall become necessary to do so, the attorney-general may prosecute civil actions in the name of the state on relation of the attorney-general to obtain a mandatory order to carry out the provisions of this chapter, and the venue shall be in any county as selected by the attorney-general.

1913, c. 41, s. 11.

15. In what name civil action prosecuted. It shall be the duty of the attorney-general, upon his ascertaining that the laws have been violated by any trust or public service corporation, so as to render it liable to prosecution in a civil action, to prosecute such action in the name of the state, or any officer or department thereof, as provided by law, or in the name of the state on relation of the attorney-general and to prosecute all officers or agents or employees of such corporations, whenever in his opinion the interests of the public require it.

1913, c. 41, s. 12.

16. Civil action by person injured; treble damages. If the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed by a jury in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.

1913, c. 41, s. 14.

CHAPTER 54

MORTGAGES AND DEEDS OF TRUST

ART. 1. CHATTEL MORTGAGES: FORM AND SUFFICIENCY.

1. Form of chattel mortgage.
 - 1a. Registration.
2. Mortgage of household and kitchen furniture.

ART. 2. RIGHT TO FORECLOSE OR SELL UNDER POWER.

3. Representative succeeds on death of mortgagee or trustee in deeds of trust; parties to action.
4. Foreclosures by representatives validated.
5. Renunciation by representative; clerk appoints trustee.
6. Agent to sell under power may be appointed by parol.
7. Survivorship among donees of power of sale.
- 7a. Clerk appoints successor to incompetent trustee.
8. Mortgage to guardian; powers pass to succeeding guardian.

ART. 3. MORTGAGE SALES.

9. Personal property; notice and place of sale.
10. Foreclosure of conditional sales.
11. Real property; notice of sale must describe premises.
12. Real property; power of sale barred when foreclosure barred.
13. Land lying in two or more counties; place of sale.
14. Reopening judicial sales, etc., on advanced bid.
15. Surplus after sale to be paid to clerk, in certain cases.
16. Surplus in clerk's hands liable for costs.

ART. 4. DISCHARGE AND RELEASE.

17. Discharge of record of mortgages and deeds of trust.
18. Register to enter satisfaction on index.
19. Recorded deed of release of mortgagee's representative.
20. Release of corporate mortgages by corporate officers.

ART. 1. CHATTEL MORTGAGES: FORM AND SUFFICIENCY

1. Form of chattel mortgage. Any person indebted to another in a sum to be secured, may execute a chattel mortgage in form substantially as 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 _____ of _____, A. D. 19____, 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. 19____, 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. 19____ (Seal).

Rev., s. 1039; Code, s. 1273; 1870-1, c. 277; 1911, c. 69, s. 1.

1a. Registration. Chattel mortgages substantially in the form provided in the last section are good to all intents and purposes when the same are duly registered according to law.

Rev., s. 1040; Code, ss. 1273, 1274; 1870-1, c. 277, ss. 1, 2.

NOTE. For registration of chattel mortgages, see further Probate and Registration, s. 19.

2. Mortgage of household and kitchen furniture. All conveyances of household and kitchen furniture by a married man, made to secure the payment of money or other thing of value, are void, unless the wife joins therein and her privy examination is taken in the manner prescribed by law in conveyances of real estate.

Rev., s. 1041; 1891, c. 91.

ART. 2. RIGHT TO FORECLOSE OR SELL UNDER POWER

3. Representative succeeds on death of mortgagee or trustee; parties to action. When the mortgagee in a mortgage, or the trustee in a deed in trust executed for the purpose of securing a debt containing a power of sale, dies before the payment of the debt secured in such mortgage or deed in trust, all the title, rights, powers and duties of such mortgagee or trustee pass to and devolve upon the executor or administrator of such mortgagee or trustee, including the right to bring an action of foreclosure in any of the courts of this state as prescribed for trustees or mortgagees, and in such action it is unnecessary to make the heirs at law of such deceased mortgagee or trustee parties thereto.

Rev., s. 1031; 1901, c. 186; 1887, c. 147; 1895, c. 431; 1905, c. 425.

4. Foreclosures by representatives validated. In all actions which were brought or prosecuted prior to the fourth day of March, one thousand nine hundred and five, for the foreclosure of any mortgage or deed in trust by any executor or administrator of any deceased mortgagee or trustee where the heirs of the mortgagee were duly made parties and regular and orderly decrees of foreclosure entered by the court and sale had by a commissioner appointed by the court for that purpose and deed made after confirmation, the title so conveyed to purchaser at such judicial sale shall be deemed and held to be vested in such purchaser, whether the heir of such deceased mortgagee or trustee was a party to such foreclosure proceeding or not, and such heir of any deceased mortgagee is estopped to bring or prosecute any further action against such purchaser for the recovery of such property or foreclosure of such mortgage or deed in trust.

Rev., s. 1032; 1905, c. 425, s. 2.

5. Renunciation by representative; clerk appoints trustee. The executor or administrator of any deceased mortgagee or trustee in any mortgage or deed of trust heretofore or hereafter executed may renounce in writing before the clerk of the superior court before whom he qualifies, the trust under the mortgage or deed of trust at the time he qualifies as executor or administrator, or at any time thereafter before he intermeddles with or exercises any of the duties under said mortgage or deed of trust, except to preserve the property until a trustee can be appointed. In every such case of renunciation the clerk of the superior court of any county wherein the said mortgage or deed of trust is registered has power and authority, upon proper proceedings instituted before him, as in other cases of special proceedings, to appoint some person to act as trustee and execute said mortgage or deed of trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall enter the name of the substituted trustee or mortgagee on the margin of the deed in trust or the mortgage in the book of the office of the register of deeds of said county.

Rev., s. 1038; 1905, c. 128.

6. Agent to sell under power may be appointed by parol. All sales of property, real or personal, under a power of sale contained in any mortgage or deed of trust to secure the payment of money, by any mortgagee or trustee, through an agent or attorney for that purpose, by such mortgagee or trustee, appointed orally or in writing, whether such writing has been or shall be registered or not, shall be valid, whether or not such mortgagee or trustee was or shall be present at such sale.

Rev., s. 1035; 1895, c. 117.

7. Survivorship among donees of power of sale. In all mortgages and deeds of trust wherein two or more persons, as trustees or otherwise, are given power to sell the property therein conveyed or embraced, and one or more of such persons dies, any one of the persons surviving having such power may make sale of such property in the manner directed in such deed, and execute such assurances of title as are proper and lawful under the power so given; and the act of such person, in pursuance of said power, shall be as valid and binding, as if the same had been done by all the persons on whom the power was conferred.

Rev., s. 1033; 1885, c. 327, s. 2.

7a. Clerk appoints successor to incompetent trustee. When the sole or last surviving trustee named in a will or deed of trust dies, removes from the county where the will was probated or deed executed and from the state, or in any way becomes incompetent to execute the said trust, or is a nonresident of this state, the clerk of the superior court of the county wherein the will was probated or deed of trust was executed is authorized and empowered, in proceedings to which all persons interested shall be made parties, to appoint some discreet and competent person to act as trustee and execute the trust according to its true intent and meaning, and as fully as if originally appointed: Provided, that in all actions or proceedings had under this section prior to January first, one thousand nine hundred, before the clerks of the superior court in which any trustee was appointed to execute a deed of trust where any trustee of a deed of trust has died, removed from the county where the deed was executed and from the state, or in any way become incompetent to execute the said trust, whether such appointment of such trustee by order or decree, or otherwise, was made upon the application or petition of any person or persons ex-parte, or whether made in proceedings where all the proper parties were made, are in all things confirmed and made valid so far as regards the parties to said actions and proceedings to the same extent as if all proper parties had originally been made in such actions or proceedings.

Rev., s. 1037; Code, s. 1276; 1901, c. 576; 1869-70, c. 183; 1873-4, c. 126.

8. Mortgage to guardian; powers pass to succeeding guardian. When a guardian to whom a mortgage has been extended dies or is removed or resigns before the payment of the debt secured in such mortgage, all the rights, powers and duties of such mortgagee shall devolve upon the succeeding guardian.

Rev., s. 1034; 1905, c. 433.

ART. 3. MORTGAGE SALES

9. Personal property; notice and place of sale. All personal property, sold under the terms of any mortgage or other contract, expressed or implied, whether

advertised in some newspaper or otherwise, shall be advertised by posting a notice at some conspicuous place at the courthouse door in the county where the property is situated, such notice to be posted for at least twenty days before the sale, unless a shorter time be expressed in the contract.

Rev., s. 1042; 1889, c. 70; 1909, c. 49, s. 1.

NOTE. For advertisement of execution sales of personal property, see Civil Procedure, Art. 28.

10. Foreclosure of conditional sales. In all sales of personal property wherein the title is retained by the seller to secure the purchase money, or any part thereof, and no power of sale is conferred and default is made in the payment of said obligation by the purchaser, then in all such cases it is lawful for the owner of such debt thereby secured, without an order of court, to sell such property, or so much thereof as may be necessary to pay off said indebtedness, at public auction for cash, after first giving twenty days notice at three or more public places in the county wherein the sale is to be made, and apply the proceeds of such sale to the discharge of said debt, interest on the same, and costs of foreclosure, and pay any surplus to the person legally entitled thereto. Before making any such sale, in addition to the advertisement above required, the owner of said debt shall, at least ten days before the day of sale, mail a copy of the notice of sale to the last known postoffice address of the original purchaser or his assigns.

1913, c. 60, s. 1.

11. Real property; notice of sale must describe premises. In sales of real estate under deeds of trust or mortgages, it is the duty of the trustee or mortgagee making such sale to fully describe the premises in the notice required by law, substantially as the same is described in the deed or authority under which said trustee or mortgagee makes such sale.

Rev., s. 1043; 1895, c. 294.

12. Real property; power of sale barred when foreclosure barred. The power of sale of real property contained in any mortgage or deed of trust for the benefit of creditors shall become inoperative, and no person shall execute any such power, when an action to foreclose such mortgage or deed of trust for the benefit of creditors would be barred by the statutes of limitation.

Rev., s. 1044.

13. Land lying in two or more counties; place of sale. When a mortgage or deed in trust conveying lands lying partly in two or more counties confers upon the mortgagee or mortgagees, trustee or trustees, therein named, any power for the sale of such lands, without naming the place of sale, or conferring upon such mortgagee or mortgagees, trustee or trustees, the right to select the same, in the exercise of such power, any sale thereunder may be made at the courthouse door of any one of the counties in which such lands are situate, and at no other place except as hereinafter provided; but when such lands consist of two or more detached parcels, lying wholly within the limits of different counties, the sale of each and every one of such parcels shall be made at the courthouse door of the county in which the same is situate.

1911, c. 165, s. 1.

14. Reopening judicial sales, etc., on advanced bid. In the foreclosure of mortgages or deeds of trust on real estate, or in the case of the public sale of real estate by an executor, administrator, or administrator with the will annexed, or by any person by virtue of the power contained in a will, the sale shall not be deemed to be closed under ten days. If in ten days from the date of the first sale, the sale price is increased ten per cent where the first price does not exceed five hundred dollars, and five per cent where the first price exceeds five hundred dollars, and the same is paid to the clerk of the superior court, the mortgagee, trustee, executor, or person offering the real estate for sale shall reopen the sale of said property and advertise the same in the same manner as in the first instance. The clerk may, in his discretion, require the person making such advance bid to execute a good and sufficient bond in a sufficient amount to guarantee compliance with the terms of sale should the person offering the advance bid be declared the purchaser at the second sale. Where the bid or offer is raised as prescribed herein and the amount paid to the clerk he shall issue an order to the mortgagee or other person and require him to advertise and resell said real estate. It shall only be required to give fifteen days notice of the second sale. Not more than one resale shall be required under this section. Upon the final sale of the real estate, the clerk shall issue his order to the mortgagee or other person, and require him to make title to the purchaser. The clerk shall make all such orders as may be just and necessary to safeguard the interest of all parties, and he shall keep a record which will show in detail the amount of each bid, the purchase price, and the final settlement between parties. This section shall not apply to the foreclosure of mortgages or deeds of trust executed prior to April first, nineteen hundred and fifteen.

1915, c. 146; 1917, c. 127, ss. 3, 4.

15. Surplus after sale to be paid to clerk, in certain cases. It is competent for any trustee or mortgagee who sells any real, personal or mixed property under the power of sale contained in any deed of trust or mortgage of any kind and who has in his hands any surplus money, after paying the debt or debts secured by such deed of trust or mortgage and costs and expenses of such sale, to pay into the office of the clerk of the superior court of the county where the sale was had, any surplus moneys in his hands as aforesaid, in all cases where the grantor in such deed of trust or mortgage is dead and there is no executor or administrator of his estate, and in all other cases where such trustee or mortgagee is, for any cause, in doubt as to who is the proper party or parties to whom to pay such surplus moneys. Such payment to the clerk shall have the effect to discharge such trustee or mortgagee from all liability to the extent of the amount so paid. The clerk shall receive such money from such trustee or mortgagee and execute a receipt for the same under the seal of his office. The failure of any clerk, however, to place his seal upon such receipt shall not invalidate the receipt if it bears the genuine signature of the clerk. The official bond of such clerk shall be responsible for the safekeeping of such moneys until the same shall be paid to the party or parties entitled thereto, or be paid out under the order of a court of competent jurisdiction.

1913, c. 15, ss. 1, 2.

16. Surplus in clerk's hands liable for costs. In the event it is necessary for an action to be instituted by or against any clerk to determine who are the rightful party or parties to whom any fund paid into his office under the preceding section, shall be paid, the court in which such action is tried may, in its discretion, order the costs of such action, including a reasonable attorney's fee, to be paid out of the fund in controversy.

1913, c. 15, s. 3.

ART. 4. DISCHARGE AND RELEASE

17. Discharge of record of mortgages and deeds of trust. Any deed of trust or mortgage registered as required by law may be discharged and released in the following manner:

1. The trustee or mortgagee or his or her legal representative, or the duly authorized agent or attorney of such trustee, mortgagee or legal representative may, in the presence of the register of deeds or his deputy, acknowledge the satisfaction of the provisions of such deed of trust or mortgage, whereupon the register or his deputy shall forthwith make upon the margin of the record of such deed of trust or mortgage an entry of such acknowledgment of satisfaction, which shall be signed by the trustee, mortgagee, legal representative or attorney, and witnessed by the register or his deputy, who shall also affix his name thereto.

2. Upon the exhibition of any mortgage, deed of trust or other instrument intended to secure the payment of money, accompanied with the bond or note, to the register of deeds or his deputy, where the same is registered, with the endorsement of payment and satisfaction appearing thereon by the payee, mortgagee, trustee, or assignee of the same, or by any chartered active banking institution in the state of North Carolina, when so endorsed in the name of the bank by an officer thereof, the register or his deputy shall cancel the mortgage or other instrument by entry of "satisfaction" on the margin of the record; and the person so claiming to have satisfied the debt may retain possession of the bond or mortgage or other instrument. But if the register or his deputy requires it, he shall file a receipt to him showing by whose authority the mortgage or other instrument was canceled.

3. Upon the exhibition of any mortgage, deed of trust, or other instrument intended to secure the payment of money by the grantor or mortgagor, his agent or attorney, together with the notes or bonds secured thereby, to the register of deeds or his deputy of the county where the same is registered, the deed of trust, mortgage, notes or bonds being at the time of said exhibition more than ten years old, counting from the date of maturity of the last note or bond, the register or his deputy shall make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.

4. Every such entry thus made by the register of deeds or his deputy, and every such entry thus acknowledged and witnessed shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage, as if a deed of release or reconveyance thereof had been duly executed and recorded.

Rev., s. 1046; Code, s. 1271; 1870-1, c. 217; 1891, c. 180; 1893, c. 36; 1901, c. 46; 1917, c. 49, s. 1; 1917, c. 50, s. 1.

17a. Register to enter satisfaction on index. When satisfaction of the provisions of any deed of trust or mortgage is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said deed of trust or mortgage, or when the register of deeds or his deputy shall cancel the mortgage or other instrument by entry of satisfaction, then the register of deeds or his deputy shall enter upon the alphabetical indexes kept by him, as required by law, and opposite the names of the grantor and grantee and on a line with the names of said grantor and grantee, the words "satisfied mortgage," if the instrument of which satisfaction has been acknowledged or entered is a mortgage, and the words "satisfied deed of trust," if the instrument of which satisfaction has been acknowledged or entered is a deed of trust.

1909, c. 658, s. 1.

18. Recorded deed of release of mortgagee's representative. The personal representative of any mortgagee or trustee in any mortgage or deed of trust which has heretofore or which may hereafter be registered in the manner required by the laws of this state may discharge and release the same and all property thereby conveyed by deed of quitclaim, release or conveyance executed, acknowledged and recorded as is now prescribed by law for the execution, acknowledgment and registration of deeds and mortgages in this state.

1909, c. 283, s. 1.

19. Release of corporate mortgages by corporate officers. All mortgages and deeds in trust executed to a corporation may be satisfied and so marked of record, as by law provided for the satisfaction of mortgages and deeds in trust, by the president, cashier, secretary or treasurer of such corporation signing the name of such corporation by him as such officer. Where mortgages or deeds in trust were marked "satisfied" on the records, before the twenty-third day of February, nineteen hundred and nine, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded: Provided, however, this validating provision shall not apply to any suits now pending in the courts of the state.

1909, c. 283, ss. 2, 3.

CHAPTER 55

MOTOR VEHICLES

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23. Use of vehicle without owner's consent.

ART. 1. GENERAL PROVISIONS

1. Terms defined. The term and words "motor vehicles" used in this chapter shall be construed to mean all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons, engines, police patrol wagons, ambulances, and such vehicles as run only upon rails or tracks. The term "owner" shall include any person, firm, association, or corporation owning a motor vehicle or renting a motor vehicle, or having the exclusive use thereof under a lease or otherwise. The term "public highway" or "highways" shall be construed to mean any public highway, township, county or state road, or any country road, any public street, alley, park, parkway, drive or public place in any city, village, or town. The term and words "business portion of any city or village" shall be construed to mean the territory of a city or incorporated village contiguous to a public highway which is at that point either wholly or partially built up with structures devoted to business.

1917, c. 140, s. 1.

2. Violation a misdemeanor. Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

1917, c. 140, s. 21.

3. Duty of officers; manner of enforcement. For the purpose of enforcing the provisions of this chapter it is hereby made the duty of every police officer, every marshal, deputy marshal, or watchman of any incorporated city or village, and every sheriff, deputy sheriff, and all other lawful officers of any county, and every constable of any township, to arrest, within the limits of their jurisdiction, any person known personally to any such officer, or upon the sworn information of a credible witness, to have violated any of the provisions of this chapter, and to immediately bring such offender before any justice of the peace or officer having jurisdiction; and any such person so arrested shall have the right of immediate trial, and all other rights given to any person arrested for having committed a misdemeanor. Every officer herein named who shall neglect or refuse to carry out the duties imposed by this chapter shall be liable on his official bond for such neglect or refusal as provided by law in like cases.

1917, c. 140, s. 22.

4. No municipal ordinances in conflict. No governing board of any city or town shall pass or have in effect or in force any ordinance contrary to the provisions of this chapter.

1917, c. 140, s. 23.

ART. 2. REGISTRATION OF VEHICLES

5. Application for registration. Every owner of a motor vehicle which shall be operated or driven upon the public highways of this state either by himself, his chauffeur, or another by his authority, shall, for each motor vehicle owned, except as herein otherwise expressly provided, cause to be filed in the office of the secretary of state an application for registration on a blank to be furnished by the secretary of state for that purpose, containing a brief description of the motor vehicle to be registered, including the name, maker's or manufacturer's serial number, style of machine, and horsepower, the name and address of the owner, and such other information as the secretary of state may deem necessary.

1917, c. 140, s. 2.

6. Registered by secretary of state. Upon receipt of an application for registration of a motor vehicle as provided in this chapter, the secretary of state shall file such application in his office and register such motor vehicle, with the name and residence of the owner, together with the facts stated in such application, in a book or index to be kept for that purpose, under the distinctive number assigned to such motor vehicle by the secretary of state, which book or index shall be open to inspection during reasonable business hours.

1917, c. 140, s. 3.

7. Number and certificate given; expiration of certificate. Upon the filing of such application and the payment of fees provided in this chapter, the secretary of state shall assign to such motor vehicle a distinctive number, and, without expense to the applicant, issue and deliver to the owner a certificate of registration in such form as the secretary of state may determine, and shall also furnish to such applicant two display numbers as hereinafter provided for. All certificates of registration shall expire on June thirtieth, following the date of issue.

1917, c. 140, ss. 4, 5.

8. Dealers to report sales. The secretary of state shall require from each wholesale and retail dealer in automobiles in the state once each month a list of all retail sales, and it shall be the duty of each of the aforesaid dealers to furnish this information to the secretary of state within the first ten days of each month of such sales made during the preceding month.

1917, c. 140, s. 5.

9. Cancellation and transfer of certificate. Upon the sale of a motor vehicle registered under the provisions of this chapter, the registered owner shall within ten days from the date of such sale return to the secretary of state his certificate of registration furnished him as hereinbefore provided for, which certificate of registration shall be canceled: Provided, that such registered owner may, at the time of returning such certificate, upon proper application for transfer filed in the office of the secretary of state and the payment of a transfer fee of fifty cents, have a new certificate of registration issued to him, containing the original registration number, for a motor vehicle owned by him of not greater tax horsepower, such certificate to remain in force until June thirtieth following date of issue. In case the machine for which a transfer license is desired is of greater tax horsepower, the difference between the amount paid for the original license and the annual fee for the machine for which transfer license is desired shall be paid at the time such application for transfer is filed, but nothing herein contained shall be construed as authorizing the secretary of state to make a rebate in case the transfer license is issued for a machine of less tax horsepower than the one originally registered. A license cannot be transferred from one person to another.

1917, c. 140, s. 8.

10. Display numbers required. In addition to the certificate of registration, the secretary of state shall furnish to each registered owner two display numbers, which shall at all times be conspicuously displayed by such owner, one on the front and one on the rear of the registered motor vehicle for which the display numbers are issued. The display numbers shall be rigidly fastened in a horizontal position, and the lower edges thereof shall be at least fifteen inches from the ground, and during the times when a motor vehicle is required to display lights the rear registered number shall be so illuminated as to be legible at a distance of fifty feet. In case of the loss or destruction of a display number, the secretary of state, upon proper proof thereof filed with him, and the payment of one dollar, shall secure for such owner a duplicate number, and the secretary of state may in his discretion authorize the applicant for duplicate number to have prepared for use a temporary number until the duplicate can be made and furnished. It shall be deemed a violation of this chapter for any person to display a fictitious number or more than two display numbers on any motor vehicle operated on the highways of this state.

1917, c. 140, s. 9.

11. Nature of display numbers. The display numbers shall be made of suitable metal, in such size and form as the secretary of state may prescribe, and shall be of a distinctive different color or shade each year.

1917, c. 140, s. 10.

12. Special numbers to dealers. Every person, firm, association, or corporation manufacturing or dealing in motor vehicles handled for purposes of sale only may, instead of registering such motor vehicles so manufactured or dealt in, make a verified application upon a blank to be furnished by the secretary of state for a general distinctive number for all motor vehicles owned or controlled by such manufacturer or dealer, such application to contain such information as to name, style and class of cars manufactured or dealt in by such person, firm, association, or corporation as the secretary of state may require; and upon the payment of an annual registration fee of ten dollars, such person, firm, association or corporation shall be assigned a distinctive number, to be used by them in the operation of all motor vehicles used for demonstration purposes on the public highways, and the secretary of state shall furnish to such dealer as many duplicate pairs of such display numbers as they may desire, upon application to him and the payment of one dollar for each pair: Provided, that nothing in this section shall be construed to apply to a motor vehicle operated by any manufacturer or dealer for hire.

1917, c. 140, s. 11.

13. Nonresident owners of vehicles. Nonresident owners or operators of motor vehicles shall be subject to the same requirements and laws as resident owners or operators: Provided, that the nonresident owner of a motor vehicle which is properly registered under the laws of another state, district, or territory shall be exempt from the registration provisions of this chapter for the same period that a properly registered owner of this state is exempt from the registration provisions of the state in which such nonresident resides, not exceeding sixty days: Provided, that nothing herein contained shall be construed to exempt any motor vehicles used for hire by a nonresident.

1917, c. 140, s. 12.

ART. 3. LICENSE FEES

14. Amount of license fee. The following license fee or registration fee shall be charged and collected annually on motor vehicles registered under the provisions of this chapter: On each motor vehicle having a rating of twenty-six horsepower or less, a registration fee of five dollars. On each motor vehicle having a rating of more than twenty-six horsepower and not more than forty horsepower, a registration fee of seven dollars and fifty cents. On each motor vehicle having a rating of over forty horsepower, a registration fee of ten dollars. The method of computing horsepower shall be by the formula adopted by the Society of Automobile Engineers, and the National Automobile Chamber of Commerce: Provided, that the registration fee for a motorcycle shall be two dollars: Provided further, that any applicant for registration of a motor vehicle on and after March first of each year shall be required to pay for the registration for the balance of the registration year ending June thirtieth only one-half of the registration fee provided for in this section: Provided further, that no county, city, or town may require a total registration fee in an amount greater than one-half the fee required by the state.

1917, c. 140, s. 6.

15. Application of funds by state highway commission. All funds collected by the secretary of state under the provisions of this chapter, or amendments

thereto, shall be paid to the state treasurer monthly, to be kept as a separate fund to be known as the highway maintenance fund, which shall be drawn upon and expended as directed by the state highway commission for the maintenance of roads and bridges constituting the state system of highways as authorized by the law creating the state highway commission, or as hereinafter provided: Provided, that an amount equal to at least seventy per cent of the fees collected in any county by the secretary of state under the provisions of this chapter shall be expended by the state highway commission within one year after its payment by the secretary of state to the state treasurer, within such county from which the fees were collected; and Provided further, that all necessary expenses, including clerical assistance, the cost of purchasing number plates and mailing same, and for such blanks, books, and other supplies as cannot be furnished by the state printer shall be paid for monthly from the revenue derived from this chapter by warrant of the auditor on the state treasurer: Provided, that such account shall be approved by the governor and council of state, and shall not in an aggregate exceed twelve and one-half per cent of the total amount collected by the secretary of state for the provisions of this chapter. Nothing in this chapter shall prevent the state highway commission and the local road authorities to make agreements as to the method or the amount required for the maintenance of roads and bridges to be maintained under the provisions of this chapter.

1917, c. 140, s. 7; 1917, c. 141; 1913, c. 107, s. 7.

ART. 4. OPERATION OF VEHICLES

16. By incompetent persons; racing. No person shall operate a motor vehicle upon the public highways of this state who is under the age of sixteen years and who is not competent physically and mentally, and no person shall operate a motor vehicle when intoxicated, or in a race, or on a bet or wager, or for the purpose of making a speed record: Provided, nothing herein contained shall prevent racing on private race courses or tracks.

1917, c. 140, s. 13.

17. Brakes, horns and lights required. Every motor vehicle operated or driven upon the public highways of this state shall be provided with adequate brakes in good working order and sufficient to control such vehicle at all times, when same is in use, and a suitable and adequate bell, horn, or other device for signaling, and shall during the period from one-half hour after sunset to one-half hour before sunrise, display at least two lighted lamps on the front, and shall also display a red light visible from the rear, which may be in combination with the light illuminating the display number on the rear, as heretofore provided in this chapter: Provided, that the lamps on such vehicle need not be lighted when the vehicle is standing under the rays of a light and can be plainly seen, and that one light displayed on the front of a motorcycle shall be deemed a compliance with this section. A motor vehicle of any kind operated on the public highways of the state shall not use any lighting device of over four candlepower equipped with a reflector, unless the same shall be so designed, deflected, or arranged that no portion of the beam or reflected light, when measured seventy-five feet or more ahead of the lamps, shall rise above forty-

two inches from the level surface on which the vehicle stands under all conditions of load.

1917, c. 140, ss. 14, 16.

18. Driving regulations; frightened animals; crossings. A person operating or driving a motor vehicle shall, on signal by raising the hand, from a person riding, leading, or driving a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or other animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or other animal: Provided, that in case such horse or other animal appears badly frightened, and the person operating such motor vehicle is so signaled to do, such person shall cause the motor of the motor vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others; and it shall also be the duty of any male chauffeur or driver of any motor vehicle and other male occupants thereof over the age of sixteen years while passing any horse, horses or other draft animals which appear frightened, upon the request of the person in charge thereof and driving such horse or horses or other draft animals, to give such assistance as would be reasonable to insure the safety of all persons concerned and to prevent accident. In approaching or passing a car of a street railway which has been stopped to allow passengers to alight or embark, the operator of every motor vehicle shall slow down, and shall bring said vehicle to a full stop when going in the same direction as the street car. Upon approaching a pedestrian who is upon the traveled part of any highway, and not upon a sidewalk, and upon approaching an intersecting highway or a curve, or a corner in a highway where the operator's view is obstructed, every person operating a motor vehicle shall slow down and give a timely signal with his bell, horn, or other device for signaling. Upon approaching an intersecting highway, a bridge, dam, sharp curve, or deep descent, and also in traversing such intersecting highway, bridge, dam, curve, or descent, a person operating a motor vehicle shall have it under control and operate it at such speed, not to exceed ten miles an hour, having regard to the traffic then on such highway and the safety of the public.

1917, c. 140, s. 15.

19. Rule of the road in passing. Whenever a person operating a motor vehicle shall meet on the public highway any other person riding or driving a horse or horses or other draft animals, or any other vehicle, the person so operating such motor vehicle and the person so riding or driving a horse, horses, or other draft animals, shall reasonably turn the same to the right of the center of such highway so as to pass without interference. Any person so operating a motor vehicle shall, on overtaking any such horse, draft animal, or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal, or other vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any person so operating a motor vehicle shall, at the intersection of a public highway, keep to the right of the intersection of the center of such highway when turning to the right and pass to the right of such intersection when turning to the left, and shall signal with the outstretched hand the direction in which turn is to be made.

1917, c. 140, s. 16.

20. Speed regulations; muffler. No person shall operate a motor vehicle upon the public highways of this state recklessly, or at a rate of speed greater than is reasonable and proper, having regard to the width, traffic, and use of the highway, or so as to endanger the property or the life or limb of any person: Provided, that a rate of speed in excess of eighteen miles per hour in the residence portion of any city, town, or village, and a rate of speed in excess of ten miles per hour in the business portion of any city, town, or village, and a rate of speed in excess of twenty-five miles per hour on any public highway outside of the corporate limits of any incorporated city or town, shall be deemed a violation of this section: Provided further, that no person shall operate upon the public highways inside the corporate limits of any incorporated city or town of this state a motor vehicle with muffler cut-out open.

1917, c. 140, s. 17.

21. Obstructions in road. No person shall throw, place or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any of the public highways of this state.

1917, c. 140, s. 18.

22. Stopping motors; standing near fire plug. No person shall permit the motor of a motor vehicle to remain running when such motor vehicle is unoccupied on the public highways of this state for a longer period than five minutes: Provided, that no motor vehicle shall be left standing within fifteen feet of a fire plug upon the public highways of this state unless in charge of a person who can immediately move such vehicle in case of necessity.

1917, c. 140, s. 19.

23. Use of vehicle without owner's consent. No person shall use or operate any motor vehicle owned by another without the knowledge or consent, expressed or implied, of such owner, on any public highway or elsewhere in this state: Provided, this section shall not be construed to repeal or in any way affect any law making the unlawful taking of such vehicle for temporary use a criminal offense.

1917, c. 140, s. 20.

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CHAPTER 56

MUNICIPAL CORPORATIONS

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SUBCHAPTER I. MUNICIPAL CORPORATIONS CREATED BEFORE 1917

ART. 1. GENERAL POWERS

1. Body politic. Every incorporated city or town is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no other.

Rev., s. 2915; Code, s. 702.

2. Corporate powers. A city or town is authorized:

1. To sue and be sued in its corporate name.

2. Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.

3. To purchase and hold land, within or without its limits, not exceeding fifty acres, for the purpose of a cemetery, and to prohibit burial of persons at any other place in said town, and to regulate the manner of burial in such cemetery. All municipal corporations purchasing real property at any trustee's or mortgagee's sale or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as conveyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers mentioned in the foregoing section.

4. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

5. To make such orders for the disposition or use of its property as the interest of the town requires.

6. To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease any waterworks, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period not exceeding thirty years, for the supply of light, water or other public commodity: Provided, that this subsection shall not apply to Cumberland County.

7. To provide for the municipal government of its inhabitants in the manner required by law.

8. To levy and collect such taxes as are authorized by law.

9. To do and perform all other duties and powers authorized by law.

Rev., s. 2916; Code, ss. 704, 3817; 1901, c. 283; 1905, c. 526; 1907, c. 978; 1917, c. 223.

NOTE. Approval by majority of qualified voters in case of sale or lease of public utilities, not required in the town of Reidsville. Pr. L. 1917, c. 28.

Reformatories for women established by county and city. See Reformatories, Art. 3.

In Alamance County towns may condemn land for cemetery. 1907, c. 172.

Act 1911, c. 86, allowing municipalities to establish public utilities, repealed except as to Cherokee. 1913, c. 179.

3. How corporate powers exercised. The corporate powers can be exercised only by the board of commissioners, or in pursuance of resolutions adopted by them, unless otherwise specially provided by law.

Rev., s. 2917; Code, ss. 703.

4. Application of chapter, and meaning of terms. Part one of this chapter shall apply to all incorporated cities and towns where the same shall not be inconsistent with special acts of incorporation, or special laws in reference thereto, and the word "commissioners" shall also be construed to mean "aldermen," or other governing municipal authorities. The sections relating to municipal or town elections shall apply to all cities and towns not expressly excepted by law.

Rev., s. 2918; Code, s. 3827; R. C., c. 111, s. 23.

ART. 2. MUNICIPAL OFFICERS

Part 1. Commissioners

5. Number and election. The board of commissioners of each town shall consist of not less than three nor more than seven commissioners, who shall be biennially elected by the qualified voters of the town, at the time and in the manner prescribed by law.

Rev., ss. 2917, 2919; Code, s. 3787; R. C., c. 111, s. 1.

NOTE. Commissioners elected annually in the town of Murphy. Pr. Ex. Sess. 1913, c. 1.

6. Number may be changed. After the first election the voters of any town may, whenever and as often as they choose, at the time of electing commissioners, and after due notice given thereof by the commissioners then in authority, by a majority of all the votes cast, alter the number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen.

Rev., s. 2922; Code, s. 3791; R. C., c. 111, s. 7.

7. Oath of office. The commissioners shall take and subscribe an oath before some person authorized by law to administer oaths that they will faithfully and impartially discharge the duties of their office, and such oath shall be filed with the mayor of such town and entered in a book kept for that purpose.

Rev., s. 2920; Code, s. 3799; R. C., c. 111, s. 12.

8. Vacancies filled. In case of a vacancy after election in the office of commissioner the others may fill it until the next election.

Rev., s. 2921; Code, s. 3793; R. C., c. 111, s. 9.

9. Commissioners appoint other officers and fix salaries. The board of commissioners may appoint a town constable, and such other officers and agents as may be necessary to enforce their ordinances and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensation; and also the compensation or salary of the mayor; may impose oaths of office upon them, and require bonds from them payable to the state, in proper penalties for the faithful discharge of their duties.

Rev., s. 2925; Code, s. 3800; R. C., c. 111, s. 13; 1862, c. 51.

Part 2. Mayor

10. How elected; vacancy. At the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the person having the highest number of votes shall be declared elected. In case of a vacancy in the office, the commissioners may fill the same.

Rev., s. 2931; Code, s. 3794; R. C., c. 111, s. 10.

11. Oath of office. The mayor, before some justice of the peace, or other person authorized by law to administer oaths, shall take and subscribe the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law, which said oath shall be filed with the records of the town and be entered on the same book with the oaths of the commissioners.

Rev., s. 2932; Code, s. 3798; R. C., c. 111, s. 11.

12. Presides at commissioners' meetings; mayor pro tem. The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number pro tempore, to exercise his duties.

Rev., s. 2933; Code, s. 3794; R. C., c. 111, s. 10.

13. Mayor's jurisdiction as a court. The mayor of every city or incorporated town is hereby constituted an inferior court, and as such court such mayor shall be a magistrate and conservator of the peace, and within the corporate limits of his 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 such city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor, and he shall be entitled to the same fees which are allowed to justices of the peace.

Rev., s. 2934; Code, s. 3818; 1871-2, c. 195; 1876-7, c. 243.

14. Enforces ordinances and penalties. As such court the mayor shall have authority to hear and determine all cases that may arise upon the ordinances of the 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 commissioners 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 the mayor, may appeal to the superior court as in case of a judgment rendered by a justice of the peace.

Rev., s. 2935; Code, s. 3819; 1876-7, c. 243, s. 2.

15. May sentence to work on streets. In all cases where judgments may be entered up against any person for fines, according to the laws and ordinances of any incorporated town, and the person against whom the same is so adjudged refuses or is unable to pay such judgment, it may and shall be lawful for the mayor before whom such judgment is entered, to order and require such person, so convicted, to work on the streets or other public works, until, at fair rates of wages, such person shall have worked out the full amount of the judgment and

costs of the prosecution; and all sums received for such fines shall be paid into the treasury. No woman shall be worked on the streets.

Rev., s. 2937; Code, s. 3806; 1897, c. 270; 1899, c. 128; 1866-7, c. 13.

16. Mayor certifies ordinances on appeal. In all cases of appeal from a mayor's court to the superior or other court of appeal, when the offense charged is the violation of a town ordinance the mayor shall send with the papers in the case a true copy of the ordinance alleged to have been violated, and shall certify under his hand and seal that said ordinance was in force at the time of the alleged violation of the same.

Rev., s. 2936; 1899, c. 277.

Part 3. Constable, Policeman, and Health Officer

17. Constable to take oath of office. The town constable shall, before some person authorized to administer oaths, take and subscribe to the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law, which said oath shall be filed with the mayor and entered in a book with the oaths of the commissioners.

Rev., s. 2938; Code, s. 3808; R. C., c. 111, s. 20.

NOTE. For appointment of special constable, see Constables, s. 3.

18. Power and duties of constable. As a peace officer, the constable shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have power to serve all civil and criminal process that may be directed to him by any court within his county, under the same regulations and penalties as prescribed by law in the case of other constables, and to enforce the ordinances and regulations of the board of commissioners as the board may direct. Whenever any process or other notice is so directed as to authorize a township constable to execute the same a town constable in that county may execute the same without any more specific direction: Provided, such town constable shall be required to give bond for performance of his duties such as is required of township constables who execute civil process.

Rev., s. 2939; Code, ss. 3808, 3810; R. C., c. 111, s. 20; 1879, c. 266; 1897, c. 519; 1899, c. 168; 1907, c. 52, s. 1.

19. Constable as tax collector. The constable shall have the same power to collect the taxes imposed by the commissioners as sheriffs have to collect the taxes imposed by the county commissioners, and he may be required by the commissioners to give bond, with sufficient surety, payable to the state of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which suit may be brought by the commissioners, as upon the bonds of other officers. The bond of the constable shall be duly proved, before the mayor and commissioners, and registered in the office of the register of deeds.

Rev., s. 2940; Code, 3809; R. C., c. 111, s. 21.

20. Policemen appointed. The board of commissioners may appoint town watch or police, to be regulated by such rules as the board may prescribe.

Rev., s. 2926; Code, s. 3803; R. C., c. 111, s. 16.

21. Policemen execute criminal process. A policeman shall have the same authority to make arrests and to execute criminal process, within the town limits, as is vested by law in a sheriff.

Rev., s. 2927; Code, s. 3811.

22. Municipal health officer. The authorities of any city or town, not already authorized in its charter, may elect a municipal health officer when, in their judgment, municipal health would be improved thereby, and may make such regulations, pay such fees and salaries, and impose such penalties as in their judgment may be necessary for the protection and advancement of the public health.

Rev., s. 4454; 1911, c. 62, s. 14; 1893, c. 214, s. 25.

NOTE. For the general duties of health officer, see chapter on Public Health.

Part 4. General Qualification of Officers

23. Must be voters in town or city. No person shall be a mayor, commissioner, intendent of police, alderman or other chief officer of any city or town, unless he shall be a qualified voter therein.

Rev., s. 2941; Code, s. 3796; 1870-1, c. 24, s. 3.

24. Refusal to qualify and act. Every person elected or appointed commissioner, mayor, or town constable, who, after being duly notified, shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one-half to the use of the town, and the other half to the use of any person who will sue for the same.

Rev., s. 2942; Code, s. 3812; R. C., c. 111, s. 22.

25. Hold office until successor qualified. Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day, shall hold their places till the day of election, and until other officers shall be elected or appointed and qualified. And they shall hold their offices in like manner, when there is any failure to make the annual election.

Rev., s. 2943; Code, s. 3792; R. C., c. 111, s. 8.

ART. 3. ELECTIONS REGULATED

26. Application of law, and exceptions. All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the town of Shelby, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Chowan, Columbus, Davidson, Edgecombe, Gaston, Lenoir, Mitchell, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson.

Rev., s. 2944; 1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; 1907, c. 165; Ex. Sess. 1908, c. 63; 1909, c. 365.

27. When election held. In all cities and towns an election shall be held on Tuesday after the first Monday of May, one thousand nine hundred and five, and biennially thereafter. Provided, that the provisions of this section shall not be construed so as to change, alter or amend any clause or provision in any charter of any town or city in Harnett County, providing for an annual election of the officers of such town or city.

Rev., s. 2945; 1901, c. 750, s. 19; 1907, c. 165.

28. Polling places. There shall be at least one polling place in each ward in the town or city, if the said town or city is divided into wards; and if not divided into wards, then there shall be as many polling places as may be established by the governing body of said town or city.

Rev., s. 2946; 1901, c. 750, s. 2.

29. Registrars appointed. The board of commissioners shall select, at least thirty days before any city or town election, one person for each election precinct, who shall act as registrar of voters for such precinct; and shall make publication of the names of the persons so selected, and of the time of the election, at the town or city hall, or at the usual place of holding the mayor's court, immediately after such appointment, and shall cause a notice to be served upon the registrars by the sheriff of the county or the township constable. If any registrar shall die or neglect to perform his duties, said governing body may appoint another in his place.

Rev., s. 2947; 1901, c. 750, s. 5; 1903, c. 613.

30. Registrars take oath of office. Before entering upon the duties of his office each registrar shall take an oath before some person authorized by law to administer oaths to faithfully perform the duties of his office as registrar.

Rev., s. 2948; 1901, c. 750, s. 6.

31. Registration of voters. It shall be the duty of the board of commissioners of every city and town to cause a registration to be made of all the qualified voters residing therein, under the rules and regulations prescribed for the registration of voters for general elections. And where there has been a registration of voters, the board of commissioners may, in its discretion, order a new registration of voters; and unless such new registration shall be ordered, the election shall be held under the existing registration, with such revision as is herein provided.

Rev., s. 2949; Code, s. 3795; 1901, c. 750, s. 3.

32. Notice of new registration. In the event a new registration is ordered the board of commissioners shall give thirty days notice thereof by advertisement in some newspaper, if there be one published in the town or city, and if there be none so published, then in three public places in the city or town.

Rev., s. 2950; 1901, c. 750, s. 4.

33. Registration books revised. Each registrar shall be furnished with registration books, and it shall be his duty to revise the registration book of his precinct in such manner that said books shall show an accurate list of the electors previously registered in such ward or precinct and still residing therein, without requiring such electors to be registered anew.

Rev., s. 2951; 1901, c. 750, s. 6.

34. Time for registration. Each registrar shall, between the hours of nine o'clock a.m. and five o'clock p.m. on each day (Sunday excepted) for seven days preceding the day for closing the registration books, as hereinafter provided, keep open said books for the registration of any new electors residing in the precinct, and entitled to register, whose names have never before been

registered in such precinct, or do not appear in the revised list. Such books shall be open until nine o'clock p.m. of each Saturday during such registration period and shall be closed for registration on the second Saturday before each election.

Rev., s. 2952; 1901, c. 750, s. 6.

35. Registration on election day. No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become of the age of twenty-one years or otherwise has become qualified to register and vote since the registration books were closed for registration, he shall be allowed to register and vote.

Rev., s. 2953; 1901, c. 750, s. 8.

36. Books open for challenge. On the second Saturday before the election the registration books shall be kept open at the polling place in the precinct for the inspection of the electors of the precinct, and any of such electors shall be allowed to object to the name of any person appearing on said books.

Rev., s. 2955; 1901, c. 750, s. 7.

37. Practice in challenges. When a person is challenged the registrar shall enter upon his books opposite the name of the person objected to the word "challenged," and the registrar shall appoint a time and place, on or before the Monday immediately preceding election day, when he, together with the judges of election, shall hear and decide the objection, giving personal notice to the voter so objected to; and if for any cause, personal notice cannot be given, then it shall be sufficient to leave a copy thereof at his residence. If any person challenged shall be found not duly qualified, the registrar shall erase his name from the books. They shall hear and determine the cause of challenge under the rules and regulations prescribed by the general law regulating elections for members of the general assembly.

Rev., s. 2956; 1901, c. 750, ss. 7, 9.

38. Judges of election. The board of commissioners shall appoint, at least thirty days before any city or town election, two judges of election, who shall be of different political parties where possible, and shall be men of good character, able to read and write, at each place of holding election in said city or town, who, before entering upon the discharge of their duties, shall take an oath, before some person authorized by law to administer oaths, to conduct the election fairly and impartially, according to the constitution and laws of the state.

Rev., s. 2958; 1901, c. 750, s. 7.

39. Vacancies on election day. If any vacancy shall occur on the day of election in the office of registrar, the same shall be filled by the judges of election, and if any vacancy shall occur on that day in the office of judge the same shall be filled by the registrar; vacancies occurring at any other time shall be filled by the board of commissioners.

Rev., s. 2954; 1901, c. 750, s. 20.

40. Judges superintend election. The judges of election shall open the polls and superintend the same until the close of election; they shall keep poll books in which shall be entered the name of every person who shall vote, and at the

close of the election they shall certify the same over their proper signatures and deposit them with the board of commissioners.

Rev., s. 2959; 1901, c. 750, s. 7.

41. When polls open and close. The polls shall be open on the day of election from eight o'clock a.m. till sunset, and no longer; and each person whose name may be registered shall be entitled to vote.

Rev., s. 2960; 1901, c. 750, s. 10.

42. Who may vote. All qualified electors, who shall have resided for four months immediately preceding an election within the limits of any voting precinct of a city or town, and not otherwise, shall have the right to vote in such precinct for mayor and other city or town officers.

Rev., s. 2961; 1901, c. 750, s. 9.

43. Ballots and ballot boxes. All ballots shall be printed or written upon white paper and shall be of the same size, without device, mutilation or ornamentation, the size of ballots to be fixed by board of commissioners at the same meeting the registrar is appointed. The governing body of the city or town shall provide for each election precinct in their respective cities or towns necessary ballot boxes in which to deposit the ballots; each of such boxes shall have an opening through the lid to admit a single folded ballot, and no more. The ballot boxes shall be kept up by the judges of election for the use of the election precincts respectively; and the registrar and judges of election, before the voting begins, shall carefully examine the ballot boxes and see that there is nothing in them, and they shall be sealed or securely fastened and not be opened until the polls are closed.

Rev., s. 2962; 1901, c. 750, s. 12; 1903, c. 613, s. 2.

44. Ballots counted. When the election shall be finished the registrar and judges of election shall open the boxes and count the ballots, reading aloud the names of the persons which shall appear on each ballot; and if there shall be two or more ballots rolled up together, or any ballot shall contain the names of more persons than the elector has the right to vote for, or shall have a device or ornament upon it, in either of these cases such ballots shall not be numbered in taking the ballots, but shall be void; and the counting of votes shall be continued without adjournment until completed, and the result thereof declared.

Rev., s. 2963; 1901, c. 750, s. 13.

45. Registration books, where deposited. Immediately after any election the registrars shall deposit the registration books for the respective precincts with the board of commissioners.

Rev., s. 2957; 1901, c. 750, s. 11.

46. Board of canvassers. The registrar and judges of election in each voting precinct shall appoint one of their number to attend the meeting of the board of canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns of the result of the election in such precinct; and the members of the board of canvassers who shall have been so appointed shall attend the meeting of the board of canvassers, and shall constitute the board of town canvassers for such election, and a majority of them shall

constitute a quorum. In towns where there is only one voting precinct, the registrar and judges of election shall, at the close of the election, declare the result thereof.

Rev., s. 2964; 1901, c. 750, ss. 13, 14.

47. Meeting of board of canvassers. The board of canvassers shall meet on the next day after the election at twelve o'clock m., at the mayor's office, and they shall each take the oath prescribed in the general law governing elections for members of the board of county canvassers.

Rev., s. 2965; 1901, c. 750, s. 15.

48. Board determines result; tie vote. The board of canvassers shall, at their meeting, in the presence of such electors as choose to attend, open, canvass and judicially determine the result, and shall make abstracts, stating the number of legal ballots cast in each precinct for each office, the name of each person voted for and the number of votes given to each person for each different office, and shall sign the same. It shall have power and authority to pass upon judicially all the votes relative to the election and judicially determine and declare the result of the same, and shall have power and authority to send for papers and persons and examine the latter upon oath; and in case of a tie between two opposing candidates, the result shall be determined by lot. In all other respects all elections held in any town or city shall be conducted as prescribed for the election of members of the general assembly.

Rev., s. 2966; 1901, c. 750, ss. 16, 17.

49. Notice of special election. No special election shall be held for any purpose in any county, township, city or town unless at least thirty days notice shall have been given of the same by advertisement in some newspaper published in said county, city or town, or by advertisement posted at the courthouse of the county and four other public places in such county, city or town.

Rev., s. 2967; 1901, c. 750, s. 24.

ART. 4. ORDINANCES AND REGULATIONS

50. General power to make ordinances. The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary; and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalties.

Rev., s. 2923; Code, ss. 3799, 3804; R. C., c. 111, ss. 12, 17.

NOTE. For proof of ordinances on appeal, see Evidence, s. 4.

51. Power to establish and regulate markets. The board of commissioners may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold grain, meal or flour (if flour be not packed in barrels), fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid. But it shall not be lawful for the commissioners or other authorities of any town

to impose any tax whatever on wagons or carts selling farm products, garden truck, fish and oysters on the public streets thereof.

Rev., s. 2928; Code, s. 3801; R. C., c. 111, s. 14; 1879, c. 176.

52. Repair streets and bridges. The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary, and may apportion the same equally among the inhabitants, by assessments of labor or otherwise, and the citizens shall not be liable to work on the public roads without the limits of the town. When they determine to repair or improve by labor, they may appoint an overseer and compel such persons as are liable to perform duty on the public roads to work on the streets, in the manner and under the penalties provided in the general law for the reparation of the public roads.

Rev., s. 2930; Code, s. 3803; R. C., c. 111, s. 16.

53. May abate nuisances. The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens.

Rev., s. 2929; Code, s. 3802; R. C., c. 111, s. 15.

NOTE. Require contractors to give bond. See chapter Liens, s. 12.

May establish public hospital. See chapter Public Hospitals.

ART. 5. MUNICIPAL TAXATION

54. Commissioners may levy taxes. The board of commissioners may annually levy and cause to be collected for municipal purposes a tax not exceeding fifty cents on the hundred dollars, and one dollar and fifty cents on each poll, on all persons and property within the corporation, which may be liable to taxation for state and county purposes; and may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the general assembly; and on all dogs, and on swine, horses and cattle, running at large within the town.

Rev., s. 2924; Code, s. 3800; R. C., c. 111, s. 13; 1862, c. 51.

55. Taxes must be uniform and ad valorem. All taxes levied by any county, city, town, or township, shall be uniform and ad valorem, upon all property in the same, except property exempted by this constitution.

Rev., s. 2968; Const., Art. VII, s. 9.

56. Poll tax limitation. The equation of taxation described in the constitution applying only to taxation levied for the ordinary purposes of the state and county, no poll tax shall be levied or collected by any city or town, except as hereinafter provided, in excess of two dollars for any or all purposes combined, and all acts levying or authorizing the levy of taxes for special purposes which contain authority to levy a poll tax in excess of two dollars in the aggregate for all purposes are hereby repealed or modified so as to restrict and provide that the poll tax for general purposes and special taxes combined shall never exceed two dollars: Provided, this act shall not be construed to affect and shall not affect the district or other special school taxes and road taxes on the poll

where they are now required to be levied by law: Provided further, that this act shall not affect any special act for the sale of bonds by municipalities where said bonds have been sold or voted for or authorized at the date of the passage of this act. This shall not apply to the counties of Halifax, Beaufort, Cleveland, New Hanover, Burke, Catawba, Union, Randolph, Orange, Edgecombe, Pasquotank and Rowan.

1907, c. 935.

57. Tax lists taken. The mayor, or other suitable person, shall, by order of the commissioners, take the list of taxables in the town, in such manner and at such time as the commissioners shall prescribe. If any person fail to list his taxables within the time prescribed by the commissioners, he shall be liable to a double tax.

Rev., s. 2969; Code, s. 3807; R. C., c. 111, s. 19.

58. Tax lists corrected. 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.

Rev., s. 2970; Code, s. 3823; 1870-1. c. 177, s. 2.

59. Taxation of municipal bonds. All laws and clauses of laws heretofore passed exempting bonds issued by any municipal corporation of the state of North Carolina from state, county or municipal taxation be and the same are hereby repealed: Provided, that nothing herein shall be construed to prevent a municipality from exempting its bonds from its own taxation.

Rev., s. 2976; 1905, c. 532.

60. Dog tax. If any person residing in a town shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may collect from the person so failing double the tax, or may treat such dog as a nuisance, and order its destruction.

Rev., s. 2971; Code, s. 3815; R. C., c. 111, s. 24.

NOTE. For general dog tax, see Dogs.

61. Monthly settlements by tax collector. Each town and city constable, or any other officer authorized by any town or city to collect taxes, fines or penalties, shall make a monthly settlement of all moneys coming into his hands, with the town treasurer or other officer authorized to receive the same.

Rev., s. 2972; Code, s. 3813; 1879, c. 194.

61a. Punishment for failing to pay over taxes monthly. If any constable or collector of taxes for any town or city, or any other officer, shall fail to make settlement and full return of all moneys, penalties and fines coming into his hands each month with the town or city treasurer, or other officer authorized to receive the same, he shall be guilty of a misdemeanor.

Rev., s. 3609; Code, s. 3814; 1879, c. 194, s. 2; 1881, c. 37.

62. Annual statement of taxes. 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 this section shall forfeit and pay one hundred dollars to any person who will sue for the same.

Rev., s. 2973; Code, s. 3816; R. C., c. 111, s. 25.

63. Publication of receipts and disbursements:

1. The board of aldermen or other governing body of incorporated cities and towns having a population of three thousand or over shall cause to be published monthly or quarterly statements of all municipal receipts and disbursements, which shall be itemized and show from what source received and to whom and on what account paid, and shall likewise cause to be published annually, at the end of each fiscal year, condensed and classified statements of such municipal receipts and disbursements, showing the source from which received and the account on which expended.

2. The governing body of incorporated towns having a population of less than three thousand shall cause to be published annually at the end of each fiscal year, statements of all receipts and disbursements of public moneys collected and expended, which statements shall be itemized as provided for the monthly or quarterly statements in the preceding paragraph, and shall also contain a classified summary of such receipts and disbursements, showing the source from which received and the account on which expended.

3. The statements above provided for shall be published in some newspaper having its place of publication, or which is of general circulation, in the city or town in which such public moneys are collected and expended. The cost of such publication shall not exceed one-half of one cent per word.

1911, c. 291.

ART. 6. SALE OF MUNICIPAL PROPERTY

64. Public sale by mayor and commissioners. The mayor and commissioners of any 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 town, and apply the proceeds as they may think best.

Rev., s. 2978; Code, s. 3824; 1872-3, c. 112.

65. Sale by county commissioners. In any town where there is no mayor or commissioners, the board of county commissioners shall have the power given in the preceding section.

Rev., s. 2979; Code, s. 3825; 1872-3, c. 112, s. 2.

66. Title made by mayor. The mayor of any town, or the chairman of any board of commissioners, of any town or county, is fully authorized to make title to the purchaser of any property sold under this chapter.

Rev., s. 2980; Code, s. 3826; 1872-3, c. 112, s. 3.

ART. 7. GENERAL MUNICIPAL DEBTS

67. Popular vote required, except for necessary expense. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officers of the

same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.

Rev., s. 2974; Const., Art. VII, s. 7.

68. Debts paid out of tax funds. 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, 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 debt.

Rev., s. 2975; Code, s. 3821; 1870-1, c. 90.

69. Debts limited to ten per cent of assessed values. It shall be unlawful for any city or town to contract any debt, pledge its faith or loan its credit for the construction of railroads, the support or maintenance of internal improvements or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent of the assessed valuation of the real and personal property situated in such city or town. And the levy of any tax to pay any such indebtedness in excess of this limitation shall be void and of no effect.

Rev., s. 2977; 1889, c. 486.

ART. 8. MUNICIPAL BONDS

70. Meaning of terms and construction. Wherever in this article the word municipality is used it shall be construed to mean the city or town issuing bonds hereunder; wherever the word resolution is used it shall be construed to mean the resolution, ordinance or order of the governing body of such municipality. This authority shall be in addition to any and all other statutes authorizing or permitting the issuance of bonds, and shall not be construed to repeal or supersede any of such statutes.

1915, c. 131, s. 8.

71. Bonds issued for necessary expense. For securing money for any purpose involving a necessary expense, including the funding or refunding of obligations therefore issued for any such purpose, the governing body of any city or town is hereby authorized to issue bonds of such municipality to such an amount as the governing body shall by resolution direct, said bonds to be of such form and tenor and denomination, and to bear interest at such rate not exceeding six per centum per annum, and the principal thereof to be payable at such time or times not exceeding thirty years from the date thereof, and such interest and principal to be payable at such place or places within or without this state as the governing body shall by resolution direct.

1915, c. 131, s. 1.

72. Popular vote required in other cases. To secure money for any other municipal purpose, including the funding or refunding of obligations theretofore issued in whole or in part for any other municipal purpose, the governing

body may issue bonds of such municipality in all respects as provided in the foregoing section, but before issuing said bonds the question of their issuance shall be submitted to the qualified voters of such municipality at a general or special election.

Notice of such election shall be given by publication at least once a week for four weeks in a newspaper published in said municipality or by posting for thirty days in at least three public places if no newspaper is published therein. Such election shall be held, conducted and canvassed as other elections in said municipality. If a special election be held, the existing registration list shall be used unless a new registration shall be ordered by resolutions. If at such election a majority of the registered voters shall vote in favor of the issuance of said bonds, then they shall be issued as aforesaid.

But if said bonds are to be issued to fund or refund any notes, bonds or other obligations, the issuance of which shall have been approved by a majority of the qualified voters of such municipality, then no election for the issuance of the funding or refunding bonds shall be necessary.

1915, c. 131, s. 2.

73. Amount limited to 10 per cent of assessed valuation. No bonds shall be issued under the preceding section which, together with all other bonded debt of the municipality, shall exceed ten per centum of the assessed valuation of the real and personal property situated in said municipality: Provided, that this prohibition shall not apply to the issuance of funding or refunding bonds.

1915, c. 131, s. 6.

74. Formal execution of bonds. The bonds shall be numbered and shall be signed by two or more officers to be designated by resolution, including the chief executive officer, under the corporate seal. The delivery of such bonds so executed shall be valid notwithstanding any change in such officers or seal occurring within twenty days after such execution. If coupons be attached to said bonds the coupons may be executed by the facsimile signature of one or more of the officers who sign said bonds, to be designated by resolution. Such coupon bonds may at any time after their issuance be registered by the financial officer of such municipality who shall sign a statement endorsed thereon evidencing the destruction of all unmatured coupons and the registration of such bonds. Such bonds may also be registered as to principal only.

1915, c. 131, s. 3.

75. Sale of bonds. Such bonds shall be sold at not less than par and shall bear such a rate of interest not exceeding six per cent, as the governing body of the municipality may determine. They shall be sold at public sale, after advertisement and competitive bidding.

1915, c. 131, s. 4.

76. Tax levied for payment of bonds. It shall be the duty of the governing body of all cities and towns to levy and collect, annually, as other taxes are levied and collected, a sum sufficient to pay the interest on all bonds issued by them as such interest becomes due, and to provide a sinking fund for the payment of all such bonds at maturity. The municipality may, prior to the issuing of such bonds, or thereafter, provide and pledge a tax in a specific amount to pay the

same, and such tax shall thereafter be levied and applied to the payment of such bonds and to no other purpose, until the same are fully paid. All laws and clauses of laws limiting the levy to be made by the governing body of any city or town in the state to an amount not sufficient to pay at maturity the principal and interest of bonds authorized to be issued are repealed as to such limitation.

1915, c. 131, s. 5; 1917, cc. 43, 120.

ART. 9. PUBLIC LIBRARIES

77. Libraries established upon petition and popular vote. The governing body of any incorporated city or town, upon the petition of twenty-five per cent of the registered voters thereof, shall submit the question of the establishment of a free public library to the voters at the next municipal election. If a majority of votes cast on said question be in the affirmative, the board of aldermen or town commissioners shall establish the library or reading-room and levy and cause to be collected as other general taxes are collected a special tax of not more than ten cents on the hundred dollars of the assessed value of the taxable property of such city or town and not more than thirty cents on the poll. The fund so provided shall constitute the library fund, and shall be kept separate from the other funds of the city or town, to be expended exclusively upon such library.

1911, c. 83, s. 1.

78. Library trustees appointed. For the government of such library there shall be a board of six trustees appointed by the governing body of the city or town, chosen from the citizens at large with reference to their fitness for such office; and not more than one member of the board of aldermen or town commissioners shall be at any one time a member of said board. Such trustees shall hold their office for six years from their appointment, and until their successors are appointed and qualified: Provided, that upon their first appointment under this act two members shall be appointed for two years, two for four years, and two for six years, and at all subsequent appointments under this act made every two years two members shall be appointed for six years. All vacancies shall be immediately reported by the trustees to the governing body and be filled by appointment in like manner, and, if in an unexpired term, for the residue of the term only. The governing body may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. No compensation shall be allowed any trustee.

1911, c. 83, s. 2.

79. Powers and duties of trustees. Immediately after appointment, such board of trustees shall organize by electing one of its members as president and one as secretary-treasurer, and such other officers as it may deem necessary. The secretary-treasurer before entering upon his duties shall give bond to the municipality in an amount fixed by the board of trustees, conditioned for the faithful discharge of his official duties. The board shall adopt such by-laws, rules and regulations for its own guidance and for the government of the library as may be expedient and comfortable to law. It shall have exclusive control of the expenditure of all moneys collected for or placed to the credit of the library

fund, and of the supervision, care, and custody of the rooms or buildings constructed, leased, or set apart for library purposes. But all money received for such library shall be paid into the city treasury, be credited to the library fund, be kept separate from other moneys, and be paid out to the secretary-treasurer upon the authenticated requisition of the board of trustees through its proper officers. With the consent of the governing body of the city or town, it may lease and occupy, or purchase, or erect upon ground secured through gift or purchase, an appropriate building: Provided, that of the income for any one year not more than one-half may be employed for the purpose of making such lease or purchase or for erecting such building. It may appoint a librarian, assistants, and other employees, and prescribe rules for their conduct, and fix their compensation, and shall also have power to remove such appointees. It may also extend the privileges and use of such library to nonresidents upon such terms and conditions as it may prescribe.

1911, c. 83, s. 3.

80. Annual report of trustees. On or before the thirty-first day of December of each year the board of trustees shall make a report to the governing body of the city or town, stating the condition of their trust, the various sums of money received from the library fund and all other sources, and how much money has been expended; the number of books and periodicals on hand, the number added during the year, the number lost or missing, the number of books loaned out, and the general character of such books; the number of registered users of such library, with such other statistics, information, and suggestions as it may deem of general interest.

1911, c. 83, s. 7.

81. Power to take property by gift or devise. With the consent of the governing body of the city or town, expressed by ordinance or resolution, and within the limitations of this act as to the rate of taxation, the library board may accept any gift, grant, devise, or bequest made or offered by any person for library purposes, and may carry out the conditions of such donations. And the city or town in all such cases is authorized to acquire a site, levy a tax, and pledge itself by ordinance or resolution to a perpetual compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted.

1911, c. 83, s. 5.

82. Title to property vested in the city or town. All property given, granted, conveyed, donated, devised, or bequeathed to, or otherwise acquired by, any city or town for a library shall vest in and be held in the name of such city or town, and any conveyance, grant, donation, devise, bequest, or gift to or in the name of any public library board shall be deemed to have been made directly to such city or town.

1911, c. 83, s. 4.

83. Library free. Every library established under this article shall be forever free to the use of the inhabitants of the city or town, subject to such reasonable regulations as the board of trustees may adopt.

1911, c. 83, s. 6.

84. Ordinances for protection of library. The governing body of such city or town shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon such library or the grounds or other property thereof, or for any injury to or for failure to return any book, plate, picture, engraving, map, magazine, pamphlet, or manuscript belonging to such library.

1911, c. 83, s. 8.

85. Contract with existing libraries. The governing body of any city or town, when deemed best for the interest of the city or town, may, in lieu of supporting and maintaining a public library, enter into a contract with and make continuing appropriations of money to such library, associations or corporations as shall maintain a library or libraries, whose books shall be available without charge to the residents of such city or town, under such rules and regulations of said library associations or corporations as shall be approved by the governing body of such city or town. All money paid to such society or corporation under such contract shall be expended solely for the maintenance of such library, and for no other purpose. No city or town shall appropriate under this act in any year a total greater than one-fortieth of one per cent of the taxable value of such city or town according to the assessment of the previous year.

Nothing in this section shall be construed to abolish or abridge any power or duty conferred upon any public library established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries.

1911, c. 83, ss. 9, 10; 1917, c. 215.

ART. 10. LOCAL IMPROVEMENTS

86. Explanation of terms. In this article the term "municipality" means any city or town in the state of North Carolina now or hereafter incorporated.

"Governing body" includes the board of aldermen, board of commissioners, council, or other chief legislative body of a municipality.

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing and remacadamizing of public streets and alleys, and the construction, reconstruction and altering of curbs, gutters and drains in public streets and alleys.

"Sidewalk improvement" includes the grading, construction, reconstruction and altering of sidewalks in public streets or alleys, and may include curbing and gutters.

"Local improvement" means any work undertaken under the provisions of this act, the cost of which is to be specially assessed, in whole or in part, upon property abutting directly on the work.

"Frontage" when used in reference to a lot or parcel of land abutting directly on a local improvement, means that side or limit of the lot or parcel of land which abuts directly on the improvement.

1915, c. 56, s. 1.

87. Application and effect. This article shall apply to all municipalities. It shall not, however, repeal any special or local law or affect any proceedings

under any special or local law, for the making of street, sidewalk or other improvements hereby authorized, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and to be a complete act, not subject to any limitation or restriction contained in any other public or private law or laws, except as herein otherwise provided.

1915, c. 56, s. 2.

88. Publication of resolution or notice. Every resolution passed pursuant to this act shall be passed in the manner prescribed by other laws for the passage of resolutions. Whenever a resolution or notice is required by this act to be published, it shall be published at least once in a newspaper published in the municipality concerned, or, if there be no such newspaper, such resolution or notice shall be posted in three public places in the municipality for at least five days.

1915, c. 56, s. 3.

89. When petition required. Every municipality shall have power, by resolution of its governing body, upon petition made as provided in the next succeeding section, to cause local improvements to be made and to defray the expense of such improvements by local assessment, by general taxation, and by borrowing, as herein provided. No petition shall be necessary, however, for the ordering or making of private water, sewer and gas connections as hereinafter provided. Nor shall a petition be necessary for the making of sidewalk improvements in those municipalities in which by other law or laws sidewalk improvements are authorized to be made without petition.

1915, c. 56, s. 4.

90. What petition shall contain. The petition for a local improvement shall be signed by at least a majority in number of the owners, who must represent at least a majority of all the lineal feet of frontage of the lands (a majority in interest of owners of undivided interests in any piece of property to be deemed and treated as one person for the purpose of the petition), abutting upon the street or streets or part of a street or streets proposed to be improved. The petition shall cite this article and shall designate by a general description the local improvement to be undertaken and the street or streets or part thereof whereon the work is to be effected. The petition shall be lodged with the clerk of the municipality, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive.

1915, c. 56, s. 5.

91. What resolution shall contain:

1. *Designate improvements.* The preliminary resolution determining to make a local improvement shall, after its passage, be published. Such resolution shall designate by a general description the improvement to be made, and the street or streets or part or parts thereof whereon the work is to be effected, and the proportion of the cost thereof to be assessed upon abutting property and the terms and manner of the payment.

2. *Sidewalk improvements.* If such resolution shall provide for a sidewalk improvement, it may, in those municipalities in which the owners of the abutting property are required to make payment of the entire cost thereof, without petition direct that the owners of the property abutting on the improvement shall make such sidewalk improvement, and that unless the same shall be made by such owners on or before a day specified in the resolution, the governing body may cause such sidewalk improvement to be made.

3. *Affecting railroads.* If the resolution shall provide for a street improvement, it shall direct that any street railway company or other railroad company having tracks on the street or streets or part thereof to be improved shall make such street improvement with such material and of such a character as may be approved by the governing body, in that part of such street or streets or part thereof which the governing body may prescribe, not to exceed, however, the space between the tracks, the rails of the tracks, and eighteen inches in width outside of the tracks of such company, and that unless such improvement shall be made on or before a day specified in such resolution, the governing body will cause such improvement to be made: Provided, however, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provided, such franchise or contract shall not be affected by this act, except in so far as this act may be consistent with the provisions of such franchise or contract.

4. *Water, gas and sewer connections.* If the resolution shall provide for a street or sidewalk improvement, it may, but need not, direct that the owners of all property, abutting on the improvement shall connect their several premises with water mains, gas and sewer pipes located in the street adjacent to their several premises in the manner prescribed in such resolution, and that unless such owners shall cause connection to be made on or before a day specified in such resolution, the governing body will cause the same to be made.

1915, c. 56, s. 6.

92. **Character of work and material.** The governing body shall have power to determine character and type of construction and of material to be used in making a local improvement, and whether the work, where not done by owners of abutting property or by a street or other railroad company, shall be done by the forces of the municipality or by contract: Provided, that for the purposes of securing uniformity in the work the governing body shall always have the power to have all street paving done by the forces of the municipality or by contract under the provisions of this act.

1915, c. 56, s. 7.

93. Assessments levied:

1. *One-half on abutting property.* One-half of the total cost of a street or sidewalk improvement made by a municipality, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways, shall be specially assessed upon the lots and parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage, unless the petition for such street or sidewalk improvement shall request that a larger proportion of such cost, speci-

fied in the petition, be so assessed, in which case such larger proportion shall be so assessed, and the remainder of such cost shall be borne by the municipality at large.

2. *Upon railroads.* The cost of that part of a street improvement required to be borne by a railroad or street railway company, and made by the municipality after default by a railroad or street railway company in making the same as hereinbefore provided, shall be assessed against such company, and shall be collected in the same manner as assessments are collected from abutting property owners, and such assessment shall be a lien on all of the franchises and property of such railroad or street railway company.

3. *For sidewalks.* The entire cost of a sidewalk improvement required to be made by owners of property abutting thereon, and made by the municipality after default by such property owners in making the same, as hereinbefore provided, shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made and directly on the improvement, according to their respective frontages thereon, by an equal rate per foot of such frontage.

4. *Water, gas and sewer connections.* The entire cost of each water, gas and sewer connection, required to be made by the owner of the property for or in connection with which such connection was made, but made by the municipality after default by such property owner in making the same, as hereinbefore provided, shall be specially assessed against the particular lot or parcel of land for or in connection with which it was made. No lands in the municipality shall be exempt from local assessment.

1915, c. 56, s. 8.

94. **Amount of assessment ascertained.** Upon the completion of any local improvement the governing body shall compute and ascertain the total cost thereof. In the total cost shall be included the interest paid or to be paid on notes or certificates of indebtedness issued by the municipality to pay the expense of such improvement pursuant to the provisions of this article and incident to the improvement and assessment therefor. The governing body must thereupon make an assessment of such total cost pursuant to the provisions of the preceding section, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed.

1915, c. 56, s. 9.

95. **Assessment roll filed; notice of hearing.** Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. Any number of assessment rolls may be included in one notice.

1915, c. 56, s. 9.

96. Hearing and confirmation; assessment lien. At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and may make proof in relation thereto. The governing body may thereupon correct such assessment roll, and either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes.

1915, c. 56, s. 9.

97. Appeal to the superior court. If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal, but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law.

1915, c. 56, s. 9.

98. Power to adjust assessments. The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the costs of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or assessment bonds issued by the municipality to pay the expenses of such improvement. The proceeding shall be in all respects as in case of local assessments, and the reassessment shall have the same force as if it had originally been properly made.

1915, c. 56, s. 9.

99. Payment of assessment in cash or by installments. The property owner or railroad or street railway company hereinbefore mentioned shall have the option and privilege of paying for the improvements hereinbefore provided for in cash, or if they should so elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in next succeeding section, they shall have the option and privilege of paying the assessments in not less than five nor more than ten equal annual installments as may have been determined by the governing body in the original resolution authorizing such improvement. Such installments shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner or railroad or street railway

company to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property and franchises shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

1915, c. 56, s. 10.

100. Payment of assessments enforced. After the expiration of twenty days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice without any addition. In the event the assessment be not paid within such time the same shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll and shall become due and payable on the date on which taxes are payable: Provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. If any assessment or installment thereof is not paid when due, it shall be subject to the same penalties as are now prescribed for unpaid taxes, in addition to the interest herein provided for.

1915, c. 56, s. 11.

100a. Assessments in case of tenant for life or years. Whenever any real estate is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property by any city, town, county, township, municipal district, or the state, to cover the cost of permanent improvements ordered put thereon by the law or the ordinances of such city or town, township, or municipal district, such as paving streets and sidewalks, laying sewer and water lines, draining lowlands, and permanent improvements of a like character, which constitute a lien upon such property, the amount so assessed for such purposes shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate.

1911, c. 7, s. 1.

100b. Interests of parties ascertained. In calculating the respective interests of a tenant for life and the remainderman in fee, the duration of the life tenancy should be ascertained and the expectation of life of the tenant as is provided by law by the mortuary table, as near as may be justly and fairly done.

1911, c. 7, s. 2.

100c. Lien of party making payment. If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying

more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the city, town, township, municipal district, county, or the state, to a lien on such property for the same.

1911, c. 7, s. 3.

101. Money borrowed to be paid out of assessment. At any time before the cost of any local improvement shall be computed and ascertained as provided in section nine of this act, the governing body may from time to time by resolution authorize the treasurer to borrow money to the extent required to pay the cost of any such improvement or to repay any money borrowed under this section with interest thereon. The resolution authorizing any such loan or loans may provide for the issue of notes or certificates of indebtedness of the municipality, or both, payable either on demand or at a fixed time, not more than six months from the date thereof and bearing interest not exceeding six per centum per annum. Said notes or certificates may be sold at public or private sale, or pledged as security for temporary loans, as the governing body may by such resolution direct. Any temporary indebtedness incurred under the authority of this section, with the interest thereon, may be paid out of moneys raised by the issue and sale of "local improvement bonds" or "assessment bonds," or both, to be issued and sold as hereinafter provided, or may be included in the annual tax levy.

1915, c. 56, s. 12.

102. Assessment books prepared. After the governing body of the municipality has levied the assessment against the property abutting upon the street or streets, the city clerk or person designated, shall prepare from such assessment roll and deliver to the tax collector or person designated, a well bound book styled Special Assessment Book, which shall be so ruled as to conveniently show:

1. Name of owner of such property.
2. The number of lot or part of lot and the plan thereof if there be a plan.
3. The frontage of said lot.
4. The amount that has been assessed against such lot.
5. The amount of such installments and the day on which installments shall become due.

Such book shall be indexed according to the names of the owners of the property and entries of all payments or partial payments shall be immediately entered upon said book when made, and said book shall be open to the inspection of any citizen of the municipality.

1915, c. 56, s. 13.

103. Local improvement bonds issued. Whenever an assessment for any local improvement has been confirmed, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which shall be borne by the municipality at large shall be raised by the issuance of bonds of the municipality to be known as "local improvement bonds." Such bonds shall be payable at such time or times, not exceeding thirty years from their

date, as the governing body shall determine. There shall be raised annually by tax upon all the taxable property of the municipality, after the issuance of any such bonds, a sum sufficient to meet and pay the interest thereon, as the same becomes due, and a sum to be paid into a sinking fund which will, together with the accumulations thereof, provide a fund sufficient to meet and pay the principal of said bonds at maturity: Provided, however, that if such bonds be made payable in annual installments substantially equal in amount, the first of which installments shall be payable within two years from the date of such bonds and the last within twenty years of such date, the governing body authorizing such bonds, in lieu of providing for a sinking fund to meet the principal of such bonds, shall cause to be raised by taxation in each year in which an installment of principal shall be payable, or in the next preceding year, an amount sufficient to meet said installment, in addition to the annual tax during the life of the bonds to provide for the payment of the interest accruing thereon. The municipality's share of two or more improvements may be included in a single issue of local improvement bonds.

1915, c. 56, s. 14.

104. Assessment bonds issued. Whenever an assessment for any local improvement has been confirmed, and twenty days have elapsed since the first publication of notice of such confirmation, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which has been assessed upon the abutting property, or any part of such expense, shall be raised by the municipality by the issuance of its bonds, to be known as "assessment bonds." Such bonds shall be made payable in not less than five and not more than ten substantially equal annual installments, the last of which shall become due not less than five nor more than ten years after the issuance of the bonds. All moneys derived from the collection of assessments upon which assessment bonds are predicated, collected after the passage of the resolution authorizing such bonds, shall be placed in a special fund, to be used only for the payment of the principal and interest of assessment bonds issued under this act; and if at the time of the annual tax levy for any year in such municipality it shall appear that such fund will be for any cause insufficient to meet the principal and interest of such bonds maturing in such year, the amount of the deficiency shall be included in such tax levy. The amount of the assessments for two or more improvements may be included in a single issue of assessment bonds.

1915, c. 56, s. 15.

105. Form of bonds; sale. Bonds authorized to be issued by this act shall be of such denomination, bear such rate of interest, not exceeding six per centum per annum, and be payable at such places, and be in such form as the governing body may by resolution provide. Such bonds shall be signed by the mayor or other chief executive officer, and the clerk of the municipality issuing them, and shall bear the seal of such municipality. Coupons attached to such bonds shall bear the facsimile signature of one or more of said officers. Such bonds may be either coupon bonds or registered bonds, or coupon bonds with the privilege of registration as to principal only, or of conversion into bonds registered as to both principal and interest. They may be sold at public or private sale, but for not less than their par value. They shall recite that they are issued pursuant

to the authority of this act and of the resolution authorizing the issuance thereof which shall be conclusive evidence of their validity, and of the regularity of their issuance.

1915, c. 56, s. 16.

106. Power to provide for payment. The full faith and credit of a municipality shall be pledged for the payment of the principal and interest of all of its local improvement bonds, assessment bonds, notes and other obligations issued under this act. For the purpose of paying such principal and interest the governing body shall have power to levy sufficient taxes upon all the taxable property in the municipality and to borrow money temporarily upon notes of the municipality in anticipation of taxes of the same or the succeeding fiscal year.

1915, c. 56, s. 17.

107. Bonds issued without popular vote validated. All bonds heretofore issued or proceedings taken by any city or town in substantial compliance with the provisions of this article are hereby validated, notwithstanding that the question of issuing bonds was not submitted to the voters of such city or town, and every such city or town is authorized to continue such proceedings to issue bonds or other obligations, as provided in this article, without submitting to the voters or taxpayers of such city or town the question of issuing such bonds.

1917, c. 71; 1917, c. 131, ss. 1, 2.

108. Popular vote not required in certain cases. Notwithstanding anything contained in any law heretofore enacted, whether general, special, private, or local, it shall be lawful for any city or town to borrow money, contract debts, and issue bonds or other evidence of indebtedness for necessary expenses without the assent of the voters or taxpayers of such city or town, in all cases where the whole or at least one-fourth of the cost of the improvements or properties for which the money is borrowed, debt incurred, or bonds or other evidences of indebtedness issued, has heretofore been or is hereafter to be specially assessed upon abutting property or other property deemed benefited by the making of such improvement or the acquisition of such properties.

1917, c. 113, s. 3.

ART. 11. INSPECTION OF METERS

109. Inspectors appointed. In every city or town in the state of North Carolina where is furnished, for pay, electricity, gas or water by meter measure, the governing body of the city or town may appoint some competent person to act as inspector of meters, whose duty it shall be to inspect and test such meters and to carry out the provisions of this act as herein provided.

1909, c. 150, s. 1.

110. Time of appointment; oath, bond and compensation. Such appointment, if made, shall be made at the first meeting in May of each year of such governing body, subject to the power of such city or town authorities to remove such appointee in the manner provided for the removal of its other appointees and to fill the vacancy caused by such removal. The compensation of such inspector shall be fixed and shall be paid by the city or town so appointing him, and such inspector shall upon his appointment take oath before the mayor of

said city or town that he will faithfully perform the duties herein imposed upon him, and the governing body of the city or town may require the inspector to give bond in such sum as they may fix for the faithful discharge of his duties.

1909, c. 150, s. 2.

111. Apparatus for testing meters provided. Every person, firm, corporation or municipality furnishing for pay electricity, gas or water by meter measure in any city or town having appointed an inspector of meters, as aforesaid, shall provide and keep a suitable and proper apparatus for testing and proving the accuracy of the meters to be so furnished for use, by which apparatus all such meters shall be tested at their rated capacity.

1909, c. 150, s. 3.

112. Meters tested before installed. No person, firm, or corporation or municipality furnishing for pay electricity, gas or water by meter measure shall hereafter furnish, install and put in use any such meter in any city or town having appointed an inspector of meters, as aforesaid, until such meter shall first have been inspected and found correct by such inspector, and it shall be the duty of such inspector to test the same upon the written request of such proposed furnisher. No meter now in service shall be required to be taken out for test, except where there is doubt as to its accuracy and upon the written request of the consumer, as herein provided.

1909, c. 150, s. 4.

113. Inspection made upon complaint. When any consumer, by meter, of electricity, gas or water in any city or town having appointed an inspector of meters, as aforesaid, doubts the accuracy of such meter and desires to have the same tested, such consumer may file with the inspector of meters a written complaint of the meter and request that the same be tested, and shall at the same time deposit with the furnisher the sum of one dollar to cover the expense of taking out and replacing such meter, and thereupon it shall be the duty of such inspector as soon as practicable to accurately test said meter in the presence of and jointly with the authorized agent of the furnisher, and also in the presence of the complainant, if he so desires, and shall give to both the complainant and to the furnisher a written report of such test and the result thereof.

1909, c. 150, s. 5.

114. Repayment of deposit. If upon such test the meter is found to be incorrect, in that it registers more than two and one-half per cent too fast—that is, more than two and one-half per cent more electricity, gas or water than it should, then and in that event the furnisher shall return to the complainant the one dollar deposit and shall promptly properly adjust and repair the meter or furnish a correctly adjusted meter; but if upon such test the meter shall not register more than two and one-half per cent too fast—that is, more than two and one-half per cent more than it ought to—the one dollar deposit shall be retained by the furnisher to cover the expense of taking out and replacing the meter.

1909, c. 150, s. 6.

115. Adjustment of charges. If upon such test the meter shall register more than two and one-half per cent too fast, as above defined, the furnisher

shall reimburse the complainant at the rate at which the meter registers too fast for a period of one month back; but if upon such test the meter shall be found to be incorrect, in that it registers more than two and one-half per cent too slow—that is, more than two and one-half per cent less electricity, gas or water than it should—then and in that event the complainant shall, in addition to the amount already charged him, pay at once to the furnisher at the rate at which the meter is too slow for a period of one month back, and the furnisher shall have the same rights for collecting such additional sum as is provided for the collecting of the past due and unpaid bills for electricity, gas or water, as the case may be.

1909, c. 150, s. 7.

NOTE. Gas and electric light bills must show reading of meters, see Commerce in State, s. 15.

116. Standard of accuracy. That any such meter having been tested and found to be not more than two and one-half per cent too slow nor more than two and one-half per cent too fast, as above defined, shall be considered correct, and such inspector shall so mark or stamp such meter and report the same to the governing body of the city or town.

1909, c. 150, s. 8.

117. Free access to meters. That nothing in this article shall be so construed as to prevent any furnisher of electricity, gas or water from having free access to the meters.

1909, c. 150, s. 9.

ART. 12. REGULATION OF BUILDINGS

118. Chief of fire department. There is hereby created in the incorporated cities and towns of the state, where not already established by their charters, the office of chief of fire department.

Rev., s. 4815; 1901, c. 677, s. 1.

118a. Election and compensation. The governing body of every incorporated city and town, when no provision is made in their charters for such office, shall elect a chief of fire department, fix his term of office, prescribe his duties and obligations, and see that he is reasonably remunerated by the city or town for the services required of him by law. They may change his duties and compensation from time to time, not inconsistent with the duties prescribed in this article. Where the governing body fails or neglects to perform such duty, the insurance commissioner shall call it to their attention and if necessary bring the matter before the proper court. Nothing herein may prevent any person elected hereunder from holding some other position in the government of the city or town.

Rev., ss. 2981, 4816; 1901, c. 677, s. 2; 1905, c. 506, s. 4; 1915, c. 192, s. 1.

118b. Duties of chief of fire department. The chief of the fire department shall perform the duties required of him by this article; where such duties are not prescribed by the charters or governing body of incorporated cities and towns, it shall be his duty to preserve and care for the fire apparatus, have charge of the fighting and putting out of all fires, make annual reports to the city municipal governments, seek out and have corrected all places and conditions dangerous to the safety of the municipality from fire, look after buildings

being erected with a view to their safety from fires, and do and perform the other duties prescribed by the governing boards of the several municipalities. Rev., ss. 4815, 4817; 1901, c. 677, ss. 1, 3.

119. Local inspector of buildings. The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and shall make all reports required by the insurance commissioner, and shall make all inspections and perform such duties as may be required by the state law or city or town ordinance or by the said insurance commissioner: Provided, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed.

Rev., s. 2982; 1905, c. 506, s. 6; 1915, c. 192, s. 2.

119a. Town aldermen failing to appoint inspectors. If the aldermen or commissioners of any city or town shall fail or refuse to appoint a chief of the fire department, or shall fail or refuse to reasonably remunerate him, they shall be guilty of a misdemeanor. This section shall not apply to the aldermen or commissioners of any city or town, where such city or town is by law exempt from the law regulating and controlling the erection and inspection of buildings.

Rev., s. 3607; 1905, c. 506, s. 4.

119b. Town officers; inspection of buildings. If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor.

Rev., s. 3610; 1905, c. 506, s. 5; 1915, c. 192, s. 17.

120. Electrical inspectors. The governing body of any incorporated city or town may in their discretion appoint an electrical inspector in addition to the building inspector, and when said electrical inspector is so appointed he shall do and perform all things herein set out for the building inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the building inspector shall be relieved of such duties.

Rev., s. 2983; 1905, c. 506, s. 33.

121. Deputy inspectors. All duties imposed by this article upon the building inspector may be performed by a deputy appointed by such inspector.

Rev., s. 2984; 1905, c. 506, s. 32.

122. Fire limits established. The governing body of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns.

Rev., s. 2985; 1905, c. 506, s. 7.

122a. Punishment for failing to establish fire limits. If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the fire limits for such town according to law, they shall be guilty of a misdemeanor. This section shall not apply to aldermen or commissioners of those towns which are exempt from the law governing the inspection of buildings.

Rev., s. 3608; 1905, c. 506, s. 7.

123. Building permits. Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. As the building progresses the inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building, giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the insurance commissioner every person neglecting to secure such permit and certificate, and also bring the matter before the mayor, recorder or municipal court for their attention and action.

Rev., s. 2986; 1905, c. 506, s. 26; 1915, c. 192, s. 3.

124. Material used in construction of walls. The walls of all buildings in cities or towns where this article applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material. All rules, regulations and requirements contained in the building law, or set out in this article in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated.

Rev., s. 2987; 1905, c. 506, s. 9; 1915, c. 192, s. 4.

125. Frame buildings within fire limits. Within the fire limits of cities and towns where this article applies, as established and defined, no frame or wooden building shall be hereafter erected, altered, repaired, or moved except upon the permit of the building inspector, approved by the insurance commissioner.

Rev., s. 2988; 1905, c. 506, s. 8; 1915, c. 192, s. 5.

126. Thickness of walls. The walls of warehouses, stores, factories, livery-stables, hotels or other brick or stone buildings for business purposes in cities or towns where this article applies, except fire-proof buildings where the framework is of steel, shall conform to the following schedules:

HEIGHT OF BUILDING.	MINIMUM THICKNESS IN INCHES OF WALL.				
	1st	2d	3d	4th	5th
One-story building -----	13	--	--	--	--
Two-story building -----	17	13	--	--	--
Three-story building -----	17	17	13	--	--
Four-story building -----	22	17	17	13	--
Five-story building -----	26	22	17	17	13

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra cotta, stone, cast-iron or cement. Upon written application approved by the building inspector the insurance commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in brick walls where such thickness is compensated for by pilasters. The roofs of all buildings named in this section shall be of metal, slate or tile or gravel or other standard fireproof roofing.

Rev., s. 2989; 1905, c. 506, s. 10; 1915, c. 192, s. 6.

127. Foundation of walls; openings and doors protected. In all buildings mentioned in the preceding section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that as near as practicable the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness. No opening or doorway shall be cut through a party or fire wall of a brick or stone building without a permit from the inspector, and every such door or opening shall have top, bottom and sides of stone, brick or iron, shall be closed by two sets of standard metal-covered doors (separated by the thickness of the wall) hung to rabbeted iron frames or to iron hinges in brick or stone rabbets, shall not exceed ten feet in height by eight feet in width, and every opening other than a doorway shall be protected in a manner satisfactory to the inspector.

Rev., s. 2990; 1905, c. 506, s. 11.

128. Metallic stand-pipes required. All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic stand-pipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half inch hose coupling on each floor. The building inspector may, with the approval of the insurance commissioner, allow two or more stand-pipes of smaller size and proper hose coupling, provided they are of such sizes and number as to be at least equivalent in service to the large stand-pipes required. All hose coupling shall conform to the size and pattern adopted by the fire department.

Rev., s. 2991; 1905, c. 506, s. 12; 1915, c. 192, s. 7.

129. Construction of joists. The ends of joists or beams entering a brick wall shall be cut not less than three-inch bevel so as not to disturb the brickwork by any deflection or breaking of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists.

Rev., s. 2992; 1905, c. 506, s. 13.

130. Chimneys and flues. All fireplaces and chimneys in stone or brick walls in any building hereafter erected and any chimneys or flues hereafter altered or repaired shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast.

Rev., s. 2993; 1905, c. 506, s. 14.

131. Chimneys not built on wood. No chimney shall be started or built upon a beam of wood or floor, the brickwork in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue.

Rev., s. 2994; 1905, c. 506, s. 16.

132. Construction of flues. All flues shall extend at least three feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra-cotta, stone, cast-iron or cement. In all buildings hereafter erected the stone or brickwork of all flues and the chimney shafts of all furnaces, boilers, bakers' ovens, large cooking ranges, and laundry stoves, and all flues used for similar purposes shall be at least eight inches in thickness, with the exception of smoke flues, which are lined with fire-clay lining or cast-iron. These may be four inches in thickness, but this shall not apply to metal stacks of boiler-houses where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed either in walls of eight inches thickness or with smoke flues lined with cast-iron or fire-clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and be carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue or flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe or taken down.

Rev., s. 2995; 1905, c. 506, s. 17.

133. Hanging flues. Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast-iron or fire-clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings, or roofs. Flues not lined as

above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside.

Rev., s. 2996; 1905, c. 506, s. 18; 1915, c. 192, s. 8.

134. Flues cleaned on completion of building. The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building.

Rev., s. 2997; 1905, c. 506, s. 19.

135. Construction of stovepipes. No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at least twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other woodwork they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soap-stone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agent of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected.

Rev., s. 2998; 1905, c. 506, s. 20; 1915, c. 192, s. 9.

136. Height of foundry chimneys. Iron cupola or other chimneys of foundries shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola or chimney.

Rev., s. 2999; 1905, c. 506, s. 22.

137. Steam pipes, how placed. No steam pipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then the distance shall not be less than one inch. All steam pipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incombustible material.

Rev., s. 3000; 1905, c. 506, s. 21.

138. Electric wiring of houses. The electric wiring of houses or buildings for lighting or for other purposes shall conform to the regulations prescribed by the organization known as National Board of Fire Underwriters. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for the purpose of illuminating any building belonging to any person, firm or corporation to be turned on without first having had an inspection made of the wiring by the building inspector and having received from the inspector a certificate approving the wiring of such building. It shall be unlawful for any person, firm or corporation engaged in the business of selling electricity to

furnish any electric current for use for illuminating purposes in any building or buildings of any person, firm or corporation, unless the said building or buildings have been first inspected by the inspector of buildings and a certificate given as above provided. The fee that shall be allowed said inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for each building inspected, to be paid by the person applying for the inspection: Provided, that the fees for such inspection in the town of Graham, Alamance County, shall be fifty cents for each building of three rooms or less and ten cents additional for each room in excess of three.

In the county of Wake, in case of addition to or alteration of wiring in any building, an inspection shall be made of such work before current is turned on such additional or altered wiring. The fee that shall be allowed the inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for the first cut-in for meter opening and twenty-five cents for each additional opening.

Rev., s. 3001; 1905, c. 506, s. 23; 1907, c. 673; P. L. Ex. Sess. 1913, c. 262.

139. Quarterly inspection of buildings. Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the insurance commissioner and shall report to the insurance commissioner all defects found by him in any building upon a blank furnished him by the insurance commissioner. The building inspector shall notify the owner or occupant of buildings of any defects, and notify them to correct the same within a reasonable time.

Rev., s. 3002; 1905, c. 506, s. 25; 1915, c. 192, s. 10.

140. Annual inspection of buildings. At least once in each and every year the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this subchapter are complied with, and the local inspector alone or with the insurance commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from any one. It shall be the duty of the local building inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected.

Rev., s. 3003; 1905, c. 506, s. 29; 1915, c. 192, s. 11.

141. Record of inspections. The local inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name and residence of owner, location of building, how it is to be occupied, date of inspection, what defects found and when remedied and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued.

Rev., s. 3004; 1905, c. 506, s. 30.

142. Reports of local inspectors. The local inspector shall report before the fifteenth of February of each and every year the number and dates of general and quarterly inspections during the year ending the thirty-first day of December upon blanks furnished by the insurance commissioner, and furnish such other information and make such other reports as shall be called for by the insurance commissioner.

Rev., s. 3005; 1905, c. 506, s. 31; 1915, c. 192, s. 12.

143. Fees of inspector. For the inspection of every new building, or old building repaired or altered, the local inspector shall charge and collect an inspection fee before issuing the building certificate as follows: Two dollars for each one-story mercantile storeroom, livery-stable or building for manufacturing, and fifty cents for each additional story, and for other buildings twenty-five cents per room; but the inspection fee shall in no case exceed five dollars. The building inspector shall be paid an adequate salary by the city or town for the quarterly and annual inspection of buildings as provided for in this article, and also for the duties under this section where the fees are collected and paid into the treasury of the municipality.

The inspector's fees for inspection in the town of Graham, Alamance County, shall be fifty cents for each one-story mercantile storeroom, livery-stable, or building for manufacturing, and twenty-five cents for each additional story, and for other buildings ten cents per room, the inspection fee in no case to exceed two dollars.

Rev., s. 3006; 1905, c. 506, s. 27; 1907, c. 673; 1915, c. 192, s. 13.

144. Care of ashes, waste, etc. Ashes shall be removed in metal vessels and unless moved by city drays shall be stowed in brick, stone or metal receptacles or removed by owner to a place not less than fifteen feet from any wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslacked lime shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet and the floors under them shall be protected by metal or sand box.

Rev., s. 3007; 1905, c. 506, s. 24.

145. Ordinances to enforce the law. No provision of this article shall be held to repeal the power of any incorporated city or town to make and enforce any further rules and regulations under the powers granted in their several charters, and said cities and towns may pass ordinances for the enforcement of any provision of this article.

Rev., s. 3008; 1905, c. 506, s. 34.

146. Defects in buildings corrected. Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed, or has not been constructed in accordance with the provisions of this law, or that an old building because of its condition is dangerous and likely to cause a fire, it shall be his duty to notify the owner of said building of the defects or the failure to comply with this law, and the said owner or builder shall immediately remedy the defect and make the said building comply with the law. The

owner or builder may appeal from the decision of the local inspector to the insurance commissioner.

Rev., s. 3009; 1905, c. 506, s. 28; 1915, c. 192, s. 14.

146a. Owner of building failing to comply with law. If the owner or builder erecting any new building, upon notice from the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is willfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense.

Rev., s. 3798; 1905, c. 506, s. 28; 1915, c. 192, s. 18.

147. Unsafe buildings condemned. Every building which shall appear to the inspector to be especially dangerous because of its liability of fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered, repaired or moved, until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law.

Rev., s. 3010; 1905, c. 506, s. 15; 1915, c. 192, s. 15.

147a. Punishment for allowing unsafe building to stand. If the owner of any building which has been condemned as unsafe and dangerous by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall forfeit and pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice.

Rev., s. 3802; 1905, c. 506, s. 15; 1915, c. 192, s. 19.

147b. Removing notice from condemned buildings. If any person shall remove any notice which has been affixed to any building by the local inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars for each offense.

Rev., s. 3799; 1905, c. 506, s. 15.

148. To what towns applied. This article shall apply only to incorporated cities and towns of over one thousand inhabitants according to the last United States census, and such other cities and towns in the state as shall by a vote of their board of aldermen or governing body adopt this article.

Rev., s. 3011; 1905, c. 506, s. 35; 1915, c. 192, s. 16.

SUBCHAPTER II. MUNICIPAL CORPORATIONS UNDER ACT OF 1917

ART. 13. OPERATION OF ACT

149. Explanation of terms. The following words and phrases as used in this act shall, unless a contrary intention clearly appears, have the following meanings, respectively: The phrase "regular municipal election" shall mean the biennial election of municipal officers for which provision is made in this act. The phrase "qualified voter" shall mean any registered qualified voter. The words "officer" and "officers," when used without further qualification or description, shall mean any person or persons holding any office in the city or in charge of any department or division of the city. The said words when used in contrast with a board or members of a board, or with division heads, shall mean any of the persons in sole charge of a department of the city. The word "ordinance" shall mean an order of the governing body entitled "ordinance," and designed for the regulation of any matter within the jurisdiction of the governing body as laid down in this act. The word "city" shall mean any city, town, or incorporated village.

1917, c. 136, sub-ch. 15, s. 1.

150. Effect upon prior laws. Nothing in this act shall operate to repeal any local or special act of the general assembly of North Carolina relating to cities, towns, and incorporated villages, but all such acts shall continue in full force and effect and in concurrence herewith, unless hereafter repealed or amended in manner provided for in this act. The provisions of this act shall not be construed to repeal the provisions as to cities and towns contained in subchapter I of this chapter, except in case they are inconsistent with this act. The provisions of this act, so far as they are the same as those of existing general laws, are intended as a continuation of said laws and not as new enactments, and so far as they give general powers to cities are supplementary to and additional to the special charters of cities which have not such powers, unless inconsistent with or repugnant thereto, and a repetition of such powers if already possessed by cities by virtue of special charters. The provisions of this act shall not affect any act heretofore done, liability incurred, or right accrued or vested, or affect any suit or prosecution now pending or to be instituted to enforce any right or penalty or punish any offense. Subject to the foregoing provisions hereof, all laws or parts of laws in conflict with this act are hereby to the extent of such conflict repealed.

1917, c. 136, sub-ch. 1, s. 1.

ART. 14. ORGANIZATION UNDER THE ACT

151. Municipal board of control. The municipal board of control shall be composed of the secretary of state, the attorney-general, and the chairman of the corporation commission. The attorney-general shall be chairman and the secretary of state shall be secretary of such board.

1917, c. 136, sub-ch. 2, s. 4.

152. Number of persons and area included. Any number of persons, not less than fifty, at least twenty-five of whom shall be freeholders or homesteaders, and twenty-five qualified voters living in the area proposed to be incorporated, which area shall have an assessed valuation of real property of at least twenty-five thousand dollars according to the last preceding assessment for taxes, and shall not be a part of the area included in the limits of any city, town, or incorporated village already or hereafter existing, may be organized into a town upon compliance with the method herein set forth.

1917, c. 136, sub-ch. 2, s. 1.

153. Petition filed:

1. *What petition must show.* A petition signed by a majority of the resident qualified electors and a majority of the resident freeholders or homesteaders of the territory proposed to be so organized shall be presented to the secretary of state of North Carolina, accurately describing such territory, with map attached containing the names of all qualified voters therein, the assessed valuation of such territory, and the proposed name of the new town. The petition shall further be signed by at least twenty-five resident freeholders or homesteaders of the age of twenty-one years or over, at least twenty of whom are qualified voters; and further, the petition shall show the valuation of the real property of the proposed town to be at least twenty-five thousand dollars, according to the last preceding tax assessment; and the petition shall be verified by at least three of the signers who are qualified voters.

2. *Order and notice for hearing.* The secretary of state shall thereupon make an order prescribing the time and place for the hearing of said petition before the municipal board of control herein provided for. At least thirty days before the hearing, notice of such hearing shall be published once a week for four weeks in a newspaper published in the county where such territory is situate, designated as most likely to give notice to the people of the territory proposed to be so organized or incorporated into a town; or, if no newspaper is so published, then in some newspaper of general circulation in such proposed city, town, or incorporated village; and such notice shall also be posted at the county courthouse door of such county for a like period. Such notice shall be signed by at least three of the freeholders signing the petition for the organization of the town.

1917, c. 136, sub-ch. 2, s. 2.

154. Hearing of petition and order made:

1. *Manner of hearing.* Any qualified voter or taxpayer of such territory proposed to be incorporated into a town may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the municipal board of control, and no formal answer to the petition need be filed. The board may adjourn the hearing from time to time, in its discretion.

2. *Order creating corporation.* The municipal board of control shall file its findings of fact at the close of such hearing, and if it shall appear that the allegations of the petition are true, and that all the requirements in this chapter have been substantially complied with, and that the organization of such city, town, or incorporated village, will better subserve the interests of said persons

and the public, the board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

3. *Election of officers provided for.* The board of control shall provide for the place of holding the first election for mayor and commissioners; and shall designate how many commissioners shall serve, as set forth in Part 1 of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in Part 1 of this chapter.

4. *Filing papers; fees.* All the papers in reference to the organization of any town under this chapter shall be filed and recorded in the office of the secretary of state, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which the town organized is situated. The fees shall be the same as are now provided for the organization of private corporations and shall be paid out of the treasury of the city, town, or incorporated village.

5. *When organization complete.* Upon the approval of the board of control and the recording of the papers in the offices above mentioned, the said town shall become a municipal corporation with all the powers and subject to all the laws governing towns as set forth in Part 1 of this chapter and as in this act set forth.

1917, c. 136, sub-ch. 2, s. 3.

ART. 15. POWER VESTED IN CORPORATION COMMISSION

155. **To fix rates for public utilities furnished.** The corporation commission shall have full power and authority to fix and establish any and all rates which any public-service or quasi public-service corporation other than railroads using steam as a motive power shall charge or exact from any person, firm, or corporation in any city for the services rendered or commodity furnished.

1917, c. 136, sub-ch. 3, s. 1.

156. **Manner of enforcing regulations.** The North Carolina corporation commission shall have the power to require such improvements and extensions to the service of public-service corporations as it may deem necessary after the investigation of any complaint of any person, corporation, or municipality as to the inadequacy of such service. Upon application being made, the corporation commission shall proceed to hear, pass on, and determine, in the manner prescribed by law, a just or reasonable rate or charge for the service or other commodity rendered or furnished; the hearing before the corporation commission shall be governed by the law as to the commission relating to the fixing of rates and rules and orders of the commission as to the enforcement thereof by the commission. The corporation commission shall have the same power and authority in hearing and passing on any matter or case under this act, enforcing or fixing of rates, supervising and regulating said corporation or otherwise under this act, as they now have under the chapter entitled Corporation Commission, in addition to such power and authority as they now have under the general law. The failure or refusal to conform to or obey any decision, rule, regulation, or order made in such cases by the corporation commission shall subject said public

utility corporation or quasi public-utility corporation refusing or failing to comply herewith to the penalty provided by law in the case of railroad companies.

1917, c. 136, sub-ch. 3, s. 2.

157. Not to affect existing power. Nothing contained in this chapter shall be construed to deprive the corporation commission of the authority and power which it now has under the laws of North Carolina to supervise and regulate and fix the rates for public utility corporations or quasi public-utility corporations operating or doing business in such city.

1917, c. 136, sub-ch. 3, s. 3.

ART. 16. POWERS OF MUNICIPAL CORPORATIONS

Part 1. General Powers Enumerated

158. Corporate powers. In addition to and coordinate with the powers granted to cities in subchapter I of this chapter, and any acts affecting such cities, all cities shall have the following powers:

1. To acquire property in fee simple or a lesser interest or estate therein by purchase, gift, devise, bequest, appropriation, lease, or lease with privilege to purchase.

2. To sell, lease, hold, manage, and control such property and make all rules and regulations by ordinance or resolution which may be required to carry out fully the provisions of any conveyance, deed, or will in relation to any gift or bequest, or the provisions of any lease by which the city may acquire property.

3. To purchase, conduct, own, lease, and acquire public utilities.

4. To appropriate the money of the city for all lawful purposes.

5. To create, provide for, construct, regulate, and maintain all things in the nature of public works, buildings, and improvements.

6. To supervise, regulate, or suppress, in the interest of public morals, public recreations, amusements and entertainments, and to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the people, and all nuisances and causes thereof.

7. To pass such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.

8. To provide for the destruction of noxious weeds, and for payment of the expense thereof by assessment or otherwise.

9. To regulate the erection of fences, billboards, signs, and other structures, and provide for the removal or repair of insecure billboards, signs, and other structures.

10. To make and enforce local police, sanitary, and other regulations.

11. To open new streets, change, widen, extend, and close any street that is now or may hereafter be opened, and adopt such ordinances for the regulation and use of the streets, squares, and parks, and other public property belonging to the city, as it may deem best for the public welfare of the citizens of the said city.

12. To acquire, lay out, establish, and regulate parks within or without the corporate limits of the city for the use of the inhabitants of the same.

13. To erect, repair, and alter all public buildings.

14. To regulate, restrain, and prohibit the running or going at large of horses, mules, cattle, sheep, swine, goats, chickens, and all other animals and fowl of whatsoever description, and to authorize the distraining and impounding and sale of the same for the costs of the proceedings and the penalty incurred and to order their destruction when they cannot be sold, and to impose penalties on the owners or keepers thereof for the violation of any ordinance or regulation of said governing body, and to prevent, regulate, and control the driving of cattle, horses, and all other animals into or through the streets of the city.

15. To regulate and control plumbers and plumbing work, and to enforce efficiency in the same by examination of such plumbers and inspection of such plumbing work.

16. To regulate, control, and prohibit the keeping and management of houses or any building for the storage of gunpowder and other combustible, explosive, or dangerous materials within the city, and to regulate the keeping and conveying of the same, and to authorize and regulate the laying of pipes and the location and construction of houses, tanks, reservoirs, and pumping stations for the storage of oil and gas.

17. To regulate, control, restrict, and prohibit the use and explosion of dynamite, firecrackers, or other explosives or fireworks of any and every kind, whether included in the above enumeration or not, and the sale of same, and all noises, amusements, or other practices or performances tending to annoy or frighten persons or teams, and the collection of persons on the streets or sidewalks or other public places in the city, whether for purposes of amusement, business, curiosity, or otherwise.

18. To direct, control, and prohibit the laying of railroad and street railway tracks, turnouts, and switches in the streets, avenues, and alleys of the city unless the same shall have been authorized by ordinance, and to require that all railroads, street railways, turnouts and switches shall be so constructed as not to interfere with the drainage of the city and with the ordinary travel and use of the streets, avenues, and alleys in said city, and to construct and keep in repair suitable crossings at the intersection of streets, avenues, and alleys and ditches, sewer and culverts, where the governing body shall deem it necessary, and to direct the use and regulate the speed of locomotive engines, trains, and cars within said city.

19. To make all suitable and proper regulations in regard to the use of the street for street cars, and to regulate the speed, running, and operation of the same so as to prevent injury or inconvenience to the public.

20. To make such rules and regulations in relation to butchers as may be necessary and proper; to establish and erect market houses, and designate, control, and regulate market places and privileges.

21. To prohibit and punish the abuse of animals.

22. To acquire, establish, and maintain cemeteries and to regulate the burial of the dead and the registration of deaths, marriages, and births.

23. To prohibit prize-fighting, cock and dog fighting.

24. To regulate, restrict, and prohibit theaters, carnivals, circuses, shows, parades, exhibitions of showmen, and shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, musical and hypnotic exhibitions and performances.

25. To create and administer a special fund for the relief of indigent and helpless members of the police and fire departments who have become superannuated, disabled, or injured in such service, and receive donations and bequests in aid of such fund and provide for its permanence and increase, and to prescribe and regulate the conditions under which, and the extent to which, the same shall be used for the purpose of such relief.

26. To prevent and abate nuisances, whether on public or private property.

27. To regulate and prohibit the carrying on of any business which may be dangerous or detrimental to health.

28. To condemn and remove any and all buildings in the city limits, or cause them to be removed, at the expense of the owner or owners, when dangerous to life, health, or other property, under such just rules and regulations as it may by ordinance establish; and likewise to suppress any and all other nuisances maintained in the city.

29. To provide for all inspections which may be expedient, proper, or necessary for the welfare, safety, and health of the city and its citizens, and regulate the fees for such inspection.

30. To require any or all articles of commerce or traffic to be gauged, inspected, measured, weighed, or metered, and to require every merchant, retail trader or dealer in merchandise or property of any description which is sold by weight or measure to have such weights and measures sealed and to be subject to inspection.

31. To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city.

32. To require the examination of all drivers of motor vehicles upon the streets and highways of the city, to prescribe fees for such examinations, and to prevent the use of such vehicles by all persons who shall not satisfactorily pass such examination.

33. To regulate the emission of smoke within the city.

34. To license, prohibit, and regulate pool and billiard rooms and dance halls, and in the interest of public morals provide for the revocation of such licenses.

35. To regulate and control electricians and electrical work and to enforce efficiency in the same by examination of such electricians and inspection of such electrical work.

36. To license and regulate all vehicles operated for hire in the city.

1917, c. 136, sub-ch. 5, s. 1.

159. Enumeration of powers not exclusive. The enumeration of particular powers by this act shall not be held or deemed to be exclusive; but in addition to the powers enumerated or implied therein, or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the constitution and laws of North Carolina now are or hereafter may be granted to cities. Powers proper to be exercised, and not specially enumerated herein, shall be exercised and enforced in the manner prescribed by this act; or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the governing body.

1917, c. 136, sub-ch. 5, s. 3.

160. Police power extended to outside territory. All ordinances, rules, and regulations of the city now in force, or that may hereafter be enacted by the

governing body in the exercise of the police powers given to it for sanitary purposes, or for the protection of the property of the city, unless otherwise provided by the governing body, shall, in addition to applying to the territory within the city limits, apply with equal force to the territory outside of the city limits within one mile in all directions of same, and to the rights of way of all water, sewer, and electric light lines of the city without the corporate limits, and to the rights of way, without the city limits, of any street railway company, or extension thereof, operating under a franchise granted by the city, and upon all property and rights of way of the city outside the corporate limits and the above mentioned territorial limits, wheresoever the same may be located.

1917, c. 136, sub-ch. 5, s. 2.

161. Power to establish and control public utilities. Any city shall have the right to acquire, establish, and operate waterworks, electric lighting systems, gas systems, schools, libraries, cemeteries, market houses, wharves, play or recreation grounds, athletic grounds, parks, abattoirs, slaughter-houses, sewer systems, garbage and sewage disposal plants, auditoriums or places of amusement or entertainment, and armories. The city shall have the further right to make a civic survey of the city, establish hospitals, clinics, or dispensaries for the poor, and dispense milk for babies; shall have the power to establish a system of public charities and benevolence for the aid of the poor and destitute of the city; for the welfare of visitors from the country and elsewhere, to establish rest rooms, public water-closets and urinals, open sales places for the sale of produce, places for hitching and caring for animals and parking automobiles; and all reasonable appropriations made for the purposes above mentioned shall be binding obligations upon the city, subject to the provisions of the Constitution of the state.

1917, c. 136, sub-ch. 13, s. 11.

Part 2. Power to Acquire Property

162. Acquisition by purchase. When in the opinion of the governing body of any city, or other board, commission, or department of the government of such city having and exercising or desiring to have and exercise the management and control of the streets, water, electric light, gas, sewerage or drainage systems, or other public utilities, parks, playgrounds, cemeteries, wharves, or markets, open-air or enclosed, which are or may by law be owned and operated or hereafter acquired by such city or by a separate association, corporation, or other organization on behalf and for the benefit of such city, any land, right of way, water right, privilege, or easement, either within or outside the city, shall be necessary for the purpose of opening, establishing, building, widening, extending, enlarging, maintaining, or operating any such streets, parks, playgrounds, cemetery, water, electric light, gas, sewerage or drainage systems, wharves, or other public utility so owned, operated, and maintained by or on behalf of any such city, such governing body, board, commission, or department of government of such city may purchase such land, right of way, water right, privilege, or easement from the owner or owners thereof and pay such compensation therefor as may be agreed upon.

1917, c. 136, sub-ch. 4, s. 1.

163. By condemnation. If such governing body, board, commission, or department of the government of such city are unable to agree with the owners thereof for the purchase of such land, right of way, privilege, or easement, for the purposes mentioned in the preceding section, condemnation of the same for such public use may be made in the same manner and under the same rules, regulations, and procedure as are provided by law for the condemnation of land by railroads.

1917, c. 136, sub-ch. 4, s. 1.

Part 3. Streets and Sidewalks

164. Power to make, improve and control. The governing body of the city shall have power to control, grade, macadamize, cleanse, and pave and repair the streets and sidewalks of the city and make such improvements thereon as it may deem best for the public good, and may provide for and regulate the lighting of the public parks, and regulate, control, license, prohibit, and prevent digging in said streets and sidewalks, or placing therein of pipes, poles, wires, fixtures, and appliances of every kind, whether on, above, or below the surface thereof, and regulate and control the use thereof by persons, animals, and vehicles; to prevent, abate, and remove obstructions, encroachments, pollution or litter therein; and shall have under its government, management, and control all parks and squares within or without the city limits established by the governing body for the use of the city except as otherwise provided.

1917, c. 136, sub-ch. 10, s. 1.

Part 4. Markets

165. Establish and control markets. The governing body of the city shall have power to provide for the establishment, maintenance, and regulation of open-air or enclosed markets and slaughter places; may prescribe the time and place of sale of fresh meats, fish, and other marketable products therein; may rent the stalls in such manner and at such prices as it may deem best; may appoint a keeper of the market or other persons, who may summarily condemn all unsound products offered for sale in the city for food, and cause the same to be removed at the expense of the person offering it for sale.

1917, c. 136, sub-ch. 12, s. 1.

Part 5. Protection of Public Health

166. Ordinances for protection of health. The governing body of cities is hereby given, within the city limits, all the power and authority that is now or may hereafter be given by law to the county superintendent of health or county physician, and such further powers and authority as will best preserve the health of the citizens. The governing body is hereby given power to make such rules and regulations, not inconsistent with the constitution and laws of the state, for the preservation of the health of the inhabitants of the city, as to them may seem right and proper.

1917, c. 136, sub-ch. 5, s. 4.

167. Establish hospitals, pesthouses, quarantine, etc. The governing body may acquire, establish, and maintain a hospital, or hospitals, or pesthouses,

slaughter-houses, rendering plants, incinerators and crematories in the city limits or within three miles thereof; may stop, detain, examine, or keep in a pesthouse or house of detention persons having or suspected of having any infectious, contagious, or other communicable disease; may quarantine the city or any part thereof; may cause all persons in the city limits to be vaccinated; may, without incurring liabilities to the owner, remove, fumigate, or destroy furniture, bedding, clothing, or other property which may be found to be tainted or infected with any contagious or infectious disease, and may do all other proper and reasonable things to prevent or stamp out any contagious or infectious disease, and to preserve better the health of the citizens. All expenses incurred by the city in disinfecting or caring for any person or persons, by authority of this section, may be recovered by it from the person, persons, or property cared for; and when expense is incurred in caring for property, the same shall become a lien on such property. Any person who shall attempt by force, or by threat of violence, to prevent his removal or that of any other persons to the pesthouse, house of detention, or hospital, or who shall in any way interfere with any officer while performing any of the duties allowed by this article, shall be guilty of a misdemeanor.

1917, c. 136, sub-ch. 5, s. 4.

168. Elect health officer. The governing body of any city may elect a health officer and create such other offices and employments as to them may seem right and proper, and fill the same and fix their compensation.

1917, c. 136, sub-ch. 5, s. 4.

169. Regulate the management of hospitals. The governing body is hereby empowered to make rules and regulations for the management and conduct of all hospitals and sanatoriums which may have for treatment any patient afflicted with any infectious, contagious, or other communicable disease, and prescribe penalties for any violation of same. Any person violating any rule or regulation of the governing body shall be guilty of a misdemeanor, and upon conviction, except as herein otherwise provided, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1917, c. 136, sub-ch. 5, s. 5.

170. Provide for removal of garbage. The governing body may by ordinance provide for the removal, by wagon or carts, of all garbage, slops, and trash from the city; and when the same is not removed by the private individual in obedience to such ordinance, may require the wagons or carts to visit the houses used as residences, stores, and other places of habitation in the city, and also may require all owners or occupants of such houses who fail to remove such garbage or trash from their premises to have the garbage, slops, and trash ready and in convenient places and receptacles, and may charge for such removal the actual expense thereof.

1917, c. 136, sub-ch. 7, s. 3.

171. Abate or remedy menaces to health. The governing body, or officer or officers who may be designated for this purpose by the governing body, shall have power summarily to remove, abate, or remedy, or cause to be removed, abated, or remedied, everything in the city limits, or within a mile of such

limits, which is dangerous or prejudicial to the public health; and the expense of such action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes.

1917, c. 136, sub-ch. 7, s. 4.

Part 6. Fire Protection

172. Establish and maintain fire department. The governing body shall have power to provide for the organization, equipment, maintenance and government of fire companies and a fire department; and, in its discretion, may provide for a paid fire department, and for this purpose may create any offices and employments and fix their compensation as to the governing body may seem right and proper.

1917, c. 136, sub-ch. 8, s. 1.

173. Establish fire limits. The governing body may establish and maintain fire limits in the city, in which it shall be unlawful to erect, alter, and repair wooden buildings or structures or additions thereto; it may also prohibit the removal of wooden buildings or structures of any kind into such limits, or from one place to another within the limits, and make such other regulations as may be deemed best for the prevention and extinguishment of fires.

1917, c. 136, sub-ch. 8, s. 2.

174. Regulate buildings. The governing body may make rules and regulations governing the erection and construction of buildings in the city so as to make them as safe as possible from fire.

1917, c. 136, sub-ch. 8, s. 3.

Part 7. Sewerage

175. Establish and maintain sewerage system. The governing body shall have power to acquire, provide, construct, establish, maintain and operate a system of sewerage for the city, and protect and regulate the same by adequate rules and regulations; and if it shall be necessary in obtaining proper outlets to such system to extend the same beyond the corporate limits, the governing body may condemn a right of way or rights of way to and for such outlets, and the proceedings for such condemnation shall be as herein provided for opening new streets and other purposes.

1917, c. 136, sub-ch. 7, s. 1.

176. Require connections to be made. The governing body may require all owners of improved property which may be located upon or near any line of such system of sewerage to connect with such sewerage all water-closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and fix charges for such connections.

1917, c. 136, sub-ch. 7, s. 2.

Part 8. Water and Lights

177. Establish and maintain water and light plants. The city may own and maintain its own light and waterworks system to furnish water for fire and

other purposes, and light to the city and its citizens but shall in no case be liable for damages for a failure to furnish a sufficient supply of either water or light. And the governing body shall have power to acquire and hold rights of way, water rights, and other property, within and without the city limits.

1917, c. 136, sub-ch. 11, ss. 1, 2.

178. Fix and enforce rates. The governing body or such board or body which has the management and control of the waterworks system in charge shall fix such uniform rates for water as is deemed best. Such body shall fix the times when the water rents shall become due and payable, and in case such rent is not paid within ten days after it becomes due and payable, the same may at any time thereafter be collected either by suit in the name of the city or by the collector of taxes for the city. Upon the failure of the owner of property for which water is furnished under the rules and regulations of such body to pay the water rents when due, then the body, or its agents or employees, may cut off the water from such property; and when so cut off it shall be unlawful for any person, firm, or corporation, other than the body or its agents or employees, to turn on the water to such property, or to use the same in connection with the property, without first having paid the water rent and obtained permission to turn on the water.

1917, c. 136, sub-ch. 11, s. 3.

179. Separate accounts for water system. It shall be the duty of the governing body to keep a separate statement and account of the money received by the city from the waterworks system, and it shall be the duty of the said body to give preference to the waterworks system over the other departments of the city in such funds, and to provide for the proper upkeep of the waterworks system and an amount necessary for the enlargement of the waterworks system before turning over to the other departments the money so received.

1917, c. 136, sub-ch. 11, s. 4.

Part 9. Care of Cemeteries

180. Care fund established. The governing body is authorized to create a fund to be known as the perpetual care fund for the cemeteries, for the purpose of perpetually caring for and beautifying the cemeteries, and such fund shall be kept by the city as is provided for bequests and gifts for cemetery purposes; and the said governing body may make contracts with lot or space owners in the cemeteries, obligating the city to keep up and maintain said lots or spaces in perpetuity upon payment of such sum as may be fixed by the governing body; and the governing body is further authorized and empowered to accept gifts and bequests for such purposes, or upon such other trusts as the donors may prescribe; and the governing body is authorized to set aside for such perpetual care fund an amount not exceeding twenty-five per cent of the proceeds of sale of cemetery lots.

1917, c. 136, sub-ch. 9, s. 1.

181. Application of fund. The principal of the funds appropriated by the governing body for caring for the cemeteries shall be held by the governing body for caring for and beautifying the cemeteries and improving the same.

The income from the fund heretofore or hereafter made shall be used for the purpose of carrying out contracts with the individual or space owners for the perpetual care of individual plots and spaces. Any gifts heretofore or hereafter made to and received by the city or any of its officers shall be held and used as a sacred trust fund for the purposes and upon the conditions named in such gifts or bequests, and all such funds shall be kept and invested separately and shall not be used for any other purpose, or by the city in its affairs.

1917, c. 136, sub-ch. 9, s. 1.

182. Separate accounts kept. The city treasurer shall keep a separate account of the cemetery funds, and a still further separate account of all special gifts or bequests made by persons for and in connection with the cemeteries and particular lots therein. The governing body has the power to make rules and regulations and adopt ordinances for the carrying out of the duties imposed by this and the two preceding sections in regard to the care of cemeteries.

1917, c. 136, sub-ch. 9, s. 1.

Part 10. Municipal Taxes

183. Provide for listing and collecting taxes. The governing body shall provide by an ordinance or otherwise means for the collection of taxes in the city and shall cause property to be listed for taxation which has not otherwise been listed as required by law.

1917, c. 136, sub-ch. 6, s. 2.

NOTE. See also Taxation, Art. 6, Part 3.

184. Unlisted taxables entered. The officer who has charge of the collection of taxes in any city shall, after the most diligent inquiry, and by comparing his book with the county tax books, make out a list of all persons liable for poll tax, or for taxes on property, who have failed to return a list in the manner and in the time prescribed, together with the estimated value of all the property not listed, and shall enter such persons in a separate part of his book.

1917, c. 136, sub-ch. 6, s. 4.

185. Lien of taxes. The lien for taxes levied for any and all purposes in each year shall attach to all the real estate of the taxpayers within the city on the first day of June annually, and shall continue until such taxes, with any penalty and costs which shall accrue thereon, shall be paid. But there shall be no lien for taxes on the personal property of the taxpayer but from a levy thereon.

1917, c. 136, sub-ch. 6, s. 5.

186. Power and duties of tax collector. The officer who has charge of the collection of taxes in any city shall, in the collection of taxes, be vested with the same power and authority as is given by the state to sheriffs for like purpose, and shall be subject to the same fines and penalties on failure or neglect of duty. It shall be his duty to collect all taxes levied by the governing body, and he shall be charged with the sums appearing on the tax list as due for city taxes. He shall at no time retain in his hands over three hundred dollars for a longer time than seven days, under a penalty of ten per cent per month to be paid to the city upon all sums so unlawfully retained.

1917, c. 136, sub-ch. 6, s. 1.

187. Settlement with tax collector. In settlement with the city the tax collector shall be credited with all poll taxes and taxes on personal property which the governing body shall declare to be insolvent and uncollectible, and with such amounts as may be involved in suit by appeal from the ruling of the board, and he shall be charged with and shall pay over all other sums appearing on the tax list. After the accounts of the tax collector shall be audited and settled, the same shall be reported to the governing body, and when approved by it the same shall be recorded in the minute book of such body, and shall be prima facie evidence of correctness, and impeachable only for fraud or specified error.

1917, c. 136, sub-ch. 6, s. 1.

188. Bond of tax collector and other officers. The governing body of the city shall require of the tax collector of the city, and any and all officers and employees, such bonds as it may deem necessary, and may pay the expenses of providing such bonds, including the bond of the mayor.

1917, c. 136, sub-ch. 6, s. 3.

189. License to plumbers and electricians. The governing body may regulate and license plumbers and those engaged in the electrical wiring of buildings for light, power, or heat, and before issuing a license may require the applicant to be examined and to give bond in such sum and upon such conditions as the governing body may determine, and with such sureties as it may approve; and such body may, for incompetency on the part of such licensees or for refusal to comply with the ordinances relating to such business, or for any other good cause, revoke any license issued hereunder. No person, firm, or corporation shall do any kind of plumbing or electrical wiring of buildings without first having obtained a license from the governing body. No license issued hereunder by the governing body shall be for more than one year, and same shall not be transferable or assignable except by the permission of the governing body. And no license shall be issued, as herein provided, before the license tax shall have been paid.

1917, c. 136, sub-ch. 6, ss. 6, 7, 8, 9.

ART. 17. EXERCISE OF POWERS BY GOVERNING BODY

190. Legislative powers, how exercised. Except as otherwise specially provided, the legislative powers of the governing body may be exercised as provided by ordinance or rule adopted by it.

1917, c. 136, sub-ch. 13, s. 1.

Part 1. Municipal Meetings

191. Quorum and vote required. Every member of the governing body shall have the right to vote on any question coming before it. A majority shall constitute a quorum, and a majority vote of all members present shall be necessary to adopt any motion, resolution, or ordinance.

1917, c. 136, sub-ch. 13, s. 1.

192. Meetings regulated, and journal kept. The city governing body shall from time to time establish rules for its proceedings. Regular and special

meetings shall be held at a time and place fixed by ordinance. All legislative sessions shall be open to the public, and every matter shall be put to a vote, the result of which shall be duly recorded. The governing body shall not by executive session or otherwise consider or vote on any question in private session. A full and accurate journal of the proceedings shall be kept, and shall be open to the inspection of any qualified registered voter of the city.

1917, c. 136, sub-ch. 13, s. 1.

Part 2. Ordinances

193. How adopted. No ordinance shall be passed finally on the date on which it is introduced, unless by two-thirds vote of those present. No ordinance making a grant, renewal, or extension, whatever its kind or nature, of any franchise or special privilege shall be passed until voted on at two regular meetings, and no such grant, renewal, or extension shall be made otherwise than by ordinance.

1917, c. 136, sub-ch. 13, s. 3.

194. Ordinances amended or repealed. No ordinance or part thereof shall be amended or annulled except by an ordinance adopted in accordance with the provisions of this act.

1917, c. 136, sub-ch. 13, s. 4.

195. How ordinance pleaded and proved. In all judicial proceedings it shall be sufficient to plead any ordinance of any city by caption, or by number of the section thereof and the caption, and it shall not be necessary to plead the entire ordinance or section. All printed ordinances or codes or ordinances published in book form by authority of the governing body of any city shall be admitted in evidence in all courts, and shall have the same force and effect as would the original ordinance.

1917, c. 136, sub-ch. 13, s. 14.

Part 3. Officers

196. City clerk elected; powers and duties. The governing body shall, by a majority vote, elect a city clerk to hold office for the term of two years and until his successor is elected and qualified. He shall have such powers and perform such duties as the governing body may from time to time prescribe in addition to such duties as may be prescribed by law. He shall keep the records of the meetings. The person holding the office of city clerk at the time when any of the plans set forth in this act shall be adopted by such city shall continue to hold office for the term for which he was elected, and until his successor is elected and qualified.

1917, c. 136, sub-ch. 13, s. 1.

197. Salary of mayor and other officers. The governing body of any city may by ordinance fix the salary of the mayor of such city or heads of departments or other officers.

1917, c. 136, sub-ch. 5, s. 6.

198. Vacancies filled; mayor pro tem. If a vacancy occurs in the office of the mayor or governing body, the vacancy shall be filled by the governing body

of the city. If the mayor is absent or unable from any cause temporarily to perform his duties, they shall be performed by one elected by the governing body of the city for that purpose, who shall be called "mayor pro tem.," and he shall possess the powers of mayor only in matters not admitting delay, but shall have no power to make permanent appointments.

1917, c. 136, sub-ch. 13, s. 6.

199. Bonds required. Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody, or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city.

1917, c. 136, sub-ch. 13, s. 15.

200. Information requested from mayor. The governing body at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request him to be present to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt by the mayor of such questions.

1917, c. 136, sub-ch. 13, s. 2.

Part 4. Contracts Regulated

201. Contracts awarded on public advertisement. No contract for construction work or for the purchase of apparatus, supplies, or materials, whether the same shall be for repairs or original construction, the estimated cost of which amounts to or exceeds one thousand dollars, except in cases of special emergency involving the health or safety of the people or their property, shall be awarded unless proposals for the same shall have been invited by advertisement once in at least one newspaper of general circulation in the city, the publication to be at least one week before the time specified for the opening of said proposals. Such advertisement shall state the time and place where plans and specifications of proposed work or supplies may be had and the time and place for opening the proposals in answer to such advertisements, and shall reserve to the city the right to reject any or all such proposals. All such proposals shall be opened in public. No bill or contract shall be divided for the purpose of evading any provision of this act.

1917, c. 136, sub-ch. 13, s. 7.

202. Certain contracts in writing and secured. All contracts made by any department, board, or commission in which the amount involved is two hundred dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until signed by the officer authorized by law to sign such contract, approved by the governing body. Any contract made as aforesaid may be required to be accompanied by a bond with sureties, or by a deposit of money, certified check, or other security for the faithful performance thereof, satisfactory to the board or official having the matter in charge, and such bonds or

other securities shall be deposited with the city treasurer until the contract has been carried out in all respects; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department, or board making the contract, with the approval of the governing body.

1917, c. 136, sub-ch. 13, s. 8.

Part 5. Control of Public Utilities

203. How control exercised:

1. *Control over departments.* The waterworks department, electric or gas light system, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by any city under separate organization or as a separate corporation under the control of any city in the state, which have been heretofore under the separate management and control of separate boards or corporations, may henceforth be under the management and control of the governing body of such city in the state.

2. *Departments may be abolished.* In all cities except those which have adopted Plan C or Plan D, hereafter set forth, before the governing body shall have control or management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, the governing body of the city, by two-thirds vote taken at two separate regular meetings of such governing body, shall pass an ordinance to the effect that the waterworks, electric or gas light system, sewerage system, library, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, or either of them, shall be abolished and the control and management shall be under the governing body of the city.

3. *Property vested in the city.* Upon the passage by the governing body of any city of such ordinance, the waterworks, electric or gas light system, sewerage system, the library system, and the park or park and tree commission system, and any other public service owned, operated, or conducted by such city under separate organization or corporation then in existence either under separate organization or under separate management or control or under separate corporation, shall immediately become the property of the city, and all land, real estate, rights, easements, franchises, choses, and property of every kind, whether real or personal, tangible or intangible, the title of which is vested in such separate corporation or board, shall be and become vested in such city, and the boards or water commissioners, electric light commissioners, sewerage commissioners, library boards, park boards, or park and tree commission boards, or the board or commission of any other public service owned, operated, or conducted by or on behalf of such city under separate organization or corporation shall cease to exist as a corporation; and all indebtedness, bonds, or other contracts and obligations of any nature incurred by, for, or on account of the waterworks, electric or gas light system, sewerage system, library system, park or park and tree commission system, or other public utility in the name of or by such corporation, or

by such city in its behalf, or by the corporation and such city jointly, shall be and become the sole obligations of such city.

4. *Same procedure in other cases.* There shall be the same procedure with reference to the library system, park or park and tree commission system, or playground system by the governing body of all cities which shall have adopted Plan C or Plan D before such control and title shall become vested as herein-before stated.

5. *Popular vote required.* In all cities, except those which have adopted Plan C or Plan D, hereafter set forth, before the foregoing provisions of this section shall become effective, such changes in the control and management of the waterworks, electric light, sewerage, etc., shall first be approved by a majority of the qualified voters of such municipality at any regular or special election held under the provisions of this act.

1917. c. 136, sub-ch. 13, s. 9.

204. **Ordinances to regulate management.** The governing body of any city in the exercise of its control and management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or any other public service owned, operated, or conducted by such city, shall have power to make rules, regulations, and ordinances in connection with the management thereof as they may deem necessary, and shall have power to enforce such rules, regulations, and ordinances.

1917. c. 136, sub-ch. 13, s. 10.

205. **Additional property acquired.** The governing body of any city shall have power to acquire such additional property as it may deem necessary for a better system of waterworks, electric light, sewerage, library, park, or parks, or other public service owned, operated, or conducted by such city. Upon the adoption by the governing body of any city of any one of the plans of government provided for in this act, the laws now in force in reference to the waterworks, electric light, sewerage, parks, libraries, or other public service owned, operated, or conducted by such city, shall not be repealed by this act, but shall be construed with this act and only repealed in so far as they are inconsistent with the provisions of this act.

1917. c. 136, sub-ch. 13, s. 10.

Part 6. Effect Upon Existing Regulations

206. **Existing rights and obligations not affected.** All official bonds, recognizances, obligations, contracts, and all other instruments entered into or executed by or to the city before this act takes effect in any city, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the city, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as is herein otherwise provided, shall continue without abatement and remain unaffected by this act; and no legal act done by or in favor of the city shall be rendered invalid by its adoption of any plan of government provided for by this act.

1917. c. 136, sub-ch. 13, s. 5.

207. **Existing ordinances remain in force.** All valid ordinances and resolutions of any city in force at the date of the ratification and not inconsistent with

the provisions of this act, and all rules of procedure adopted by the governing body of any city, shall be and remain in full force and effect until repealed, annulled, or amended under the provisions of this act, or under the provisions of the charter of such city, and all laws relative to any city not in conflict with the provisions of this act shall be and remain in full force and effect.

1917, c. 136, sub-ch. 13, s. 5.

208. Existing election laws remain in force. This act shall not repeal or impair any general, special, or local election laws now in force in any city, but such general, special, or local laws shall be and continue in full force and effect except where clearly inconsistent with and repugnant to the provisions of this act; and the municipal elections of such city shall continue to be held under and subject to the provisions of such special election laws except as herein otherwise provided: Provided, however, that in every case the governing body of any city shall have the right and power in its discretion and by an ordinance adopted by a two-thirds vote of the members of the entire governing body, to order a new registration of the voters of such city for any general, regular, or special municipal election held in such city for any purpose, unless excepted in this act.

1917, c. 136, sub-ch. 13, s. 12.

209. General laws apply. All questions arising in the administration of the government of any city, and not provided for in this act, shall be governed by the laws of the state in such cases made and provided.

1917, c. 136, sub-ch. 13, s. 13.

ART. 18. ACCOUNTING SYSTEMS

210. Nature of accounting system. Accounting systems shall be devised and maintained which shall exhibit the condition of the city's assets and liabilities, the value of its several properties, and state of its several funds. Such systems shall be adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules as shall be necessary to show the full effect of such transactions for each fiscal year upon the finances of the city and in relation to each department of the city government; and there shall be included distinct summaries and schedules for each public utility owned and operated by the city. In all respects, as far as the nature of the city's business permits, the accounting systems maintained shall conform to those employed by progressive business concerns and approved by the best usage. The governing body shall have power to employ accountants to assist in devising such accounting systems.

1917, c. 136, sub-ch. 14, s. 1.

211. Cooperation through board of control. The board of municipal control shall investigate what amount of cost will be required to employ expert accountants to devise proper uniform accounting systems for municipalities, and shall submit to each city a statement of the cost thereof and attempt to obtain cooperation among as many of the cities of the state as possible in the payment of the cost of such systems; and in case a satisfactory arrangement can be made

by such cities for the payment of such costs, then the board of municipal control shall employ such expert accountants for such purpose, and the governing body of each of the cities in the state shall have power to pay its proportion of the cost thereof and install such system.

1917, c. 136, sub-ch. 14, s. 2.

ART. 19. ADOPTION OF CITY CHARTERS

Part 1. Effect of Adoption

212. Continues corporation with powers according to plan. Any city which shall adopt, in the manner hereinafter prescribed, one of the plans of government provided in this act shall thereafter be governed by the provisions thereof; and the inhabitants of such city shall continue to be a municipal corporation under the name existing at the time of such adoption, and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties, liabilities, and obligations provided for herein or otherwise pertaining to or incumbent upon such city as a municipal corporation.

1917, c. 136, sub-ch. 16, s. 1.

213. Legislative powers not restricted. None of the legislative powers of a city shall be abridged or impaired by the provisions of this act, but all such legislative powers shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions of this act.

1917, c. 136, sub-ch. 16, s. 2.

214. Ordinances remain in force. All ordinances, resolutions, orders, or other regulations of a city or of any authorized body or official thereof existing at the time when such city adopts a plan of government set forth in this act shall continue in full force and effect until annulled, repealed, modified, or superseded.

1917, c. 136, sub-ch. 16, s. 3.

215. Mayor and aldermen to hold no other offices. The mayor or any member of the board of aldermen shall not hold any other office or position of profit, trust, or honor, or perform any other duties or functions than mayor or aldermen under the city government unless it shall be submitted to and approved by a majority of the qualified voters of the city at a regular or special election.

1917, c. 136, sub-ch. 16, s. 4.

216. Wards regulated. The territory of any city adopting any one of the plans of government provided for in this act shall continue to be divided into the same number of wards existing at the time of such adoption, which wards shall retain their boundaries until same shall be changed under the provisions of this act: Provided, that if the plan so adopted provides for a different number and arrangement of wards from that existing at the time of such adoption, then in such event the wards of such city shall be so changed and arranged as to conform to the provisions of the plan so adopted.

1917, c. 136, sub-ch. 16, s. 5.

Part 2. Manner of Adoption

217. Petition filed. At any time after the passage of this act a petition addressed to the board of elections of the county in which the city is situated, in

the form and signed and certified as provided in the next section, may be filed with the county board of elections. The petition shall be signed by qualified voters of the city to a number equal to at least twenty-five per cent of the qualified voters at the last election next preceding the filing of the petition.

1917, c. 136, sub-ch. 16, s. 6.

218. Form of petition. The petition shall be in substantially the following form:

To the County Board of Elections of _____ County:

We, the undersigned qualified voters of the city, respectfully petition your honorable body to cause to be submitted to a vote of the voters of the city of _____ the following question: "Shall the city of _____ adopt the form of government defined as Plan (A, B, C, or D), as it is desired by petitioners and consisting of (describe plan briefly, as government by a mayor and councilors elected at large, or government by a mayor and councilors elected partly at large and partly from wards or districts, or government by three commissioners, one of whom shall be the mayor, or government by a mayor and four councilors with a city manager), according to the provisions of an act entitled 'An act to provide for the organization of government of cities, towns, and incorporated villages' of the Public Laws of nineteen hundred and seventeen, under chapter sixteen thereof, 'to simplify the revision and adoption of city charter'?"

Or, in case it shall be desired by such petitioners that two of such plans shall be submitted, then the question may be stated as follows:

Shall the city of _____ adopt the form of government defined as Plan _____ or _____ (naming two of such plans as stated above), or remain under the present form of government?

The petition may be in the form of separate sheets, each sheet containing at the top thereof the heading above set forth, and when attached together and offered for filing the several papers shall be deemed to constitute one petition, and there shall be indorsed thereon the name and address of the person presenting the same for filing.

1917, c. 136, sub-ch. 16, s. 7.

219. Election held. Within five days after the petition has been filed with the county board of elections, if the petition shall contain twenty-five per cent of the qualified voters as before set forth, the board of elections shall call an election in accordance with such petition. The board of elections shall cause notice of such election to be given at least once a week for four weeks in some newspaper of general circulation in the county in which the election is to be held, or at the courthouse door of the county in which the city is situated or at the door of the city or town hall, and the date of such election shall be fixed by the board not later than forty days from the receipt of such petition. The notice shall be signed by the chairman of the county board of elections, and the cost of publication thereof paid by the city. The election shall be held under, and governed and controlled by, the laws in force at the time of such election governing regular elections of such city.

1917, c. 136, sub-ch. 16, s. 8.

220. Petitions for more than one plan. Separate petitions for the submission of more than one of such plans may be filed in the form and manner hereinbefore provided, but if petitions for the submission of more than two of such

plans shall be submitted at such election, those two plans shall be submitted at the election, petitions for which shall be first filed with the county board of elections.

1917, c. 136, sub-ch. 16, s. 9.

221. What the ballots shall contain. All ballots used in elections held upon the adoption of the plans of government herein set forth shall contain the name of the plan submitted, as Plan A, B, C, or D, or any two of such plans submitted, as the case may be, with a brief description of each plan submitted, as described in the petition, and shall also contain the existing form of government under the name "present form of government." The names of the plans and forms shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of government for which he casts his vote; if there shall be only one plan submitted, the letter and description of such plan and the "present form of government" only shall appear, and the voter shall express his preference between such plan and the "present form of government." If there shall be two plans submitted, then each of the plans shall be denominated and described on the ballot as herein set forth, and the "present form of government" shall also appear upon the ballot, and the ballot shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of his first choice and the plan and form of his second choice.

1917, c. 136, sub-ch. 16, s. 10.

222. Form of ballots. Except that the crosses here shown shall be omitted, the ballots shall be printed substantially as follows:

(Form of ballot when only one plan is submitted:)

SPECIAL MUNICIPAL ELECTION

PLAN ----- (WITH BRIEF DESCRIPTION).

PRESENT FORM OF GOVERNMENT.

(Form of ballot when two plans are submitted:)

SPECIAL MUNICIPAL ELECTION

To vote for any plan or form of government, make a cross in the appropriate square to the right of the name of such plan or form.

Note your first choice in the first column.

Note your second choice in the second column.

Names of plans or forms.

First Choice.

Second Choice.

PLAN ----- (with brief description).

PLAN ----- (with brief description).

PRESENT FORM OF GOVERNMENT.

1917, c. 136, sub-ch. 16, s. 11.

223. Series of ballots. The plans and forms on all ballots shall be printed in rotation as follows: The ballots shall be printed in as many series as there

are plans or forms. The whole number of ballots to be printed shall be divided by number of series and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots the names of each plan or form shall be arranged in the alphabetical order of the letters of the plans submitted, followed by the "present form of government." After printing the first series, the first plan or form shall be placed last and the next series printed, and the process shall be so repeated until each plan shall have been printed first an equal number of times. The ballots so printed shall be then combined in tablets or packages so as to have the fewest possible ballots having the same order of plans or forms printed thereon together in the same tablet or package.

1917, c. 136, sub-ch. 16, s. 12.

224. How choice determined:

1. *One plan submitted.* If only one of the plans herein set forth and the "present form of government" are submitted, the plan or form of government receiving a majority of the votes cast shall be declared the plan or form selected.

2. *More than one plan submitted.* If two of the plans herein set forth and the "present form of government" are submitted, the plan or form receiving a majority of first class votes equal to a majority of all the ballots cast shall be declared the plan or form selected. If no plan or form shall receive such a majority, then the second choice votes received for each plan or form shall be added to its first choice votes, and the plan or form receiving the highest total of first and second choice votes equal to a majority of all ballots cast shall be declared the plan or form selected.

3. *How ballots are counted.* In counting the ballots, if two plans and the "present form of government" are submitted, the precinct officers shall enter the total number of ballots on a tally-sheet printed therefor. They shall also carefully enter on such sheet the number of first choice and second choice votes for each plan or form of government. Only one vote shall be counted for any one plan or form on any one ballot. If two votes are cast for the same plan or form, the higher choice only shall be counted. If but one choice is voted on a ballot, it shall be counted as a first choice. If more than one cross appears in the same choice column on any ballot, they shall be counted as choices with priority as between each other in the order in which they appear in the choice column. Ballots marked with more than two crosses shall be declared void. A tie between two or more plans or forms shall be decided in favor of the one having the largest number of first choice votes.

1917, c. 136, sub-ch. 16, ss. 13, 14.

Part 3. Result of Adoption

225. **Plan to continue for two years.** Should any one of the plans of government provided for in this act be adopted, the plan shall continue in force for the period of at least two years after beginning of the term of office of the officials elected thereunder; and no petition proposing a different plan shall be filed during the period of one year and six months after such adoption.

1917, c. 136, sub-ch. 16, s. 15.

226. **City officers to carry out plan.** It shall be the duty of the mayor, the governing body, and the city clerk and other city officials in office, and all boards

of election and all election officials, when any plan of government set forth in this act has been adopted by the qualified voters of any city or is proposed for adoption, to comply with all requirements of this act relating to such proposed adoption and to the election of the officers specified in such plan, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the provisions of this act and of the plan so adopted.

1917, c. 136, sub-ch. 16, s. 16.

227. First election of officers. The first election next succeeding the adoption of any of the plans provided for by this act shall take place on Tuesday after the first Monday in May next succeeding such adoption, and thereafter the city election shall take place biennially on the Tuesday next following the first Monday in May, and the municipal year shall begin and end at ten o'clock in the morning following the day of election.

1917, c. 136, sub-ch. 16, s. 17.

228. Time for officers to qualify. On Wednesday after the first Monday in May following the adoption of any of the plans herein provided for, and biennially thereafter, the mayor-elect and the councilors-elect or commissioners shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that such oath has been taken shall be entered on the journal of the city council. At any meeting thereafter the oath may be administered in the presence of the city council to the mayor, or to any councilor or commissioner absent from the meeting on the first Wednesday after the first Monday in May.

1917, c. 136, sub-ch. 16, s. 18.

ART. 29. DIFFERENT FORMS OF MUNICIPAL GOVERNMENT

Part 1. Plan "A." Mayor and City Council Elected at Large

229. How it becomes operative. The method of city government herein provided for shall be known as Plan A. Upon the adoption of Plan A by a city in the manner prescribed by this act, such plan shall become operative, and its powers of government shall be exercised, as prescribed herein and in article nineteen of this chapter.

1917, c. 136, sub-ch. 16, Part II, Plan A, ss. 1, 2.

230. Mayor's election and term of office. There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after first Monday in May following his election and until his successor is elected and qualified.

1917, c. 136, sub-ch. 16, Part II, Plan A, s. 3.

231. Number and election of city council. The legislative powers of the city shall be vested in a city council. In cities of five thousand inhabitants and under the city council shall consist of three; in cities of five thousand to ten thousand the city council shall consist of five; in cities of ten thousand to twenty

thousand inhabitants, the city council shall consist of seven; and in all over twenty thousand inhabitants the city council shall consist of nine. The councilmen shall be elected at large and from the qualified voters of the city. One of its members shall be elected by the council biennially as mayor pro tem. At the first election held in a city after its adoption of Plan A, the councilors shall be elected to serve for two years from Wednesday after the Monday in May following their election and until their successors are elected and qualified, and at each biennial city election thereafter the councilors elected to fill vacancies caused by B, the councilors elected from each ward shall be elected to serve for two years. The number of inhabitants shall be determined by the last United States government census or estimate.

1917, c. 136, sub-ch. 16, Part II, Plan A, s. 4.

232. Salaries of mayor and councilmen. The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred dollars nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than thirty-five hundred dollars. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder and shall six months prior to the time of the expiration of its term fix by ordinance the salary within the above limits of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of succeeding mayors, but such ordinance shall not be binding in case another plan shall be adopted during the term of office of such council. The council may by a two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding two hundred dollars each a year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted.

1917, c. 136; sub-ch. 16, Part II, Plan A, s. 5.

233. Officers elected by city council. All heads of departments and members of municipal boards, as their present term of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor.

1917, c. 136, sub-ch. 16, Part II, Plan A, s. 6.

234. Power of removal in mayor. The mayor may, with the approval of a majority of the members of the city council, remove any head of a department

or member of a board, other than governing board, before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing.

1917, c. 136, sub-ch. 16, Part II, Plan A. s. 7.

235. Veto power of mayor. Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a two-thirds vote of all the members of the city council, it shall then be in force; but such vote shall not be taken for seven days and after its return to the city council. Every such order, ordinance, resolution, and vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him.

1917, c. 136, sub-ch. 16, Part II, Plan A. s. 8.

*Part 2. Plan "B." Mayor and Council Elected by Districts
and at Large*

236. How it becomes operative. The method of city government herein provided for shall be known as Plan B. Upon the adoption of Plan B by a city in the manner prescribed by this act, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article nineteen of this chapter.

1917, c. 136, sub-ch. 16, Part III, Plan B. ss. 1, 2.

237. Mayor's election and term of office. There shall be a mayor elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after first Monday in May following his election and until his successor is elected and qualified, and at each biennial city election thereafter the mayor shall be elected to serve for two years.

1917, c. 136, sub-ch. 16, Part III, Plan B. s. 3.

238. City council, election and term of office. The legislative powers of the city shall be vested in a city council. One of its members shall be elected biennially as its mayor pro tem. In cities having more than seven wards the city council shall be composed of twelve members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. At the first election held in a city after its adoption of Plan B, the councilors elected from each ward shall be elected to serve for two years from Wednesday after first Monday in May following their election and until their successors are elected and qualified; and at each biennial city election

thereafter the councilors elected to fill vacancies by the expiration of the terms of councilors shall be elected to serve for two years.

1917, c. 136, sub-ch. 16, Part III, Plan B, s. 4.

239. Officers elected by city council. All heads of departments and members of municipal boards, as their terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor.

1917, c. 136, sub-ch. 16, Part III, Plan B, s. 5.

240. Power of removal in mayor. The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing.

1917, c. 136, sub-ch. 16, Part III, Plan B, s. 6.

241. Salaries of mayor and council. The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred dollars nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than thirty-five hundred dollars. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder, and shall six months prior to the time of the expiration of its term fix by ordinance the salary, within the above limits, of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of the succeeding mayors; but such ordinance shall not be binding as to succeeding mayors in case another plan shall be adopted during the term of office of such council. The council may by two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding one hundred dollars each per year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted.

1917, c. 136, sub-ch. 16, Part III, Plan B, s. 7.

242. Veto power in mayor. Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city

council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a majority vote of all the members of the city council, it shall be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, or vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him.

1917, c. 136, sub-ch. 16, Part III, Plan B, s. 8.

Part 3. Plan "C." Commission Form of Government

243. How it becomes operative. The method of city government herein provided for shall be known as Plan C. Upon the adoption of Plan C by any city in the manner prescribed by this act, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article nineteen of this chapter.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, ss. 1, 2.

244. Board of commissioners governing body. The government of the city and the general management and control of all of its affairs shall be vested in a board of commissioners, which shall be elected and shall exercise its powers in the manner hereinafter set forth; and such board shall have full power and authority to enact laws and ordinances for the government and management of the city and all its departments.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, s. 3.

245. Number, power and duties of commissioners. The board of commissioners shall consist of three members, one of whom shall be mayor, and all of whom shall be elected by a vote of the people as hereinafter provided. One of the commissioners shall be elected and known as commissioner of public works; one of the commissioners shall be elected and known as commissioner of public safety; and the mayor shall be known as commissioner of administration and finance. And the commissioners are hereby empowered to appoint, elect, employ, suspend, and discharge all other officers and employees necessary for the operation and management of the city government and its various departments and activities, and to make all necessary rules and regulations for their government; and full power and authority is hereby granted the board of commissioners to enact all laws and ordinances for the proper government of the city.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 4.

246. Power and duties of mayor. The mayor shall be the chief executive officer of the city, and, subject to the supervision of the board of commissioners, shall perform all duties pertaining to such office. He shall do and perform all duties provided or prescribed by law or by the ordinances of the city, not expressly delegated to any other person. He shall have general supervision and oversight over the departments and offices of the city government, and shall be the chief representative of the city, and shall report to the board any failure on the part of any of the officers of his or any other department to perform their duties, and shall preside at all meetings of the board of commissioners. He shall sign all contracts on behalf of the city unless otherwise provided by law, ordi-

nance or resolution of the board of commissioners, he shall have charge of and cause to be prepared and published all statements and reports required by law or ordinance or by resolution of the board of commissioners.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 5.

247. Commissioner of administration and finance:

1. *Purchasing agent.* The commissioner of administration and finance (who is also mayor), shall be the purchasing agent of the board of commissioners of the city, and all property, supplies, and material of every kind whatsoever shall, upon the order of the board of commissioners, be purchased by him; and when so purchased by him, the bills therefor shall be submitted to and approved by the board of commissioners before warrants are issued therefor. When such warrants are issued, they shall be signed by the commissioners and countersigned by some other person designated by the board of commissioners.

2. *Collector of taxes and other dues.* He shall collect all taxes, water rents, license fees, franchise taxes, rentals, and all other moneys which may be due or become due to the city; he shall issue license or permits as provided by law, ordinance, or resolution adopted by the board of commissioners; he shall report the failure on the part of any person, firm or corporation to pay money due the city; and he shall report to the board of commissioners any failure on the part of any person, firm, or corporation to make such reports as are required by law, ordinance, or order of the board of commissioners to be made, and he shall make such recommendations with reference thereto as he may deem proper.

3. *Supervision of accounts.* He shall have charge of and supervision over all accounts and records of the city, and accounts of all officers, agents, and departments required by law or by the board of commissioners to be kept or made. He shall regularly, at least once in three months, inspect or superintend inspection of all records or accounts required to be kept in any of the offices or departments of the city, and shall cause proper accounts and records to be kept, and proper reports to be made. He shall recommend to the board methods of modern bookkeeping for all departments, employees, and agents of the city, and shall, acting for the board of commissioners, audit or cause to be audited by an expert accountant, quarterly, the accounts of every officer or employee who does or may receive or disburse money, and shall publish or cause to be published quarterly statements showing the financial condition of the city. He shall examine or cause to be examined all accounts, payrolls, and claims before they are acted on or allowed, unless otherwise provided by law or by order of the board of commissioners.

4. *Control of employees.* He shall have control of all employees of his department, and of all other officers and employees not by law, ordinance, or resolution of the board of commissioners apportioned or assigned to some other department. The assessor, auditor, city clerk, city attorney, and their respective offices or departments, and all employees therein, and all book-keepers and accountants are apportioned and assigned to the department of administration and finance, and shall be under the direction and supervision of the commissioner thereof.

5. *General duties.* In the absence or inability of any commissioner to act, he shall exercise temporary supervision over the department assigned to such commissioner, subject, however, to the power of the board to substitute some one

else temporarily to perform any of such duties. He shall do and perform any and all other services ordered by the board and not herein expressly conferred upon some other department.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8.

248. Commissioner of public works:

1. *Construction of public works.* The commissioner of public works shall have authority and charge over all the public works not herein expressly given to some other department; the construction, cleansing, sprinkling, and repair of the streets and public places, the erection of buildings for the city, the making and construction of all other improvements, paving, curbing, sidewalks, bridges, viaducts, and the repair thereof. He shall approve all estimates of the city engineer of the cost of public works, and recommend to the board of commissioners the acceptance of the work done or improvement made, when completed according to contract, and perform such other duties with reference to such other matters as may be required by law, ordinance, or order of the board of commissioners.

2. *Control of streets and public places.* The commissioner shall have supervision and control, and it shall be his duty to keep in good condition the streets, cemeteries, and public parks in the city or belonging to the city, subject to the supervision and control of the board of commissioners; he shall have control, management and direction of all public grounds, bridges, viaducts, subways, and buildings not otherwise assigned herein to some other department; he shall have supervision of the enforcement of the provisions of law and the ordinances relating to streets, public squares and places, cemeteries, and the control of the placing of billboards and street wastepaper receptacles.

3. *Control over public utilities.* He shall have supervision over the public service utilities not otherwise assigned to some other department, and all persons, firms, or corporations rendering service in the city under any franchise, contracts, or grant made by the city or state, not otherwise assigned to some other department. He shall have control of the location of street-car tracks, telephone and telegraph wires, and other things placed by public-service corporations in, along, under, or over the streets, and shall report to the boards of commissioners or city officers, as may be appointed by them to receive his reports, any failure of such person or corporation to render proper service under a franchise granted by the city or state, and shall report any failure on the part of such person, firm, or corporation to observe the requirements or conditions of such franchise, contract, or grant.

4. *Control of water system.* He shall have charge of the watersheds from which the city takes its supply of water, pumping stations, pipe lines, filtering apparatus, and all other things connected with or incident to the proper supply of water for the city; it shall be his duty to act for the city, subject to the control of the board of commissioners, in securing all rights of way and easements connected with and necessary to the supply of water for the city; he shall have supervision and control of all buildings, grounds, and apparatus connected therewith and incident to the furnishing of water for the city; he shall superintend the erection of water tanks and laying of water lines and the operation thereof.

5. *Control of departments.* The department of the city engineer, and all employees therein, the departments of streets, parks, cemeteries, buildings, and

all employees in said departments, shall be under the supervision and control of the commissioner of public works; and he shall do and perform all other services ordered by the board, or that may be ordered by the board, not herein expressly conferred upon some other department.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 7.

249. Commissioner of public safety:

1. *Charge of police force.* The commissioner of public safety shall have charge of the police force, subject to the supervision and control of the board of commissioners, and shall have power temporarily to supplant the chief of police and take charge of the department, and shall at all times have power to give directions to the officers and all employees in the police department, and his directions shall be binding upon all such officers and employees, subject only to the control of the board of commissioners. He shall have charge of the police stations, jails, and property and apparatus connected therewith, including city ambulance and patrol wagons used in connection with his department.

2. *Control of fire department.* He shall have the supervision and control, subject to the control of the board of commissioners, of the fire department, of all firemen, officers, and employees therein or connected therewith, and of all fire stations, property and apparatus connected therewith; he shall have power to supersede temporarily the chief of the fire department, and his orders to such department and all employees therein shall be binding upon the department.

3. *Traffic regulations.* He shall be charged with the duty of enforcing all ordinances and resolutions relating to traffic on the public streets, alleys, and public ways, on and across railway lines and through and over the cemetery-ways, public parks, and other public places.

4. *Health regulations.* He shall, subject to the supervision of the board of commissioners, have control of the laws, ordinances, and orders relating to the public health and sanitation, and all health officers, employees of the city, connected with and under his department; and it shall be the duty of the board of commissioners to pass such ordinances and prescribe such rules and regulations and employ such persons as will be necessary to protect and preserve public health. He shall have control and supervision, through the health officer under his department, over public dumping grounds and dumps and city scavengers; he shall be charged, through his department, with the enforcement of all quarantine regulations, of keeping clean all streets, alleys, and public places, and with suppressing and removing conditions on private property within the city that are a menace to health or public safety. He shall be authorized to enter upon private premises for the purpose of discharging the duties imposed upon him, and he shall cause to be abated all nuisances which may endanger or affect the health of the city, and generally do all things, subject to the control of the board of commissioners, that may be necessary and expedient for the promotion of health and suppression of disease.

5. *Sewer and light systems.* He shall have control and supervision over the sewer system, and shall have charge and control over the sewer inspector and all other officers and employees connected with the department of lights and sewers. He shall have supervision and control over the lighting system of the city, and the management and direction of the lighting of the streets, alleys, and all other public places and grounds and all other places where city lights are

placed; he shall be charged with the duty of seeing that all persons, firms, and corporations charged with the duty of supplying lights or waterpower perform the obligation imposed upon them by law, ordinance, or order of the board of commissioners.

6. Control over officers. He shall have charge of the electrical inspector, plumbing inspector, building inspector, market house and the employees connected therewith and of all apparatus and property used therein; he shall have charge, supervision and direction of all officers and employees of the city connected with and under his department. He shall perform all other services ordered by the board of commissioners, or that may be ordered by the board of commissioners, not herein expressly conferred upon some other department.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8.

250. Recommendations as to purchases. It shall be the duty of each commissioner to recommend to the city purchasing agent the purchase of goods and the contract for all things necessary to be contracted for in his department, and these recommendations shall be submitted to the board of commissioners for its orders with respect thereto.

1917, c. 136.

251. General powers of board of commissioners. The board of commissioners shall exercise all legislative powers, functions, and duties conferred upon the city or its officers. It shall make all orders for the doing of work or the making or construction of any improvements, bridges, or buildings. It shall levy all taxes, apportion and appropriate all funds, audit and allow all bills and accounts, payrolls, and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers, and other work, improvements, or repairs which may be specially assessed. It shall make or authorize the making of all contracts, and no contracts shall bind or be obligatory upon the city unless either made by ordinance or resolution adopted by the board of commissioners or reduced to writing and approved by the board or expressly authorized by ordinance or resolution adopted by the board. All contracts and all ordinances and resolutions making contracts or authorizing the making of contracts shall be drawn by the city attorney, or submitted to such officer before the same are made or passed. All heads of departments, agents, and employees are the agents of the board of commissioners only, and all their acts shall be subject to review and to approval or revocation by the board of commissioners. Every head of department, superintendent, agent, employee, or officer shall from time to time, as required by law or ordinance, or when requested by the board of commissioners, or whenever he shall deem necessary for the good of the public service, report to the board of commissioners in writing respecting the business of his department, office, or employment, all matters connected therewith. The board of commissioners may by ordinance or resolution assign to a head of a department, a superintendent, officer, agent, or employee, duties in respect to the business of any other department, office, or employment and such service shall be rendered without additional compensation. The board of commissioners shall elect and have authority over the city clerk, who shall be the clerk of the board of commissioners. The board of commissioners shall have charge of all matters pertaining to public health, and shall perform all duties belonging thereto.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, ss. 10, 11.

252. Commissioners' service exclusive. Each member of the board of commissioners shall devote his time and attention to the performance of the public duties to the exclusion of all other occupations, professions, or callings.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 12.

253. The initiative and referendum:

1. *Ordinances submitted by petition.* Any proposed ordinance may be submitted to the board of commissioners by petition signed by electors of the city equal to the number provided herein for recall of any official. The signatures, verifications, authentications, inspections, certification, amendments, and submission of such petition shall be the same as provided for the removal of officials.

2. *Duty of the board.* If the petition accompanying the proposed ordinance be signed by the requisite number of electors, and contains a request that the ordinance be passed or submitted to a vote of the people, if not passed by the board of commissioners, such board shall either:

a. Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition, or

b. After the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of commissioners shall forthwith submit the question to the qualified voters at a special election called for that purpose, or to a general election occurring within ninety days after the date of the clerk's certificate. If the petition is signed by not less than ten and less than twenty-five per cent of the electors as above defined, then the board of commissioners shall within twenty days pass such ordinance without change or submit the same at the next general city election.

3. *Popular vote taken.* The ballots used when voting upon such ordinance shall contain these words: "For the Ordinance" (stating the nature of the proposed ordinance) and "Against the Ordinance" (stating the nature of the proposed ordinance). If the majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

4. *Proposition for repeal.* The board of commissioners may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general election; and should any such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly.

5. *Publication.* Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city shall cause such ordinance or proposition to be published once in a newspaper of general circulation in the city, such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

6. *When ordinance takes effect.* No ordinance passed by the board of commissioners, unless otherwise expressly provided, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a

statement of its urgency and is passed by a two-thirds vote of the board of commissioners shall go into effect before twenty days from the time of its final passage and publication, as herein provided.

7. *Action upon protest filed.* If during the twenty days a petition, signed by electors of the city equal to the number prescribed herein to be signed to a petition for the recall of any official, protesting against the passage of such ordinance, be presented to the board of commissioners, the operation of such ordinance shall thereupon be suspended, and it shall be the duty of the board of commissioners to consider such ordinance, and if the same is not entirely repealed, the board of commissioners shall submit to the qualified voters the question of the repeal of such ordinance at an election to be held for that purpose in the manner and under the conditions herein provided for reference to voters of the question of recall of an official.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 3, s. 1.

254. Nomination of candidates:

1. *Nomination by primaries.* All candidates to be voted for at all general municipal elections, at which time a mayor, commissioners, or any other elective officer are to be elected under the provisions of this act, shall be nominated by a primary election, and no other names shall be placed upon the general ballot, except those nominated in such primary in the manner hereinafter prescribed.

2. *How primaries held.* The primary election for such nominations shall be held on the second Monday preceding all general municipal elections. The judges and other officers of election appointed for the general municipal election shall, whenever practical, be the judges of the primary election, and it shall be held at the same place and in the same manner and under the same rules and regulations and subject to the same conditions, and the polls to be opened and closed at the same hours, as are required for the general election.

3. *Notice of candidacy.* Any person desiring to become a candidate for nomination by the primary for the office of mayor or commissioner of either of the other two departments or any other elective office shall, at least ten days prior to the primary election, file with the clerk a statement of such candidacy in substantially the following form:

STATE OF NORTH CAROLINA—COUNTY OF _____

I, _____, hereby give notice that I reside at _____ street, city of _____ county of _____, State of North Carolina; that I am a candidate for nomination to the office of (mayor, or commissioner of a particular department, or other office) to be voted upon at the primary election to be held on the _____ Monday of _____, 19____, and I hereby request that my name be printed upon the official ballot for the nomination by such primary election for such office.
(Signed) _____

And he shall at the same time pay to the clerk, to be turned over to the city treasurer, the sum of five dollars.

4. *Publication of names.* Immediately upon the expiration of the time for filing the petition of candidates, the city clerk shall cause to be published for three successive days in a daily newspaper of general circulation in the city, in proper form, the names of the persons as they are to appear upon the primary ballots.

5. *Ballots prepared.* The clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the ballot the names of the candidates for mayor, arranged alphabetically, shall be placed, with a square at the left of each name, and immediately below the words, "vote for one." Following the names likewise arranged in alphabetical order, shall appear the names of the candidates for the commissioners of the two other departments, respectively, with a square at the left of each name, and below the names of such candidates for each of the departments shall appear the words, "vote for one." Like provision shall be made for the names of candidates for each other elective office provided by law. The ballots shall be printed upon plain, substantial white paper, and shall be headed: "Candidates for nomination for mayor and commissioners of two other offices (naming them), of the city of -----, North Carolina, at the primary election," but shall have no party designation or mark whatever.

6. *Form of ballots.* The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of parties you favor as candidates for the respective positions.)

Official primary ballot. Candidates for nomination for mayor and commissioners and other offices (naming them) of the city of -----, North Carolina, at the primary election.

For Mayor (naming candidates). (Vote for one.)

For Commissioner of the Department of Public Safety (names of candidates). (Vote for one.)

For Commissioner of the Department of Public Works (names of candidates). (Vote for one.)

Official ballot. Attest:

(Signature)-----City Clerk.

7. *Distribution of ballots.* Having caused ballots to be printed, the city clerk shall cause to be delivered at each polling place a number of ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor.

8. *Who entitled to vote.* The persons who are qualified to vote at the succeeding municipal election shall be qualified to vote at such primary election, and shall be subject to challenge made by any resident of the city, under such rules as may be prescribed by the board of commissioners, and such challenge shall be passed upon by the judges of election and registrars: Provided, however, that the law applicable to challenge at a general municipal election shall be applicable to challenge made at such primary election.

9. *Ballots counted.* Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precincts for each of the candidates, and make return thereof to the city clerk, upon blanks to be furnished by the clerk, within six hours of the closing of the polls.

10. *Returns canvassed.* On the day following the primary election the city clerk, under the supervision and direction of the mayor, shall canvass such returns so received from all the polling precincts, and shall make and publish in some newspaper of general circulation in the city, at least once, the result thereof. The canvass by the city clerk shall be publicly made.

11. *Who to be candidates.* The two candidates receiving the highest number of votes for mayor, and the two candidates receiving the highest number of

votes for commissioners for each of the respective departments, and the two candidates receiving the highest number of votes for any other elective office, shall be the candidates, and the only candidates whose names shall be placed upon the ballot for mayor, commissioners, and other elective offices at the next succeeding general municipal election.

1917. c. 136, sub-ch. 16, Part IV, Plan C, c. 4.

255. Recall of officials by the people:

1. *Who may be removed.* The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent.

2. *Petition filed and verified.* The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the clerk, which petition shall contain a general statement of the ground for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true, as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

3. *Clerk to examine and certify sufficiency.* Within ten days from the date of filing such petition the city clerk shall examine and from the voters register ascertain whether or not the petition is signed by the requisite number of qualified electors, and he shall attach to the petition his certificate, showing the result of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of the certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the board of commissioners without delay.

4. *Board to order primary.* If the petition shall be found to be sufficient, the board of commissioners shall order and fix a date for holding a primary, as provided in cases preceding regular elections, the primary to be held not less than ten days or more than twenty days from the date of the clerk's certificate to the board of commissioners that a sufficient petition is filed. If in the primary election any candidate receives a majority of all the votes cast, he shall be declared to be elected to fill out the remainder of the term of the officer who is sought to be recalled. If there be more than two candidates in such primary and no one received a majority of all the votes cast therein, then there shall be an election held within twenty days from the date of the primary, at which election the two candidates receiving the highest vote in the primary shall be voted for. Candidates' names shall be placed on the ticket in the primary and election held, and the results canvassed, under the same rules, conditions, and

regulations as are prescribed for the primaries preceding regular elections. The board of commissioners shall make or cause to be made publication for ten days of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the results thereof declared in all respects as other city elections.

5. *Candidate elected succeeds to office.* The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. At such election, if some other person than the incumbent is elected, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor.

6. *Vacancy filled.* In case the party elected should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant, and in that event the unexpired term shall be filled by election by the board, but the commissioner removed shall not be eligible to election by the board, and the person so elected by the board shall be subject to recall as other commissioners. If the incumbent receives a majority of votes in the primary election he shall continue his office.

7. *Application of method of removal.* Such method of removal shall be cumulative and additional to any other method provided by law. In the event any officer is recalled and any person is elected as his successor, the right of recall of such successor so elected shall be as in case of an officer originally elected.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 5.

256. Salaries of officers. The mayor and commissioners shall have offices at the city hall. The compensation of the mayor and commissioners shall be as follows: In cities of five thousand inhabitants and under, the mayor shall receive one thousand dollars and the commissioners each seven hundred and fifty dollars. In cities of five to ten thousand inhabitants the mayor shall receive fifteen hundred dollars and the commissioners each one thousand dollars. In cities of ten to fifteen thousand inhabitants the mayor shall receive two thousand dollars and the commissioners each fifteen hundred dollars. In cities of fifteen to twenty-five thousand inhabitants the mayor shall receive twenty-six hundred dollars and the commissioners each twenty-four hundred dollars. In cities of over twenty-five thousand inhabitants the mayor shall receive thirty-five hundred dollars and the commissioners each thirty-two hundred and fifty dollars. The number of inhabitants shall be determined by the last United States government census or estimate. Every other officer, agent, employee, and assistant of the city government shall receive such salary or compensation as the board of commissioners shall by ordinance provide, payable in equal monthly installments, unless the board shall order payments to be made at nonpayment intervals.

1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 6.

Part 4. Plan "D." Mayor, City Council, and City Manager

257. How it becomes operative. The method of city government herein provided for shall be known as Plan D. Upon the adoption of Plan D by a city

in the manner prescribed by article nineteen of this act, such plan shall become operative, and the powers of government of such city shall be exercised, as provided herein and in article nineteen.

1917, c. 136, sub-ch. 16, Part V, Plan D, ss. 1, 2.

258. Governing body. The government of the city and the general management and control of all its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner herein and in article nineteen set forth, except that the city manager shall have the authority hereinafter specified.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 3.

259. Number and election of city councils. The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 4.

260. Power and organization of city council. All the legislative powers of the city shall be vested in the city council. The city council elected as aforesaid shall meet at ten o'clock in the forenoon on Wednesday after the first Monday of May in each year, and the members of the city council whose terms of office then begin shall severally make oath before the city clerk or justice of the peace to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice from its members of a mayor pro tem, who shall hold his office during the pleasure of the city council. The organization of the city council shall take place as aforesaid, notwithstanding the absence, death, refusal to serve, or nonelection of one or more of the members: Provided, that at least three of the persons entitled to be members of the city council are present and make oath as aforesaid. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefor, may make oath at any time thereafter.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 5.

261. Meetings regulated. The city council shall fix suitable times for its regular meetings. The mayor, the mayor pro tem of the city council, or any two members thereof, may at any time call a special meeting by causing a written notice, stating the time of holding such meeting and signed by a person or persons calling the same, to be delivered in hand to each member or left at his usual dwelling place at least six hours before the time of such meeting. Meetings of the city council may also be held at any time when all the members of the council are present and consent thereto.

1917, c. 136; sub-ch. 16, Part V, Plan D, s. 6.

262. Quorum and conduct of business. A majority of the members of the city council shall constitute a quorum. Its meetings shall be public, and the mayor, who shall be the official head of the city, shall, if present, preside and shall have the same power as the other members of the council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the mayor, the mayor pro tem. of the city council shall preside, and in the

absence of both, a chairman pro tempore shall be chosen. The city clerk shall be ex officio clerk of the city council, and shall keep records of its proceedings; but in case of his temporary absence, or in case of a vacancy in the office, the city council may elect by ballot a temporary clerk, who shall be sworn to the faithful discharge of his duties, and may act as clerk of the city council until a city clerk is chosen and qualified. All final votes of the city council involving the expenditure of fifty dollars or over shall be by yeas and nays and shall be entered on the records. On request of one member, the vote shall be by yeas and nays, and shall be entered upon the records. Three affirmative votes at least shall be necessary for the passage of any order, ordinance, resolution, or vote.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 7.

263. Vacancies in council. Vacancies in the city council shall be filled by the council for the remainder of the unexpired terms.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 8.

264. Mayor, how chosen. The mayor shall be that member of the city council who, at the regular municipal election at which the members of the council were elected, received the highest number of votes. In case two councilors receive the same number of votes, one of them shall be chosen by the remaining members of the council. In case of vacancy in the office of mayor, the remaining members of the council shall choose from their own number his successor for the unexpired term.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 9.

265. Salaries of mayor and council. The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding seven hundred dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members not exceeding two hundred dollars a year for each. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 10.

266. City manager appointed. The city council shall appoint a city manager, who shall be the administrative head of the city government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council, and shall receive such compensation as it shall fix by ordinance.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 11.

267. Power and duties of manager. The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions, and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition and its future financial needs; (5)

appoint and remove all heads of departments, superintendents, and other employees of the city.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 12.

268. Appointment and removal of officers. Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him; but the city manager shall report every such appointment and removal to the council at the next meeting thereof following any such appointment or removal.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 13.

269. Control of officers and employees. The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council.

1917, c. 136, sub-ch. 16, Part V, Plan D, s. 14.

Part 5. Plans "A," and "D," with Initiative, Referendum and Recall

270. How submitted, and effect of adoption. There may be submitted as an addition to Plans A or D "The Initiative and Referendum" and "Recall of Officials by the People," as set forth in Plan C, in which case all references to the board of commissioners shall apply to the mayor and council, and the petition for election and the ballots shall contain the name of the plan as "Plan A, with Initiative, Referendum, and Recall"; "Plan D, with Initiative, Referendum and Recall," and such plans shall be submitted with such additions as provided in this act for the submission of such plans.

1917, c. 136, sub-ch. 16, Part VI.

ART. 21. AMENDMENT AND REPEAL OF CHARTER

271. "Home rule" or "Local self-government." Within the limitations prescribed by the constitution and now existing or hereafter enacted general laws, any municipality may amend or repeal its charter or any part thereof or adopt a new charter. The proposal to amend, repeal, or adopt may be initiated: (a) By the governing body of such municipality; (b) By any number of the qualified electors of such municipality not less than twenty-five per centum of qualified electors entitled to vote at the next preceding regular municipal election in such municipality.

1917, c. 136, sub-ch. 16, Part VII, s. 1.

272. Ordinances to amend or repeal charter:

1. How adopted. If any amendment, repeal, or adoption be initiated by the governing body of any municipality, the governing body shall at one of its regular meetings, and not less than six days after the introduction thereof, adopt by not less than a two-thirds vote of all its members an ordinance in which shall be recited in full the amendment, repeal, or adoption proposed; such ordinance shall also recite that such amendment, repeal, or adoption is, in the opinion of the governing body, for the best interests of the municipality.

2. *Publication made.* It shall direct publication over the name of the mayor or other chief officer of the municipality of a notice in substantially the following form (the blank spaces to be properly filled in) :

NOTICE OF AMENDMENT TO CHARTER OF

(here insert name of municipality.)

The governing body of (here insert name of municipality) at a regular meeting held on the ----- day of -----, 19____, adopted a resolution as follows (here copy verbatim the resolution).

Dated this ----- day of -----, 19____

-----, Mayor.

3. *Submitted to vote.* The governing body shall in its resolution provide that the amendment, repeal, or adoption therein proposed shall not become effective until submitted to and approved by a majority of the votes cast at a regular municipal election or a special election called for that purpose, and such amendment, repeal or adoption shall be submitted to the qualified voters of the city at an election called and held for such purpose, or at a regular municipal election. Thereupon, if such amendment, repeal, or adoption shall have been approved by a majority of the votes cast as hereinbefore provided, such amendment, repeal, or adoption shall become effective.

4. *Manner of publication.* The notice required by section two shall be published once a week for four successive weeks in a newspaper of general circulation in the municipality.

1917, c. 136, sub-ch. 16, Part VII, ss. 2, 8.

273. Petition for amendment or repeal of charter :

1. *Nature of petition.* If any amendment, repeal, or adoption be initiated by the qualified electors of such municipality the same shall be by a petition signed by not less than twenty-five per centum of the qualified electors entitled to vote at the next preceding regular election in such municipality. The petition shall be appropriately entitled and shall be addressed to the governing board of such municipality, and shall state in exact language the amendment, repeal, or adoption proposed; the petition need not be all on one sheet, and if on one or more than one sheet shall be verified by a freeholder in such municipality who is also a signer of such petition. The petition shall contain a request to the governing body of the municipality to submit to the qualified electors thereof the amendment, repeal, or adoption as therein stated, either at a regular election or at a special election to be called for that purpose. It shall thereupon be the duty of the clerk of such municipality to examine the petition for the purpose of ascertaining whether the same has been signed by the required number of qualified electors of the municipality, and the clerk shall certify to the governing body the result of his investigation.

2. *Submitted to vote.* Upon such certificate, it shall be the duty of the governing body to provide for submission to a vote of the amendment, repeal, or adoption proposed in the petition, either at a regular election or at a special election to be called for that purpose, and if the amendment, repeal, or adoption shall be approved by a majority of the votes cast, as hereinbefore provided, such amendment, repeal, or adoption shall become effective.

1917, c. 136, sub-ch. 16, Part VII, s. 3.

274. Nature of verification. Whenever verification of any petition is provided or required to be made by this chapter, such verification shall consist of a written oath signed by the person making the same, which shall state in substance that the persons whose names appear signed to such petition were so signed by such persons respectively in the presence of the person making oath, and that, to the best of the knowledge and belief of the person making the oath, each of such persons is a qualified elector entitled to vote at the next preceding regular election in the municipality.

1917, c. 136, sub-ch. 16, Part VII, s. 4.

275. Laws controlling elections. Whenever any election, either regular or special, is provided or required to be held under this chapter, such election shall be held under such laws, either general or special, as are at the time of the holding of such election in force and effect with reference to such municipality.

1917, c. 136, sub-ch. 16, Part VII, s. 5.

276. Several propositions voted on. Any number of amendments or repeals may be initiated by one and the same resolution or petition, and whenever under this chapter an election is provided or required to be held, any number of such amendments or repeals may be submitted and voted upon at one and the same election.

1917, c. 136, sub-ch. 16, Part VII, s. 6.

277. Limitations as to holding special elections. No special election provided or required by this chapter shall, except as otherwise provided in this act, be held within two months of the time of holding any regular municipal election in any municipality; not more than two special elections may be held under this chapter in any municipality within any one year. The elections, subject to the other provisions of this section, shall be held not less than three months from the date of the filing of the petition.

1917, c. 136, sub-ch. 16, Part VII, s. 7.

278. Adoption or change certified and recorded. Upon the amendment, repeal, or adoption of a charter of any municipality as provided in this chapter, the governing body shall cause to be certified to the secretary of the municipal board of control a copy of such amendment, repeal, or adoption duly certified by its clerk and under the seal of such municipality; the copy so certified shall be recorded in the office of the secretary of state, and a copy shall be so certified by the secretary of state to the clerk of the superior court of the county in which such municipality is situated and recorded in the office of the clerk; the record therein provided for, either in the office of the secretary of state or in the office of the clerk of the superior court, shall be evidence in all the courts of this state.

1917, c. 136, sub-ch. 16, Part VII, s. 9.

279. Adoption or change ratified by vote. Whenever any amendment, repeal, or adoption of a charter of any municipality is submitted under the provisions of this chapter to the qualified electors of such municipality, such amendment, repeal, or adoption shall not become effective unless and until the same shall have been approved by a majority of the votes cast at the election and the result of the election thereon canvassed, determined, and declared as provided by law.

1917, c. 136, sub-ch. 16, Part VII, s. 10.

280. Plan not changed for two years. When any municipality shall, as provided in this act, adopt any one of the plans as set forth in this act, no amendment, repeal, or adoption of such plans shall be made until and after the expiration of two years from the date of the adoption of such plan.

1917, c. 136, sub-ch. 16, Part VII, s. 3.

ART. 22. ELECTIONS REGULATED

281. Laws governing elections. All elections called and held by any city for any purpose under the provisions of this act shall be held under, governed and controlled by the laws in force at the time of such election governing and controlling regular and special municipal elections of such city in so far as they are applicable and not inconsistent with the provisions of this act, and where not otherwise provided by law.

1917, c. 136, sub-ch. 16, Part VII, s. 1.

282. Publication of notice. Except as otherwise provided in this act, notice of every special election held in any city shall be published in a newspaper of general circulation in such city at least once a week for four weeks preceding the date of such election, and posted for thirty days at the door of the building in which the governing body holds its meetings and three other public places in the city. Such notice shall set forth the date and hours of such elections, the proposition to be voted on thereat, the location of the polling places, and, in the event a new registration is ordered for such election, shall so state and set forth the dates of opening and closing the registration books and the names and addresses of the several registrars in charge thereof.

1917, c. 136, sub-ch. 16, Part VII, s. 1.

283. Time for holding elections. If any city shall adopt any one of the plans of government provided for in this act during the year nineteen hundred and seventeen, the election of city officers under such plan shall be held on Tuesday after the first Monday in May following the adoption of such plan, and the regular municipal elections of such city shall take place biennially thereafter.

1917, c. 136, sub-ch. 16, Part VII, s. 2.

ART. 23. GENERAL EFFECT OF ACT

284. Not to repeal Municipal Finance Act. Nothing in this act contained shall be construed to amend or repeal any provisions of the "Municipal Finance Act, 1917," and wherever this act and the "Municipal Finance Act, 1917," conflict, the "Municipal Finance Act, 1917," shall control.

1917, c. 136, sub-ch. 16, Part VII, s. 4.

285. Effect of unconstitutionality in part. If any part of this act shall be declared unconstitutional, it shall not affect other parts of this act.

1917, c. 136, sub-ch. 17.

SUBCHAPTER III. MUNICIPAL FINANCE ACT OF 1917

ART. 24. GENERAL PROVISIONS

286. Name of act. This act may be cited as the "Municipal Finance Act, 1917."

1917, c. 138, s. 1.

287. Meaning of terms. In this act, unless the context otherwise requires, the expression "municipality" means and includes any city, town, or incorporated village; "governing body" means the board or body in which the person occupying the position of clerk of a municipality are vested; "clerk" means the person occupying the position of clerk of a municipality; "finance officer" means the chief financial officer of a municipality; "necessary expenses" and "voters" means respectively the necessary expenses and qualified voters referred to in section seven of article seven of the constitution of North Carolina; "funding bonds" means bonds issued to pay or extend the time of payment of indebtedness heretofore incurred, not evidenced by bonds; "refunding bonds" means bonds issued to pay or extend the time of payment of indebtedness heretofore incurred, evidenced by bonds; "publication" includes posting in cases where posting is authorized by this act as substitute for publication in a newspaper; "bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality.

1917, c. 138, s. 2.

288. Manner of publication. Any ordinance or notice required by this act to be published shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality.

1917, c. 138, s. 3.

289. Application and construction of act. This act shall apply to all municipalities. And every provision of this act shall be construed as being qualified by the provisions of the constitution of North Carolina. If any portion of this act shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be excinded.

1917, c. 138, ss. 4, 5.

ART. 25. BUDGET AND APPROPRIATIONS

290. The fiscal year. The fiscal year of every municipality shall begin on the first day of June.

1917, c. 138, s. 6.

291. Budget prepared. Not later than twenty days after the beginning of each fiscal year of a municipality the governing body shall cause to be prepared a plan for financing the municipality during the fiscal year, which plan shall be

known as the budget, and shall be based upon detailed estimates furnished by the several departments and other divisions of the municipal government.

1917, c. 138, s. 6.

292. What budget shall contain. The budget shall present the following information:

1. An itemized estimate of the appropriations necessary to be made for current expenses and for permanent improvements for each department and division of the municipal government for the fiscal year (exclusive of expenses to be paid for by means of bonds issued under article twenty-seven), and for deficits of the previous fiscal year, with comparative statements in parallel columns of expenditures for corresponding items so far as possible for the two next preceding years. This estimate may include a contingent fund not designated for any particular purpose not exceeding five per centum of the total estimated amount of other appropriations.

2. An itemized estimate of the taxes required and of the estimated revenues of the municipality, from all other sources for the fiscal year and the unencumbered balances of the appropriations, with comparative statements in parallel columns of the taxes and other revenues for the two next preceding fiscal years.

3. A statement of the financial condition of the municipality; and such other information as the governing body may deem advisable to state.

1917, c. 138, s. 6.

293. Copy of budget filed for inspection. A copy of the budget shall be filed in the office of the clerk of the municipality for public inspection not later than ten days before its adoption by the governing body, and a public hearing shall be given thereon by the governing body before the adoption of the budget, notice of which hearing shall be published.

1917, c. 138, s. 6.

294. Annual appropriation ordinance. Not later than one month after the beginning of the fiscal year the governing body shall pass the annual appropriation ordinance for the fiscal year, which shall be based on the budget. The total amount of appropriations shall not exceed the estimated revenues of the municipality.

1917, c. 138, s. 7.

295. Appropriation made before annual ordinance. Before the adoption of the annual appropriation ordinance the governing body may make appropriations for the purpose of paying fixed salaries, the principal and interest of bonded debts and other loans, the stated compensation of officers and employees and indebtedness for work performed or materials furnished under contracts made before the beginning of the fiscal year, or for the ordinary expenses of the municipality, which appropriations shall be chargeable to the appropriations in the annual appropriations ordinance for that year.

1917, c. 138, s. 8.

296. Amendment of appropriations. At any time after the passage of the annual appropriation ordinance, and after at least one week's public notice, the governing body may amend such ordinance so as to authorize the transfer of

balances appropriated for one purpose to another purpose or to appropriate available revenues not included in the annual budget.

1917, c. 138, s. 9.

297. Balances revert for future appropriations. At the close of each fiscal year the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated, and shall be subject to future appropriation.

1917, c. 138, s. 10.

298. Funds specially applied not affected. Nothing herein shall be construed to permit revenues which by statute are appropriated to a particular purpose to be appropriated to any other purpose, but such revenues shall nevertheless be included in the budget.

1917, c. 138, s. 11.

ART. 26. TEMPORARY LOANS

299. Money borrowed to meet appropriations. A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual budget and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year.

1917, c. 138, s. 12.

300. Money borrowed in anticipation of bond sales. At any time after a bond ordinance has taken effect as provided in article twenty-seven, a municipality may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Such loans shall be due and payable not later than three years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated.

1917, c. 138, s. 13.

301. Notes or bonds issued for temporary loans. Notes or bonds shall be issued for all moneys borrowed under the last two sections. Such notes or bonds may be renewed from time to time, but all such renewal notes or bonds shall mature within the time limited by such sections for the payment of the original loan. They may be disposed of by public or private negotiation. No money shall be borrowed under such sections at a rate of interest exceeding six per centum per annum. The issuance of such obligations shall be authorized by resolution of the governing body, which shall fix the maximum face amount of the obligations, the maximum rate of interest to be paid upon the amount borrowed, and the maximum period within which the obligations shall be issued. The governing body may delegate to the financial officer or to the chief executive officer the power to fix the face amount, rate of interest, and time of issue within the limitations prescribed by such resolution, and the power to dispose of such obligations. All such notes or bonds shall be signed by the financial officer and

the seal of the municipality shall be affixed and attested by the clerk. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval indorsed on the notes or bonds.

1917, c. 138, s. 14.

ART. 27. PERMANENT FINANCING

302. Not applied to temporary loans. The provisions of this article shall not apply to temporary bonds or other obligations issued under article twenty-six.

1917, c. 138, s. 15.

303. For what purposes bonds may be issued. A municipality may issue its bonds for any one or more of the following purposes:

1. To pay for any public improvement or property which it may lawfully make or acquire, or for the making or acquisition of which it may lawfully pay money, except current expenses.

2. To fund or refund an indebtedness outstanding at the time when this act takes effect, for the payment of which the municipality is now or may hereafter be liable, and which is payable at the time of passage of the ordinance authorizing bonds to fund or refund such indebtedness, or to become payable within one year thereafter.

3. For any other purpose which it may lawfully undertake or for which it is authorized by law to raise money, except current expenses.

1917, c. 138, s. 16.

304. Ordinance for bond issue:

1. *Ordinance required.* All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

2. *What ordinance must show.* The ordinance shall state:

a. In brief and general terms the purpose or purposes of the bond issue: Provided, however, that bonds for any purpose other than the payment of necessary expenses shall be authorized by a separate ordinance.

b. The maximum principal amount of the issue, and, if the bonds are to be issued for more than one purpose, the maximum principal amount of bonds for each purpose.

c. The maximum rate of interest (not exceeding six per centum per annum) the bonds shall bear.

d. The maximum period within which they shall mature, which must not exceed the period required by the next succeeding clause of this section, to be stated in the ordinance.

e. One of the following periods (to be determined by the governing body within the limitations prescribed by the next succeeding section):

(1) If the bonds are for but one improvement or property or class of improvements or properties, the probable period of usefulness thereof, except in the case next mentioned; or,

(2) If the bonds are entirely for paying the portion of the cost of an improvement or property that has been or is to be assessed upon property benefited thereby, the probable period at the end of which the last installment of the assessment will have been in arrears for two years, but not exceeding fifteen years; or,

(3) If the bonds are entirely for funding or entirely for refunding a debt now outstanding, either the shortest period in which the debt can be finally paid without making it unduly burdensome upon the taxpayers of the municipality or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred; or,

(4) If the bonds are for more than one purpose, the average of the periods that would be stated pursuant to this clause if a separate ordinance were passed for the bonds for each purpose, taking into consideration the amount of bonds applicable to each purpose.

f. That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected.

g. That a statement of the debt of the municipality has been filed with the clerk pursuant to this act and is open to public inspection.

h. The average assessed valuation of property subject to taxation by the municipality for the three fiscal years in which taxes were last levied, as shown by such statement.

i. The amount of the net debt of the municipality outstanding authorized or to be authorized, as shown by such statement.

j. One of the following provisions:

(1) If the bonds are for funding or refunding debts heretofore incurred, or for improvements or properties of which at least one-fourth of the cost has been or is to be assessed upon abutting property or properties benefited (and for no other purpose), that the ordinance shall take effect upon its passage and shall not be submitted to the voters; or,

(2) If the bonds are for a purpose other than the payment of necessary expenses, and in any case where the governing body desires to obtain the assent of the voters before issuing the bonds, if a petition for its submission is filed under this act, that the ordinance shall take effect when approved by a vote of a majority of the qualified voters of the municipality; or,

(3) In any other case, except funding and refunding, that the ordinance shall take effect thirty days after its first publication (or posting), unless in the meantime a petition for its submission to the voters is filed under this act, and that in such event it shall take effect when approved by a majority of the voters of the municipality.

3. *When the ordinance takes effect.* A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage, no vote of the people shall be necessary for the issuance of the bonds.

1917, c. 138, s. 17.

305. Determining periods for bonds to run:

1. *Periods of usefulness.* In determining for the purposes of the preceding section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

a. Sewer systems (either sanitary or surface drainage), forty years.

b. Water supply systems, forty years.

c. Gas systems, thirty years.

d. Electric light or power systems, twenty years.

e. Plants for the incineration or disposal of ashes, garbage, or refuse (other than sewage), ten years.

f. Public parks (including or not including playground as a part thereof), fifty years.

g. Playgrounds, thirty years.

h. Buildings for purposes not stated in this section, if they are

(1) Of frame construction, that is, a building of which the exterior walls or a portion thereof shall be constructed of wood; or a building sheathed with boards and partially or entirely covered with four inches or less of masonry or metal sheets, twenty years.

(2) Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

(3) Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair-halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable material is used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stairhalls and entrance halls there is wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden hand-rails and treads, made of hardwood, not less than two inches thick), forty years.

i. Bridges (including retaining walls and approaches) of stone, concrete, or iron construction, or of a combination of any or all of these materials, thirty years.

j. Lands for purposes not stated in this section, forty years.

k. Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, or gutters, or drains, or grading, if such surface—

(1) Is constructed of sand and gravel, five years.

(2) Is of waterbound macadam or penetration process, ten years.

(3) Is of brick, or blocks of any material, of sheet asphalt, bitulithic or bituminous concrete, laid on a solid foundation, or of concrete not less than six inches thick, twenty years.

l. Lands for roads, streets, highways, or sidewalks; or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, thirty years.

m. Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, ten years.

n. Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

o. Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officers, ten years.

p. Land for cemeteries, or the improvement thereof, thirty years.

q. Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the

municipality, in connection with any permanent improvement of or in any street, ten years.

r. The elimination of any grade crossing or crossings and improvements incident thereto, fifteen years.

s. Equipment, apparatus, or furnishing not included in other clauses of this subsection, ten years.

t. Any improvement or property not included in other clauses of this subsection, forty years.

2. Improvements and properties defined. Each of the improvements and properties mentioned in clauses above designated "a" to "i," both inclusive, shall be deemed to include the acquisition, construction, reconstruction, or enlargement thereof, or of any part thereof, or of buildings, lands, or rights in lands therefor, or of original furnishings, equipment, machinery, or apparatus therefor, or of the original improvement thereof. Bonds for any or all improvements or properties included in any one clause of the preceding subsection may, for the purposes of this act, be deemed by the governing body to be for but one improvement or property.

3. Determining period of maturity. In determining, for the purpose of the preceding section, the shortest period in which a debt now outstanding can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, the governing body shall not deem said period to be greater than the following periods in the following cases, respectively:

a. Ten years, if funding bonds are to be issued.

b. Thirty years, if refunding bonds are to be issued and the net debt of the municipality, as stated in the debt statement filed pursuant to the next succeeding section, is not more than eight per centum of the average assessed valuation set forth in such statement.

c. Forty years, if refunding bonds are to be issued, and the net debt is more than eight but not more than ten per centum of the average assessed valuation.

d. Fifty years, if refunding bonds are to be issued, and the net debt is more than ten per centum of the average assessed valuation.

1917. c. 138, s. 18.

306. Sworn statement of indebtedness:

1. What shall be shown. Before the final passage of a bond ordinance the financial officer shall make and file with the clerk a sworn statement of the debt of the municipality, showing in such detail as he may deem advisable—

a. The total amount (hereinafter referred to as the gross debt), of the outstanding floating debt heretofore incurred and of all bonded debt outstanding or to be incurred under ordinances or other proceedings passed, taken, or pending, exclusive of debt incurred or to be incurred in anticipation of the collection of taxes of the current fiscal year or for the sale of bonds.

b. The total of the following amounts (hereinafter referred to as the deductions), viz.:

(1) The amount of unissued funding or refunding bonds included in the gross debt.

(2) The amount of sinking funds or other funds held for the payment of any part of the gross debt other than existing debt incurred for revenue-producing enterprises and deducted as provided in this clause.

(3) The amount (actual or estimated), of uncollected special assessments levied or to be levied, applicable to the payment of any part of the gross debt.

(4) The amount of existing bonded debt incurred for any enterprise owned by the municipality which during the fiscal year immediately preceding the date of the statement yielded to the municipality current net revenue, after making any necessary allowance for repairs and maintenance, in excess of the interest payable on the debt in that year and of the annual installment necessary to be raised in that year for the amortization of the debt; or, if such debt was not entirely provided for as aforesaid, it shall be stated as a deduction proportionately to the extent to which the net revenue (after making such allowance), met the interest and amortization installment during the year: Provided, however, that in no event shall the amount of all such debt stated as a deduction exceed three per centum of the average assessed valuation referred to in clause "d."

c. The amount (hereinafter referred to as the net debt), of the difference between the gross debt and the deductions.

d. The assessed valuation of property subject to taxation by the municipality for each of the three years in which taxes were last levied, and the average thereof.

e. The percentage that the net debt bears to the average assessed valuation.

And if the net debt appears from such statement to be more than ten per centum of the average assessed valuation, the statement shall further show:

f. The total amount (hereinafter referred to as the net increase) of all bonds issued since this act took effect (including those which have been paid), or authorized or to be authorized by ordinance or other proceeding passed, taken, or pending, exclusive of bonds for the payment of the portion of the cost of an improvement that has been or is to be assessed upon property benefited, and exclusive of unissued refunding bonds.

g. The assessed valuation of property subject to taxation by the municipality for the preceding calendar year.

h. The percentage which the net increase bears to said assessed valuation.

2. *Limitation of amount.* The ordinance shall not be passed unless it appears from such statement either that the net debt does not exceed ten per centum of the average assessed valuation or that the net increase does not exceed three per centum of the assessed valuation for the preceding year, or unless the bonds to be issued under the ordinance are for the supply of water, or for funding or refunding indebtedness now outstanding, and for no other purpose.

3. *Statement filed for inspection.* Such statement shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds such statement shall be deemed to be true and to comply with the provisions of this act, unless it appears in an action or proceeding commenced within the time limited by this article for the commencement thereof, first, that the representations contained therein could not by any reasonable method of computation be true, and second, that a true statement would show that the ordinance authorizing the bonds could not be passed.

4. *Annual installments estimated.* In determining, for the purposes of clause "b" of subsection one of this section, the annual installment necessary to be raised in any year for the amortization of an outstanding debt for a revenue-producing enterprise, the financial officer shall, in case the debt is not payable in annual installments, deem such annual installment to be an amount which, if

thereafter annually contributed to a sinking fund for the amortization of the debt (which shall be the then existing sinking fund for such purpose, if there is one), would, with the fund and with the accumulations of interest thereon and upon the contribution thereto, such accumulation being computed at the rate of four per centum per annum, produce at the date of maturity the amount of the debt.

1917, c. 138, s. 19.

307. Publication of bond ordinance. A bond ordinance shall be published once in each of four successive weeks. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the ----- day of -----
19----- was first published (or posted) on the ----- day of -----, 19-----

Any action or proceeding questioning the validity of such ordinance must be commenced within thirty days after its last publication (or posting).

----- Clerk.

1917, c. 138, s. 20.

308. Limitation of action to set aside ordinance. Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within thirty days of the last publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

1917, c. 138, s. 20.

309. Ordinance requiring popular vote:

1. When vote required. If a bond ordinance provides that it shall take effect within thirty days after its last publication unless a petition for its submission to the voters shall be filed in the meantime, the ordinance shall be inoperative without the approval of the voters of the municipality at an election if a petition shall be filed as provided in this section.

2. Petition filed. A petition demanding that the ordinance be submitted to the voters may be filed with the clerk within thirty days after the last publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least thirty-three and one-third per centum of the total number of registered voters in the municipality as shown by the registration books for the last preceding election therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures) made by some adult resident freeholder of the municipality under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

3. *Sufficiency of petition.* The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the sufficiency of the petition, and the determination of the governing body shall be conclusive.

1917, c. 138, s. 21.

310. Elections on bond issue:

1. *When election held.* Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinance by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but no such special election shall be held within two months before or after a regular election. Several ordinances or other matters may be voted upon at the same election.

2. *Notice of election, and law governing.* A notice of the election, setting forth in full the ordinance to be voted upon, shall be published at least once not more than sixty days nor less than twenty days before the election. The provisions of law in force at the time of such election governing the registration of voters for regular municipal elections in the municipality and the conducting and canvassing of such regular municipal elections shall apply to elections required or provided for by this act.

3. *Form of ballots.* The title or a statement of the nature of each ordinance to be voted upon shall be printed on a ballot, which shall be separate from the ballot for candidates for office. Below the title or statement of the nature of each ordinance there shall be printed on two separate lines the words "for the ordinance" and "against the ordinance," respectively, with a square enclosed in ruled lines at the left of each of the two lines. At the top of the ballot there shall be printed the following words: "Notice to voters: For a vote for any ordinance submitted upon this ballot, make a X mark in the square opposite the words 'for the ordinance.' For a negative vote, make a similar mark in the square opposite the words 'against the ordinance.'"

4. *Method of voting.* If a voter makes a X mark in the square opposite the words "for the ordinance," it shall be counted as a vote approving the ordinance and the issuance of the bonds and the levying of the tax provided for by the ordinance. If a voter makes a X mark in the square opposite the words "against the ordinance," it shall be counted as a vote against the ordinance, bonds, and tax.

5. *Returns canvassed.* The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The board authorized to canvass the votes cast shall also canvass the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

6. *Statement of result.* The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted, and the number

of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in the book of ordinances of the municipality, file the original in his office, and publish at once.

7. Limitation as to actions. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within twenty days after the publication of such statement.

1917, c. 138, s. 22.

311. Preparation for issuing bonds. At any time after the passage of a bond ordinance, all steps preliminary to the actual issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect.

1917, c. 138, s. 23.

312. Within what time bonds issued. After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within three years after the ordinance takes effect.

1917, c. 138, s. 24.

313. Amount and nature of bonds determined. The aggregate amount of bonds to be issued under a bond ordinance, the rate of interest they shall bear, and the times of payment of the principal and interest of the bonds, shall be fixed by resolution of the governing body within the limitations prescribed by the ordinance. Such resolutions shall be subject to amendment or repeal at any time prior to the delivery of any bonds to be affected by such amendment or repeal. The bonds may be issued either all at one time or from time to time in blocks or installments, and different provisions may be made for different blocks or installments.

1917, c. 138, s. 25.

314. Bonded debt payable in installments. The principal of the bonded debt created pursuant to any one ordinance shall be payable in annual installments, within the maximum period prescribed by the ordinance, the first of which installments shall be made payable not more than two years after the date of the bonds first issued under the ordinance; and no installment of the principal shall be more than fifty per centum in excess of the amount of the smallest prior installment. If the debt is incurred from time to time, each portion thereof shall, with the portion previously incurred, mature as aforesaid.

1917, c. 138, s. 26.

315. Kind of money for payment. The bonds may be made payable in such kinds of money and at such place or places, within or without the state of North Carolina, as the governing body may by resolution provide.

1917, c. 138, s. 27.

316. Formal execution of bonds. Bonds of a municipality shall be signed by two or more officers of the municipality holding office at the time of such

signing, one of which officers shall be the mayor or other chief executive officer, and the corporate seal of such municipality shall be affixed to the bonds. Interest coupons attached to the bonds shall bear a facsimile signature of a financial officer of the municipality. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occurring after the signing and sealing of the bonds.

1917, c. 138, s. 28.

317. Registered or coupon bonds. Bonds issued under this act may be issued either in registered or coupon form. If they are coupon bonds, they may be made registerable either as to principal only or as to both principal and interest. The governing body may also appoint a bank or trust company as registrar or transfer agent of the municipality and provide for the registration or transfer of bonds of the municipality by such registrar or transfer agent.

1917, c. 138, s. 29.

318. Sale of bonds. All bonds of a municipality shall be sold by the governing body at not less than par. They shall be advertised and sold upon sealed proposals or at public auction, unless the sale is made to a sinking fund of the municipality or is made within thirty days after failure to receive any legally acceptable bid in response to a public offering made as provided in this section.

Whenever bonds are to be sold pursuant to advertisement there shall be published, at least once, a notice containing a description of the bonds to be sold, the manner and place of sale, and the time of sale, or time limited for the receipt of proposals, which shall be not less than ten days after the first publication of the notice. The notice shall state that bidders must deposit with the financial officer before making their bids, or present with their bids, a certified check drawn to the order of the financial officer upon an incorporated bank or trust company, or a sum of money for or in an amount equal to two per centum of the face amount of bonds bid for, to secure the municipality against any loss resulting from the failure of the bidder to comply with the terms of his bid.

Proposals for bonds required to be advertised shall be opened in public, and the bonds shall be awarded to the highest bidder, unless all bids are rejected. Any municipality shall have the right to reject all bids. The governing body may delegate its power to sell bonds to a committee thereof, or any two officers, one of whom shall be the financial officer; but every private sale of bonds shall be made or confirmed by the governing body. Bonds of the municipality sold out of a sinking fund of the municipality shall be sold as provided in this section, except that such bonds may be sold for less than par.

1917, c. 138, s. 30.

319. Application of funds. The proceeds of the sale of any bonds herein-after issued shall be used only for the purposes specified in the ordinance authorizing said bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. Interest accruing on temporary loans for an improvement or property during the period of construction or acquisition of the improvement or property, within six

months thereafter, shall be deemed to be part of the cost of such improvement or property and payable out of the proceeds of the sale of bonds issued therefor.

1917, c. 138, s. 31.

320. Bonds incontestable after delivery. Any bonds reciting that they are issued pursuant to this act shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds.

1917, c. 138, s. 32.

321. Tax levied for payment of bonds. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this act as such principal and interest become due: Provided, however, that so much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue-producing enterprise owned by the municipality after paying all expenses or operating, managing, maintaining, repairing, enlarging, and extending such enterprise, shall be applied, first, to the payment of the interest payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of such bonds, and the amounts required to be raised by tax in such succeeding year for the payment of the principal and interest of such bonds may be reduced by the amount of such revenue actually collected and set aside for such purposes.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property situated therein for the purpose of paying the principal of or the interest on any valid bonds or notes heretofore issued by such municipality and for the purpose of providing a sinking fund for the payment of the principal.

The powers stated in this section in respect of the levy of the taxes for the payment of the principal and interest of bonds heretofore or hereafter issued shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality.

1917, c. 138, s. 33.

ART. 28. RESTRICTIONS UPON THE EXERCISE OF MUNICIPAL POWERS

322. In borrowing or expending money. 1. No municipality shall—

- a. Make an appropriation of money except as provided in this act.
- b. Borrow money or issue bonds or notes except as provided in this act.
- c. Make an expenditure of money unless the money shall have been appropriated as provided in this act.
- d. Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an

appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

2. The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized amount of the bonds for the purposes for which they are to be issued.

1917, c. 138, s. 34.

323. In passing ordinances under this act. Ordinances and resolutions passed pursuant to this act shall be passed in the manner provided by other laws for the passage of ordinance and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this act shall, unless they relate solely to elections held under this act, be so approved before they take effect.

1917, c. 138, s. 35.

324. Actions to compel or prevent official act. Any officer of a municipality or any one or more taxable inhabitants thereof, or any creditor to whom the municipality is indebted to an amount not less than one thousand dollars, may, within the periods of limitation prescribed by this and other acts, maintain an action or other proceeding against the municipality or any officer thereof to set aside or have declared invalid any illegal official act on the part of the municipality or its officers, or to prevent any such act, or to compel the municipality or its officers to comply with the provisions of this and other laws relating to the municipality. The superior court of the county or district in which the municipality is situated shall have jurisdiction to enforce by mandamus, injunction, or other appropriate remedy the provisions of this act and such laws.

1917, c. 138, s. 36.

325. Limitation of taxing power for general purposes. For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality the governing body shall have the power to levy and collect, for general purposes, an annual ad valorem tax on all taxable property in the municipality of and at the rate of not exceeding one dollar and twenty-five cents on the one hundred dollars valuation of said property, and a poll tax in accordance with the limitations contained in the constitution of the state.

1917, c. 138, s. 37.

ART. 29. GENERAL EFFECT OF ACT

326. Effect upon prior laws and proceedings taken. All acts and parts of acts, general or special, to the extent that they relate to the subject matter of this act, are superseded by this act:

Provided, however, that acts and proceedings heretofore done or taken by any municipality or the voters thereof or any board or officers thereof pursuant to acts or parts of acts superseded by this act shall not be affected by this act, but

all such acts or proceedings similar to any acts or proceedings provided for in this act shall have the same force and effect as if done and taken pursuant to this act, and only subsequent proceedings shall be taken as provided in this act:

Provided further, that in all cases where, pursuant to acts or parts of acts so superseded, an ordinance or resolution has been heretofore passed authorizing the issuance of bonds or notes or calling an election for such purpose, nothing in this act shall prevent the issuance of the bonds or notes in accordance with the terms of such ordinance or resolution, and it shall not be necessary to pass the ordinance provided for in this act, and no vote of the people shall be necessary for the issuance of such bonds or notes unless they are for purposes other than the payment of necessary expenses or unless such vote shall be required by the terms of the acts or parts of acts so superseded or by the terms of the ordinance or resolution so passed:

Provided further, that this act shall not be deemed to repeal any of the provisions of subchapter one, article ten, of this chapter, except that in all matters relating to restriction of municipal power of taxation, assessment, borrowing money, contracting debts and loaning credit, the provisions of this act shall govern: Provided, that any municipality of the state may proceed under the provisions of subchapter one, article ten, of this chapter, as herein amended, notwithstanding anything contained in any law heretofore enacted, whether general, special, private, or local.

1917, c. 138, s. 38.

CHAPTER 57

NAMES OF PERSONS

1. Legislature may regulate change by general but not private law.
2. Procedure for changing name; petition; notice.
3. Contents of petition.
4. Proof of good character to accompany petition.
5. Clerk to order change; certificate and record.
6. Effect of change; only one change.

1. Legislature may regulate change by general but not private law. The general assembly shall not have power to pass any private law to alter the name of any person, but shall have power to pass general laws regulating the same.

Rev., s. 2146; Const., Art. II, s. 11.

2. Procedure for changing name; petition; notice. A person who wishes, for good cause shown, to change his name must file his application before the clerk of the superior court of the county in which he lives, having first given ten days notice of the application by publication at the courthouse door.

Rev., s. 2147; 1891, c. 145.

3. Contents of petition. The applicant shall state in the application his true name, the name he desires to adopt, his reasons for desiring such change, and that his name has never been changed before by law.

Rev., s. 2147; 1891, c. 145.

4. Proof of good character to accompany petition. The applicant shall also file with said petition proof of his good character, which proof must be made by at least two citizens of the county who know his standing.

Rev., s. 2148; 1891, c. 145.

5. Clerk to order change; certificate and record. If the clerk thinks that good and sufficient reason exists for the change of name, it shall be his duty to issue an order changing the name of the applicant from his true name to the name sought to be adopted. He shall issue to the applicant a certificate under his hand and seal of office, stating the change made in the applicant's name, and shall also record said application and order on the docket of special proceedings in his court.

Rev., ss. 2149, 2150; 1891, c. 145.

6. Effect of change; only one change. When the order is made and the applicant's name changed, he is entitled to all the privileges and protection under his new name as he would have been under the old name. No person shall be allowed to change his name under this chapter but once.

Rev., ss. 2147, 2149; 1891, c. 145.

CHAPTER 58

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ART. 1. GENERAL PROVISIONS

1. Definitions. In this chapter, unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and setoff.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bills of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

Rev., s. 2340; 1899, c. 733, s. 191.

2. Person primarily liable on instrument. The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable.

Rev., s. 2342; 1899, c. 733, s. 192.

3. What constitutes reasonable time. In determining what is reasonable time or an unreasonable time regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments and the facts of the particular case.

Rev., s. 2343; 1899, c. 733, s. 193.

4. When law merchant governs. In any case not provided for in this chapter the rules of the law merchant shall govern.

Rev., s. 2344; 1899, c. 733, s. 196.

4a. Acts to be done on Sunday or holiday. Where the day, or the last day, for doing any act herein required or permitted to be done, falls on Sunday, or on a holiday, the act may be done on the next succeeding secular or business day.

Rev., s. 2839; 1899, c. 733, s. 194.

NOTE. See Sundays and Holidays.

5. Application of chapter. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the eighth day of March, one thousand eight hundred and ninety-nine.

Rev., s. 2345; 1899, c. 733, s. 195.

ART. 2. FORM AND INTERPRETATION

6. Form of negotiable instrument. An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand or at a fixed or determinable future time; (4) must be payable to the order of a specified person or to bearer; and (5) where the instrument is addressed to a drawee, he must be named, or otherwise indicated therein with reasonable certainty.

Rev., s. 2151; 1899, c. 733, s. 1.

7. What constitutes certainty as to sum. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid (1) with interest; or (2) by stated installments; or (3) by stated installments with a provision that upon default in payment of any installment the whole shall become due; or (4) with exchange, whether at a fixed rate or at the current rate; or (5) with costs of collection or an attorney's fee in case payment shall not be made at maturity. But a provision incorporated in the instrument to pay counsel fees for collection is not enforceable, but does not affect the other terms of the instrument or the negotiability thereof.

Rev., ss. 2152, 2346; 1899, c. 733, ss. 2, 197; 1905, c. 327.

8. When promise is unconditional. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Rev., s. 2153; 1899, c. 733, s. 3.

9. What constitutes determinable future time. An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable (1) at a fixed period after date or sight; or (2) on or before a fixed or determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Rev., s. 2156; 1899, c. 733, s. 4.

10. Additional provisions as affecting negotiability. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which (1) authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) authorizes a confession of judgment if the instrument be not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal, nor authorize the enforcement of an authorization to confess judgment or a waiver of homestead and personal property exemptions.

Rev., ss. 2154, 2346; 1899, c. 733, ss. 5, 197; 1905, c. 327.

NOTE. For provision as to counsel fees, see above, s. 7.

11. Effect of omissions; seal; designation of particular money. The validity and negotiable character of an instrument are not affected by the fact that (1) it is not dated; or (2) does not specify the value given, or that any value has been given therefor; or (3) does not specify the place where it is drawn or the place where it is payable; or (4) bears a seal; or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Rev., s. 2155; 1899, c. 733, s. 6.

12. When payable on demand. An instrument is payable on demand (1) when it is expressed to be payable on demand, or at sight or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

Rev., s. 2157; 1899, c. 733, s. 7.

13. When payable to order. The instrument is payable to order when it is drawn payable to the order of a specified person, or to him or his order. It may be

drawn payable to the order of (1) a payee who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of several payees, or (6) the holder of an office for the time being. When the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

Rev., s. 2158; 1899, c. 733, s. 8.

14. When payable to bearer. The instrument is payable to bearer (1) when it is expressed to be so payable; or (2) when it is payable to a person named therein or to bearer; or (3) when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank.

Rev., s. 2159; 1899, c. 733, s. 9.

15. No formal language required. The negotiable instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Rev., s. 2160; 1899, c. 733, s. 10.

16. Presumption as to date. Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

Rev., s. 2161; 1899, c. 733, s. 11.

17. Antedated and postdated. The instrument is not invalid for the reason only that it is antedated or postdated, provided that this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered, acquires the title thereto as of the date of delivery.

Rev., s. 2162; 1899, c. 733, s. 12.

18. When date may be inserted. When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date.

Rev., s. 2163; 1899, c. 733, s. 13.

19. When blanks may be filled. Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion be negotiated to a holder in due course, it is valid and effectual for

all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Rev., s. 2164; 1899, c. 733, s. 14.

20. Incomplete instrument not delivered. Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.

Rev., s. 2165; 1899, c. 733, s. 15.

21. Delivery necessary; when effectual; when presumed. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery in order to be effectual must be made either by or under the authority of the party making, drawing or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Rev., s. 2166; 1899, c. 733, s. 16.

22. Construction, where instrument is ambiguous. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note the holder may treat it as either at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Rev., ss. 1952, 2341; 1899, c. 733, s. 17.

23. Signature must appear; trade or assumed name. No person is liable on the instrument whose signature does not appear thereon, except as herein other-

wise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Rev., s. 2167; 1899, c. 733, s. 18.

24. Signature by agent; how authority shown. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency.

Rev., s. 2168; 1899, c. 733, s. 19.

25. Liability of person signing as agent. Where the instrument contains, or a person adds to his signature, words indicating that he signed for or on behalf of the principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Rev., s. 2169; 1899, c. 733, s. 20.

26. Effect of signatures by procuration. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent so signing acted within the actual limits of his authority.

Rev., s. 2170; 1899, c. 733, s. 21.

27. Effect of forged signature. When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Rev., s. 2171; 1899, c. 733, s. 23.

ART. 3. CONSIDERATION

28. Presumption of consideration. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

Rev., s. 2172; 1899, c. 733, s. 24.

29. What constitutes consideration. Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value and is deemed such whether the instrument is payable on demand or at a future time.

Rev., s. 2173; 1899, c. 733, s. 25.

30. What constitutes a holder for value. Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Rev., s. 2174; 1899, c. 733, s. 26.

31. When lien on instrument constitutes holder for value. Where the holder has a lien on the instrument arising either from contract or by implication of law he is deemed a holder for value to the extent of his lien.

Rev., s. 2175; 1899, c. 733, s. 27.

32. Effect of want of consideration. Absence or failure of consideration is matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Rev., s. 2176; 1899, c. 733, s. 28.

33. Liability of accommodation party. An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

Rev., s. 2177; 1899, c. 733, s. 29.

ART. 4. NEGOTIATION

34. What constitutes negotiation. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, and completed by delivery.

Rev., s. 2178; 1899, c. 733, s. 30.

35. How indorsement made. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Rev., s. 2179; 1899, c. 733, s. 31.

36. Effect of indorsement by infant or corporation. The indorsement or assignment of the instrument by a corporation, an infant, or married woman passes the property therein, notwithstanding that from want of capacity the corporation, infant, or married woman may incur no liability thereon.

Rev., s. 2180; 1899, c. 733, s. 22.

37. Indorsement must be of entire instrument. An indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue.

Rev., s. 2181; 1899, c. 733, s. 32.

38. Kinds of indorsement. An indorsement may be either in blank or special, and it may also be either restrictive or qualified or conditional.

Rev., s. 2182; 1899, c. 733, s. 33.

39. Special indorsement; indorsement in blank. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery.

Rev., s. 2183; 1899, c. 733, s. 34.

40. How blank indorsement changed to special indorsement. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Rev., s. 2184; 1899, c. 733, s. 35.

41. When indorsement restrictive. An indorsement is restrictive, which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for, or to the use of, some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Rev., s. 2185; 1899, c. 733, s. 36.

42. Effect of restrictive indorsement; rights of indorsee. A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Rev., s. 2186; 1899, c. 733, s. 37.

43. Qualified indorsement. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Rev., s. 2187; 1899, c. 733, s. 38.

44. Conditional indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally.

Rev., s. 2188; 1899, c. 733, s. 39.

45. Indorsement of instrument payable to bearer. Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Rev., s. 2189; 1899, c. 733, s. 40.

46. Indorsement of instrument payable to two or more persons. Where an instrument is payable to the order of two or more payees or indorsees who are

not partners, all must indorse unless the one indorsing has authority to indorse for the others.

Rev., s. 2190; 1899, c. 733, s. 41.

47. Effect of instrument drawn or indorsed to a person as cashier. Where an instrument is drawn or indorsed to a person as cashier or other fiscal officer of a bank or corporation it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

Rev., s. 2191; 1899, c. 733, s. 42.

48. Indorsement, where payee's name misspelled. Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as there described, adding, if he think fit, his proper signature.

Rev., s. 2192; 1899, c. 733, s. 43.

49. Indorsement in representative capacity. Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability.

Rev., s. 2193; 1899, c. 733, s. 44.

50. Presumption as to time of indorsement. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

Rev., s. 2194; 1899, c. 733, s. 45.

51. Presumption as to place of indorsement. Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

Rev., s. 2195; 1899, c. 733, s. 46.

52. Continuation of negotiable character. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Rev., s. 2196; 1899, c. 733, s. 47.

53. Striking out indorsement. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument.

Rev., s. 2197; 1899, c. 733, s. 48.

54. Effect of transfer without indorsement. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires in addition the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Rev., s. 2198; 1899, c. 733, s. 49.

55. When prior party may negotiate instrument. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Rev., s. 2199; 1899, c. 733, s. 50.

ART. 5. RIGHTS OF HOLDER

56. Right of holder to sue; payment. The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

Rev., ss. 2, 200; 1899, c. 733, s. 51.

57. What constitutes holder in due course. A holder in due course is a holder who has taken the instrument under the following conditions: (1) That the instrument is complete and regular upon its face; (2) that he became the holder of it before it was overdue and without notice that it has been previously dishonored, if such was the fact; (3) that he took it for good faith and value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Rev., s. 2201; 1899, c. 733, s. 52.

58. When person not deemed holder in due course. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Rev., s. 2202; 1899, c. 733, s. 53.

59. Notice before full amount paid. Where the transferee has received notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Rev., s. 2203; 1899, c. 733, s. 54.

60. When title defective. The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress or force and fear or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.

Rev., s. 2204; 1899, c. 733, s. 55.

61. What constitutes notice of defect. To constitute a notice of an infirmity in the instrument or defect in the title of the person negotiating the same the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Rev., s. 2205; 1899, c. 733, s. 56.

62. Rights of holder in due course. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses avail-

able to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Rev., s. 2206; 1899, c. 733, s. 57.

63. When subject to original defenses. In the hands of any holder other than a holder in due course a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course and who is not himself a party to any fraud or illegality affecting the instrument has all the rights of such former holder in respect of all parties prior to the latter.

Rev., s. 2207; 1899, c. 733, s. 58.

64. Who deemed holder in due course. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

Rev., s. 2208; 1899, c. 733, s. 59.

ART. 6. LIABILITIES OF PARTIES

65. Liability of maker. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Rev., s. 2209; 1899, c. 733, s. 60.

66. Liability of drawer. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

Rev., s. 2210; 1899, c. 733, s. 61.

67. Liability of acceptor. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits (1) existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse.

Rev., s. 2211; 1899, c. 733, s. 62.

68. When person deemed indorser. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Rev., s. 2212; 1899, c. 733, s. 63.

69. Liability of irregular indorser. Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties; (2) if the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer; (3) if he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

Rev., s. 2213; 1899, c. 733, s. 64.

70. Warranty, where negotiation by delivery. Every person negotiating an instrument by delivery or by a qualified indorsement warrants (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes.

Rev., s. 2214; 1899, c. 733, s. 65.

71. Liability of general indorser. Every indorser who indorses without qualification warrants to all subsequent holders in due course (1) the matters and things mentioned in subdivisions one, two and three of the next preceding section; and (2) that the instrument is at the time of his indorsement valid and subsisting. And in addition he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it.

Rev., s. 2215; 1899, c. 733, s. 66.

72. Liability of indorser, where paper negotiable by delivery. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Rev., s. 2216; 1899, c. 733, s. 67.

73. Order in which indorsers are liable. As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorseees who indorse are deemed to indorse jointly and severally.

Rev., s. 2217; 1899, c. 733, s. 68.

74. Liability of agent or broker. Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section two thousand two hundred and fourteen, unless he discloses the name of his principal and the fact that he is acting only as agent.

Rev., s. 2218; 1899, c. 733, s. 69.

ART. 7. PRESENTMENT FOR PAYMENT

75. Effect of want of demand on principal debtor. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is by its terms payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Rev., s. 2219; 1899, c. 733, s. 70.

76. Presentment, where the instrument is not payable on demand. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Rev., s. 2220; 1899, c. 733, s. 71.

77. What constitutes a sufficient presentment. Presentment for payment to be sufficient must be made (1) by the holder or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

Rev., s. 2221; 1899, c. 733, s. 72.

78. Place of presentment. Presentment for payment is made at the proper place (1) where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified but the address of the person to make the payment is given in the instrument, and is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Rev., s. 2222; 1899, c. 733, s. 73.

79. Instrument must be exhibited. The instrument must be exhibited to the person from whom payment is demanded, and, when it is paid, must be delivered up to the party paying it.

Rev., s. 2223; 1899, c. 733, s. 74.

80. Presentment where instrument payable at bank. Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Rev., s. 2224; 1899, c. 733, s. 75.

81. Presentment where principal debtor is dead. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

Rev., s. 2225; 1899, c. 733, s. 76.

82. Presentment to persons liable as partners. Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Rev., s. 2226; 1899, c. 733, s. 77.

83. Presentment to joint debtors. Where there are several persons not parties primarily liable on the instrument and no place of payment is specified, presentment must be made to them all.

Rev., s. 2227; 1899, c. 733, s. 78.

84. When presentment not required to charge the drawer. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Rev., s. 2228; 1899, c. 733, s. 79.

85. When presentment not required to charge the indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

Rev., s. 2229; 1899, c. 733, s. 80.

86. When delay in presentment is excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

Rev., s. 2230; 1899, c. 733, s. 81.

87. When presentment may be dispensed with. Presentment for payment is dispensed with (1) where after the exercise of reasonable diligence presentment as required by this chapter cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.

Rev., s. 2231; 1899, c. 733, s. 82.

88. When instrument dishonored by nonpayment. The instrument is dishonored by nonpayment when (1) it is duly presented for payment and payment is refused or cannot be obtained; or (2) presentment is excused and the instrument is overdue and unpaid.

Rev., s. 2232; 1899, c. 733, s. 83.

89. Liability of person secondarily liable when instrument dishonored. Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Rev., s. 2233; 1899, c. 733, s. 84.

90. Time of maturity. Every negotiable instrument is payable at the time fixed therein without grace, except as allowed by the succeeding section. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day.

Rev., s. 2234; 1899, c. 733, s. 85; 1907, c. 897, c. 800, s. 1.

91. When days of grace allowed. All bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect and not otherwise, shall be entitled to days of grace as the same are allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or sight, but no days of grace shall be allowed on any bill of exchange, promissory note, or draft payable on demand.

Rev., s. 2235; Code, s. 43; 1905, c. 327; 1907, c. 861.

92. How time is computed. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment.

Rev., s. 2236; 1899, c. 733, s. 86.

93. Rule where instrument is payable at bank. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Rev., s. 2237; 1899, c. 733, s. 87.

94. What constitutes payment in due course. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

Rev., s. 2238; 1899, c. 733, s. 88.

ART. 8. NOTICE OF DISHONOR

95. To whom notice of dishonor must be given. Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Rev., s. 2239; 1899, c. 733, s. 89.

96. By whom notice given. The notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay to the holder, and who upon taking it up would have a right to reimbursement from the party to whom notice is given.

Rev., s. 2240; 1899, c. 733, s. 90.

97. Notice given by agent. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Rev., s. 2241; 1899, c. 733, s. 91.

98. Effect of notice given on behalf of holder. Where notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Rev., s. 2242; 1899, c. 733, s. 92.

99. Effect, where notice is given by party entitled thereto. Where notice is given by or on behalf of a party entitled to give notice it inures to the benefit of the holder and all parties subsequent to the party by whom notice is given.

Rev., s. 2243; 1899, c. 733, s. 93.

100. When agent may give notice. Where the instrument has been dishonored in the hands of an agent he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

Rev., s. 2244; 1899, c. 733, s. 94.

101. When notice sufficient. A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate it unless the party to whom the notice is given is in fact misled thereby.

Rev., s. 2245; 1899, c. 733, s. 95.

102. Form of notice. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

Rev., s. 2246; 1899, c. 733, s. 96.

103. To whom notice may be given. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Rev., s. 2247; 1899, c. 733, s. 97.

104. Notice when party is dead. When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative if there be one, and if with reasonable diligence he can be found. If there is no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Rev., s. 2248; 1899, c. 733, s. 98.

105. Notice to partners. When the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Rev., s. 2249; 1899, c. 733, s. 99.

106. Notice to persons jointly liable. Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.

Rev., s. 2250; 1899, c. 733, s. 100.

107. Notice to bankrupt. Where a party has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.

Rev. s. 2251; 1899, c. 733, s. 101.

108. Time within which notice must be given. Notice may be given as soon as the instrument is dishonored, and, unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.

Rev., s. 2252; 1899, c. 733, s. 102.

109. Notice where parties reside in the same place. When the person giving and the person to receive notice reside in same place notice must be given within the following times: (1) If given at the place of business of the person to receive notice it must be given before the close of business hours on the day following; (2) if given at his residence it must be given before the usual hours of rest on the day following; (3) if sent by mail it must be deposited in the postoffice in time to reach him in the usual course on the day following:

Rev., s. 2253; 1899, c. 733, s. 103.

110. Notice where parties reside in different places. Where the person giving and the person to receive notice reside in different places the notice must be given within the following times: (1) If sent by mail it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail if it had been deposited in the postoffice within the time specified in the last subdivision.

Rev., s. 2254; 1899, c. 733, s. 104.

111. When sender deemed to have given due notice. Where notice of dishonor is duly addressed and deposited in the postoffice the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Rev., s. 2255; 1899, c. 733, s. 105.

112. What constitutes deposit in postoffice. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department.

Rev., s. 2256; 1899, c. 733, s. 106.

113. Time of notice to antecedent parties. Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Rev., s. 2257; 1899, c. 733, s. 107.

114. Where notice must be sent. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence or to the postoffice where he is accustomed to receive his letters; or (2) if he lives in one place and has his place of business in another, notice may be sent to either place; or (3) if he be sojourning in another place notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this chapter it will be sufficient, though not sent in accordance with requirements of this section.

Rev., s. 2258; 1899, c. 733, s. 108.

115. Waiver of notice. Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied.

Rev., s. 2259; 1899, c. 733, s. 109.

116. Who affected by waiver. Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only.

Rev., s. 2260; 1899, c. 733, s. 110.

117. Waiver of protest. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest but also of a presentment and notice of dishonor.

Rev., s. 2261; 1899, c. 733, s. 111.

118. When notice is dispensed with. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

Rev., s. 2262; 1899, c. 733, s. 112.

119. Delay in giving notice. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Rev., s. 2263; 1899, c. 733, s. 113.

120. When notice need not be given to drawer. Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and the drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.

Rev., s. 2264; 1899, c. 733, s. 114.

121. When notice need not be given to indorser. Notice of dishonor is not required to be given to an indorser in either of the following cases; (1) Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation.

Rev., s. 2265; 1899, c. 733, s. 115.

122. Notice of nonpayment where acceptance refused. Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary unless in the meantime the instrument has been accepted.

Rev., s. 2266; 1899, c. 733, s. 116.

123. Effect of omission to give notice of nonacceptance. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Rev., s. 2267; 1899, c. 733, s. 117.

124. When protest need not be made; when it must be made. Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be, but protest is not required in the case of foreign bills of exchange.

Rev., s. 2268; 1899, c. 733, s. 118.

ART. 9. DISCHARGE

125. How instrument discharged. A negotiable instrument is discharged (1) by payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Rev., s. 2269; 1899, c. 733, s. 119.

126. Discharge of person secondarily liable. A person secondarily liable on the instrument is discharged (1) by any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.

Rev., s. 2270; 1899, c. 733, s. 120.

127. Right of party paying instrument. When the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except (1) where it is payable to the order of the third person and has been paid by the drawer; and (2) where it was made or accepted for accommodation and has been paid by the party accommodated.

Rev., s. 2271; 1899, c. 733, s. 121.

128. Renunciation by holder. The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Rev., s. 2272; 1899, c. 733, s. 122.

129. Unintentional cancellation; burden of proof. A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative, but where an instrument or any signature thereon appears to have been

canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

Rev., s. 2273; 1899, c. 733, s. 123.

130. Effect of alteration of instrument. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration he may enforce payment thereof according to its original tenor.

Rev., s. 2274; 1899, c. 733, s. 124.

131. What constitutes a material alteration. Any alteration which changes (1) the date; (2) the sum payable either for principal or interest; (3) the time or place of payment; (4) the number or the relation of the parties; (5) the medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

Rev., s. 2275; 1899, c. 733, s. 125.

ART. 10. BILLS OF EXCHANGE

132. Bill of exchange defined. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Rev., s. 2276; 1899, c. 733, s. 126.

133. Bill not an assignment of funds in hands of drawee. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Rev., s. 2277; 1899, c. 733, s. 127.

134. Bill addressed to more than one drawee. A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession.

Rev., s. 2278; 1899, c. 733, s. 128.

135. Inland and foreign bills of exchange. An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

Rev., s. 2279; 1899, c. 733, s. 129.

136. When bill may be treated as promissory note. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note.

Rev., s. 2280; 1899, c. 733, s. 130.

137. Referee in case of need. The drawer of a bill and any endorser may insert thereon the name of a person to whom the holder may resort in case of need: that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

Rev., s. 2281; 1899, c. 733, s. 131.

ART. 11. ACCEPTANCE

138. Acceptance defined; how made. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawer. It must not express that the drawee will perform his promise by any other means than the payment of money.

Rev., s. 2282; 1899, c. 733, s. 132.

139. Holder entitled to acceptance on face of bill. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

Rev., s. 2283; 1899, c. 733, s. 133.

140. Acceptance by separate instrument. Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Rev., s. 2284; 1899, c. 733, s. 134.

141. When promise to accept equivalent to acceptance. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Rev., s. 2285; 1899, c. 733, s. 135.

142. Time allowed drawee to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill, but the acceptance, if given, dates as of the day of presentation.

Rev., s. 2286; 1899, c. 733, s. 136.

143. Liability of drawee retaining or destroying bill. Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

Rev., s. 2287; 1899, c. 733, s. 137.

144. Acceptance of incomplete bill. A bill may be accepted before it has been signed by the drawer or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Rev., s. 2288; 1899, c. 733, s. 138.

145. Kinds of acceptances. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Rev., s. 2289; 1899, c. 733, s. 139.

146. What constitutes a general acceptance. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Rev., s. 2290; 1899, c. 733, s. 140.

147. What constitutes a qualified acceptance. An acceptance is qualified which is (1) conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local; that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all.

Rev., s. 2291; 1899, c. 733, s. 141.

148. Rights of parties as to qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. When a qualified acceptance is taken the drawer and endorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance he must, within a reasonable time, express his dissent to the holder or he will be deemed to have assented thereto.

Rev., s. 2292; 1899, c. 733, s. 142.

ART. 12. PRESENTMENT FOR ACCEPTANCE

149. When presentment for acceptance must be made. Presentment for acceptance must be made (1) where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Rev., s. 2293; 1899, c. 733, s. 143.

150. Failure to present in reasonable time discharges drawee and indorsers. Except as herein otherwise provided the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so the drawee and all indorsers are discharged.

Rev., s. 2294; 1899, c. 733, s. 144.

151. How presentment made. Presentment for acceptance must be made by or on behalf of the holder, at a reasonable hour on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse

acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) where the drawee is dead presentment may be made to his personal representative; (3) where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors presentment may be made to him or to his trustee or assignee.

Rev., s. 2295; 1899, c. 733, s. 145.

152. On what days presentment may be made. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of this chapter.

Rev., s. 2296; 1899, c. 733, s. 146; 1909, c. 800, s. 1.

153. Presentment where time is insufficient. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Rev., s. 2297; 1899, c. 733, s. 147.

154. Where presentment is excused. Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases: (1) Where the drawee is dead or has absconded or is a fictitious person or a person not having capacity to contract by bill; (2) where after the exercise of reasonable diligence presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some ground.

Rev., s. 2298; 1899, c. 733, s. 148.

155. When dishonored by nonacceptance. A bill is dishonored by nonacceptance (1) when it is duly presented for acceptance and such an acceptance as is prescribed in this chapter is refused or cannot be obtained; or (2) when a presentment for acceptance is executed and the bill is not accepted.

Rev., s. 2299; 1899, c. 733, s. 149.

156. Duty of holder, where bill not accepted. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

Rev., s. 2300; 1899, c. 733, s. 150.

157. Rights of holder, where bill not accepted. When a bill is dishonored by nonacceptance an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Rev., s. 2301; 1899, c. 733, s. 151.

ART. 13. PROTEST

158. In what cases protest necessary. Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for

nonacceptance, and where such a bill which had not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill protest in case of dishonor is unnecessary.

Rev., s. 2302; 1899, c. 733, s. 152.

159. How protest made. The protest must be annexed to the bill or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Rev., s. 2303; 1899, c. 733, s. 153.

160. By whom protest made. Protest may be made by (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Rev., s. 2304; 1899, c. 733, s. 154.

161. When protest to be made. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted the protest may be subsequently extended as of the date of the noting.

Rev., s. 2305; 1899, c. 733, s. 155.

162. Where protest made. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

Rev., s. 2306; 1899, c. 733, s. 156.

163. Protest both for nonacceptance and nonpayment. A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Rev., s. 2307; 1899, c. 733, s. 157.

164. Protest before maturity, where acceptor insolvent. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Rev., s. 2308; 1899, c. 733, s. 158.

165. When protest dispensed with. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Rev., s. 2309; 1899, c. 733, s. 159.

166. Protest where bill is lost. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Rev., s. 2310; 1899, c. 733, s. 160.

ART. 14. ACCEPTANCE FOR HONOR

167. When bill may be accepted for honor. Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.

Rev., s. 2311; 1899, c. 733, s. 161.

168. How acceptance for honor made. An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Rev., s. 2312; 1899, c. 733, s. 162.

169. When deemed an acceptance for honor of drawer. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Rev., s. 2313; 1899, c. 733, s. 163.

170. Liability of acceptor for honor. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Rev., s. 2314; 1899, c. 733, s. 164.

171. Agreement of acceptor for honor. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee; and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

Rev., s. 2315; 1899, c. 733, s. 165.

172. Maturity of bill payable after sight accepted for honor. Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

Rev., s. 2316; 1899, c. 733, s. 166.

173. Protest of bill accepted for honor. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

Rev., s. 2317; 1899, c. 733, s. 167.

174. How presentment for payment to acceptor for honor made. Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity; (2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time in this chapter specified.

Rev., s. 2318; 1899, c. 733, s. 168.

175. When delay in making presentment excused. The provisions of section 86 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Rev., s. 2319; 1899, c. 733, s. 169.

176. Dishonor of bill by acceptor for honor. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

Rev., s. 2320; 1899, c. 733, s. 170.

ART. 15. PAYMENT FOR HONOR

177. Who may make payment for honor. Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Rev., s. 2321; 1899, c. 733, s. 171.

178. How payment for honor must be made. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

Rev., s. 2322; 1899, c. 733, s. 172.

179. Declaration before payment for honor. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Rev., s. 2323; 1899, c. 733, s. 173.

180. Preference of parties offering to pay for honor. Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill is to be given the preference.

Rev., s. 2324; 1899, c. 733, s. 174.

181. Effect on subsequent parties, where bill is paid for honor. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Rev., s. 2325; 1899, c. 733, s. 175.

182. Where holder refuses to receive payment supra protest. Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment.

Rev., s. 2326; 1899, c. 733, s. 176.

183. Rights of payer for honor. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest.

Rev., s. 2327; 1899, c. 733, s. 177.

ART. 16. BILLS IN A SET

184. Bills in a set constitute one bill. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

Rev., s. 2328; 1899, c. 733, s. 178.

185. Rights of holders, where different parts are negotiated. Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Rev., s. 2329; 1899, c. 733, s. 179.

186. Liability of holder who indorses two or more parts of a set to different persons. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if such parts were separate bills.

Rev., s. 2320; 1899, c. 733, s. 180.

187. Acceptance of bills drawn in sets. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part and such accepted parts are negotiated to different holders in due course he is liable on every such part as if it were a separate bill.

Rev., s. 2331; 1899, c. 733, s. 181.

188. Payment by acceptor of bills drawn in sets. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Rev., s. 2332; 1899, c. 733, s. 182.

189. Effect of discharging one of a set. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Rev., s. 2333; 1899, c. 733, s. 183.

ART. 17. PROMISSORY NOTES AND CHECKS

190. Negotiable promissory note defined. A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him.

Rev., s. 2334; 1899, c. 733, s. 184.

191. Check defined. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided the provisions of this chapter are applicable to a bill of exchange payable on demand apply to a check.

Rev., s. 2335; 1899, c. 733, s. 185.

192. Within what time a check must be presented. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Rev., s. 2336; 1899, c. 733, s. 186.

193. Effect of certification of check. Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

Rev., s. 2397; 1899, c. 733, s. 187.

194. Effect, where holder of check procures it to be certified. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Rev., s. 2338; 1899, c. 733, s. 188.

195. Check not assignment of funds. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

Rev., s. 2339; 1899, c. 733, s. 189.

CHAPTER 59

NOTARIES

1. Appointment and commission; term of office.
2. To qualify before clerk; record of qualification.
3. Clerks notaries ex officio; may certify own seals.
4. Powers of notaries.
5. May exercise powers in any county.
6. Expiration of commission to be stated after signature.
7. Notarial seal.

1. Appointment and commission; term of office. The governor may, from time to time, at his discretion, appoint one or more fit persons in every county to act as notaries public, and shall issue to each a commission. They shall hold their office for two years from and after the date of their appointment.

Rev., ss. 2347, 2348; Code, ss. 3304, 3305.

2. To qualify before clerk; record of qualification. Upon exhibiting their commission to the clerk of the superior court of the county in which they are to act, the notaries shall be duly qualified by taking before said clerk an oath of office, and the oaths prescribed for officers. A certificate of the commission shall be deposited with the clerk and filed among the records, and he shall note on his minutes the qualifications of the notary public.

Rev., ss. 2347, 2348; Code, ss. 3304, 3305.

3. Clerks notaries ex officio; may certify own seals. The clerks of the superior court may act as notaries public, in their several counties, by virtue of their office as clerks, and may certify their notarial acts under the seals of their respective courts.

Rev., s. 2349; Code, s. 3306; R. C., c. 75, s. 3; 1833, c. 7, ss. 1, 2.

4. Powers of notaries. Notaries public, in and out of the state, have power to take and certify the acknowledgment or proof of powers of attorney, mortgages, deeds and other instruments of writing, to take depositions and to administer oaths and affirmations in matters incident or belonging to the duties of their office, and to take affidavits to be used before a court, judge or other officer, within the state, and have power to take the privy examination of *femes covert*.

Rev., s. 2350; Code, s. 3307; 1866, c. 30; 1879, c. 128.

5. May exercise powers in any county. Notaries public have full power and authority to perform the functions of their office in any and all counties of the state, and full faith and credit shall be given to any of their official acts where-soever the same shall be made and done.

Rev., s. 2351; 1891, c. 248.

6. Expiration of commission to be stated after signature. Notaries public shall state after each official signature by them the date of the expiration of their commissions; but the failure to do so shall not thereby invalidate their official acts.

Rev., s. 2351a.

7. Notarial seal. Official acts by notaries public shall be attested by their notarial seals.

Rev., s. 2352.

CHAPTER 60

OATHS

ART. 1. GENERAL PROVISIONS.

1. Oaths to be administered with solemnity.
2. Administration of oath upon the gospels.
3. Administration of oath with uplifted hand.
4. Affirmation of Quakers and others.
5. Oath to support constitution of United States; all officers to take.
6. Oath or affirmation to support state constitution; all officers to take.
7. When deputies may administer.
8. Administration by certain officers.
9. When county surveyors may administer oaths.
10. Certain oaths validated.

ART. 2. FORMS OF OFFICIAL AND OTHER OATHS.

11. Oaths of sundry persons; forms.

ART. 1. GENERAL PROVISIONS

1. Oaths to be administered with solemnity. 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.

Rev., s. 2353; R. C., c. 76, s. 1; 1777, c. 108, s. 2.

2. Administration of oath upon the Gospels. 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 he shall kiss the Holy Gospel, as a seal of confirmation to the said engagements.

Rev., s. 2354; Code, s. 3309; R. C., c. 76, s. 1; 1777, c. 108, s. 2.

3. Administration of oath with uplifted hand. 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 Gospel; 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 (etc., as the words of the oath may be).

Rev., s. 2355; Code, s. 3310; R. C., c. 76, s. 2; 1777, c. 108, s. 3.

4. Affirmation of Quakers and others. The solemn affirmation of Quakers, Moravians, Dunkers and Mennonites, made in the manner heretofore used and accustomed, shall be admitted as evidence in all civil and criminal actions; and in all cases where they are required to take an oath to support the constitution of the state, or of the United States, or an oath of office, they shall make their solemn affirmation in the words of the oath beginning after the word "swear"; which affirmation shall be effectual to all intents and purposes.

Rev., s. 2356; Code, s. 3311; R. C., c. 76, s. 3; 1777, c. 108, s. 4; 1777, c. 115, s. 42; 1819, c. 1019; 1821, c. 1112.

5. Oath to support constitution of United States; all officers to take. All members of the general assembly, and all officers who shall be elected or appointed to any office of trust or profit within the state, shall, agreeably to act of congress, take the following oath or affirmation:

I, A. B., do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States; so help me, God.

Which oath shall be taken before they enter upon the execution of the duties of the office.

Rev., s. 2357; Code, s. 3313; R. C., c. 76, s. 5; 1791, c. 342, s. 2.

6. Oath or affirmation to support state constitution; all officers to take. Every member of the general assembly, and every person who shall be chosen or appointed to hold any office of trust or profit in the state, shall, before taking his seat or entering upon the execution of the office, take and subscribe the following oath or affirmation:

I, A. B., do solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

Where such person shall be of the people called Quakers, Moravians, Mennonites or Dunkers, he shall take and subscribe the following affirmation:

I, A. B., do solemnly and sincerely declare and affirm that I will truly and faithfully demean myself as a peaceful 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 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.

Rev., s. 2358; Code, s. 3312; R. C., c. 76, s. 4; 1781, c. 342, s. 1.

7. When deputies may administer. 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.

Rev., s. 2359; Code, s. 3316; R. C., c. 76, s. 7; 1836, c. 27, s. 2.

8. Administration by certain officers. The chairman of the board of county commissioners and the chairman of the board of education of the several counties may administer oaths in any matter or hearing before their respective boards.
Rev., s. 2362; 1899, c. 89; 1889, c. 529.

9. When county surveyors may administer oaths. The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants.

Rev., s. 2361; Code, s. 3314; 1881, c. 144.

10. Certain oaths validated. All oaths and affidavits made prior to the first day of March, nineteen hundred and fifteen, administered by authorized officers to persons with uplifted hands be and the same are hereby validated and made as legal and binding as if administered to persons laying hands on and kissing the Holy Evangelists of Almighty God, whether said oaths and affidavits were made by persons conscientiously scrupulous of taking a "book oath" or not, and whether such oaths and affidavits were made in other respects in strict compliance with section 2 of this chapter: Provided, that this section shall not affect the rights of the parties in actions now pending nor in any manner affect prosecutions for perjury claimed to have been heretofore committed.

Rev., s. 2363; 1899, c. 50; 1915, c. 3.

ART. 2. FORMS OF OFFICIAL AND OTHER OATHS

11. Oaths of sundry persons; forms. The oaths of office to be taken by the several persons hereafter named, shall be in the words following the names of said persons respectively:

ADMINISTRATOR

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

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

ATTORNEY GENERAL, STATE SOLICITORS AND COUNTY ATTORNEYS

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of attorney general (solicitor for the state or attorney for the state in the county of -----); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

AUDITOR

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

BOOK DEBT OATH

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 ADMINISTRATOR

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.

CLERK OF THE SUPREME COURT

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, gift, fee or reward, in consideration of my appointment to the office of clerk of the supreme court of North Carolina; nor have I sold, or offered to sell, nor will I sell, or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in this state; I do further swear that I will execute the office of clerk of the supreme court without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

CLERK OF THE SUPERIOR COURT

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of -----; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the state; and I do further swear that I will execute the office of clerk of the superior court for the county of ----- without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

COMMISSIONERS ALLOTING A YEAR'S PROVISIONS

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

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 agreeably to law; so help you, God.

COMMISSIONER OF WRECKS

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

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of 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 constable, so long as I shall continue in office; so help me, God.

COTTON WEIGHER FOR PUBLIC

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 tender a true account thereof to the parties concerned, if required so to do; so help me, God.

ENTRY-TAKER

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry-taker for the county of _____ according to law; so help me, God.

EXECUTOR

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

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.

GRAND JURY—FOREMAN OF

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

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

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

You swear (or affirm) that you will keep every person, sworn on this jury, together in some private or 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

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 ACTIONS NOT CAPITAL

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 ACTIONS

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

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, LAYING OFF ROADS AND ASSESSING DAMAGES

I, A. B., do solemnly swear (or affirm) that I will lay out the road, directed to be laid out by the board of commissioners of the county, to the greatest ease and advantage of the inhabitants, and with as little prejudice to the owners of land over which the same shall be laid out as may be; and will truly and impartially assess the damages which may be awarded by me for injuries done to lands by the laying out of said road, without favor, affection, malice or hatred, to the best of my skill and knowledge; so help me, God.

JUDGE OF THE SUPREME COURT

I, A. B., do solemnly swear (or affirm) that in my office of justice of the supreme court of North Carolina I will administer justice without respect to persons, and do equal right to the poor and the rich, to the state and to individuals; and that I will honestly, faithfully and impartially perform all the duties of the said office according to the best of my abilities, and agreeably to the constitution and laws of the state; so help me, God.

JUDGE OF THE SUPERIOR COURT

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of judge of the superior court of the said state; I will do equal law and right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take, by myself or by any other person, any fee, gift, gratuity or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed; I will not maintain, by myself or by any other person, privately or openly, any plea or quarrel depending in any of the said courts; I will not delay any person of common right by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letter or orders come to me contrary to law, I will proceed to enforce the law, such letters or order notwithstanding; I will not appoint any person to be clerk of any of the said courts but such of the candidates as appear to me sufficiently qualified for that office; and in all such appointments I will nominate without reward, hope of reward, prejudice, favor or partiality or any other sinister motive whatsoever; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

JUSTICE OF THE PEACE

I, A. B., do solemnly swear (or affirm) that as a justice of the peace of the county of -----, in all articles in the commission to me directed, I will do equal right to the poor and the rich, to the best of my judgment and according to the laws of the state; I will not, privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; the fines and amercements that shall happen to be made, and the forfeitures that shall be incurred, I will cause to be duly entered without concealment; I will not wittingly or willingly take, by myself or by any other person for me, any fee, gift, gratuity or reward whatsoever for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will perform my office of justice of the peace; I will not delay any person of common right, by reason of any letter or order from any person in authority to me directed, or for any other cause whatever; and if any letter or order come to me contrary

to law I will proceed to enforce the law, such letter or order notwithstanding. I will not direct or cause to be directed to the parties any warrant by me made, but will direct all such warrants to the sheriffs or constables of the county, or the other officers or ministers of the state, or other indifferent persons, to do execution thereof; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, and according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

REGISTER OF DEEDS

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 of deeds for the county of -----, in all things according to law; so help me, God.

SECRETARY OF STATE

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of secretary of state of the state of North Carolina, during my continuance in office, according to law; so help me, God.

SHERIFF

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of ----- county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

STANDARD KEEPER

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.

STATE TREASURER

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of state treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

STRAY VALUERS

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 A COUNTY

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of -----, according to law; so help me, God.

TREASURER FOR A COUNTY

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

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

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

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

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

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 of the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

GENERAL OATH

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.

Rev., s. 2360; Code, ss. 3057, 3315; 1903, c. 604; 1874-5, c. 58, s. 2; R. C., c. 76, s. 6.

CHAPTER 61

OFFICES AND PUBLIC OFFICERS

1. No person shall hold more than one office.
2. Holding office contrary to the constitution; penalty.
3. Bargains for office void.
4. Oath required before acting; penalty.
5. Persons admitted to office deemed to hold lawfully.
6. Officer to hold until successor qualified.
7. Citizens to recover funds of county or town retained by delinquent official.
8. Local: Officers compensated from fees to render statement; penalty; proceeds to school fund.

1. No person shall hold more than one office. No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly: Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes.

Rev., s. 2364; Const., Art. XIV, s. 7.

2. Holding office contrary to the constitution; penalty. If any person presumes to hold any office, or place of trust or profit, or is 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.

Rev., s. 2365; Code, s. 1870; R. C., c. 77, s. 1; 1790, c. 319; 1792, c. 366; 1793, c. 393; 1796, c. 450; 1811, c. 811.

3. Bargains for 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.

Rev., s. 2366; Code, s. 1871; R. C., c. 77, s. 2; 5 and 6 Edw. VI, c. 16, s. 3.

4. Oath required before acting; penalty. Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the state, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the 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.

Rev., s. 2367; Code, s. 1873; R. C., c. 77, s. 4.

5. Persons admitted to office deemed to hold lawfully. Any person who shall, by the proper authority, be admitted and sworn into any office, 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.

Rev., s. 2368; Code, s. 1872; R. C., c. 77, s. 3; 1844, c. 38, s. 2; 1848, c. 64, s. 1; Const., Art. IV, s. 25.

NOTE. For penalty for acting as officer without giving bond, see Bonds, s. 2.

6. Officer to hold until successor qualified. All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualify.

Rev., s. 2368; Code, s. 1872; R. C., c. 77, s. 3; 1848, c. 64, s. 2.

7. Citizen to recover funds of county or town retained by delinquent official. When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, setting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within sixty days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars, of the amount recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as indemnity shall in no case exceed five hundred dollars.

1913, c. 80.

8. Local: officers compensated from fees to render statement; penalty; proceeds to school fund. Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation for services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year a statement, verified under oath, showing: first, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars and ten dollars additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and apply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December twelfth, one thousand nine hundred and thirteen.

This section applies only to the counties of Anson, Bertie, Bladen, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson.

1913, c. 97; Ex. Sess. 1913, c. 10.

CHAPTER 62

PARTITION

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ART. 1. PARTITION OF REAL PROPERTY

1. Partition is a special proceeding. Partition under this chapter shall be by special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein.

Rev., s. 2485; Code, s. 1923; 1868-9, c. 122, s. 33.

2. Venue in partition. The proceedings for partition, actual or by sale, must be instituted in the county where the land lies. If the land to be partitioned lies in more than one county, the proceedings may be instituted in either of the counties.

Rev., s. 2486; Code, s. 1898; 1868-9, c. 122, s. 7.

3. Petition by cotenant. One or more persons claiming real estate as joint tenants or tenants in common may have partition by petition to the superior court.

Rev., s. 2487; Code, s. 1892; 1868-9, c. 122, s. 1.

4. Surface and minerals in separate owners; partitions distinct. When the title to the mineral interests in any land has become separated from the surface in ownership the tenants in common, or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common or joint tenants of the surface may have partition of the same, in manner provided by law, distinct from the mineral interests and without joining as parties the owner or owners of the mineral interests. In all instances where the mineral interests and surface interests have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interests be compelled to join in a partition of the mineral interests, nor shall the rights of either owner be prejudiced by a partition of the other interests.

Rev., s. 2488; 1905, c. 90.

5. Petition by judgment creditor of cotenant; assignment of homestead. When any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint tenant, and the judgment creditor desires to lay off the homestead of the judgment debtor in the land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before the clerk of the court of the county wherein the land lies a special proceeding for partition of the land between the tenants in common, making the judgment debtor, the other tenants in common and all other interested persons parties to the proceeding by summons. The proceeding shall then be in all other respects conducted as other special proceedings for the partition of land between tenants in common. Upon the actual partition of the land the judgment creditor may sue out execution on his judgment, as allowed by law, and have the homestead of the judgment debtor allotted to him and sell the excess, as in other cases where the homestead is allotted under execution. The remedy provided for in this section shall not deprive the judgment creditor of any other remedy in law or in equity which he may have for the enforcement of his judgment lien.

Rev., s. 2489; 1905, c. 429.

6. Unknown parties; summons and representation. If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to, and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the

petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented.

Rev., s. 2490; 1887, c. 284.

7. Commissioners appointed. The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants.

Rev., s. 2487; Code, s. 1892; 1868-9, c. 122, s. 1.

8. Oath of commissioners. The commissioners shall be sworn by a justice of the peace, or other person authorized to administer oaths, to do justice among the tenants in common, in respect to such partition, according to their best skill and ability.

Rev., s. 2492; Code, s. 1893; 1868-9, c. 122, s. 2.

9. Delay or neglect of commissioner penalized. If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars, to be recovered by the petitioner.

Rev., s. 2498; Code, s. 1901; 1868-9, c. 122, s. 10.

10. Commissioners to meet and make partition; equalizing shares. The commissioners, who shall be summoned by the sheriff, or any constable, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition.

Rev., s. 2491; Code, s. 1894; 1887, c. 284, s. 2; 1868-9, c. 122, s. 3.

11. Owelty to bear interest. The sums of money due from the more valuable dividends shall bear interest until paid.

Rev., s. 2496; Code, s. 1899; 1868-9, c. 122, s. 8.

12. Owelty from infant's share due at majority. When a minor to whom a more valuable dividend shall fall is charged with the payment of any sum, the money shall not be payable until such minor arrives at the age of twenty-one years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian has assets which he did not so apply, he shall pay out of his own proper estate any interest that may have accrued in consequence of such failure.

Rev., s. 2497; Code, s. 1900; 1868-9, c. 122, s. 9.

13. Partition where shareowners unknown or title disputed. If there are any of the tenants in common, or joint tenants, whose names are not known or whose title is in dispute, the share or shares of such persons shall be set off together as one parcel. If, in any partition proceeding, two or more appear as defendants claiming the same share of the premises to be divided, or if any part of the share claimed by the petitioner is disputed by any defendant or defendants, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding.

Rev., ss. 2491, 2511; Code, s. 1894; 1868-9, c. 122, s. 3; 1887, c. 284, ss. 2, 4.

14. Dower claims settled on partition; dower valued. When there is dower or right of dower on any land, petitioned to be sold or divided in severalty by actual partition, the woman entitled to dower or right of dower therein may join in the petition. The land to be divided in severalty shall be allotted to the tenants in common, or joint tenants, subject to the dower right or dower, and either may be asked and assigned at the same time that partition thereof is made and by same commissioners. On a decree of sale, the interest of one-third of the proceeds shall be secured and paid to her annually; or in lieu of such annual interest, the value of an annuity of six per cent on such third, during her probable life, shall be ascertained and paid to her absolutely out of the proceeds.

Rev., s. 2517; Code, s. 1909; 1893, c. 341; 1868-9, c. 122, s. 18.

15. Partial partition; balance sold or left in common. In all proceedings under this chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder, or a part only, of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy.

Rev., s. 2506; 1887, c. 214, s. 1.

16. Report of commissioners; contents; filing. The commissioners, within a reasonable time, not exceeding sixty days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk.

Rev., s. 2494; Code, s. 1896; 1868-9, c. 122, s. 5.

17. Map embodying survey to accompany report. The commissioners are authorized to employ the county surveyor, or in his absence, or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners.

Rev., s. 2493; Code, s. 1895; 1868-9, c. 122, s. 4.

18. Confirmation and impeachment of report. If no exception to the report of the commissioners is filed within twenty days, the same shall be confirmed.

Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.

Rev., s. 2494; Code, s. 1896; 1868-9, c. 122, s. 5.

19. Report and confirmation enrolled and registered; effect. Such report, when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns.

Rev., s. 2495; Code, s. 1897; 1868-9, c. 122, s. 6.

20. Clerk to docket owelty charges; no release of land and no lien. In case owelty of partition is charged in favor of certain parts of said land and against certain other parts, the clerk shall enter on the judgment docket the said owelty charges in like manner as judgments are entered on said docket, persons to whom parts are allotted in favor of which owelty is charged being marked plaintiffs on the judgment docket, and persons to whom parts are allotted against which owelty is charged being marked defendants on said docket; that said entry on said docket shall contain the title of the special proceeding in which the land was partitioned, and shall refer to the book and page in which the said special proceeding is recorded; that when said owelty charges are paid, said entry upon the judgment docket shall be marked satisfied in like manner as judgments are canceled and marked satisfied; and the clerk shall be entitled to the same fees for entering such judgment of owelty as he is entitled to for docketing other judgments: Provided, that the docketing of said owelty charges as hereinbefore set out shall not have the effect of releasing the land from the owelty charged in said special proceeding: Provided, any judgment docketed under this section shall not be a lien on any property whatever, except that upon which said owelty is made a specific charge.

1911, c. 9, s. 1.

ART. 2. PARTITION SALES OF REAL PROPERTY

21. Sale in lieu of partition. Whenever it appears by satisfactory proof that an actual partition of the lands cannot be made without injury to some or all of the parties interested, the court shall order a sale of the property described in the petition, or any part thereof.

Rev., s. 2512; Code, ss. 1904, 1921; 1868-9, c. 122, ss. 13, 31.

22. Remainder or reversion sold for partition; outstanding life estate. The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common, or joint tenants, shall be deemed seized and possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate.

Rev., s. 2508; 1887, c. 214, s. 2.

23. Life tenant as party; valuation of life estate. In all proceedings for partition of land whereon there is a life estate, the life tenant may join in the proceeding and on a sale the interest on the value of the share of the life tenant

shall be received and paid to such life tenant annually; or in lieu of such annual interest, the value of such share during the probable life of such life tenant shall be ascertained and paid out of the proceeds to such life tenant absolutely.

Rev., s. 2509; 1887, c. 214, s. 3.

24. Sale of standing timber on partition; valuation of life estate. When two or more persons own, as tenants in common, joint tenants, or copartners, a tract of land, either in possession (or in remainder or reversion, subject to a life estate), on which there may be standing timber trees, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his portion of the net proceeds of sales, to be ascertained under the mortuary tables established by law.

Rev., s. 2510; 1895, c. 187.

25. Sale of mineral interests on partition. In case of the partition of mineral interests, in all instances where it is made to appear to the court that it would be for the best interests of the tenants in common, or joint tenants, of such interests to have the same sold, or if actual partition of the same cannot be had without injury to some or all of such tenants (in common), then it is lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear.

Rev., s. 2507; 1905, c. 90, s. 2.

26. Sale of land required for public use on cotenant's petition. When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands, or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary, in the manner and on the terms it deems expedient. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court.

Rev., s. 2518; Code, s. 1907; 1868-9, c. 122, s. 16.

27. Manner and terms of partition sale. The sale shall be made by some person appointed by the court, on such terms as to size of lots, place or manner of sale, time of credit and security for payment of purchase money, as may be most advantageous to the parties concerned.

Rev., s. 2512; Code, ss. 1904, 1921; 1868-9, c. 122, ss. 13, 31.

28. Notice of partition sale. The notice of sale, under this proceeding, shall be the same as required by law on sales of real estate by sheriff under execution.

Rev., s. 2514; Code, s. 1905; 1868-9, c. 122, s. 14.

29. Title made to purchaser; effect of deed. On the coming in of the report of sale and confirmation thereof, and payment of the purchase money, the title shall be made to the purchaser or purchasers at such time and by such person as the court may direct, and in all cases where the persons in possession have been made parties to the proceeding, the court may grant an order for possession. And the deed of the officer or person designated to make such sale shall convey to the purchaser such title and estate in the property as tenants in common, or joint tenants, had.

Rev., s. 2512; Code, ss. 1904, 1921; 1868-9, c. 122, ss. 13, 31.

30. Who appointed to sell. The court may authorize any officer thereof, or any other competent person, to be designated in the decree of sale, to sell the real estate under this proceeding; but no clerk of any court shall appoint himself or his deputy to make sale of real property or other property in any proceeding before him.

Rev., s. 2513; Code, s. 1906; 1868-9, c. 122, s. 15; 1899, c. 161.

31. Report of sale; filing; confirmation and impeachment. Such officer or person shall file his report of sale giving full particulars thereof, within ten days after the sale, in the office of the clerk of the superior court, and if no exception thereto is filed within twenty days, the same shall be confirmed. Any party, after the confirmation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.

Rev., s. 2513; Code, s. 1906; 1899, c. 161; 1868-9, c. 122, s. 15.

32. Shares in proceeds to cotenants secured. Upon confirmation of the report, the court shall secure to each tenant in common, or joint tenant, his ratable share in severalty of the proceeds of sale.

Rev., s. 2513; Code, s. 1921; 1868-9, c. 122, s. 31.

33. Shares to persons unknown or not sui juris secured. When a sale is made under this chapter, and any party to the proceedings be an infant, a married woman, non compos mentis, imprisoned, or beyond the limits of the state, or when the name of any tenant in common is not known, it is the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative.

Rev., s. 2516; Code, s. 1908; 1887, c. 284, s. 3; 1868-9, c. 122, s. 17.

ART. 3. PARTITION OF LANDS IN TWO STATES

34. Petition to partition lands in two states descended or devised. Whenever on the death of any person, his lands in this state, and in another state, descend or are devised to several persons, who, by the law of this and the other state, hold in the lands undivided estates as tenants in common, or by any other undivided tenancy, and such heirs or devisees cannot, without suit, have partition for want of consent, or because of inability in any of the cotenants, then, if such deceased person was 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 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 cotenants is entitled under the laws of the several states, and praying for partition to be made of all the tracts, according to their respective interests. 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.

Rev., s. 2499; Code, s. 1911; 1868-9, c. 122, s. 20.

35. 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.

Rev., s. 2500; Code, s. 1912; 1868-9, c. 122, s. 21.

36. Commissioners appointed; how partition made; report and confirmation. The court making such decree shall issue a commission to three respectable freeholders in this or any other 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 cotenants, 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. Before making the allotment the commissioners shall make a valuation of all the lands held by the cotenants in all the said states; and where they cannot, without injury to the value of some shares, make an exact division of the lands, they shall charge the more valuable dividends with money to be paid to the tenants of a less valuable dividend to make equality of partition. They shall report their proceedings as they may be directed, and the report shall contain a valuation of all the estate in this and the other states, and the division among the cotenants according to such valuation. The court may confirm such report, or on sufficient cause shown, may correct and alter, or set it aside and order a new commission.

Rev., s. 2501; Code, s. 1913; 1868-9, c. 122, s. 22.

37. Provisions as to owelty. Where any sum is charged on a more valuable dividend, it shall be a charge on the land into whose hands soever it may come, although it may be taken without notice, and shall bear interest at a rate not greater than allowed in this state. The tenant of the larger dividend may discharge himself from accruing interest by paying the whole amount due at any time. The court may direct, if the tenant taking such a dividend is an infant, that the sum charged shall not be paid till a future day.

Rev., s. 2501; Code, s. 1913; 1868-9, c. 122, s. 22.

38. Final decree; enrollment and registry; service on parties; effect. The court shall, upon the confirmation of any report of the commissioners, make a

final decree. And where all the parties are within the jurisdiction of this court, the court shall, by the usual proceedings, direct and compel the parties to execute and deliver deeds and assurances, sufficient, by the laws of this state and the other states, to give the partition full force and validity in all the states; and in case any of the parties are under such disabilities that they cannot execute such assurances, or are without the jurisdiction of the court, then the court, upon receiving evidence from the plaintiff that, by a law of the other state in which lie the parts of the lands described in the petition to be without this state, the decree can have effect thereon, shall direct the decree to be enrolled, and a copy of it shall be registered in the register's office of all the counties within this state where any of the lands lie; and a copy shall also be furnished to the plaintiff or other party interested, duly certified, to the end that, as to the lands without this state, it may be carried into effect in the state in which the said lands may be, in such manner as said state may direct; and on satisfactory evidence being made to the court in this state that the decree may have full effect by the law of such other state, the court in this state shall by its decree declare the partition in the land in this state to be final and conclusive. The decree shall be firm and irreversible, as hereinafter provided; and shall, on registration as aforesaid, pass to the tenants the title in severalty to the lands in this state in the same manner as if all the land mentioned in the decree were situate within this state.

Rev., s. 2501; Code, s. 1913; 1868-9, c. 122, s. 22.

39. Effectuating decree of sister state; enrollment; registry and confirmation; effect. Where real estate may be partly in this state and partly in another state and the deceased person from whom it was derived by descent or devise, was, at the time of his death, a resident of some other state, or was a resident of none of the states in which he held lands, and in this last case, the lands of which he was seized in this state were of less value than the lands of which he was seized in any other state, the courts of the state in which such deceased person had his residence at his death, or in which he held lands of greater value than those he held in this state, shall have full power and authority, under any law passed by the legislature of such state, substantially in accordance with the provisions herein made on this subject, to decree partition of the lands in this state, together with those within such other state, in the same manner as if the whole real estate were within the jurisdiction of such court, and in the same manner as the courts in this state are directed and authorized to do by the preceding section, as to the lands of deceased persons resident here at their death, or leaving lands of greater value here than in any other state. In case any person having an interest in the final decree, made as aforesaid in another state, as to lands in this state, shall, within twelve months after the same may be entered up in the courts of said state, produce the records and proceedings of such courts of record duly certified to a superior court of any county in this state, where any of the lands of this state lie, the court, on petition *ex parte* in such case, shall order such proceedings to be entered of record in the court of this state, and order that the said decree shall be of the same force and validity as if it had been a decree of the court in this state in which the petition is filed, upon a petition and regular proceedings had thereon, and the decree of the court of such other state, and the proceedings on it by petition in the superior court in this state confirming it

and giving it validity, being enrolled in the said court of this state and registered in all the counties where the lands lie in this state, shall pass the lands in this state, according to the decree, and shall vest estates in severalty therein declared, as to said lands, in the same manner and with the same effect in law as if the lands in this state had been so allotted on a petition for partition, according to the provisions of the former sections of this chapter.

Rev., s. 2502; Code, s. 1914; 1868-9, c. 122, s. 23.

40. When court may decide whether statute passed in another state. Where a copy of a decree and proceedings of a suit in any other state are produced, as in the preceding section, and also when it is necessary for a superior court to be certified that its decree of a partition of lands without this state and within the territory of another state, can have effect therein, it is competent for the judge of the superior court before which the existence of a law in such other state is to be proved, to decide whether any act of the legislature of such state has been passed.

Rev., s. 2503; Code, s. 1915; 1868-9, c. 122, s. 24.

ART. 4. PARTITION OF PERSONAL PROPERTY

41. Personal property may be partitioned; commissioners appointed. When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within twenty days after notice of their appointment, to divide such property as nearly equal as possible among the tenants in common, or joint tenants.

Rev., s. 2504; Code, s. 1917; 1868-9, c. 122, s. 27.

42. Report of commissioners. The commissioners shall report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made.

Rev., s. 2505; Code, s. 1918; 1868-9, c. 122, s. 28.

43. Sale of personal property on partition; report of officer. If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, the court shall order a sale to be made by some officer of the court or other competent person, who shall file his report of sale in the office of the clerk of the court within ten days after sale.

Rev., s. 2519; Code, s. 1919; 1868-9, c. 122, s. 29.

44. Confirmation and impeachment of reports of commissioners or officer. If no exception to the report of the commissioners making partition, or to the report of the officer making sale, as the case may be, is filed within twenty days, the same shall be confirmed. Any party, after confirmation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition

in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.

Rev., ss. 2505, 2519; Code, ss. 1918, 1919; 1868-9, c. 122, ss. 28, 29.

45. Notice of sale of personal property. The sale shall be made after twenty days notice, by advertisement in three or more public places in the county, and shall be on such terms as the court may direct.

Rev., s. 2520; Code, s. 1920; 1868-9, c. 122, s. 30.

NOTE. For compensation of commissioners under this chapter, see Salaries and Fees, s. 63.

CHAPTER 63

PARTNERSHIP

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ART. 1. LIMITED PARTNERSHIP

1. Purposes for which formed. Limited partnerships for the transaction of any mercantile, manufacturing or mechanical business within the state may be formed by two or more persons, upon the terms and with the rights and powers and subject to the conditions and liabilities in this chapter; but its provisions shall not be construed to authorize any such partnership for the conducting of a banking or insurance business, other than writing or soliciting insurance.

Rev., s. 2521; Code, s. 3088; 1860-1, c. 28.

2. General and special partners; liability. Such partnerships may consist of one or more persons, who are general partners, and are jointly and severally responsible as partners are now by law, and of one or more persons, who contrib-

ute in actual cash payments a specific sum as capital to the common stock, who are called special partners, and who are not liable for the debts of the partnership beyond the funds so contributed to the capital.

Rev., s. 2522; Code, s. 3089; 1860-1, c. 28, s. 2.

3. Certificate filed; contents. The persons desirous of forming such partnership must make and severally sign a certificate containing: First, the name or firm under which such partnership is to be conducted; second, the general nature of the business to be transacted; third, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence; fourth, the amount of capital which each special partner has contributed to the common stock; fifth, the period at which such partnership is to commence and terminate.

Rev., s. 2523; Code, s. 3090; 1860-1, c. 28, s. 3.

4. Certificate proved and registered. The certificate must be acknowledged or proved before some one competent to take the probate of deeds and ordered registered in the same manner as provided for deeds, and must be registered in the county in which the principal place of business of such partnership is situated. If the partnership has places of business in different counties, a transcript of the certificate and acknowledgment certified by the register must be registered and filed in the register's office of each of such counties.

Rev., s. 2524; Code, ss. 3091, 3092; 1860-1, c. 28, ss. 4, 5.

5. Affidavit as to cash payment. At the time the certificate is ordered to be registered an affidavit of one or more of the general partners shall be made before the officer taking such acknowledgment, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually in good faith paid in cash, and the affidavit so made shall be registered with the original certificate.

Rev., s. 2525; Code, s. 3093; 1860-1, c. 28, s. 6.

6. Probate and registration necessary. No such partnership shall be deemed to have been formed until such certificate and affidavit have been made, acknowledged, or proved, and registered as required in the preceding sections.

Rev., s. 2526; Code, s. 3094; 1860-1, c. 28, s. 7.

7. Effect of false statement. If any false statement is made in such certificate or affidavit, all the persons interested in such partnership shall be liable as general partners.

Rev., s. 2527; Code, s. 3095; 1860-1, c. 28, s. 8.

8. Terms of partnership published. The terms of the partnership must be published immediately after its formation for six successive weeks, in at least one newspaper in the same county or near the place of said partnership business, and if such publication be not made, the partnership shall be deemed general.

Rev., s. 2528; Code, s. 3096; 1860-1, c. 28, s. 9.

9. Proof of publication. Affidavits of such publication, made by the proprietor of such newspaper in which the same is published, may be filed with the

clerk of the superior court of the county in which such business is conducted, and shall be evidence of the fact.

Rev., s. 2529; Code, s. 3097; 1860-1, c. 28, s. 10.

10. Requirements for renewals and continuances. Every renewal or continuance of such partnership beyond the time originally fixed for its duration must be certified, acknowledged and registered, and an affidavit of a general partner made and filed, and notice given by publication as required for its original formation, and every such partnership which is otherwise continued must be deemed a general partnership: Provided, the affidavit herein required may state that the amount of cash therein specified had been originally paid in good faith, and that it is represented by goods or merchandise then on hand, and has not been impaired in the course of trade.

Rev., s. 2530; Code, s. 3098; 1860-1, c. 28, s. 11.

11. Alterations deemed a dissolution. Every alteration which is made in the names of the partners, in the nature of the business, in the capital or shares thereof or in any other matter specified in the original certificate must be deemed a dissolution of the partnership; and any such partnership which is in any manner carried on after such alteration has been made must be deemed a general partnership, unless renewed as a special partnership, according to the preceding sections.

Rev., s. 2531; Code, s. 3099; 1860-1, c. 28, s. 12.

12. Name of firm. The business of the partnership must be conducted under a firm, in which the names of the general partners only are inserted, without the addition of the word "company" or any other general term, except the word "limited"; and if the name of any special partner is used in the firm with his privacy, he shall be deemed a general partner.

Rev., s. 2532; Code, s. 3100; 1899, c. 75; 1860-1, c. 28, s. 13.

13. Actions as in general partnership. Suits in relation to the business of the partnership may be brought and conducted by and against the general partner in the same manner as if there was no special partner.

Rev., s. 2533; Code, s. 3101; 1860-1, c. 28, s. 14.

14. Special stock not withdrawn nor reduced. No part of the sum which any special partner has contributed to the capital stock must be withdrawn by or paid to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital; and if, after the payment of such interest, any profit remain to be divided, he may receive his portion of such profits.

Rev., s. 2534; Code, s. 3102; 1860-1, c. 28, s. 15.

15. Depleted capital restored. If it appears by the payment of interest or profits to any special partner that the original capital has been reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the capital without interest.

Rev., s. 2535; Code, s. 3103; 1860-1, c. 28, s. 16.

16. Rights of special partner. A special partner may from time to time examine into the state and progress of the partnership concern; he may advise as to its management and act as attorney at law, but must not transact any other of the partnership business, nor be employed for that purpose as agent or otherwise; and if he interfere contrary to this section he is deemed a general partner.

Rev., s. 2536; Code, s. 3104; 1860-1, c. 28, s. 17.

17. Accounting inter se. The general partners are liable to account to each other, and to the special partners for their management of the partnership, as other partners.

Rev., s. 2537; Code, s. 3105; 1860-1, c. 28, s. 18.

18. Special partner as a creditor in insolvency. In case of the bankruptcy or insolvency of the partnership, no special partner, under any circumstances, is to be allowed to claim as a creditor until the claims of all the other creditors of the partnership are satisfied.

Rev., s. 2538; Code, s. 3107; 1860-1, c. 28, s. 20.

19. Notice of dissolution. No dissolution of such partnership by the acts of the parties must take place before the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of its dissolution has been registered in the register's office in which the original certificate was registered, and published once a week for four successive weeks in the nearest newspaper to each of the places where the partnership transacts its business.

Rev., s. 2539; Code, s. 3108; 1860-1, c. 28, s. 21.

ART. 2. SURVIVING PARTNERS

20. Surviving partner to give bond. Upon the death of any member of a partnership, the surviving partner shall, within thirty days, execute before the clerk of the superior court of the county where the partnership business was conducted, a bond payable to the state of North Carolina, with sufficient surety conditioned upon the faithful performance of his duties in the settlement of the partnership affairs. The amount of such bond shall be fixed by the clerk of the court; and the settlement of the estate and the liability of the bond shall be the same as under the law governing administrators and their bonds.

1915, c. 227, ss. 1, 2, 3.

21. Effect of failure to give bond. Upon the failure of the surviving partner to execute the bond provided for in the preceding section, the clerk of the superior court shall, upon application of any person interested in the estate of the deceased partner, appoint a collector of the partnership, who shall be governed by the same law governing an administrator of a deceased person.

1915, c. 227, s. 4.

22. Surviving partners and personal representative make inventory. When a member of any partnership dies the surviving partner, within sixty days after the death of the deceased partner, together with the personal representative of the deceased partner, shall make out a full and complete inventory of the assets of the partnership, including real estate, if there be any, together with a schedule

of the debts and liabilities thereof, a copy of which inventory and schedule shall be retained by the surviving partner, and a copy thereof shall be furnished to the personal representative of the deceased partner.

Rev., s. 2540; 1901, c. 640.

23. When personal representative may take inventory; receiver. If the surviving partner neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of the preceding section. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law.

Rev., s. 2541; 1901, c. 640, s. 2.

24. Notice to creditors. Every surviving partner, within thirty days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within twelve months from the date of first publication of such notice. The notice shall be published once a week for four weeks in a newspaper (if there be any) published in the county where the partnership existed. If there should be no newspaper published in the county, then the notice shall be posted at the courthouse and four other public places in the county.

Rev., s. 2542; 1901, c. 640, s. 3.

25. Debts paid pro rata; liens. All debts and demands against a copartnership, where one partner has died, shall be paid pro rata, except debts which are a specific lien on property belonging to the partnership.

Rev., s. 2543; 1901, c. 640, s. 4.

26. Effect of failure to present claim in twelve months. 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 surviving partner shall not be chargeable for any assets that he may have paid in satisfaction of any debts before such action was commenced, nor shall any costs be recovered in such action against the surviving partner.

Rev., s. 2544; 1901, c. 640, s. 5.

27. Procedure for purchase by surviving partner:

1. Appraisal of property. The surviving partner may, if he so desire, make application to the clerk of the superior court of the county in which the partnership existed, after first giving notice to the executor or administrator of the time of the hearing of such application, for the appointment of three judicious, disinterested appraisers, one of whom may be named by the surviving partner, one by the representative of the deceased partner's estate, and the third named by the two appraisers selected, whose duty it shall be to make out under oath a full and complete inventory and appraisal of the entire assets of the partnership, including real estate if there be any, together with a schedule of the

debts and liabilities thereof, and to deliver the same to the surviving partner; they shall also deliver a copy to the executor or administrator, and file a copy with the clerk of the court.

2. *Surviving partner may purchase.* The surviving partner may, with the consent of the executor or administrator of the deceased partner and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of such deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets.

3. *Surviving partner to give bond.* In case the surviving partner shall avail himself of the privilege of purchasing such interest as provided for in this section, he shall give bond to the executor or administrator with surety for the payment of the debts and liabilities of the partnership, and for the performance of all contracts for which the partnership is liable.

4. *Sale of real estate.* In case of such sale of the real estate belonging to the partnership, the title to the real estate so purchased shall not pass until the sale thereof has been reported to and confirmed by the clerk of the superior court of the county in which the partnership was located, in a special proceeding to which the widow and heirs at law or devisees of the deceased partner are duly made parties.

Rev., s. 2545; 1901, c. 640, s. 6.

28. *Surviving partner to account and settle.* In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within twelve months from the death of the deceased partner, file with the clerk of the superior court of the county where the partnership was located, an account, under oath, stating his action as surviving partner, and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court, and in no case to exceed five per cent out of the share of the deceased partner.

Rev., s. 2546; 1901, c. 640, s. 7.

29. *Accounting compelled.* In case any surviving partner fails to come to a settlement with the executor or admintsrator of the deceased partner within the time prescribed by law, the clerk of the superior court may, at the instance of such executor, administrator or other person interested in such deceased partnership estate, cite the surviving partners to a final settlement as provided for by law in the case of executors and administrators.

Rev., s. 2547; 1901, c. 640, s. 8.

30. *Settlement otherwise provided for.* When the original articles of partnership in force at the death of any partner or the will of a deceased partner make provision for the settlement of the deceased partner's interest in the part-

nership, and for a disposition thereof different from that provided for in this chapter, the interest of such deceased partner in the partnership shall be settled and disposed of in accordance with the provisions of such articles of partnership or of such will.

Rev., s. 2545: 1901, c. 640, s. 6.

ART. 3. BUSINESS UNDER ASSUMED NAME REGULATED

31. Certificate filed; contents. No person shall hereafter carry on, conduct or transact business in this state under assumed name, or under any designation, name or style other than the real name of the individual owning, conducting or transacting such business, unless such person shall file in the office of the clerk of the superior court of the county in which such person owns, conducts or transacts, or intends to own, conduct or transact such business, or maintain an office or place of business, a certificate setting forth the name under which such business owned is or is to be conducted or transacted, and the true or real full name of the person owning, conducting or transacting the same, with the home and postoffice address of such person. The certificate shall be executed and duly acknowledged by the person so owning, conducting or intending to conduct such business: Provided, that the selling of goods by sample or through traveling agents or traveling salesmen, or by means of orders forwarded by the purchaser through the mails, shall not be construed for the purpose of this section as conducting or transacting business so as to require the filing of such certificates.

1913, c. 77, s. 1.

32. Index of certificates kept by clerk. The several clerks of the superior court of this state shall keep an alphabetical index of all persons filing certificates provided for herein, and for the indexing and filing of such certificates they shall receive a fee of twenty-five cents. A copy of such certificates duly certified to by the clerk, in whose office the same shall be filed, shall be presumptive evidence in all courts of law in this state of the facts therein contained.

1913, c. 77, s. 2.

33. Corporations and limited partnerships not affected. This article shall in no way affect or apply to any corporation created and organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state, nor shall it in any manner affect the right of any persons to form limited partnerships as provided by the laws of this state.

1913, c. 77, s. 3.

34. Violating of article misdemeanor. Any person owning, carrying on or conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than fifty dollars or imprisonment in the county jail for a term of not exceeding thirty days.

1913, c. 77, s. 4.

35. Person trading as "company" or "agent" to disclose real parties; married woman not disclosing a free trader. If any person or persons transacts

business as trader or merchant, with the addition of the words "factor," "agent," "& Company" or "& Co.," or conducts such business under any name or style other than his own, except in case of corporation, and fails to disclose the name of his principal or partner by a sign placed conspicuously at the place wherein such business is conducted; or if any married woman conducts such business through her husband or any other agent, or if a husband or agent of any married woman conducts such business for her without displaying the Christian name of such married woman, and the fact that she is a feme covert, by a sign placed conspicuously at the place wherein such business is conducted, then all the property, stock of goods and merchandise, and choses in action purchased, used and contracted in the course of such business shall, as to creditors, be liable for the debts contracted in the course of such business by the person in charge of same. A married woman conducting such business as aforesaid without complying with the provisions of this section shall for all purposes be deemed and treated, as to all debts contracted in the course of such business, as a free trader as fully as if she had in all respects complied with the provisions of this article: Provided, this section shall not apply to any person transacting business under license as an auctioneer broker or commission merchant; in all actions under this section it is incumbent on such trader, merchant or married woman to prove compliance with the same.

Rev., s. 2118; 1905, c. 443.

CHAPTER 64

PROBATE AND REGISTRATION

ART. 1. PROBATE.

1. Officials of state authorized to take probate.
2. Officials of United States, foreign countries and sister states.
3. Commissioner appointed by clerk for nonresident maker.
4. By justice of peace of other than registering county.
5. When seal of officer necessary to probate.
6. Officials may act although land or maker's residence elsewhere.
7. Probate where clerk is a party.
8. Attorney in action not to probate papers therein.
9. Probates before stockholders in building and loan associations.
10. Subpoenas to maker and subscribing witnesses.
11. Proof of attested writing.
12. Proof of unattested writing.
13. Clerk to pass on certificate and order registration.
14. Probate of husband's deed where wife insane.
15. Probate of corporate deeds, where corporation has ceased to exist.

ART. 2. REGISTRATION.

16. Probate and registration sufficient without livery.
17. Conveyances, contracts to convey, and leases of land.
18. Unregistered deeds prior to January, 1885, registered on affidavit.
19. Deeds of trust and mortgages, real and personal.
20. Conditional sales of personal property.
21. Conditional sales or leases of railroad property.
22. Marriage settlements.
23. Deeds of gift.
24. Deeds of easements.
25. Powers of attorney.
26. Plats and subdivisions.
27. Certified copies may be registered; used as evidence.
28. Register to fill in deeds on blank forms with lines.
29. Errors in registration corrected on petition to clerk.

ART. 3. FORMS OF ACKNOWLEDGMENT, PROBATE AND ORDER OF REGISTRATION.

30. Adjudication and order of registration.
31. Acknowledgment by grantor.
32. Private examination of wife.
33. Husband's acknowledgment and wife's examination before same officer.
34. Corporate conveyances.
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ART. 4. CURATIVE STATUTES; ACKNOWLEDGMENTS; PROBATES; REGISTRATION.

37. Defective order of registration; "same" for "this instrument."
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43. Before officer in wrong capacity or out of jurisdiction.
44. Before justices of peace, where clerk's certificate or order of registration defective.
45. Probates on proof of handwriting of maker refusing to acknowledge.
46. Before judges supreme or superior courts or clerk before 1889.
47. Before clerks of inferior courts.
48. Before de facto officers of Greene County.
49. Order of registration by judge, where clerk party.
50. Order registration by interested clerk.
51. Probates before interested notaries.
52. Probates before officer of interested corporation.

53. Probates before stockholders and directors of building and loan associations.
54. Clerk's deeds, where clerk appointed himself to sell.
55. Certificate of wife's "previous" examination.
56. Probates of husband and wife in wrong order.
57. Probates of husband and wife before different officers.
58. Wife free-trader; no examination or husband's assent.
59. By president and attested by treasurer under corporate seal.
60. By president and attested by witness before January, 1900.
61. Proof of corporate articles before officer authorized to probate.
62. Before officials of wrong state.
63. Before notaries and clerks in other states.
64. Acknowledgment by resident taken out of state.
65. Before deputy clerks of courts of other states.
66. Sister state probates without governor's authentication.
67. Before commissioners of deeds.
68. Foreign probates omitting seals.
69. Before consuls general.
70. Before vice-consuls and vice-consuls general.
71. Before masters in chancery.

ART. 1. PROBATE

1. Officials of state authorized to take probate. The execution of all deeds of conveyance, contracts to buy, sell or convey lands, mortgages, deeds of trust, assignments, powers of attorney, covenants to stand seized to the use of another, leases for more than three years, releases and any and all instruments and writings of whatsoever nature and kind which are required or allowed by law to be registered in the office of the register of deeds or which may hereafter be required or allowed by law to be so registered, may be proved, or acknowledged before any one of the following officials of this state: the several justices of the supreme court, the several judges of the superior court, commissioners of affidavits appointed by the governor of this state, the clerk of the supreme court, the several clerks of the superior court, the deputy clerks of the superior courts, the several clerks of the criminal courts, notaries public, and the several justices of the peace.

Rev., s. 989; Code, s. 1246; 1899, c. 235; 1895, c. 161, ss. 1, 3; 1897, c. 87.

2. Officials of the United States, foreign countries and sister states. The execution of all such instruments and writings as are permitted or required by law to be registered may be proved or acknowledged before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, of countries under the dominion of the United States and of foreign countries: Any judge of a court of record, any clerk of a court of record, any notary public, any commissioner of deeds, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice consul, consul general, vice consul general, or commercial agent of the United States, any justice of the peace of any state or territory of the United States. If the proof or acknowledgment of the execution of an instrument is had before a justice of the peace of any state of the United States other than this state or of any territory of the United States, the certificate of such justice of the peace shall be accompanied by a certificate of the clerk of some court of record of the county in which such justice of the peace resides, which certificate of the clerk shall be under his hand and official seal, to the effect that such justice of the peace was at the time the certificate of such justice bears

date an acting justice of the peace of such county and state or territory and that the genuine signature of such justice of the peace is set to such certificate.

Rev., s. 990; 1899, c. 235, s. 5; 1905, c. 451; 1913, c. 39, s. 1; Ex. Sess. 1913, c. 72, s. 1.

3. Commissioner appointed by clerk for nonresident maker. When it appears to the clerk of the superior court of any county that any person nonresident of this state desires to acknowledge 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 her assent to any power of attorney, deeds or other conveyances, touching real estate in said county. The commissioner shall make certificate of the acknowledgments or proof and privy examination made by him, and shall return the same to the clerk of the superior court, whereupon he shall adjudge that such conveyance, power of attorney or other instrument is duly acknowledged or proved, and that such examination is in due form, and shall order the same to be registered.

Rev., s. 991; Code, s. 1258; 1869-70, c. 185.

4. By justice of peace of other than registering county. If the proof of acknowledgment of any instrument is had before a justice of the peace of any county other than the county in which such instrument is offered for registration, the certificate of proof or acknowledgment made by such justice of the peace shall be accompanied by the certificate of the clerk of the superior court of the county in which said justice of the peace resides, that such justice of the peace was at the time his certificate bears date an acting justice of the peace of such county, and that such justice's genuine signature is set to his certificate. The certificate of the clerk of the superior court herein provided for shall be under his hand and official seal.

Rev., s. 992; 1899, c. 235, s. 4.

5. When seal of officer necessary to probate. When proof or acknowledgment of the execution of any instrument by any maker of such instrument, whether a married woman or other person or corporation, is had before any official authorized by law to take such proof and acknowledgment and such official has an official seal he shall set his official seal to his certificate. If the official before whom the instrument is proved or acknowledged has no official seal he shall certify under his hand, and his private seal shall not be essential. When the instrument is proved or acknowledged before the clerk or deputy clerk of the superior court of the county in which the instrument is to be registered, the official seal shall not be necessary.

Rev., s. 993; 1899, c. 235, s. 8.

6. Officials may act although land or maker's residence elsewhere. The execution of all instruments required or permitted by law to be registered may be proved or acknowledged before any of the officials authorized by law to take probates, regardless of the county in this state in which the subject matter of the instrument may be situated and regardless of the domicile, residence or citizen-

ship of the person who executes such instrument, or of the domicile, residence or citizenship of the person to whom or for whose benefit such instrument may be made.

Rev., s. 994; 1899, c. 235, s. 13.

7. Probate where clerk is a party. All instruments required or permitted by law to be registered to which clerks of the superior court are parties or in which such clerks are interested, may be proved or acknowledged and privy examination of any married woman, when necessary, taken before any justice of the peace of the county of said clerk, which clerk may then, under his hand and official seal, certify to the genuineness thereof, or before any judge of the superior court or justice of the supreme court, and the instrument probated and ordered to be registered by such judge or justice of the peace in like manner as is provided by law for probates by clerks of the superior court in other cases.

Rev., s. 995; 1891, c. 102; 1893, c. 3; 1913, c. 148, s. 1.

8. Attorney in action not to probate papers therein. No practicing attorney at law has power to administer any oath to a person to any paper writing to be used in any legal proceeding in which he appears as attorney.

Ex. Sess. 1908, c. 105, s. 2.

9. Probates before stockholders in building and loan associations. No acknowledgment or proof of execution, including the privy examination of any married woman, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any building and loan association shall hereafter be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination, is a stockholder in said building and loan association. This section does not authorize any officer or director of a building and loan association to take acknowledgments, proofs and privy examinations.

1913, c. 110, ss. 1, 3.

10. Subpœnas to maker and subscribing witness. The grantee or other party to an instrument required or allowed by law to be registered may at his own expense obtain from the clerk of the superior court of the county in which the instrument is required to be registered a subpœna for any or all of the makers of or subscribing witnesses to such instrument, commanding such maker or subscribing witness to appear before such clerk at his office at a certain time to give evidence concerning the execution of the instrument. The subpœna shall be directed to the sheriff of the county in which the person upon whom it is to be served resides. If any person refuses to obey such subpœna he is liable to a fine of forty dollars or to be attached for contempt by the clerk, upon its being made to appear to the satisfaction of the clerk that such disobedience was intentional, under the same rules of law as are prescribed in the cases of other defaulting witnesses.

Rev., s. 996; Code, s. 1268; 1899, c. 235, s. 16; 1897, c. 28.

11. Proof of attested writing. If an instrument required or permitted by law to be registered has a subscribing witness and such witness is dead or out of the state, or of unsound mind, the execution of the same may be proved before any official authorized to take the proof and acknowledgment of such instrument

by proof of the handwriting of such subscribing witness or of the handwriting of the maker, but this shall not be proof of the execution of instruments by married women.

Rev., s. 997; 1899, c. 235, s. 12.

12. Proof of unattested writing. If an instrument required or permitted by law to be registered has no subscribing witness, the execution of the same may be proved before any official authorized to take the proof and acknowledgment of such instrument by proof of the handwriting of the maker, but this shall not apply to proof of execution of instruments by married women.

Rev., s. 998; 1899, c. 235, s. 11.

13. Clerk to pass on certificate and order registration. When the proof or acknowledgment of the execution of any instrument, required or permitted by law to be registered, is had before any other official than the clerk or deputy clerk of the superior court of the county in which such instrument is offered for registration, the clerk or deputy clerk of the superior court of the county in which the instrument is offered for registration shall, before the same is registered, examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it appears that the instrument has been duly proved or acknowledged and the certificate or certificates to that effect are in due form he shall so adjudge and shall order the instrument to be registered together with the certificates. If the clerk of the superior court is a party to or interested in such instrument such adjudication and order of registration shall be made by his deputy or by the clerk of the superior court of some other county of this state, or by some justice of the supreme court of this state or some judge of the superior court of this state. The acknowledgment of such instruments may also be made before a justice of the peace of said county, and the adjudication of the sufficiency of the certificate of said justice may be made by said clerk or his deputy.

Rev., s. 999; 1899, c. 235, s. 7; 1905, c. 414.

14. Probate of husband's deed where wife insane. When a deed executed by a married man whose wife is insane or a lunatic, together with the certificate of the superintendent of the asylum and the certificate of the clerk taken as prescribed in 514 of ch. on Conveyances is offered for probate before the clerk of the superior court of the county in which the land conveyed is situated, and the execution of such deed is acknowledged or proved, the clerk shall adjudge whether the certificates of the superintendent and the clerk are in due form, and if adjudged to be in due form he shall order the registration of the deed and certificates.

Rev., s. 1000; 1905, c. 138, s. 2.

15. Probate of corporate deeds, where corporation has ceased to exist. It is competent for the clerk of the superior court in any county in this state, on proof before him upon the oath and examination of the subscribing witness to any contract or instrument required to be registered under the laws of this state, to adjudge and order that such contract or instrument be registered as by law provided, when such contract or instrument is signed by any corporation in its corporate name by its president, and when such corporation has been out of

existence for more than ten years when the said contract or instrument is offered for probate and registration, and when the grantee and those claiming under any such grantee have been in the uninterrupted possession of the property described in said contract or instrument since the date of its execution; and said contract or instrument so probated and registered shall be as effective to all intents and purposes as if signed, sealed, and acknowledged, or proven, as provided under the existing laws of this state.

1911, c. 44, s. 1.

ART. 2. REGISTRATION

16. Probate and registration sufficient without livery. All deeds, contracts or leases, before registration, except those executed prior to January first, one thousand eight hundred and seventy, shall be acknowledged by the grantor, lessor or the person executing the same, or their signature proven on oath by one or more witnesses in the manner prescribed by law, and all deeds executed and registered according to law shall be valid, and pass title and estates without livery of seizin, attornment or other ceremony.

Rev., s. 979; Code, s. 1245; 1885, c. 147, s. 3; 29 Ch. II, c. 3; R. C., c. 37, s. 1; 1715, c. 7; 1756, c. 58, s. 3; 1838-9, c. 33; 1905, c. 277.

17. Conveyances, contracts to convey, and leases of land. No conveyance of land, or contract to convey, or lease of land for more than three years shall be valid to pass any property, as against creditors or purchasers for a valuable consideration, from the donor, bargainor or lessor, but from the registration thereof within the county where the land lies: Provided, the provisions of this section shall not apply to contracts, leases or deeds executed prior to March first, one thousand eight hundred and eighty-five, until the first day of January, one thousand eight hundred and eighty-six; and no purchase from any such donor, bargainor or lessor shall avail or pass title as against any unregistered deed executed prior to the first day of December, one thousand eight hundred and eighty-five, when the person holding or claiming under such unregistered deed shall be in the actual possession and enjoyment of such land, either in person or by his tenant at the time of the execution of such second deed, or when the person, claiming under or taking such second deed, had at the time of taking or purchasing under such deed actual or constructive notice of such unregistered deed, or the claim of the person holding or claiming thereunder.

Rev., s. 980; Code, s. 1245; 1885, c. 147, s. 1.

18. Unregistered deeds prior to January 1885 registered on affidavit. Any person holding any unregistered deed or claiming title thereunder, executed prior to the first day of January, one thousand eight hundred and eighty-five, may have the same registered without proof of the execution thereof by making an affidavit before the officer having jurisdiction to take probate of such deed, that the grantor, bargainor or maker of such deed, and the witnesses thereto are dead or cannot be found, that he cannot make proof of their handwriting, and that affiant believes such deed to be a bona fide deed and executed by the grantor therein named. This section shall not interfere with vested rights nor shall a deed so admitted to record be used as evidence in any action now pending. Said affidavit shall be written upon or attached to such deed, and the same,

together with such deed, shall be entitled to registration in the same manner and with the same effect as if proved in the manner prescribed by law for other deeds.

Rev., s. 981; 1885, c. 147, s. 2; 1905, c. 277; 1913, c. 102; 1915, cc. 13, 90.

19. Deeds of trust and mortgages, real and personal. No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor or mortgagor, but from the registration of such deed of trust or mortgage in the county where the land lies; or in case of personal estate where the donor, bargainor or mortgagor resides; or in case the donor, bargainor or mortgagor resides out of the state, then in the county where the said personal estate, or some part of the same, is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides. For the purposes mentioned in this section the principal place of business of a domestic corporation is its residence.

Rev., s. 982; Code, s. 1254; R. C., c. 37, s. 22; 1829, c. 20; 1909, c. 874, s. 1.

20. Conditional sales of personal property. All conditional sales of personal property in which the title is retained by the bargainor, shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages, in the county where the purchaser resides, or, in case the purchaser shall reside out of the state, then in the county where the personal estate or some part thereof is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides.

Rev., s. 983; Code, s. 1275; 1891, c. 240; 1883, c. 342.

21. Conditional sales or leases of railroad property. When any railroad equipment and rolling stock is sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee, or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully complied with, such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice, unless—

1. The same is evidenced by writing duly acknowledged before some person authorized to take acknowledgments of deeds.

2. Such writing is registered as mortgages are registered, in the office of the register of deeds in at least one county in which such vendee, lessee or bailee does business.

3. Each locomotive or car so sold, leased or loaned has the name of the vendor, lessor, or bailor, or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

This section shall not apply to or invalidate any contract made before the twelfth day of March, one thousand eight hundred and eighty-three.

Rev., s. 984; Code, s. 2006; 1883, c. 416; 1907, c. 150, s. 1.

22. Marriage settlements. All marriage settlements and other marriage contracts, whereby any money or other estate is secured to the wife or husband,

shall be proved or acknowledged and registered in the same manner as deeds for lands, and shall be valid against creditors and purchasers for value only from registration.

Rev., s. 985; Code, ss. 1269, 1270, 1281; 1885, c. 147; R. C., c. 37; ss. 24, 25; 1785, c. 238; 1871-2, c. 193, s. 12.

23. Deeds of gift. All deeds of gift of any estate of any nature shall within two years after the making thereof be proved in due form and registered, or otherwise shall be void, and shall be good against creditors and purchasers for value only from the time of registration.

Rev., s. 986; Code, s. 1252; 1885, c. 147; R. C., c. 37, s. 18; 1789, c. 315, s. 2.

24. Deeds of easements. All persons, firms, or corporations now owning or hereafter acquiring any deed or agreement for rights of way and easements of any character whatsoever shall record such deeds and agreements in the office of the register of deeds of the county where the land affected is situated. Where such deeds and agreements may have been acquired, but no use has been made thereof, the person, firm, or corporation holding such instrument, or any assignment thereof, shall not be required to record them until within ninety days after the beginning of the use of the easements granted thereby.

Nothing in this act shall require the registration of the following classes of instruments or conveyances, to wit:

1. It shall not apply to any deed or instrument executed prior to January first, one thousand nine hundred and ten.

2. It shall not apply to any deed or instrument so defectively executed or witnessed that it cannot by law be admitted to probate or registration, provided that such deed or instrument was executed prior to the ratification of this act.

3. It shall not apply to decrees of a competent court awarding condemnation or confirming reports of commissioners, when such decrees are on record in such courts.

4. It shall not apply to local telephone companies, operating exclusively within the state, or to agreements about alley-ways.

Any person, firm, or corporation knowingly and willfully violating this section shall be guilty of a misdemeanor, and each day's continuance of this violation shall be a separate offense.

This section shall not apply to Alleghany, Harnett, Lee, Surry and Wilkes counties.

1917, c. 148.

25. Powers of attorney. Every power of attorney, wherever made or concerning whatsoever matter, may, on acknowledgment or proof of the same before any competent official, be registered in the county wherein the property or estate which it concerns is situate, if such power of attorney relate to the conveyance thereof; if it does not relate to the conveyance of any estate or property, then in the county in which the attorney resides or the business is to be transacted.

Rev., s. 987; Code, s. 1249; 1899, c. 235, s. 15.

26. Plats and subdivisions. Any person, firm, or corporation, owning land in this state, who may desire to subdivide the same into smaller tracts or lots for the purpose of sale or other purpose, may have a plat or subdivision of such

land recorded in the office of the register of deeds of the county in which such land or any part thereof is situated, upon proof upon oath by the surveyor making such plat or subdivision that the same is in all respects correct and was prepared from an actual survey by him made, giving the date of such survey and the variation of the magnetic needle. Such plats or subdivisions when so proven, and probated as deeds and other conveyances, shall be recorded either by transcribing a correct copy thereof upon or by permanently attaching the original to the records, or in a book to be designated the Book of Plats; and when so recorded shall be duly indexed.

1911, c. 55, s. 2.

27. Certified copies may be registered; used as evidence. A duly certified copy of any deed or writing, required or allowed to be registered, may be registered in any county; and the registry or duly certified copy of any deed or writing when registered in the county where the land is situate may be given in evidence in any court of the state.

Rev., s. 988; Code, s. 1253; 1858-9, c. 18, s. 2.

28. Register to fill in deeds on blank forms with lines. Registers of deeds shall, in registering deeds and other instruments, where printed skeletons or forms are used by the register, fill all spaces left blank in such skeletons or forms by drawing or stamping a line or lines in ink through such blank spaces.

1911, c. 6, s. 1.

29. Errors in registration corrected on petition to clerk. Every person who discovers that there is an error in the registration of his grant, conveyance, bill of sale or other instrument of writing, may prefer a petition to the clerk of the superior court of the county in which said writing is registered, in the same manner as is directed for petitioners to correct errors in grants or patents, and if on hearing the same before said clerk, it appears that errors have been committed, the clerk shall order the register of the county to correct such errors and make the record conformable to the original. The petitioner must notify his grantor and every person claiming title to, or having lands adjoining those mentioned in the petition, thirty days previous to preferring the same. Any person dissatisfied with the judgment may appeal to the superior court as in other cases.

Rev., s. 1008; Code, s. 1266; R. C., c. 37, s. 28; 1790, c. 326, ss. 2, 3, 4.

ART. 3. FORMS OF ACKNOWLEDGMENT, PROBATE AND ORDER OF REGISTRATION

30. Adjudication and order of registration. The form of adjudication and order of registration required by section 13 of this chapter shall be substantially as follows:

North Carolina, _____ County.

— The foregoing (or annexed) certificate of (here give name and official title of the officer signing the certificate passed upon) is adjudged to be correct. Let the instrument and the certificate be registered.

This _____ day of _____, A. D. _____.

(Official seal.)

(Signature of officer.)

But the order of registration may be substantially in the form: "Let the same with this certificate be registered."

Rev., ss. 1001, 1010; 1899, c. 235, s. 7; 1905, c. 344.

31. Acknowledgment by grantor. Where the instrument is acknowledged by the grantor or maker, the form of acknowledgment shall be in substance as follows:

North Carolina, ----- County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the grantor or maker) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the ____ day of ----- (year).
(Official seal.) -----

(Signature of officer.)

Rev., s. 1002.

32. Private examination of wife. When an instrument purports to be signed by a married woman, the form of certificate of her acknowledgment and private examination before any officer authorized to take the same, shall be in substance as follows:

North Carolina, ----- County.

I (here give name of the official and his official title), do hereby certify that (here give name of the married woman who executed the instrument), wife of (here give husband's name), personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument; and the said (here give married woman'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 (when an official seal is required by law) official seal, this ____ (day of month), A. D. ----- (year).
(Official seal.) -----

(Signature of officer.)

Rev., s. 1003; 1899, c. 235, s. 8; 1901, c. 637.

33. Husband's acknowledgment and wife's examination before same officer. Where the instrument is acknowledged by both husband and wife or by other grantor before the same officer the form of acknowledgment shall be in substance as follows:

North Carolina, ----- County.

I (here give name of official and his official title), do hereby certify that (here give name of the grantors whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument, and the said (here give name of the married woman or women), wife (or wives) of (here give name of husband or husbands), 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 (when an official seal is required by law) official seal, this ____ (day of month), A. D. ----- (year).
(Official seal.) -----

(Signature of officer.)

Rev., s. 1004; 1899, c. 235, s. 8; 1901, c. 299.

34. Corporate conveyances. The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate, which would be deemed sufficient in law.

If the instrument is executed by the president or presiding member or trustee and two other members of the corporation, and sealed with the common seal, the following form shall be sufficient:

North Carolina, _____ County.

This ____ day of _____, A. D. _____, personally came before me (here give the name and official title of the officer who signs this certificate), A. B. (here give the name of the subscribing witness), who, being by me duly sworn, says that he knows the common seal of the (here give the name of the corporation), and is also acquainted with C. D., who is the president (or presiding member or trustee), and also with E. F. and G. H., two other members of said corporation; and that he, the said A. B., saw the said president (or presiding member or trustee) and the two said other members sign the said instrument, and saw the said president (or presiding member or trustee) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence. Witness my hand and (when an official seal is required by law) official seal, this ____ day of _____ (year).

(Official seal.)

(Signature of officer.)

If the deed or other instrument is executed by the president, presiding member or trustee of the corporation, and sealed with its common seal, and attested by its secretary or assistant secretary, either of the following forms of proof and certificate thereof shall be deemed sufficient:

North Carolina, _____ County.

This ____ day of _____, A. D. _____, personally came before me (here give name and official title of the officer who signs the certificate) A. B. (here give the name of the attesting secretary or assistant secretary), who, being by me duly sworn, says that he knows the common seal of (here give the name of the corporation), and is acquainted with C. D., who is the president of said corporation, and that he, the said A. B., is the secretary (or assistant secretary) of the said corporation, and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said A. B., secretary or assistant secretary as aforesaid, affixed said seal to said instrument), and that he, the said A. B., signed his name in attestation of the execution of said instrument in the presence of said president of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the ____ day of _____ (year).

(Official seal.)

(Signature of officer.)

North Carolina, _____ County.

This is to certify that on the ____ day of _____, 19____, before me personally came _____ (president, vice-president, secretary or assistant secretary, as the case may be), with whom I am personally acquainted, who, being by me duly sworn, says that _____ is the president (or vice-president), and _____ is the secretary (or assistant secretary) of the _____, the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president (or vice-president), and that said president (or vice-president) and secretary (or assistant secretary) subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation and that the said instrument is the act and deed of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the ____ day of _____ (year).

(Official seal.)

(Signature of officer.)

If the deed or other instrument is executed by the signature of the president, presiding member or trustee of the corporation, and sealed with its common seal and attested by its secretary, the following form of proof and certificate thereof shall be deemed sufficient:

This ____ day of _____, A. D. _____, personally came before me (here give name and official title of the officer who signs the certificate) A. B., who, being by me duly sworn, says that he is president (presiding member or trustee) of the _____ Company, and that the seal affixed to the foregoing (or annexed) instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said A. B. acknowledged the said writing to be the act and deed of said corporation.

(Official seal.)

(Signature of officer.)

If the officer before whom the same is proven be the clerk or deputy clerk of the superior court of the county in which the instrument is offered for registration, he shall add to the foregoing certificate the following: "Let the instrument with the certificate be registered."

Rev., s. 1005; 1899, c. 235, s. 17; 1901, c. 2, s. 110; 1905, c. 114; 1907, c. 927, s. 1.

35. Clerk's certificate upon probate by justice of peace. When the proof or acknowledgment of any instrument is had before a justice of the peace of some other state or territory of the United States, or before a justice of the peace of this state but of a county different from that in which the instrument is offered for registration, the form of certificate as to his official position and signature shall be substantially as follows:

North Carolina, _____ County.

I, A. B. (here give name and official title of a clerk of a court of record), do hereby certify that C. D. (here give the name of the justice of the peace taking the proof, etc.), was at the time of signing the foregoing (or annexed) certificate an acting justice of the peace in and for the county of _____ and state (or territory) of _____, and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this ____ day of _____.

A. D. _____

(Official seal.)

(Signature of officer.)

Rev., s. 1006; 1899, c. 235, s. 8.

36. Clerk's certificate upon probate by nonresident official without seal. When the proof or acknowledgment of any instrument is had before any official of some other state, territory or country and such official has no official seal, then the certificate of such official shall be accompanied by the certificate of a clerk of a court of record of the state, territory or country in which the official taking the proof or acknowledgment resides, of the official position and signature of such official; such certificate of the clerk shall be under his hand and official seal and shall be in substance as follows:

North Carolina, _____ County.

I, A. B. (here give name and official title of the clerk of a court of record as provided herein), do hereby certify that C. D. (here give name of the official taking the proof, etc.) was at the time of signing the foregoing (or annexed) certificate a (here give the official title of the officer taking proof, etc.) in and for the county of _____ and state of _____ (or other political division of the state, territory or country as the case may be), and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this ____ day of _____.

A. D. _____

(Official seal.)

(Signature of Clerk.)

Rev., s. 1007; 1899, c. 235, s. 8.

ART. 4. CURATIVE STATUTES; ACKNOWLEDGMENTS; PROBATES;
REGISTRATION

37. Defective order of registration; "same" for "this instrument." Where instruments were admitted to registration prior to the ratification of chapter three hundred and forty-four of the laws of nineteen hundred and five, and the clerk's order for the registration used the word "same" in place of "this instrument," the said registrations are good and valid.

Rev., s. 1010; 1905, c. 344.

38. Clerk's certificate failing to pass on all prior certificates. When it appears that the clerk of the superior court or other officer having the power to probate deeds, in passing upon deeds or other instruments, and the certificates thereto, having more than one certificate of the same or a prior date, by other officer or officers taking acknowledgment or probating the same, has in his certificate or order mentioned only one or more of the preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed or other instrument to probate, it shall be conclusively presumed that he has passed upon all the certificates of said deed or instrument necessary to the admission of the same to probate, and the certificate of said clerk or other probating officer shall be deemed sufficient and the probate and registration of said deed or instrument is hereby made and declared valid for all intents and purposes.

1917, c. 237, s. 1.

39. Order of registration omitted. In every case where it appears from the records of the office of the register of deeds of any county in this state that the execution of a deed of conveyance was duly acknowledged before the clerk or deputy clerk of the superior court of such county and the certificate of such officer taking the acknowledgment was made complete except that the order of registration was omitted and such deed with the certificate of such officer was duly registered without any order of registration, any and all such probates and registrations are hereby validated and the records of such deeds of conveyance may be read in evidence upon the trial or hearing of any cause with the same force and effect as if the same had been duly ordered registered. This section only applies to deeds so acknowledged and registered prior to January first, one thousand nine hundred and fifteen. Suits pending October 13, 1913, are not affected by this section.

1911, c. 91; 1911, c. 166; 1913, c. 61; Ex. Sess., 1913, c. 73; 1915, c. 179, s. 1.

40. Official deeds omitting seals. All deeds executed prior to January first, nineteen hundred and ten, by any sheriff, commissioner, or other officer authorized to execute a deed, by virtue of his office or appointment, wherein the officer has omitted to affix a seal after his signature, shall be good and valid nevertheless. This section does not apply to actions pending, March 8, 1907.

1907, c. 807; 1917, c. 69, s. 1.

41. Probates omitting official seals. In all cases where the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken or had by or before any commissioner of affidavits and deeds of this state, or clerk or

deputy clerk of a court of record, or notary public of this or any other state, territory, or district, and such deed, mortgage, or other instrument has heretofore been recorded in any county in this state, but such commissioner, clerk, deputy clerk, or notary public has omitted to attach his or her official or notarial seal thereto, or it does not appear of record that such seal was attached to the original deed, mortgage, or other instrument, or such commissioner, clerk, deputy clerk, or notary public has certified the same as under his or her "official seal," "notarial seal," or words of similar import, and no such seal appears of record, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and the registration thereof, are hereby made in all respects valid and binding. The provisions of this section apply to acknowledgments, private examinations, or proofs taken prior to March 11, 1907, before a notary whose term had expired. This section does not apply to litigation pending February 16, 1915.

Rev., s. 1012; 1907, cc. 213, 665, 971; 1911, c. 4; 1915, c. 36.

42. Registrations by register's clerks or deputies. All registration of deeds and other instruments heretofore made by the several registers of deeds of the several counties of the state by their deputies and clerks, and signed in the name of the register of deeds by a deputy or clerk, and when said registration is in all other respects regular, are hereby validated and declared of the same force and effect as if signed in the name of the register and not by a deputy or clerk, this section does not affect pending litigation in any state nor federal court or any suit in substantial renewal of any pending litigation.

1911, c. 184, s. 1.

43. Before officer in wrong capacity or out of jurisdiction. All deeds, conveyances, or other instruments permitted by law to be registered in this state, which have been probated or ordered to be registered previous to January first, one thousand nine hundred and thirteen, before any officer of this or any other state or country, authorized by law to take acknowledgments or to order registration, where the certificate of the probate or order of registration is sufficient in form, but appears to have been certified by the officer in some capacity other than that in which such officer was authorized to act, or appears to have been made out of the county or district authorized by law but within the state, and where the instrument with such certificate has been recorded in the proper county, are hereby declared to have been duly proved, probated and recorded, and to be valid. This section does not affect actions pending March 11, 1913.

Rev., ss. 1017, 1030; 1913, c. 125, s. 1.

44. Before justices of peace, where clerk's certificate or order or registration defective. In every case where it appears from the record of the office of any register of deeds in this state that a justice of the peace in this state has taken and certified the proof of any instrument required by law to be registered, or the privy examination of a married woman thereto, and the deed and certificate have been registered, prior to the first day of January, one thousand nine hundred and seven, in the county where the lands described in the instrument are located, without, or with a defective certificate of the clerk of the official character of the justice, or as to the genuineness of his signature; or without the order of registration of the clerk, or his adjudication of due probate, or with a defective

adjudication thereof, such proofs, certificates and registration are validated; but as against creditors or purchasers from donor, bargainor or lessor, only from February first, nineteen hundred and seven.

1907, c. 83, s. 1.

45. Probates on proof of handwriting of maker refusing to acknowledge.

All registrations of instruments, prior to February fifth, one thousand eight hundred and ninety-seven, permitted or required by law to be registered, which were ordered to registration upon proof of the handwriting of the grantor or maker who refused to acknowledge the execution, are hereby validated.

Rev., s. 1026; 1897, c. 28.

46. Before judges supreme or superior courts or clerks before 1889. Wherever the judges of the supreme or the superior court, or the clerks or deputy clerks of the superior court, or courts of pleas and quarter sessions, mistaking their powers, have essayed previously to the first day of January, one thousand eight hundred and eighty-nine, to take the probate of any instrument required or allowed by law to be registered, and the privy examination of femes covert, whose names are signed to such deeds, and have ordered said deeds to registration, and the same have been registered, all such probates, privy examinations and registrations are validated.

Rev., s. 1009; Code, s. 1260; 1871-2, c. 200, s. 1; 1889, c. 252; 1891, c. 484.

47. Before clerks of inferior courts. All probates and orders of registration made by and taken before any clerk of any inferior, or criminal court, prior to the twentieth day of February, one thousand eight hundred and eighty-five, and valid in form and substance, shall be valid and effectual, and all deeds, mortgages or other instruments requiring registration, registered upon such probate and order of registration, shall be valid. This section shall apply only to the counties of Halifax, Northampton, Hertford, Buncombe, Mecklenburg, Granville, Beaufort, Lenoir, Robeson, Cumberland, Ashe, Martin, Wayne, Greene, Iredell, Bertie, Edgecombe, Duplin and New Hanover. This section applies to probates and private examinations taken before the clerks of the criminal court of Buncombe prior to February second, one thousand eight hundred and ninety-three.

Rev., ss. 1020, 1021; 1885, cc. 105, 108; 1889, c. 143; 1889, c. 463.

48. Before de facto officers of Greene County. The probate of all instruments requiring registration made by Alexander Taylor while acting as and being the de facto clerk of the superior court of Greene County during the month of December, one thousand eight hundred and ninety-eight, and during the year one thousand eight hundred and ninety-nine, are hereby declared valid; and the registration of all instruments requiring registration as made by W. E. Murphrey while acting as the de facto register of deeds of Greene County, during the month of December, one thousand eight hundred and ninety-eight, and during the year one thousand eight hundred and ninety-nine, are declared valid.

Rev., s. 1029; 1901, c. 369.

49. Order of registration by judge, where clerk party. All deeds, mortgages or other instruments which prior to the twentieth day of January, one thousand eight hundred and ninety-three, have been probated by a justice of the

peace, and ordered to registration by a judge of the superior court or justice of the supreme court to which clerks of the superior court are parties are hereby confirmed, and the probates and orders for registration declared to be valid.

Rev., s. 1011; 1893, c. 3, s. 2.

50. Order of registration by interested clerk. The probate and registration of all deeds, mortgages and other instruments requiring registration, prior to the fourth day of March, one thousand nine hundred and eight, to which the clerks of the superior courts are parties or in which they have an interest and which have been registered on the order of such clerks on proof of acknowledgment taken before such clerks, justices of the peace or notaries public be and the same are hereby declared valid. This section shall not affect pending actions.

Rev., s. 1015; 1891, c. 102; 1899, c. 258; 1905, c. 427; 1907, c. 1003, s. 2; Ex. Sess. 1908, c. 105, s. 1.

51. Probates before interested notaries. The proof and acknowledgment of instruments required by law to be registered in the office of the register of deeds of a county, and all privy examinations of a feme covert to such instruments made before any notary public on or since March eleventh, one thousand nine hundred and seven, are hereby declared valid and sufficient, notwithstanding the notary may have been interested as attorney, counsel or otherwise in such instruments.

Ex. Sess. 1908, c. 105, s. 2.

52. Probates before officer of interested corporation. In all cases when acknowledgment of proof of any conveyance has been taken before a clerk of superior court, justice of the peace or notary public, who was at the time a stockholder or officer in any corporation, bank or other institution which was a party to such instrument, the certificates of such clerk, justice of the peace, or notary public, shall be held valid, and are so declared.

1907, c. 1003, s. 1.

53. Probates before stockholders and directors of building and loan associations. No acknowledgment or proof of execution, including privy examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any building and loan association, prior to the first day of January, one thousand nine hundred and thirteen, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination was a stockholder or director in said building and loan association; but such proofs and acknowledgment and the registration thereof, if in all other respects valid, are declared to be valid. Nor shall the registration of any such instrument ordered to be registered, be held invalid by reason of the fact that the clerk, or deputy clerk ordering the registration was a stockholder, or director in any building and loan association, whose indebtedness is secured thereby.

Ex. Sess. 1913, c. 41.

54. Clerk's deeds, where clerk appointed himself to sell. All deeds made by any clerk of the superior court of any county or his deputy, prior to the first day of January, one thousand nine hundred and five, in any proceeding before him in which he has appointed himself or his deputy to make sale of real property or other property are hereby validated.

1911, c. 146, s. 1.

55. Certificate of wife's "previous" examination. All probates of deeds, letters of attorney or other instruments requiring registration to which married women were parties, had and taken prior to the fourteenth day of February, one thousand eight hundred and ninety-three, in which probate it appears that such married women were "previously examined" instead of "privately examined," are hereby validated and confirmed.

Rev., s. 1016; 1893, c. 130.

56. Probates of husband and wife in wrong order. All probates prior to the sixth day of March, one thousand eight hundred and ninety-three, of instruments executed by a husband and wife in which the probate as to the husband has been taken before or subsequent to the privy examination of his wife are validated.

Rev., s. 1017; 1893, c. 293.

57. Probates of husband and wife before different officers. Where, prior to the second day of March, one thousand eight hundred and ninety-five, the probate of a deed or other instrument, executed by husband and wife, has been taken as to the husband and the wife by different officers having the power to take probates of deeds, whether both officers reside in this state, or one in this state and the other in another state, or foreign country, the said probate, in the cases mentioned, shall be valid to all intents and purposes, and all deeds and other instruments required to be registered, and which have been ordered to registration by the proper officer in this state, and upon such probate or probates, and have been registered, shall be taken and considered as duly registered and the word "probate," as used in this section, shall include privy examination of the wife. This section does not affect actions pending January 25, 1907.

Rev., s. 1018; 1895, c. 120; 1907, c. 34, s. 1.

58. Wife free trader; no examination or husband's assent. In all cases prior to the twenty-fourth day of September, nineteen hundred and thirteen, where a married woman who was at the time a free trader by her husband's consent has executed and delivered a deed conveying her land, without her privy examination having been taken, and without the written assent of her husband other than his written assent contained in the instrument making her a free trader, such deed shall be valid and effectual to convey her land as if she had been, at the time of the execution and delivery of such deed, a feme sole. This section does not validate such deed where it would affect the title to land or property of purchasers or their grantees or assignees from such married woman and free trader subsequent to the execution of such deed.

Ex. Sess. 1913, c. 54, s. 1.

59. By president and attested by treasurer under corporate seal. All deeds and conveyances for lands in this state, made by any corporation of this state, which have heretofore been proved or acknowledged before any notary public in any other state, or before any commissioner of deeds and affidavits for the state of North Carolina in any other state, and sealed with the common seal of the corporation and attested by the treasurer, are hereby ratified and declared to be good and valid deeds for all purposes. Where such deeds have been executed for the corporation by its president and attested, sealed and acknowledged or

probated as aforesaid, and the acknowledgment or probate has been duly adjudged sufficient by any deputy clerk and ordered registered, the acknowledgment, probate and registration are ratified, and said deed is declared valid. Such deeds, or certified copies thereof, may be used as evidence of title to the lands therein conveyed in the trial of any suits in any of the courts of this state where the title of said lands shall come in controversy.

Rev., s. 1028; 1905, c. 307.

60. By president and attested by witness before January, 1900. All deeds and conveyances for land in this state, made prior to January first, one thousand nine hundred, by the president of any corporation duly chartered under the laws of this state, and attested by a witness, is hereby declared to be a good and valid deed by such corporation for all purposes, and shall be admitted to probate and registration and shall pass title to the property therein conveyed to the grantee as fully as if said deed were executed according to provisions and forms of law in force in this state at the date of the execution of said deed. This section does not apply to suits now pending.

1900, c. 859, s. 1.

61. Proof of corporate articles before officer authorized to probate. All proofs of articles of agreement for the creation of corporations which were, prior to the eighteenth day of February, one thousand nine hundred and one, made before any officer who was at that time authorized by the law to take proofs and acknowledgments of deeds and mortgages are ratified.

Rev., s. 1027; 1901, c. 170.

62. Before officials of wrong state. In all cases where the acknowledgment, examination and probate of any deed, mortgage, power of attorney or other instrument required or authorized to be registered has been taken before any judge, clerk of a court of record, notary public having a notarial seal, mayor of a city having a seal, or justice of the peace of a state other than the state in which the grantor, maker or subscribing witness resided at the time of the execution, acknowledgment, examination or probate thereof, and such acknowledgment, examination or probate is in other respects according to law, and such instrument has been duly ordered to registration and has been registered, then such acknowledgment, examination, probate and registration are hereby in all respects made valid and binding. This section applies to probates and acknowledgments of deputy clerks of other states when such probate and acknowledgment has been attested by the official seal of said office and adjudged sufficient and in due form of law by the clerk of the court in the state where the instrument is required to be registered. This section does not affect any pending suit.

Rev., s. 1013; 1905, c. 505.

63. Before notaries and clerks in other states. All deeds and conveyances made for lands in this state which have, previous to February fifteenth, one thousand eight hundred and eighty-three, been proved before a notary public or clerk of a court of record, or before a court of record, not including mayor's court, of any other state, where such proof has been duly certified by such notary or clerk under his official seal, or the seal of the court, or in accordance with the act of Congress regulating the certifying of records of the courts of one state to

another state, or under the seal of such courts, and such deed or conveyance, with the certificate, has been registered in the office of register of deeds in the book of records thereof for the county in which such lands were situate at the time of such registration, are declared to be validly registered, and the proof and registration is adjudged valid. All deeds and conveyances so proved, certified and registered, or certified copies of the same, may be used as evidence of title for the lands on the trial of any suit in any courts where title to the lands come into controversy.

Rev., ss. 1022, 1023; Code, ss. 1262, 1263; 1883, c. 129, ss. 1, 2; 1885, c. 11; 1915, c. 213.

64. Acknowledgment by resident taken out of state. When prior to the ninth day of March, one thousand eight hundred and ninety-five, a deed or mortgage executed by a resident of this state has been proved or acknowledged by the maker thereof before a notary public of any other state of the United States, and has been ordered to be registered by the clerk of the superior court of the county in which the land conveyed is situated, and said deed or mortgage has been registered such registration is valid.

Rev., s. 1019; 1895, c. 181.

65. Before deputy clerks of courts of other states. Where any deed or conveyance of lands in this state, executed prior to January first, one thousand nine hundred and thirteen, has been acknowledged by the grantor or the privy examination of any married woman, has been taken before the deputy clerk of a court of record of any other state, and the certificate of acknowledgment and privy examination is otherwise sufficient under the laws of this state, except that it appears to have been signed in the name of the clerk of said court, by the deputy clerk, and the seal of the court has been affixed thereto; and such certificate has been duly approved by the clerk of the superior court of this state, in the county where the lands conveyed are situated and the instrument ordered to be recorded, such certificate and probate and the registration made thereon is validated, and the conveyance, if otherwise sufficient, is declared valid. This section does not apply to any pending litigation.

1913, c. 57, ss. 1, 2.

66. Sister state probates without governor's authentication. In all cases, where any deed concerning lands or any power of attorney for the conveyance of the same, or any other instrument required or allowed to be registered, has been, prior to the twenty-ninth day of January, one thousand nine hundred and one, acknowledged by the grantor therein, or proved and the private examination of any married woman, who was a party thereto, taken according to law, before any judge of a supreme, superior or circuit court, of any other state or territory of the United States, where the parties to such instrument resided, and the certificate of such judge as to such acknowledgment, probate or private examination and also the certificate of the secretary of state of said state or territory instead of the governor thereof (as required by the laws of this state then in force) that the judge, before whom the acknowledgment or probate and private examination were taken, was at the time of taking the same a judge as aforesaid, are attached to said deed, or other instrument, and the said deed or other instrument, having said certificates attached, has been exhibited before the former judge of probate, or the clerk of the superior court of the county in which the property is situated

and such acknowledgment, or probate and private examination have been adjudged by him to be sufficient and said deed or other instrument ordered to be registered and has been registered accordingly, such probate and registration shall be valid. Nothing herein contained affects the rights of third parties, who are purchasers for value, without notice from the grantor in such deed or other instrument.

Rev., s. 1014; 1901, c. 39.

67. Before commissioners of deeds. Any deed or other instrument permitted by law to be registered, and which has prior to the third day of March, one thousand nine hundred and thirteen, been proved or acknowledged before a commissioner of deeds, is validated; and its registration is authorized and validated. Nothing in this section affects pending litigation.

1913, c. 39, s. 2.

68. Foreign probates omitting seals. In all cases where the acknowledgment, privy examination or other proof of the execution of any instrument authorized or required to be registered has been taken by or before any ambassador, minister, consul, vice consul, vice consul general or commercial agent of the United States in any country beyond the limits of the United States, and such instrument has heretofore been recorded in any county in this state, but the official before whom it was taken has omitted to attach his seal of office, or it does not appear of record that such seal was attached to the instrument, or such official has certified the same as under his "official seal" or seal of his office, or words of similar import, and no such seal appears of record, then all such acknowledgments, privy examinations or other proof of such instruments, and the registration thereof, are hereby made in all respects valid, and such instruments, after the ratification hereof, shall be competent to be read in evidence. This section does not apply to pending suits.

1913, c. 69, s. 1.

69. Before consuls general. Any deed or other instrument permitted by law to be registered, and which has prior to the thirteenth day of October, nineteen hundred and thirteen, been proved or acknowledged before a "consul general" is validated; and its registration is authorized and validated. This section does not affect pending litigation.

Ex. Sess. 1913, c. 72, s. 2.

70. Before vice consuls and consuls general. The order for registration by the clerk of the superior court and the registration thereof of all deeds of conveyance and other instruments in any county of this state prior to January first, one thousand nine hundred and five, upon the certificate of any vice consul or vice consul general of the United States residing in a foreign country, certifying in due form under his name and the official seal of the United States consul or United States consulate general of the same place and country where such vice consul or vice consul general resided and acted, that he has taken the proof or acknowledgments of the parties to such instruments, together with the privy examinations of married women parties thereto, are hereby, together with such proof and acknowledgments, privy examinations and certificates validated.

Rev., s. 1024; 1905, c. 451, s. 2.

71. Before masters in chancery. All probates, acknowledgments, and private examinations of deeds and conveyances of land heretofore taken before masters in equity or masters in chancery in any other state are declared to be valid, and all registrations of such deeds or conveyances upon such probates, acknowledgments and private examinations, or any of them, are hereby declared to be sufficient. All such deeds and conveyances and registration thereof, and all certified copies of such registrations, shall be received in evidence or otherwise used in the same manner and with the same force and effect as other deeds and conveyances with probates, acknowledgments, or private examinations made in accordance with provisions of statutes of this state in force at the time and as registrations thereof and certified copies of such registrations. This section does not apply to any suit pending in the courts of this state or of the United States. Nothing in this section contained shall have effect to deprive any one of any legal rights acquired, before its passage, from the grantors in such deeds or conveyances subsequently to their execution, where the deeds or conveyances by which such rights were acquired have been duly acknowledged or probated and registered.

1911, c. 10.

CHAPTER 65

PROHIBITION

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ART. 1. MANUFACTURE AND SALE OF INTOXICATING LIQUORS

1. Unlawful to manufacture or sell. It is unlawful for any person, firm or corporation to manufacture or in any manner make, or sell, or otherwise dispose of, for gain, any spirituous, vinous, fermented or malt liquors or intoxicating bitters within the state of North Carolina: Provided, that wines and ciders may be manufactured or made from grapes, berries or fruits, and wine sold at the place of manufacture only, and only in sealed or crated packages containing not less than two and one-half gallons per package; but no wine, when sold, shall be drunk upon the premises where sold, nor shall the package containing the same be opened on the premises: Provided further, that nothing herein contained shall be construed to prevent the sale of cider, in any quantity, by the manufacturer from fruits grown on his lands within the state of North Carolina; nor to prevent the sale of wine to any minister of religion or other officer of a church to be used for religious or sacramental purposes.

1908, c. 71, ss. 1, 5; 1915, c. 97, s. 8.

2. Intoxicating liquors defined. All liquors or mixtures thereof, by whatever name called, that will produce intoxication shall be construed and held to be intoxicating liquors within the meaning of this article: Provided, that medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia and National Formulary which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution, and which are manufactured and sold as medicines and not as beverages, shall not be held or construed to be or to come within the meaning or provisions of this article.

1908, c. 71, s. 2.

3. Place of delivery place of sale. The place where delivery of any intoxicating liquors is made in the state of North Carolina shall be construed and held to be the place of sale thereof, and any station or other place within the state to which any person shall ship or convey any intoxicating liquors for the purpose of delivering or carrying the same to a purchaser shall be construed to be the place of sale.

Rev., s. 2080; 1908, c. 71, s. 4; 1915, c. 97, s. 8.

4. Unlawful to solicit orders for liquor. It is unlawful for any person, for himself or as agent or traveling salesman for any person, firm or corporation, to solicit orders or proposals of purchase of intoxicating liquors by the jug or bottle or otherwise within the state of North Carolina.

1908, c. 118, s. 1.

4a. Unlawful sale through agents. If any person unlawfully and illegally procures and delivers any spirituous or malt liquors to another, he shall be deemed and held in law to be the agent of the person selling said spirituous and malt liquors, and shall be guilty of a misdemeanor and shall be punished in the discretion of the court. When the solicitor of any judicial district has good reason to believe that liquor has been manufactured or sold contrary to law within any county in his district and believes that any person has knowledge of

the existence and establishment of any illicit distillery, or that any person has sold liquor illegally, then it is lawful for the solicitor to apply to the clerk of the superior court of the county wherein the offense is supposed to have been committed to issue subpoenas for the person so having knowledge of said offenses to appear before the next grand jury drawn for the county, there to testify upon oath what he may know touching the existence, establishment and whereabouts of said distillery or persons who have sold intoxicating liquors contrary to law, and shall give the names and personal description of the keepers thereof, and such evidence, when so obtained, shall be considered and held in law as an information on oath upon which the grand jury shall make presentment, as provided by law, in other cases. If any officer shall fail or refuse to use due diligence in the execution of the provisions of this section, he shall be guilty of laches in office and such failure be cause for removal from office.

Rev., ss. 3526, 3534; 1905, c. 498, ss. 6, 7, 8.

5. Social clubs using liquors. No corporation, club, association, or person, shall directly or indirectly keep or maintain alone, or by association with others or by any other means, or shall in any manner aid, assist, or abet others in keeping or maintaining a clubroom or other place where intoxicating liquors are received, kept, or stored for barter, sale, exchange, distribution, or division among the members of any such club or association or aggregation of persons, or to or among any other persons by any means whatever, or shall act as agents in ordering, procuring, buying, storing, or keeping intoxicating liquors for any such purpose: Provided, this section shall not apply to churches using wines for sacramental purposes, or to hospitals or asylums keeping intoxicating liquors for medical purposes.

1911, c. 133, s. 1; 1915, c. 97, s. 8.

ART. 2. SALE OF NEAR-BEER AND OTHER SPECIFIED DRINKS

6. Unlawful to sell near-beer and other mixed drinks. It is unlawful for any person, firm or corporation to sell or dispose of, for gain, near-beer, beerine, or other spirituous, vinous, or malt liquors, or mixtures of any kind, and under whatsoever name called, that shall contain alcohol, or cocaine, or morphine, or other opium derivative, except as herein provided.

1911, c. 35, s. 1.

7. Must allow package to be taken away. It is unlawful for any person, firm or corporation, who is engaged in the sale of any kind of drinks, to refuse to allow any person to carry away from the place, where such drinks are being sold or offered for sale, any package or quantity of any size of the drink which has been bought and paid for; and if any person, firm or corporation shall refuse to allow the package or quantity of such drink to be carried away from the place of sale, it shall be prima facie evidence of the violation of this article.

1911, c. 35, s. 2.

8. Construction of article. This article shall not be construed to forbid the sale of cocaine or morphine or other opium derivative to any registered pharmacist, or to forbid the sale of cocaine, morphine, or other opium derivative by a licensed pharmacist upon a written prescription by a regularly licensed physi-

cian or surgeon. This article shall not apply to the sale of domestic wines when sold in quantity of not less than two and one-half gallons in sealed packages or crated, on the premises where manufactured, or to the sale of cider in any quantity by the manufacturer from fruits grown on his land within the state of North Carolina, or to the sale of wine to any minister of religion or other officer of a church when such wine is bought for religious or sacramental purposes, or to the sale of flavoring extracts or essences when sold as such, or to the sale of medical preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia and National Formulary which contain no more alcohol than is necessary to extract the medical properties of the drug contained in such preparations, and no more alcohol than is necessary to hold the medical agents in solution, and which are manufactured and sold as medicines and not as beverages, or to the sale of any medical preparation which is manufactured, sold, and used as a medicine and not as a beverage, or to the sale of carbonated drinks that contain no more than one-tenth of one per cent of alcohol, and in which drinks a flavoring agent is used, in the manufacture of which flavoring agent alcohol is used to dissolve and hold in solution or to extract from the crude material the flavoring agent.

1911, c. 35, s. 3; 1915, c. 97, s. 8.

NOTE. For regulation of sale of cocaine, etc., see Medicine and Allied Occupations, ss. 71-76.

ART. 3. MANUFACTURE AND SALE OF MALT

9. Unlawful to make or sell malt. It is unlawful for any person, firm or corporation, or any agent, officer or employee thereof, to manufacture or sell malt, such as is used in the manufacture of spirituous liquors, in the state of North Carolina.

1915, c. 91, s. 1.

10. Transportation companies to keep record. All express companies, railroad companies, or other transportation companies, doing business in this state, are required to keep a separate record of all shipments of such malt, in which shall be entered immediately upon receipt thereof, the name of the person to whom shipped, the amount of each shipment, the date when received and the date when delivered, and by whom delivered and to whom delivered, which record shall be open for the inspection of any officer of the state, county or municipality any time during business hours of the company.

1915, c. 91, s. 2.

ART. 4. SEARCH AND SEIZURE LAW

11. Handling liquor for gain. It is unlawful for any person, firm, corporation, or association, by whatever name called, to engage in the business of selling, exchanging, bartering, giving away for the purpose of direct or indirect gain, or otherwise handling spirituous, vinous or malt liquors in the state of North Carolina.

1913, c. 44, s. 1.

12. Keeping liquor for sale; evidence. It is unlawful for any person, firm, association or corporation, by whatever name called, to have or keep in possession, for the purpose of sale, any spirituous, vinous or malt liquors, and proof

of any one of the following facts shall constitute prima facie evidence of the violation of this section:

1. The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or

2. The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or

3. The possession of more than three gallons of vinous liquors at any one time, whether in one or more places; or

4. The possession of more than five gallons of malt liquors at any one time, whether in one or more places; or

5. The delivery to such person, firm, association or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within any four successive weeks, whether in one or more places; or

6. The possession of intoxicating liquors as samples to obtain orders thereon: Provided, that this section shall not prohibit any person from keeping in his possession wines and ciders in any quantity where such wines and ciders have been manufactured from grapes or fruit grown on the premises of the person in whose possession such wines and ciders may be.

1913, c. 44, s. 2; 1915, c. 97, s. 8.

13. Search and seizure upon complaint and warrant. Upon the filing of complaint, under oath, by a reputable citizen, or information furnished under oath by an officer charged with the execution of the law, before a justice of the peace, recorder, mayor, or other officer authorized by law to issue warrants, charging that any person, firm, corporation or association, by whatever name called, has in possession, at a place or places specified, more than one gallon of spirituous or vinous liquors or more than five gallons of malt liquors for the purpose of sale, a warrant shall be issued commanding the officer to whom it is directed to search the place or places described in such complaint or information, and if more than one gallon of spirituous or vinous liquors or more than five gallons of malt liquors be found in any such place or places, to seize and take into his custody all such intoxicating liquors described in the complaint or information, and seize and take into his custody all glasses, bottles, kegs, pumps, bars or other equipment used in the business of selling intoxicating liquors which may be found at such place or places, and safely keep the same subject to the orders of the court. The complaint or information shall describe the place or places to be searched with sufficient particularity to identify the same, and shall describe the intoxicating liquors or other property alleged to be used in carrying on the business of selling intoxicating liquors as particularly as practicable, and any description, however general, that will enable the officer executing the warrant to identify the property seized shall be deemed sufficient. All spirituous, vinous or malt liquors seized under this section shall be held and upon acquittal of the person so charged shall be returned to such person, and upon conviction, or upon default of appearance, shall be destroyed.

1913, c. 44, s. 3.

14. Unlawful to handle draft connected with receipt for liquor. It is unlawful for any bank incorporated under the laws of this state, or national bank, or any individual, firm or association, to present, collect or in any wise handle

any draft, bill of exchange or order to pay money, to which draft, bill of exchange or order to pay money is attached a bill of lading, or order, or receipt for intoxicating liquors, or which draft is enclosed with, connected with, or in any way related to, directly or indirectly, any bill of lading, order or receipt for intoxicating liquors.

1913, c. 44, s. 4.

15. Transportation companies to keep record. All express companies, railroad companies, or other transportation companies doing business in this state are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which book shall be open for inspection to any officer or citizen of the state, county, or municipality any time during business hours of the company, and such book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this state. Any express company, railroad company, or other transportation company or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor: Provided, upon the filing of a certificate signed by a reputable physician or two reputable citizens that the consignee is unable, by reason of sickness or infirmities of age, to appear in person, then the company is authorized to deliver any package to the agent of the consignee, and the agent shall sign the name of the consignee and his own name, and the certificate shall be filed of record.

1913, c. 44, s. 5.

16. Indictment and proof. In indictments for violating the first section of this article, it shall not be necessary to allege a sale to a particular person, and the violation of law may be proved by circumstantial evidence as well as by direct evidence.

1913, c. 44, s. 6.

ART. 5. DELIVERY AND RECEIVING REGULATED

17. Amount delivered restricted. It is unlawful for any person, firm or corporation, or any agent, officer or employee thereof, to ship, transport, carry or deliver, in any manner or by any means whatsoever, for hire or otherwise, in any one package or at any one time from a point within or without this state to any person, firm or corporation in this state any spirituous or vinous liquors or intoxicating bitters in a quantity greater than one quart, or any malt liquors in a quantity greater than five gallons; and it is unlawful for any spirituous or vinous liquors or intoxicating bitters so shipped, transported, carried or delivered in any one package to be contained in more than one receptacle.

1915, c. 97, s. 1.

18. Amount received restricted. It is unlawful for any person, firm or corporation at any one time, or in any one package to receive at a point within the

state of North Carolina for his use or for the use of any person, firm or corporation, or for any other purpose, any spirituous or vinous liquors or intoxicating bitters in a quantity greater than one quart or any malt liquors in a quantity greater than five gallons.

1915, c. 97, s. 2.

19. Fifteen days between receipts. It is unlawful for any person, firm or corporation, during the space of fifteen consecutive days to receive any spirituous or vinous liquors or intoxicating bitters in a quantity or quantities totaling more than one quart, or any malt liquors in a quantity greater than five gallons: Provided, that the provisions of this and the two preceding sections shall not apply to the receipt by a common carrier for transportation to a point in another state where delivery is not forbidden by the laws of such state.

1915, c. 97, s. 3.

20. Malt liquors defined. The words "malt liquors" as used in this article shall be construed to include only such malt liquors as contain not to exceed five per centum of alcohol and any malt liquors containing more than five per centum of alcohol shall be held to be "spirituous liquors" within the meaning of this article.

1915, c. 97, s. 4.

21. No order in fictitious name or in name of another. It is unlawful for any person to order in a fictitious name or in the name of another any spirituous or vinous or malt liquors or intoxicating bitters or to receive for himself any spirituous or vinous or malt liquors or intoxicating bitters so ordered or shipped.

1915, c. 97, s. 5.

22. To allow use of name forbidden. It is unlawful for any person to allow or in any way permit the use of his name in the ordering for another or the delivery to another of any spirituous or vinous or malt liquors or intoxicating bitters.

1915, c. 97, s. 6.

23. To serve liquors with meals forbidden. It is unlawful for any person, firm or corporation to serve with meals, or otherwise, any spirituous, vinous, fermented or malt liquors or intoxicating bitters where any charge is made for such meal or service.

1915, c. 97, s. 7.

24. Sale by druggists prohibited. All laws authorizing or allowing the sale of spirituous, vinous, or malt liquors or intoxicating bitters by any medical depository, druggist or pharmacist are hereby repealed, and it shall be unlawful for any medical depository, druggist or pharmacist to sell or otherwise dispose of for gain any spirituous, vinous, fermented or malt liquors or intoxicating bitters.

1915, c. 97, s. 8.

25. Application of the provisions of this article. The provisions of this article shall not apply to grain alcohol received by duly licensed physicians, druggists, dental surgeons, college, university and state laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or pre-

serving medicines or medical preparations, or for surgical purposes, when obtained as hereinafter provided: Provided, however, that nothing contained in this article shall prohibit the importation into the state of North Carolina and the delivery and possession in the state for use in industry, manufactures, and arts of any denatured alcohol or other denatured spirits, which are compounded and made in accordance with the formulæ prescribed by acts of congress of the United States and regulations made under authority thereof by the treasury department of the United States and the commissioner of internal revenue thereof, and which are not now subject to internal revenue tax levied by the government of the United States: Provided, further, that this article shall not apply to wines and liquors required and used by hospitals or sanatoria bona fide established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoria for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing.

1915, c. 97, s. 9.

26. Permit to obtain alcohol for certain purposes. Manufacturers of medicine, duly licensed physicians, hospitals, dental surgeons, college, university, and state laboratories and druggists may make written application to the clerk of the superior court of the county for a permit to receive by transportation by a common carrier grain alcohol intended to be used for surgical purposes and in compounding, mixing, or preserving medicines and medical preparations. Such permit shall then be granted by the clerk or his duly appointed deputy, who shall affix the seal of his office thereto, and the permit shall contain the name of the applicant to whom the shipment is to be delivered, the place from which the shipment is to be made, the amount to be shipped, and the date of the granting of the permit. The permit shall be executed in duplicate. The original shall be delivered to the applicant to be sent by him to the shipper, to be pasted on the outside of the package containing alcohol.

1915, c. 97, s. 10.

27. Permit attached to package. A permit, issued as above, when attached to and plainly affixed in a conspicuous place to any package or parcel containing grain alcohol transported within this state shall authorize any common carrier within the state to transport the package or parcel to which such permit is attached or affixed, containing only alcohol mentioned in the permit, and to deliver the same to the person, firm or corporation to which such permit was issued.

1915, c. 97, s. 11.

28. Duplicate permit filed with clerk. The duplicate copy of the permit, together with the application therefor, as hereinbefore provided shall be filed in the office of the clerk of the superior court chronologically and alphabetically with regard to the name of the applicant, and the application and permit shall at all times be subject to the inspection of any citizen or officer of the state, county, or municipality; and for his services the clerk of the superior court shall be entitled to a fee of fifty cents, to be paid by the applicant.

1915, c. 97, s. 12.

29. Construction of article. Nothing in this article shall be construed to impair or repeal any laws prohibiting the sale of intoxicating liquors or any laws making the place of delivery the place of sale, nor shall it be construed to repeal any laws prohibiting the transportation, delivery, or receipt of intoxicating liquors in any county or counties in this state.

1915, c. 97, s. 14.

ART. 6. SEIZURE AND FORFEITURE OF PROPERTY

30. Duty of sheriff to seize distilleries. It is the duty of the sheriff of each county in the state and of the police of each incorporated town or city in the state to search for and seize any distillery or apparatus used for the manufacture of intoxicating liquors in violation of the laws of North Carolina, and to deliver the same, with any materials used for making such liquors found on the premises, to the board of county commissioners, who shall confiscate the same and shall cause the distillery to be cut up and destroyed, in their presence or in the presence of a committee of the board, and who may dispose of the material, including the copper or other material from the destroyed still or apparatus, in such manner as they may deem proper.

Rev., s. 3533; 1905, c. 498, s. 2; 1907, c. 807, s. 1.

31. Duty of officers to destroy liquor and arrest offenders. It is the duty of the sheriff and other officers mentioned in the preceding section to seize and then and there destroy any and all liquors which may be found at any distillery for the manufacture of intoxicating liquors in violation of law, and to arrest and hold for trial all persons found on the premises engaged in distilling or aiding or abetting in the manufacture or sale of intoxicating liquors.

Rev., s. 3533; 1905, c. 498, ss. 4, 5; 1909, c. 807, s. 2.

31a. Officer failing to discharge duty removed from office. If any officer mentioned in the two preceding sections shall fail or refuse to use due diligence in the execution of the provisions of such sections, after being informed of violation thereof, he shall be guilty of laches in office and such failure be cause for removal therefrom.

Rev., s. 3526; 1905, c. 498, s. 8.

32. Fee for seizure. For every distillery seized under this article the sheriff or other police officer shall receive the sum of twenty dollars, which shall be allowed by the commissioners of the county in which the seizure was made: Provided, that the commissioners shall not pay this amount if they are satisfied, after due investigation, that the seizure of the distillery was not bona fide made.

1909, c. 807, s. 3; 1911, c. 45, s. 1.

33. Claimant may sue for fee. The person making the seizure may institute an action before the proper court for the amount claimed under and by virtue of the seizure; then the matter may be inquired into on its merits and judgment rendered accordingly.

1911, c. 45, s. 2.

34. Seizure of vehicle used in conveying liquor. If any person, firm or corporation shall have or keep in possession any spirituous, vinous or malt liquors

in violation of law, the sheriff or other officer of any county, city or town, who shall seize such liquors by any authority provided by law, is hereby authorized and required to seize and take into his custody any vessel, boat, cart, carriage, automobile and all horses and other animals or things used in conveying, concealing or removing such spirituous, vinous or malt liquors, and safely keep the same until the guilt or innocence of the defendant has been determined upon his trial for the violation of any such law making it unlawful to so keep in possession any spirituous, vinous or malt liquors, and upon conviction of a violation of the law, the defendant shall forfeit and lose all right, title and interest in and to the property so seized; and it shall be the duty of the sheriff having in possession the vessel, boat, cart, carriage, automobile and all horses and other animals or things so used in conveying, concealing or removing such spirituous, vinous or malt liquors, to advertise and sell same under the laws governing the sale of personal property under execution.

1915, c. 197, s. 1.

35. Notice to owner to claim property. In the event the sheriff or other officer shall, at the time of seizing spirituous, vinous or malt liquors, fail to capture or arrest the owner or party in possession and so using the vessel, boat, cart, carriage, automobile and all horses and other animals or thing to convey, conceal or remove such spirituous, vinous or malt liquors, he shall advertise for the owner to come forward and institute the proper proceeding to secure possession of the property, and upon the failure of any person to so come forward and surrender himself to the sheriff to the end that the question of whether the property was used as set out in this article, and upon the failure of such person to come forward, if an individual, in person, and make such claim within thirty days after such notice shall have appeared in at least one issue of some newspaper published in the county where such seizure was made, and after such notice and time the sheriff shall advertise such property so seized for sale and sell as provided in the preceding section.

1915, c. 197, s. 2.

36. Proceeds of sale applied to school fund. The proceeds derived from the sale of such property, after paying for the reasonable expense of such sale, shall be paid by the sheriff to the county treasurer, and be applied by the treasurer to the credit of the public school fund of the county.

1915, c. 197, s. 3.

ART. 7. GENERAL PROVISIONS

37. No witness privileged. No person shall be excused from testifying on any prosecution for violating any law against the sale or manufacture of intoxicating liquors, but no discovery made by such person shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned for the offense done or participated in by him.

1913, c. 44, s. 7.

37a. Allowing distilleries to be operated on land. If any person shall knowingly permit or allow any distillery or other apparatus for the making or distilling of spirituous liquors to be set up for operation or to be operated on lands

in his possession or control, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

Rev., s. 3533; 1905, c. 498, s. 2.

38. Federal license as evidence. The possession of a license or the issuance to any person of a license to manufacture, rectify or sell, at wholesale or retail, spirituous or malt liquors by the United States government or any officer thereof in any county, city or town where the manufacture, sale or rectification of spirituous or malt liquors is forbidden by the laws of this state shall be prima facie evidence that the person having such license, or to whom the same was issued, is guilty of doing the act permitted by such license in violation of the laws of this state. On the trial of any person charged with the violation of any such laws, it shall be competent to prove that such a license is in the possession of or has been issued to such person, by the testimony of any witness who has personally examined the records of the government office where the official record of such licenses is kept.

Rev., s. 2060; 1905, c. 339, s. 5; 1907, c. 931.

39. Manufacturing liquor a felony. It is unlawful for any person to distill, manufacture, or in any manner make, or for any person to aid, assist, or abet any such person in distilling, manufacturing, or in any manner making any spirituous or malt liquors or intoxicating bitters within the state of North Carolina; but this shall not be understood as prohibiting the manufacture of wines and cider in the manner and under the conditions which are now or may hereafter be provided by law. Any person violating the provisions of this section shall be guilty of a felony and be imprisoned in the state prison for not less than one year and not exceeding five years, in the discretion of the court.

1917, c. 157.

40. Other violations a misdemeanor. Any person violating any of the provisions of this chapter, except as specified in the preceding section, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

1908, c. 71, s. 8; 1908, c. 118, s. 2; 1911, c. 35, s. 3; 1911, c. 133, s. 1; 1913, c. 44, ss. 1, 4; 1915, c. 91, s. 3; 1915, c. 97, s. 13.

41. Local laws not repealed. Nothing in this chapter shall operate to repeal any of the local or special acts of the general assembly of North Carolina prohibiting the manufacture or sale or other disposition of any of the liquors mentioned in this chapter, or any laws for the enforcement of the same, but all such acts shall continue in full force and effect and in concurrence herewith, and indictment or prosecution may be had either under this chapter or under any special or local act relating to the same subject.

1908, c. 71, s. 7; 1913, c. 44, s. 8.

CHAPTER 66

RAILROADS AND OTHER CARRIERS

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ART. 1. GENERAL PROVISIONS

1. Application to existing railroads: special charters. 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. This chapter shall govern and control, anything in any special act of assembly creating a railroad corporation to the contrary notwithstanding, unless in the act of the general assembly creating the corporation the section or sections of this chapter intended to be repealed shall be specially referred to by number and, as such, specially repealed.

Rev., s. 2566; Code, ss. 701, 1982; 1871-2, c. 138, s. 45.

1a. Roads not to be established unless authorized by law. If any person or corporation, not being expressly authorized thereto, shall make or establish any canal, turnpike, tramroad, railroad or plankroad, with the intent that the same shall be used to transport passengers other than such persons, or the members of such corporation, or to transport any productions, fabrics or manufactures other than their own, the person or corporation so offending, and using the same for any such purpose, shall forfeit and pay fifty dollars for every person and article of produce so transported.

This section shall not apply to any narrow-gauge railroad, tramroad or toll road made and established and maintained solely by the owner of the lands upon which said road may be, the principal business of which is the transportation of logs, lumber and articles for the owners of such railroad or tramroad: Provided, that the corporation commission shall have power to authorize lumber companies,

having logging roads, to transport all kinds of commodities other than their own and passengers and to charge therefor reasonable rates to be approved by said commission.

Rev., s. 2598; Code, s. 1717; R. C., c. 61, s. 37; 1874-5. c. 83; 1901, c. 282; 1907, c. 531; 1911, c. 160; 1915, c. 6.

2. Conductor and certain other employees to wear badges. Every conductor, baggage master, engineer, brakeman or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

Rev., s. 2604; Code, s. 1958; 1871-2, c. 138, s. 30.

3. Actions for penalties to be in name of state. All penalties imposed by this chapter may, unless otherwise provided, be sued for in the name of the state.

Rev., s. 2647; Code, s. 1976; 1885, c. 221.

4. Discrimination in charges misdemeanor. If any common carrier shall directly or indirectly by special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property subject to the provisions of law than it charges, demands or collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions; or shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever; or shall subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such person or corporation shall be upon conviction thereof fined not less than one thousand nor more than five thousand dollars for each and every offense.

Rev., s. 3749; 1899, c. 164, s. 13.

5. Discrimination against connecting lines and violation of certain rules of the corporation commission misdemeanor. If any common carrier shall not afford all reasonable, proper and equal facilities for the interchange of traffic between its respective lines and for the forwarding and delivering of passengers and freights to and from its several lines and those connecting therewith, or shall discriminate in its rates and charges against such connecting lines, or if any connecting line shall not make as close connection as practicable for the convenience of the traveling public, or shall not obey all rules and regulations made by the corporation commission relating to trackage, it shall be punished by a fine of not less than five hundred dollars nor exceeding five thousand dollars for each and every offense.

Rev., s. 3751; 1899, c. 164, s. 21.

6. Discrimination against the Atlantic and North Carolina Railroad misdemeanor; venue. If any railroad in North Carolina shall discriminate against the freights received from the Atlantic and North Carolina Railroad, or shall make rates by which, either directly or indirectly, by rebates or otherwise, freights may be delivered at less rates when received from other points than from points along the Atlantic and North Carolina Railroad in proportion to distance hauled, it shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars for each and every violation thereof. An indictment for the misdemeanor may be found and tried in the courts where the goods were either shipped or delivered, but the court in which the indictment for the offense is first found shall have exclusive jurisdiction.

Rev., s. 3750; 1889, c. 358.

ART. 2. INCORPORATION, OFFICERS AND STOCK OF RAILROADS

7. Articles of association; contents; signature; filing. Any number of persons, not less than six, at least one of whom shall be a citizen and resident of this state, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use; and for that purpose may make and sign articles of association, in which shall be stated the name of the company, the number of years the same is to continue, the places from and to which the road is to be constructed or maintained and operated, the length of such road as near as may be, and the name of each county in this state through or into which it is made or intended to be made, the amount of the capital stock of the company, which shall not be less than five thousand dollars for every mile of road constructed or proposed to be constructed, and the number of shares of which the capital stock shall consist, and the names and places of residence of six directors of the company, at least one of whom shall be a citizen and resident of this state, upon whom legal process may be served, who shall manage its affairs for the first year, or until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in the company. On compliance with the provisions of the succeeding section, such articles of association may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and thereupon the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges granted to railroad corporations by this chapter.

Rev., s. 2548; Code, s. 1932; 1871-2, c. 138; 1905, c. 187; 1907, c. 472, ss. 1, 2.

8. Prerequisites of filing; stock subscription; affidavit of directors; payment of fees. Such articles of association shall not be filed and recorded in the office of the secretary of state until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and five per cent paid thereon in good faith, and in cash, to the directors named in the articles of asso-

ciation; nor until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors named in such articles, that the amount of stock required by this section has been in good faith subscribed and five per cent paid in cash thereon as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association, as aforesaid; nor until said directors shall pay the taxes and fees provided for under the chapter Corporations, Article 11, entitled Fees and Taxes.

Rev., s. 2549; Code, s. 1933; 1871-2, c. 138, s. 2; 1905, c. 168.

9. Copy of articles evidence of incorporation. A copy of any articles of association filed and recorded in pursuance of this article and of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated.

Rev., s. 2550; Code, s. 1934; 1871-2, c. 138, s. 3.

10. Opening of subscription books. When such articles of association and affidavit are filed and recorded in the office of the secretary of state, the directors named in such articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company in such places and after giving such notice as they may deem expedient, and may continue to receive subscriptions until the whole of the capital stock is subscribed.

Rev., s. 2551; Code, s. 1935; 1871-2, c. 138, s. 4.

11. How stock paid for; forfeiture for nonpayment. The directors may require the subscribers to the capital stock of the company to pay the amounts by them respectively subscribed in such manner and in such installments as they may deem proper. If any stockholders shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon forfeited for the use of the company, but they shall not declare it so forfeited until they shall have caused a notice in writing to be served on him personally, or the same to be deposited in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in such notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid at least sixty days previous to the day on which payment is required to be made.

Rev., s. 2554; Code, s. 1938; 1871-2, c. 138, s. 7.

12. Increase of capital stock. In case the capital stock of any railroad company is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purposes aforesaid. Such increase must be sanctioned by a vote in person or by proxy of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose, by a notice in writing to each stockholder, to be served on him person-

ally or by depositing the same, properly folded and directed to him at the post-office nearest his usual place of residence, in the postoffice at least twenty days prior to such meeting. Such notice must state the time and place of the meeting and its object and the amount to which it is proposed to increase the capital stock. The proceedings of such meeting must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all the stockholders of the company aforesaid.

Rev., s. 2555; Code, s. 1939; 1871-2, c. 138, s. 9.

13. Liability for unpaid stock to laborers; notice to stockholder. Each stockholder of any such company shall be individually liable to the creditors of such company to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company until the whole amount of the capital stock so held by him shall have been paid to the company, and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution shall be the amount recoverable with costs against such stockholder. Before such laborer or servant shall charge such stockholders for such thirty days service he shall give them notice in writing within twenty days after the performance of such service that he intends to hold them liable and shall commence such action therefor within thirty days after the return of such execution unsatisfied as above mentioned; and every such stockholder, against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in such corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.

Rev., s. 2556; Code, s. 1940; 1871-2, c. 138, s. 10.

14. Liability of trustees and other fiduciaries holding stock. No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company. The estates in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name, and a person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly.

Rev., s. 2557; Code, s. 1941; 1871-2, c. 138, s. 11.

15. Directors and president. There shall be a board of six directors, one of whom shall be elected president, of every corporation formed under this article to manage its affairs. The directors shall be chosen annually by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue in office until others are elected in their places. In the election of directors each stockholder shall be entitled to one vote personally or by proxy on every share

held by him thirty days previous to any such election, and vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. The inspectors of the first election of directors shall be appointed by the board of directors named in the articles of association. No person shall be a director or president unless he shall be a stockholder owning stock absolutely in his own right and qualified to vote for directors at the election at which he shall be chosen; and at every election of directors the books and papers of such company shall be exhibited to the meeting, if a majority of the stockholders present shall require it.

Rev., s. 2552; Code, s. 1936; 1871-2, c. 138, s. 5.

16. Appointment of officers and agents. The president and directors shall appoint a treasurer and secretary and such other officers and agents as shall be prescribed by the by-laws.

Rev., s. 2553; Code, s. 1937; 1871-2, c. 138, s. 6.

17. Officials to account to successors. The president and directors of the several railroads, and all persons acting under them, are hereby required upon demand to account with the president and directors elected or appointed to succeed them, and shall transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company.

Rev., s. 2648; Code, s. 2001; 1870-1, c. 72, ss. 1, 3.

ART. 3. COUNTY SUBSCRIPTIONS IN AID OF RAILROADS

18. Counties may subscribe stock. The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company when necessary to aid in the construction of any railroad in which the citizens of the county may have an interest.

Rev., s. 2558; Code, s. 1996; 1868-9, c. 171, s. 1.

19. Election on question of county aid. The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and if a majority of the board shall vote for the proposition, this shall be entered of record, which record shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. If a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company: Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

Rev., s. 2559; Code, s. 1997; 1868-9, c. 171, s. 2.

20. Conduct of election. All elections ordered under the preceding section shall be held by the sheriff under the laws and regulations provided for the elec-

tion of members of the general assembly. The votes shall be compared by the boards of county commissioners, who shall make a record of the same.

Rev., s. 2569; Code, s. 1998; 1868-9, c. 171, s. 3.

21. Interest on bonds. In case the county shall subscribe the amount proposed in bonds, the board of commissioners shall have power to fix the rate of interest, not to exceed the rate of six per cent, when the principal on said bonds shall be payable and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mode and manner of paying the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on such bonds.

Rev., s. 2561; Code, s. 1999; 1868-9, c. 171, s. 4.

22. Collection and disposition of taxes authorized. The taxes authorized by this article to be raised for the payment of interest or principal shall be collected by the sheriff in like manner as other state taxes, and be paid into the hands of the county treasurer, to be used by the chairman of the board of county commissioners as directed by this article.

Rev., s. 2562; Code, s. 2000; 1868-9, c. 171, s. 5.

ART. 4. TOWNSHIP SUBSCRIPTIONS IN AID OF RAILROADS

23. Townships may subscribe stock. The board of commissioners of the several counties of the state shall have power to subscribe stock for the use and benefit of any township in their several counties, when necessary to aid in the construction of any railroad, which is now or may be hereafter incorporated under the laws of this state, in which the citizens of such county may have an interest.

1917, c. 64, s. 1.

24. Election on question of township aid. The board of commissioners of any county proposing to take stock, for the use and benefit of any township, as mentioned in the preceding section, shall meet and agree upon the amount to be subscribed for such township, and if a majority of the board shall vote for the proposition, this shall be entered of record, which record shall show the amount proposed to be subscribed, and for what township, to what company, and whether in bonds, money or other property; and thereupon the board shall order an election, to be held upon a notice of not less than thirty days, in each and every township for whose use and benefit such subscription is proposed to be made, for the purpose of voting for or against the proposition to subscribe the amount agreed on by the board of commissioners. If a majority of the qualified voters of the township for whose use and benefit such subscription is proposed to be made shall vote in favor of the proposition, the board of county commissioners through their chairman shall have power to subscribe the amount of stock proposed by them, and submitted to the voters, for the use and benefit of such township, subject to all the rules, regulations, and restrictions of other stockholders in such railroad company: Provided, that the township, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as it may think proper.

1917, c. 64, s. 2.

25. Conduct of election; canvass of votes. All elections ordered under the preceding section shall be held by the sheriff of the county in which such township is located, under such laws and regulations as are now or may hereafter be provided for the election of members of the general assembly. The votes of each township for whose use and benefit subscription under this article is proposed to be made shall be compared and the results of such election determined by the board of commissioners of the county in which such township is located, who shall make a record of the same.

1917, c. 64, s. 3.

26. Bond issue; special tax. In case the township shall authorize, at the election herein provided for, a subscription of the amount proposed in bonds, the board of commissioners shall have power to fix the rate of interest, not to exceed the rate of six per cent when the principal of such bonds shall be payable, and at what place, and shall also fix the time and place for paying interest, and shall also determine the mode and manner of paying the same. The board of commissioners shall, in order to provide for the payment of the bonds and interest thereon authorized to be issued by this article, compute and levy each year at the time of levying the county and state taxes a sufficient tax upon the property in any township authorizing the issuing of bonds under this article to pay the interest on the bonds issued on account of and for the use and benefit of such township, and shall also levy a sufficient tax to create a sinking fund to provide for the payment of such bonds at maturity. Such taxes shall be levied and collected annually and under the same laws and regulations as shall be in force for levying and collecting other county taxes.

1917, c. 64, s. 4.

27. Levy, collection and disposition of tax. The tax authorized by this article to be raised for the payment of interest and principal shall be levied by the board of commissioners of the county in which such township is located, at such times as is now or hereafter may be fixed for levying state and other county taxes, against the taxable property located in such township, in addition to the regular state and county taxes assessable against such property. The tax shall be collected by the sheriff or tax collector or other collecting officer of the county in which such township is located in like manner as state taxes are collected, and shall be paid into the hands of the county treasurer, to be used by the chairman of the board of commissioners as directed by this article.

1917, c. 64, s. 5.

28. Tax to be kept separate. The taxes levied and collected under the provisions of this article shall be kept separate and apart from all other state and county taxes levied and collected in the county in which such township shall be located.

1917, c. 64, s. 6.

ART. 5. POWERS AND LIABILITIES

29. Powers of railroad corporations enumerated. Every railroad corporation shall have power:

1. *To survey and enter on land.* To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and

servants to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto.

2. *To condemn land under eminent domain.* To appropriate land and rights therein by condemnation, as provided in the chapter, Eminent Domain.

3. *To take property by grant.* To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

4. *To purchase and hold property.* To purchase, and hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad and the stations and other accommodations necessary to accomplish the object of its incorporation.

5. *To grade and construct road.* To lay out its road, not exceeding one hundred feet in width, and to construct the same; to take for the purpose of cuttings and embankments, as much more land as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in the chapter, Eminent Domain.

6. *To intersect with highways and waterways.* To construct its road across, along or upon any stream of water, water-course, street, highway, plankroad, turnpike, railroad or canal which the route of its road shall intersect or touch; but the company shall restore the stream or water-course, street, highway, plankroad or turnpike road, thus intersected or touched, to its former state or to such state as not unnecessarily to have impaired its usefulness. Nothing in this chapter contained shall be construed to authorize the erection of any bridge or any other obstruction across, in or over any stream or lake navigated by steam or sail boats, at the place where any bridge or other obstructions may be proposed to be placed, nor to authorize the construction of any railroad not already located in, upon or across any streets in any city without the assent of the corporation of such city.

7. *To intersect with other railroads.* To cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route, and upon the grounds of such other company, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the object of its connections. Every company whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be appointed by the court as is provided in the chapter, Eminent Domain.

8. *To transport persons and property.* To take and convey persons and property on its railroad by the power or force of steam, electricity or animals, or by any mechanical power, and to receive compensation therefor.

9. *To erect stations and other buildings.* To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

10. *To borrow money, issue bonds and execute mortgages.* From time to time to borrow such sums of money as may be necessary for completing and finishing or operating its railroad, and to issue and dispose of its bonds for any

amount so borrowed, and to mortgage its corporate property and franchises and to secure the payment of any debt contracted by the company for the purposes aforesaid, and the directors of the company may confer on any holder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such company at any time under such regulations as the directors may see fit to adopt.

11. To lease rails. To lease iron rails to any person or corporation for such time and upon such terms as may be agreed on by the contracting parties, and upon the termination of the lease by expiration, forfeiture or surrender, to take possession of and remove the rails so leased as if they had never been laid.

12. To establish hotels and eating houses. To purchase, lease, hold, operate or maintain eating-houses, hotels and restaurants for the accommodation of the traveling public along the line of its road.

Rev., ss. 2567, 2575; Code, s. 1957; 1887, c. 341; 1889, c. 518; 1871-2, c. 138, s. 29.

29a. Power to aid in construction of connecting and branch lines. Any railroad or other transportation company shall have the right to aid in the construction of any railroad or branch railroad in this or an adjoining state connected with it directly or indirectly, if the construction of such railroad or branch railroad is authorized by law.

Rev., s. 2567, subsec. 12; 1885, c. 108, s. 1.

30. Power to seize fuel. If any railroad or other transportation company finds it necessary, in order to prevent delays in the transportation of freight or passengers, to take possession of coal, wood or other fuel not its own property and convert it to its own use without an agreement with the owner thereof, it shall notify such owner within three days of such taking that his property has been appropriated, giving the date thereof, and shall, within a period of thirty days, pay for such coal, wood or other fuel at the invoice price at place of shipment, plus twenty-five per cent. Should the transportation company fail to notify the consignee or owner within such three days or pay for the coal, wood or other fuel at the invoice price at place of shipment, plus twenty-five per cent as above provided, within thirty days after converting the same to its own use it shall in addition forfeit to the party aggrieved the sum of twenty-five dollars for the first day of failure to notify such consignee of the appropriation of the fuel, or its failure to pay for the same, and five dollars for each day thereafter in which it shall fail to notify such consignee or pay for the same.

Rev., s. 2617; 1903, c. 590, s. 4; 1907, c. 467.

31. Agreements for through freight and travel. The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight, or breaking the bulk thereof, at different points along the lines, and for this purpose may use the road or roads and the rolling stock of such corporations or companies on such terms as may be agreed upon by them.

Rev., s. 2640; Code, s. 1995, 1866-7., c. 105.

32. Intersection with highways. Whenever the track of a railroad shall cross a highway, turnpike or plankroad, such highway, turnpike or plankroad

may be carried under or over the track as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway, turnpike or plankroad desirable, then such corporation may take such additional lands for the construction of the road, highway, turnpike or plankroad on such new line as may be deemed requisite by the directors. Unless the land so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in the chapter, Eminent Domain, and duly made by such corporation to the owners and persons interested in such land. The same when so taken shall become a part of such intersecting highway, turnpike or plankroad in such manner and by such tenure as the adjacent parts of the same highway, turnpike or plankroad may be held for highway purposes.

Rev., s. 256S; Code, s. 1954; 1871-2, c. 138, s. 26.

33. Obstructing highways; defective crossings; failure to repair after notice misdemeanor. Whenever, in their construction, the works of any railroad corporation shall cross established roads or ways, the corporation shall so construct its works as not to impede the passage or transportation of persons or property along the same. If any railroad corporation shall so construct its crossings with public streets, thoroughfares or highways, or keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or endanger the passage or transportation of persons or property along, over or across the same, the governing body of the county, city, town, township or road district having charge, control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in writing, directing it to place any such crossing in good condition, so that persons may cross and property be safely transported across the same. If the railroad corporation shall fail to put such crossing in a safe condition for the passage of persons and property within thirty days from and after the service of the notice, it shall be guilty of a misdemeanor and shall be punished in the discretion of the court. Each calendar month which shall elapse after the giving of the notice, and before the placing of such crossing in repair shall be a separate offense. This section shall in no wise be construed to abrogate, repeal or otherwise affect any existing law now applicable to railroad corporations with respect to highway and street crossings; but the duty imposed and the remedy given by this section shall be in addition to other duties and remedies now prescribed by law.

Rev., s. 2569; Code, s. 1710; R. C., c. 61, s. 30; 1874-5, c. 83; 1915, c. 250, ss. 1, 2.

34. Service of notice of defective crossings. The notice required by the preceding section may be served upon the agent of the offending railroad located nearest to the defective or dangerous crossing about which the notice is given, or it may be served upon the section master whose section includes such crossing. Such notice may be served by delivering a copy to such agent or section master, or by letter properly stamped, registered and addressed to either of such persons.

1915, c. 250, s. 1.

35. Change in location of highways. In order to prevent the frequent crossing of such road or ways, or in cases where it may be necessary to occupy the

same, the corporation may change the roads and ways so as to avoid such crossing and occupation, and to such points as may be deemed expedient.

Rev., s. 2570; Code, s. 1711; R. C., c. 61, s. 31; 1874-5, c. 83.

36. Damages due to change in location. For any injury done to the lands of persons by taking them under the preceding section, the value thereof shall be assessed in like manner as is provided for assessing damages to real estate for taking lands under the chapter, Eminent Domain.

Rev., s. 2571; Code, s. 1712; R. C., c. 61, s. 32; 1874-5, c. 83.

37. Old road not to be impeded until new road is made. Before any part of an established road or way shall be impeded by any railroad corporation, the new road or way shall be prepared and made equally good with the portion proposed to be discontinued; and then the same shall be deemed a part of the original road or way, and shall be kept up and repaired as before the change.

Rev., s. 2572; Code, s. 1713; R. C., c. 61, s. 33; 1874-5, c. 83.

38. Cattle guards and private crossings; failure to erect and maintain misdemeanor. Every incorporated company owning, operating or constructing, or which shall hereafter own, operate or construct, or any company which shall hereafter be incorporated, and shall own, operate or construct any railroad passing through and over the land of any person now enclosed, or which may hereafter become enclosed, shall, at its own expense, construct and constantly maintain in good and safe condition, good and sufficient cattle guards at the points of entrance upon and exit from such enclosed land, and shall also make and keep in constant repair crossings to any plantation road thereupon. Every railroad corporation which shall fail to erect and constantly maintain the cattle guards and crossings provided for by this section, shall be liable to an action for damages to any party aggrieved, and shall be guilty of a misdemeanor and fined in the discretion of the court.

So far as this section relates to cattle guards the corporation commission is hereby authorized, directed and empowered to adopt such good and sufficient make of cattle guard now upon the market as is best suited for turning stock. When such guard is selected, approved and authorized by the commission any company operating in this state which shall procure, install and maintain and keep in good and safe condition on its line of road such guard so selected by the commission, shall be deemed and held in all suits, actions or proceedings in all the courts of this state to have complied with the conditions of this section in installing a good and sufficient cattle guard: Provided, that any railroad company operating in this state may make application to the commission to adopt for its road any particular brand or make of cattle guard, and if the commission shall approve and authorize the use of such guard, it shall, if kept and maintained in good and sufficient condition at all times by such railroad company, be deemed and held in all actions, suits or proceedings in any court of this state a good and sufficient cattle guard.

Rev., ss. 2601, 3753; Code, s. 1975; 1883, c. 394, ss. 1, 2, 3; 1915, c. 127.

39. Change of route of railroad. The directors of any railroad corporation may by a vote of two-thirds of their whole number at any time alter or change the route, or any part of the route, of their road, if it shall appear to them that

the line can be improved thereby, and they shall have the same right and power to acquire title to any lands required for the purposes of the company in such altered or changed route, as if the road had been located there in the first instance; but no such alteration shall be made in any city or town after the road shall have been constructed, unless the same is sanctioned by a vote of two-thirds of the corporate authorities of such city or town. In case of any alteration made in the route of any railroad after the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. When any route or line is abandoned in the exercise of the power herein granted, full compensation shall be made by the company for all money, labor, bonds or material contributed to the construction of the road-bed or its superstructure by those so interested by their contributions in the abandoned route or line. All the provisions of this chapter relative to the first location and to acquiring title to land shall apply to every such new or altered portion of the route.

Rev., s. 2573; Code, s. 1953; 1871-2, c. 138, s. 25; 1889, c. 391; 1893, c. 396, s. 3.

40. Forfeiture for failure to begin or complete railroad. If any railroad corporation shall not within three years after its articles of association are filed and recorded in the office of the secretary of state, or the passage of its charter, begin the construction of its road and expend thereon ten per cent of the amount of its capital, or shall not finish the road and put it in operation in ten years from the time of filing its articles of association or passage of its charter as aforesaid, its corporate existence and powers shall cease.

Rev., s. 2564; Code, s. 1980; 1871-2, c. 138, s. 43; Ex. Sess. 1908, c. 142.

41. Forfeiture for preferences to shippers. In the event of any contract having been entered into by any railroad company in this state with any person or company, whereby preferences or exclusive rights of transportation, either in priority or in arrangements, are given to such person or company, the attorney-general is hereby instructed to institute proceedings against such railroad company for a forfeiture of its charter.

Rev., s. 2563; Code, s. 1969; 1865-6, resolution ratified December 14, 1865.

NOTE. For actions by the attorney general to forfeit charters of corporations, see chapter, Corporations, Art. 8.

ART. 6. LEASE, SALE AND REORGANIZATION

42. Lessee of noncompeting railroad may acquire its stock; merger of lessor. Any railroad corporation or its successors, being the lessee of the road of any other noncompeting railroad corporation, may take a surrender or transfer of the capital stock of the stockholders or any of them, in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do to be entered on their minutes, become ex officio the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof as provided by law; and

whenever the whole of such capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the corporation whose stock shall have been so surrendered or transferred, shall thereupon vest in and be held and enjoyed by the corporation to whom such surrender or transfer shall have been made and as fully and entirely without charge or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the corporation to whom the surrender or transfer of such stock shall have been made in the corporate name of such corporation. But the property, rights, franchises and profits of every corporation so surrendered, transferred or leased, shall hereafter always be liable to taxation, and shall never be exempt therefrom. The rights of any stockholder not so surrendering or transferring his stock, shall not be in any way affected thereby, nor shall existing liabilities or the rights of creditors of the corporation where stock shall have been so surrendered or transferred be in any way affected or impaired by this section.

Rev., s. 2574; Code, s. 1994; 1871-2, c. 138, s. 57; Ex. Sess. 1908, c. 119, s. 2.

43. Lease or merger of competing carrier declared a misdemeanor. No railroad or other transportation company or its officers, now or hereafter doing business in this state, shall purchase, lease, absorb, take over, buy stock in, merge with or in any way secure an interest in a competing line of railroad or other transportation company, nor shall any railroad or other transportation company or its officers enter into any contract, agreement or understanding with a competing line of railroad or other transportation company calculated to defeat or which may defeat or lessen competition in this state. All such contracts, purchases or sales shall be void. Any violation of this section shall make the corporation or person so offending guilty of a misdemeanor, and on conviction the offender shall be fined in the discretion of the court. This section shall not prevent railroads independently owned and operated in this state, and not exceeding one hundred miles in length, from selling their roads and property.

Ex. Sess. 1908, c. 119, ss. 2, 3.

44. Acquisition of interest in or lease of noncompeting branch or connecting lines. Any railroad or other transportation company may acquire and hold or guarantee, or endorse the bonds or stocks of, or may lease any railroad or branch railroad, or other transportation line in this or adjoining state connecting with it directly or indirectly. But no railroad or other transportation company or its officers shall acquire, hold or guarantee the bonds or stock of, or lease or be leased to, or purchase or buy or consolidate with or be merged into, any parallel or competing railroad or other transportation company, nor shall any railroad or other transportation company or its officers sell any of its stock or bonds to any holding or voting company or its officers, whereby such consolidation or merger may be effected, and any such purchase, contract, merger or sale shall be void. This provision shall not prevent railroads independently owned and operated in this state, and not exceeding one hundred miles in length, from selling their roads and property.

Rev., s. 2567, subsec. 13; 1885, c. 108, s. 2; 1908, c. 119, ss. 1, 3.

45. Purchaser at mortgage or execution sale of railroads may incorporate. Whenever the purchaser of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may hereafter be sold, by virtue of any mortgage executed by such corporation or execution issued upon any judgment or decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser may associate with him any number of persons, and make and acknowledge and file articles of association as prescribed in this chapter. Such purchaser and his associates shall thereupon be a new corporation with all the powers, privileges and franchises and subject to all of the provisions of this chapter.

Rev., s. 2552; Code, s. 1936; 1871-2, c. 138, s. 5.

46. On dissolution or sale of railroads purchaser becomes a corporation. When any railroad corporation shall be dissolved, or its property sold and conveyed under any execution, deed of trust, mortgage or other conveyance, the owner or purchaser shall constitute a new corporation upon compliance with law.

Rev., s. 2565; Code, s. 2005.

NOTE. For reorganization upon judicial or execution sale, see Corporations, Art. 12.

ART. 7. LIABILITY OF RAILROADS FOR INJURIES TO EMPLOYEES

47. Common carrier defined. The term "common carrier." as used in this article shall include the receiver or receivers, or other persons or corporations charged with the duty of the management of the business of a common carrier.

1913, c. 6, s. 5.

48. Fellow-servant rule abrogated; defective machinery. Any servant or employee of any railroad company operating in this state who shall suffer injury to his person, or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void.

Rev., s. 2646; 1897 (Pr.), c. 56; 1915, c. 256.

49. Injuries through fellow-servants or defective appliances. Every common carrier by railroad shall be liable in damages to any person suffering injury while he is employed by such carrier, or in the case of the death of such employee, to his or her personal representative, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engine, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment.

1913, c. 6, s. 1.

50. Contributory negligence no bar, but mitigates damages. In all actions hereafter brought against any common carrier by railroad to recover damages

for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

1913, c. 6, s. 2.

51. Assumption of risk as defense. In any action brought against any common carrier under or by virtue of any of the provisions of this article to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee, or the death or injury was caused by negligence.

1913, c. 6, s. 3.

52. Contracts and rules exempting from liability void; set off. Any contract, rule, regulation or device whatsoever, the purpose and intent of which shall be to enable any common carrier by railroad to exempt itself from any liability created by this article, shall to that extent be void: Provided, that in any action brought against such common carrier, under and by virtue of any of the provisions of this article, such common carrier may set off therein any sum it has contributed or paid to any insurance or relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which such action was brought.

1913, c. 6, s. 4.

ART. 8. CONSTRUCTION AND OPERATION OF RAILROADS

53. Map of route to be served with summons for condemnation. Whenever it shall become necessary to condemn any land for the purposes of a railroad, at the time that the summons for such condemnation is served, there shall also be served by the railroad company a map showing how the line of the road is located on the land sought to be condemned, and a profile showing the depth of the cuts and the height of the embankments on the land so sought to be condemned, and at what points on such land such cuts and embankments are located. This section shall not apply to street railways.

Rev., s. 2599; Code, s. 1952; 1893, c. 396, s. 2; 1901, c. 6, s. 3; 1871-2, c. 138, s. 24.

54. Map of railroad to be made and filed. Every railroad corporation shall, within a reasonable time after its road shall be constructed, cause to be made a map and profile thereof, and of the land taken or obtained for the use thereof, and shall file the same in the office of the corporation commission. Every such map shall be drawn on a scale and on paper to be designated by the corporation commission, and shall be certified and signed by the president or engineer of such corporation.

Rev., s. 2600; Code, s. 1977; 1871-2, c. 138, s. 41.

55. Joint construction by railroads having same location. 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.

Rev., s. 2602; Code, s. 1983; 1871-2, c. 138, s. 46.

56. Construction of part of line in another state. 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. The sections of such 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.

Rev., s. 2603; Code, s. 1984; 1871-2, c. 138, s. 47.

57. Carriage must be according to public schedule. Every railroad corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises.

Rev., s. 2611; Code, s. 1963; 1871-2, c. 138, s. 35.

58. Arrangement of cars in passenger trains. In forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear of the passenger cars, except in case of accident, or when the cars are provided with automatic couplers or brakes. If any officer or agent of a railroad company, in forming a passenger train, shall direct or knowingly suffer an arrangement of the cars different from the one herein provided for, he shall be guilty of a misdemeanor: Provided, the criminal liability hereby imposed shall not apply to officers and agents of the Wilmington Sea-Coast Railroad Company.

Rev., ss. 2612, 3747; Code, s. 1971; 1871-2, c. 138; 1893, c. 331; 1895, c. 212.

59. Unauthorized manufacture or sale of switch-lock keys misdemeanor. It shall be unlawful for any person to make, manufacture, sell or give away to any other person any duplicate key to any lock used by any railroad company in this state on its switches or switch tracks, except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch-lock keys

to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court.

1909, c. 795.

60. Willful injury to railroad property misdemeanor. If any person shall willfully do or cause to be done any act or acts whatever whereby any building, construction or work of any railroad corporation, or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor.

Rev., s. 3756; Code, s. 1974; 1871-2, c. 138, s. 39.

61. Headlights on locomotives on main lines. Every company, corporation, lessee, manager or receiver owning or operating a railroad in this state is hereby required to equip and maintain and use upon every locomotive in operation in railroad service on main lines in this state an electric or power headlight of at least one thousand five hundred candlepower, measured without the aid of a reflector. This section shall not apply to locomotive engines regularly used in switching cars or trains, to locomotive engines used exclusively between sunup and sundown and to locomotive engines going to and returning from repair shops when ordered in for repairs; neither shall this section apply to independently owned and operated railroad companies in this state whose mileage of road in this state is one hundred and twenty-five miles or less, nor to railroad companies having only lines extending into this state, no one of which is one hundred miles in length in this state. The corporation commission may relieve from the operation of this section such locomotives and roads, or parts or sections or branches of roads, upon which the said corporation commission may deem electric or power headlights not advisable. Should an engine start on a trip with the headlight in good working condition, and from some unavoidable cause such headlight becomes disabled and cannot be repaired on the line of the road on which such run is being made, there shall be nothing in this section to prevent such engine from continuing on its trip, and the railroad company shall not be liable for prosecution on account of such failure to repair. Any company, corporation, lessee, manager or receiver violating the provisions of this section shall be guilty of a misdemeanor.

1909, c. 446.

62. Operation of trains on Sunday misdemeanor; exceptions. No railroad company shall permit the loading or unloading of any freight car on Sunday; nor shall it permit any car, train of cars or locomotive to be run on Sunday on any railroad, save in case of accident, except such as may be run for the purpose of transporting the United States mails, passengers with their baggage and ordinary express freight in express cars exclusively, and except such as may be run for the purpose of transporting fruits, vegetables, live stock and perishable freights. Where there are not sufficient cars of livestock or other perishable freights to make a complete train, or section of a train, the company may add other cars to complete the same. Solid trains, made up of through freight cars, reaching on Sunday any point upon any railroad in North Carolina and destined for some point or points beyond the limits of the state of North Carolina, may be

continued as a solid through freight train along the line of such railroad through the state of North Carolina, without stopping the train for other purposes than to take on fuel and receive necessary running orders. The word Sunday in this section shall be construed to embrace only that portion of the day between sunrise and sunset. Trains in transitu, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock a.m. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops. Any railroad company violating the provisions of this section shall be guilty of a misdemeanor in each county in which such car, train of cars, or locomotive shall run, or in which any such freight car shall be loaded or unloaded, and upon conviction shall be fined not less than five hundred dollars for each offense.

Rev., ss. 2613, 3844; Code, s. 1973; 1879, cc. 97, 203; 1885, c. 92; 1897, c. 126; 1901, c. 444; 1909, c. 285.

63. Operation of fast mail trains. The corporation commission is hereby empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall stop only at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train such railroad company shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday.

Rev., s. 2614; 1893, c. 97.

64. Negligence presumed from killing livestock. When any cattle or other livestock shall be killed or injured by the engine or cars running upon any railroad, it shall be prima facie evidence of negligence on the part of the railroad company in any action for damages against such company: Provided, that no person shall be allowed the benefit of this section unless he shall bring his action within six months after his cause of action shall have accrued.

Rev., s. 2645; Code, s. 2326; 1856-7, c. 7.

ART. 9. RAILROAD POLICE

65. Railway conductors and station agents declared special police. All passenger conductors of railroad trains and station or depot agents are hereby declared to be special police of the state of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall have such power only on board of their respective trains or their railroad right of way, and the agents at their respective stations; and such conductors and agents may cause any person so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability now existing by statute or under the common law for the act or acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred.

1907, c. 470, ss. 3, 4.

NOTE. Conductors and employees on trains must wear badges, see this chapter, s. 2.

66. Governor may appoint and commission railroad police. Any corporation operating a railroad on which steam or electricity is used as the motive power or any electric or waterpower company or construction company may apply to the governor to commission such persons as the corporation or company may designate to act as policemen for it. The governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen.

Rev., ss. 2605, 2606; Code, ss. 1988, 1989; 1871-2, c. 138, ss. 51, 52; 1907, c. 128, s. 1.

67. Oath, bond, and powers of railroad police. Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath. Such oath, with a copy of the commission, shall be filed with the corporation commission and a certificate thereof by its clerk shall be filed with the clerk of each county through or into which the railroad for which such policeman is appointed may run or in which the company may be engaged in work, and in which it is intended he shall act, and such policeman shall severally possess within the limits of the county all the powers of policemen in the several towns, cities and villages in which they shall be so authorized to act as aforesaid: Provided, that every policeman appointed under this and the preceding section shall, before entering upon the duties of his office, enter into bond in the sum of five hundred dollars, payable to the state of North Carolina, conditioned for the faithful performance of the duties of his office, with good and sufficient surety, to be passed upon and accepted by and filed with the corporation commission.

Rev., s. 2607; Code, s. 1990; 1871-2, c. 138, s. 53; 1907, c. 128, s. 2; 1907, c. 462.

68. Railroad police to wear badges. Such railroad police shall, when on duty, severally wear a metallic shield with the words "Railway Police" and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives.

Rev., s. 2608; Code, s. 1991; 1871-2, c. 138, s. 54.

69. Compensation of railroad police. The compensation of such police shall be paid by the companies for which the policemen are respectively appointed as may be agreed on between them.

Rev., s. 2609; Code, s. 1992; 1871-2, c. 138, s. 55.

70. Police powers cease on company's filing notice. Whenever any company shall no longer require the services of any policeman so appointed as aforesaid, it may file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of such officer shall cease and be determined.

Rev., s. 2610; Code, s. 1993; 1871-2, c. 138, s. 56.

ART. 10. CARRIAGE OF PASSENGERS

71. Railroad passenger rates established. No railroad company doing business as a common carrier of passengers in the state of North Carolina shall, except as herein provided, charge, demand or receive for transporting any passenger and

his or her baggage, not exceeding in weight two hundred pounds from any station on its railroad in North Carolina, to any other station on its road in North Carolina, a rate in excess of two and one-half cents per mile; and for transporting children under twelve years and over five years old, one-half of the rate above prescribed. For transporting children under five years old, accompanied by any person paying fare, no charge whatever shall be made. Where the amount of the ticket at the prescribed rate would amount to any figure between two multiples of five, the price of the ticket shall be the multiple of five which is nearest the price of the ticket at the rate above mentioned; or, in the event that the amount is equidistant between the multiples of five, the price charged for the ticket shall be on the basis of the higher of those two multiples of five. No charge less than ten cents shall be required. Independently owned and operated railroad companies in North Carolina, whose mileage of road in the state is one hundred miles or less, may charge a rate not exceeding three cents per mile; and independently owned and operated railroad companies in North Carolina, whose mileage of road in the state is ten miles or less, may charge the same rate which is now in existence on such roads. This provision shall not extend to branch lines of railroad companies controlling over one hundred miles of road, whether chartered in or out of the state. Newly constructed railroads, or the portion of railroad which may be newly constructed, shall be exempt from the operation of this section for two years after completion, to the extent that they may charge a rate in no case to exceed three cents per mile. A charge of fifteen cents may be added to the fare of any passenger when the same is paid on the train, if the ticket might have been procured within a reasonable time before the departure of the train.

EX. Sess. 1908, c. 144, s. 1.

72. Rates on leased or controlled lines. In the case that any railroad company operating as a common carrier of passengers in the state of North Carolina is owned, controlled or operated by lease or other agreement by any other railroad company doing business in the state, the rate for carrying passengers thereon shall be determined for such railroad company by the rate prescribed by the preceding section for the railroad company which owns, controls or operates the same.

EX. Sess. 1908, c. 144, s. 2.

73. Violations of passenger rates misdemeanor. Any railroad company violating any of the provisions of the two preceding sections, or counseling, ordering or directing any employee, agent or servant to violate any of such provisions, by charging, demanding or receiving any rate greater than that fixed by such section, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five hundred dollars nor more than five thousand dollars; and any agent, servant or employee of any railroad company who shall violate either of the two preceding sections shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, in the discretion of the court.

EX. Sess. 1908, c. 144, s. 3.

NOTE. See Art. 11, sec. 101, of this chapter for a similar provision relative to excessive freight rates.

74. Accepting or giving free transportation illegally misdemeanor. Any persons, except those permitted by law, who accept free transportation shall be

guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, in the discretion of the court; and any railroad, or its employees or agents, giving free transportation of any kind whatsoever, except that permitted by law, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five hundred dollars nor more than two thousand dollars for each offense.

Ex. Sess. 1908, c. 144, s. 4.

75. Powers of corporation commission over rates limited. The corporation commission shall have no power to change, alter, modify or in any way affect the enforcement or operation of any of the provisions of the preceding sections of this article, except as the same shall be therein specifically authorized, or the enforcement of any penalties for violating the provisions thereof.

Ex. Sess. 1908, c. 144, s. 7.

76. Separate accommodations for different races. All railroad and steamboat companies engaged as common carriers in the transportation of passengers for hire, other than street railways, shall provide separate but equal accommodations for the white and colored races at passenger stations or waiting rooms, and also on all trains and steamboats carrying passengers. Such accommodations may be furnished by railroad companies either by separate passenger cars or by compartments in passenger cars, which shall be provided by the railroads under the supervision and direction of the corporation commission: Provided, that this shall not apply to relief trains in cases of accident, to Pullman or sleeping cars, or through express trains that do not stop at all stations and are not used ordinarily for traveling from station to station, to negro servants in attendance on their employers, to officers or guards transporting prisoners, nor to prisoners so transported.

Rev., s. 2619; 1899, c. 384; 1901, c. 213.

77. Certain carriers may be exempted from requirement. The corporation commission is hereby authorized to exempt from the provisions of the preceding section steamboats, branch lines and narrow-gauge railroads and mixed trains carrying both freight and passengers, if in its judgment the enforcement of the same be unnecessary to secure the comfort of passengers by reason of the light volume of passenger traffic, or the small number of colored passenger travelers on such steamboats, narrow-gauge railroads, branch lines or mixed trains.

Rev., s. 2620; 1899, c. 384, s. 2; 1901, c. 213.

78. Use of same coach in emergencies. When any coach or compartment car for either race shall be completely filled at a station where no extra coach or car can be had, and the increased number of passengers could not be foreseen, the conductor in charge of such train may assign and set apart a portion of a car or compartment assigned for passengers of one race to passengers of the other race.

Rev., s. 2621; 1899, c. 384, s. 3.

79. Penalty for failing to provide separate coaches. Any railroad or steamboat company failing to comply in good faith with the provisions of the three preceding sections shall be liable to a penalty of one hundred dollars per day, to be recovered in an action brought against such company by any passenger on any train or boat of any railroad or steamboat company which is required by

this chapter to furnish separate accommodations to the races, who has been furnished accommodations on such railroad train or steamboat only in a car or compartment with a person of a different race in violation of law.

Rev., s. 2622; 1899, c. 384, s. 5.

80. Facilities for exchange of mileage required. All railroad companies of one hundred miles or more in length doing business in whole or in part in the state of North Carolina are hereby required to provide and keep at all depots in cities or towns of two thousand and over in population, as fixed by the United States census of the year one thousand nine hundred and ten, two windows opening in the waiting-room for passengers of the race using the greatest amount of mileage or coupon books, for the sale or exchange of fares on all passenger trains in North Carolina. One of such windows shall be used for the sale of cash fares exclusively, and the other for the sale and exchange of mileage or coupon books. Each window is to be attended by an agent whose duty it shall be to wait upon the traveling public, during the hours now prescribed, for the sale of cash-fare tickets and the sale and exchange of mileage or coupon books. Over each such window shall be kept a sign, painted in plain letters, "Mileage Exchange" and "Cash Fares," respectively: Provided, that the provisions of this section shall not apply to any railroad company in North Carolina, as aforesaid, selling mileage or coupon books at a rate of not more than two cents per mile and pulling or taking the same on the train: Provided further, that all the provisions of this section shall apply to the following railroad junctions in this state, irrespective of population, namely: Dunn, Selma, Maxton, Hamlet, Norlina, and Sanford.

1911, c. 41, s. 1.

81. Application of requirement for exchange of mileage. The corporation commission shall upon complaint, and in its discretion, apply the provisions of the preceding section to railroad junctions not named in the second proviso of that section and to depots in cities and towns of less than two thousand population. The commission may in like manner exempt, in its discretion, depots in cities and towns of over two thousand population from the operation of that section. When the requirements of the preceding section are so applied by the commission, then all of the provisions of this article having to do with the sale and use of mileage-books shall extend to and include all railroad companies thereby affected, and such companies shall be subject to all of the penalties prescribed for a failure to comply with such provisions.

1911, c. 41, s. 2.

82. Penalty for failure to provide mileage-exchange facilities. Any railroad company failing to comply in good faith with the provisions of the two preceding sections shall be liable to a penalty of fifty dollars per day for each city or town where such failure occurs that is covered by the provisions of those sections, or taken in by the corporation commission as therein provided, to be recovered by any passenger demanding cash-fare or mileage tickets at any depot in any such city or town in an action brought by such passenger.

1911, c. 41, s. 3.

83. Right to check baggage on mileage-books. Any legal holder of a mileage-book shall be privileged to have his baggage checked before the exchange of

mileage for a ticket entitling such holder to transportation upon the surrender of the baggage slip forming a part of such mileage-book for the requisite number of miles and the payment of all proper excess-baggage charges.

1911, c. 41, s. 4.

84. Corporation commission may regulate the checking of baggage on mileage tickets. The corporation commission is hereby empowered and directed to take into consideration the provisions of the preceding section and promulgate such rules and regulations, with regard to checking baggage on mileage tickets, as, in the opinion of the commission, shall be necessary and proper to safeguard and protect both the convenience of passengers and the rights of railroad companies; and such rules and regulations of the commission, when so promulgated, shall have the same force and effect as if they were a part of such section.

1911, c. 124, s. 1.

85. Unused tickets to be redeemed. When any round-trip ticket is sold by a railroad or other transportation company, it shall be the duty of such company to redeem the unused portion of said ticket by allowing to the holder thereof the difference between the cost thereof and the price of a one-way ticket between the stations for which such round-trip ticket was sold. Whenever any one-way or regular ticket is sold by a railroad or other transportation company, and not used by the purchaser, it shall be the duty of the company selling the ticket to redeem it at the price paid for it. All railroad and other transportation companies shall redeem in money all mileage tickets known as five-hundred, thousand and two-thousand mile tickets, sold by them, if presented within a year from the date of the sale, when as much as fifty per centum of such ticket has been used by the purchaser, by paying the same price per mile paid for it, or shall allow the original holder to ride it out.

Rev., s. 2627; 1891, c. 290; 1893, c. 249; 1895, c. 83, ss. 2, 3; 1897, c. 418.

86. Ticket may be refused intoxicated person; prohibited entry misdemeanor. The ticket agent of any railroad, steamboat or other transportation company shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The conductor, captain or other person in charge of any railroad car, steamboat or other conveyance for the use of the traveling public, shall at all times have power to prevent any intoxicated person from entering such car, boat or other conveyance. If any intoxicated person, after being forbidden by the conductor, captain or other person having charge of any such railroad train, steamboat or other conveyance for the use of the traveling public, shall enter such train, boat or other conveyance, he shall be guilty of a misdemeanor.

Rev., ss. 2625, 2626, 3757; 1885, c. 358, ss. 1, 2, 3.

87. Entering cars after being forbidden misdemeanor. No person shall enter any railroad passenger car, baggage car, mail car or caboose car, or go upon the platform of such cars, after being forbidden so to do by the conductor, his assistants, the baggage-master or other person in charge of such cars, unless the person enter such cars or go upon such platforms as a passenger or in some official capacity authorized by law, or on business with a passenger or some official or employee of the railroad, or for some other like purpose. Any person

violating this section shall be guilty of a misdemeanor and shall be fined not exceeding ten dollars.

Rev., s. 3752; Code, s. 1979; 1883, c. 351.

88. Riding in first-class cabin with second-class ticket misdemeanor. If any passenger purchasing or holding a second-class ticket, after being requested or directed by any captain or other officer in charge of any steamboat in this state, riding in any first-class cabin, refuses to pay the difference between a first-class and a second-class fare or rate, or refuses to go into the second-class cabin, when there shall be a comfortable second-class cabin on such steamboat, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Any justice of the peace in the county where such offense is committed shall have jurisdiction of the offense, upon sworn complaint of any officer of such steamboat company.

Rev., s. 3761; 1903, c. 795.

89. Passenger refusing to pay fare and violating rules may be ejected. If any passenger shall refuse to pay his fare, or violate the rules of a railroad corporation, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling-house, as the conductor shall elect, on stopping the train.

Rev., s. 2629; Code, s. 1962; 1871-2, c. 138, s. 34.

90. Beating way on trains misdemeanor; venue. If any person, other than a railroad employee in the discharge of his duty, without authority from the conductor of the train or by permission of the engineer and with the intention of being transported free and without paying the usual fare for such transportation, rides or attempts to ride on top of any car, coach, engine or tender, on any railroad in this state, or on the draw-heads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car or mail car on any train, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding fifty dollars, or imprisoned not more than thirty days. Any person charged with a violation of this section may be tried in any county in this state through which such train may pass carrying such person, or in any county in which such violation may have occurred or may be discovered.

Rev., s. 3748; 1899, c. 625; 1905, c. 32.

91. Injury while on platform or in other prohibited places. In case any passenger on any railroad shall be injured while on the platform of a car or on any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside its passenger cars then in the train, such company shall not be liable for the injury: Provided, such company at the time furnish room inside its passenger cars sufficient for the proper accommodation of its passengers.

Rev., s. 2628; Code, s. 1978; 1871-2, c. 138, s. 42.

92. Checking baggage; liability for loss. A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of any

railroad corporation, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the conductor in charge of the train, and on producing the check, if his baggage shall not be delivered to him, he may, by an action, recover the value of such trunk or baggage.

Rev., s. 2623; Code, s. 1970; 1871-2, c. 138, s. 36.

93. Cars and toilets to be kept clean. Every person or railroad company, whether incorporated or not, engaged in the regular business of carrying passengers on his or its railroad cars in this state, shall have such cars cleaned, brushed, dusted and the windows washed, if needed, at least once each day, and shall in each car, in which male and female passengers are carried, have therein a toilet-room for each sex, and have the same kept clean and decent. Any person or corporation engaged in the business aforesaid, who shall willfully or negligently fail or refuse to give orders to his or its agent in charge of such cars to comply with the requirements of this section, shall forfeit twenty dollars for each day of such failure or refusal, to be recovered by any person suing therefor.

1907, c. 474, ss. 1, 2.

94. Evidence of failure to order cleaning of cars; violation of orders misdemeanor. The willful or negligent refusal or the failure on the part of the conductor or manager of any passenger-car named in the preceding section, to comply with such section, shall be received as evidence of failure or refusal of such person or railroad company to give the orders therein provided for. Moreover, such conductor or manager shall be guilty of a misdemeanor if he fail or refuse to carry out such orders of the persons or company mentioned in the preceding section.

1907, c. 474, s. 3.

ART. 11. CARRIAGE OF FREIGHT

95. Freight rates to be posted. It shall be the duty of every railroad or other transportation company to keep posted in a conspicuous place in its depots or other places where freight is received for shipment a list of its charges for carrying freight, specifying name of place, class of freight and charge for carrying the same. Such charges shall not be increased without giving fifteen days notice. Any company represented by an agent who refuses to comply with this section shall be liable to a penalty of not less than fifty nor more than one hundred dollars.

Rev., s. 2630; Code, s. 1965; 1879, c. 182, s. 2.

NOTE. See chapter, Corporation Commission, Art. IV, section 49, where provision is made for the publication of the corporation commission of both freight and passenger rates.

96. No charge in excess of printed tariffs; refunding overcharge; penalty. No railroad, steamboat, express or other transportation company engaged in the carriage of freight, and no telegraph company or telephone company shall

demand, collect or receive for any service rendered or to be rendered in the transportation of property or transmission of messages, more than the rates appearing in the printed tariff of such company in force at the time such service is rendered, or more than is allowed by law. In case of any overcharge, contrary to the provisions of this section, the person aggrieved may file with any agent of the company collecting or receiving greater compensation than the amount allowed a written demand, supported by a paid freight bill and an original bill of lading or duplicate thereof for refund of overcharge, and a maximum period of sixty days shall be allowed such company to pay claims filed under this section. Any company failing to refund such overcharge, within the time allowed, shall forfeit to the party aggrieved the sum of twenty-five dollars for the first day and five dollars per day for each day's delay thereafter until said overcharge is paid, together with all costs incurred by the party aggrieved: Provided, the total forfeiture shall not exceed one hundred dollars.

Rev., ss. 2642, 2643, 2644; 1903, c. 590, ss. 1, 2.

97. Penalty for failure to receive and forward freight tendered. Agents or other officers of railroads and other transportation companies whose duty it is to receive freights shall receive all articles of the nature and kind received by such company for transportation whenever tendered at a regular depot, station, wharf or boat landing, and every loaded car tendered at a sidetrack, or any warehouse connected with the railroad by a siding, and shall forward the same by the route selected by the person tendering the freight under existing laws; and the transportation company represented by any person refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars for each day such company refuses to receive such shipment of freight, and all damages actually sustained by reason of the refusal to receive freight. If such loaded car be tendered at any siding or warehouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment.

Rev., s. 2631; Code, s. 1964; 1903, cc. 444, 693.

98. Penalty for failure to transport within reasonable time. It shall be unlawful for any railroad company, steamboat company, express company or other transportation company doing business in this state to omit or neglect to transport within a reasonable time any goods, merchandise or other articles of value received by it for shipment and billed to or from any place in the state of North Carolina, unless otherwise agreed upon between the company and the shipper or unless the same be burned, stolen or otherwise destroyed, or unless otherwise provided by the North Carolina corporation commission

Any company violating any of the provisions of this section shall forfeit to the party aggrieved the sum of fifteen dollars for the first day and two dollars for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars for the first day and one dollar for each succeeding day, but the forfeiture shall not be collected for a period exceeding thirty days.

In reckoning what is a reasonable time for such transportation, it shall be considered that such transportation company has transported freight within a reasonable time if it has done so in the ordinary time required for transporting such articles of freight between the receiving and shipping stations. A delay of

two days at the initial point and forty-eight hours at one intermediate point for each hundred miles of distance or fraction thereof over which such freight is to be transported shall not be charged against the transportation company as unreasonable and shall be held to be prima facie reasonable, and a failure to transport within such time shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the freight from the station where it is received, but to require the delivery at its destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen, and which were unavoidable, then upon the establishment of these facts to the satisfaction of the justice of the peace or jury trying the cause, the defendant transportation company shall be relieved from any penalty for delay in the transportation of freight, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a transportation company under this section, the burden of proof shall be upon the transportation company to show where the delay, if any, occurred.

Rev., s. 2632; 1903, c. 590, s. 3; 1905, c. 545; 1907, cc. 217, 461.

99. Flume companies exercising right of eminent domain become common carriers. All flume companies availing themselves of the right of eminent domain under the provisions of the chapter, Eminent Domain, shall become public carriers of freight, for the purposes for which they are adapted, and shall be under the direction, control and supervision of the corporation commission in the same manner and for the same purposes as is by law provided for other public carriers of freight.

1907, c. 39, s. 4.

NOTE. The provisions of this section are applicable in Duplin County to standard gauge and narrow gauge roads, logging or otherwise, more than five miles in length, in operation for five years prior to March 8, 1911. See 1911, c. 214.

100. Freight charges to be at legal rates; penalty for failure to deliver to consignee on tender of same. All common carriers doing business in this state shall settle their freight charges according to the rate stipulated in the bill of lading, provided the rate therein stipulated be in conformity with the classifications and rates made and filed with the interstate commerce commission in case of shipments from without the state and with those of the corporation commission of this state in case of shipments wholly within this state, by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers; and it shall be the duty of such common carriers to inform any consignee of the correct amount due for freight according to such classification and rates. Upon payment or tender of the amount due on any shipment which has arrived at its destination according to such classification and rates, such common carrier shall deliver the freight in question to the consignee. Any failure or refusal to comply with the provisions hereof shall subject such carrier so failing or refusing to a penalty of fifty dollars for each such failure or refusal, to be recovered by any consignee aggrieved by any suit in any court of competent jurisdiction.

Rev., s. 2633; 1905, c. 330.

101. Charging unreasonable freight rates misdemeanor. If any railroad company doing business in this state shall charge, collect, demand or receive more

than a fair and reasonable rate of toll or compensation for the transportation of freight of any description, or for the use and transportation of any railroad car upon its track or any of the branches thereof or upon any railroad in this state which has the right, license or permission to use, operate or control the same, it shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred nor more than five thousand dollars.

Rev., s. 3768; 1899, c. 164, s. 12.

NOTE. See Art. 10, sec. 73, of this chapter for a similar provision relative to excessive passenger rates.

102. Allowing or accepting rebates or pooling freights misdemeanor. If any person shall be concerned in pooling freights or shall directly or indirectly allow or accept rebates on freights he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one thousand dollars or imprisoned not less than twelve months.

Rev., s. 3762; Code, s. 1968; 1879, c. 237, s. 2.

103. Partial charges for partial deliveries. Whenever any freight of any kind shall be received by any common carrier in this state to be delivered to any consignee in this state, and a portion of the same shall not have been received at the place of destination, it shall not be lawful for the carrier to demand any part of the charges for freight or transportation due for such portion of the shipment as shall not have reached the place of destination. The carrier shall be required to deliver to the consignee such portion of the consignment as shall have been received upon the payment or tender of the freight charges due upon such portion. But nothing in this section shall be construed as interfering with, or depriving a consignor, or other person having authority, of his rights of stoppage in transitu.

Rev., s. 2641; 1893, c. 495.

104. Baggage and freight to be carefully handled. All railroad and steamboat companies shall handle with care all baggage and freights placed with them for transportation, and they shall be liable in damages for any and all injuries to the baggage or freight of persons from whom they have collected fare or charged freight, while the same is under their control. Upon proof of injury to baggage or freight in the possession or under the control of any such company it shall be presumed that the injury was caused by the negligence of the company.

Rev., s. 2624; 1897, c. 46.

105. Claims for loss of or damage to goods; filing and adjustment. Every claim for loss of or damage to property while in possession of a common carrier, including every express company, firm or corporation doing an express business within the state, shall be adjusted and paid within ninety days, in case of shipments wholly within the state, and within four months in case of shipments from without the state, after the filing of such claim with the agent of such carrier at the point of destination of such shipment, or point of delivery to another common carrier, by the consignee, or at the point of origin by the consignor, when it shall appear that the consignor was the owner of the shipment: Provided, that no such claim shall be filed until after the arrival of the shipment, or some part

thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof.

In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee aggrieved (or consignor, when it shall appear that the consignor was the owner of the property at the time of shipment and at the time of suit, and is, therefore, the party aggrieved), in any court of competent jurisdiction: Provided, that unless such consignee or consignor recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid; and that no penalty shall be recoverable under the provisions of this section where claims have been filed by both the consignor and consignee, unless the time herein provided has elapsed after the withdrawal of one of the claims.

Causes of action for the recovery of the possession of the property, shipped, for loss or damage thereto, and for the penalties herein provided for, may be united in the same complaint.

1907, c. 983; 1911, c. 139.

106. Existing remedies to continue. The preceding section shall not deprive any consignee of any rights or remedies now existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon such common carriers.

Rev., s. 2635; 1905, c. 330, s. 5.

107. Carrier's right against prior carrier. Any common carrier, upon complying with the provisions of the two preceding sections, shall have all the rights and remedies herein provided for against a common carrier from which it receives the freight in question.

Rev., s. 2636; 1905, c. 330, s. 3.

108. Regulation of demurrage. No railroad or other transportation company doing business in the state shall make any charge on account of demurrage, while a car, whether the same be a refrigerator car or not, is being loaded for shipment, until it has remained at the place of loading for forty-eight hours from the time it has been so placed; but the corporation commission may change this provision, if it considers it unreasonable, under the power vested in it under the chapter, Corporation Commission, to make regulations as to demurrage and the loading of cars.

Ex. Sess. 1913, c. 55.

109. Shipment of livestock on Scuppernong River regulated; violation of regulations misdemeanor. If any transportation company or common carrier shall receive livestock for shipment at any of the landings or shipping points on Scuppernong River, Columbia excepted, between the hours of sunset and sunrise, or shall during the time any livestock may be held for shipment at any landing or shipping point on such river, Columbia excepted, fail to keep the same in a covered pound or inclosure, supplied with necessary food and drinking water,

and at all times in full view of the public, such transportation company, common carrier, or the agent of either shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, at the discretion of the court.

Rev., s. 3675; 1903, c. 283.

110. Carload shipments of watermelons regulated; violation of regulations misdemeanor. It shall be the duty of all common carriers to furnish the weights of all carload shipments of watermelons originating within the state to the shippers thereof within forty-eight hours after receipt of the same. Any common carrier violating the provisions of this section shall upon conviction be fined ten dollars for each offense.

Ex. Sess. 1913, c. 68.

111. Express companies to settle promptly for cash-on-delivery shipments; penalty. Every express company which shall fail to make settlement with the consignor of a cash-on-delivery shipment, either by payment of the moneys stipulated to be collected upon the delivery of the articles so shipped or by the return to such consignor of the article so shipped, within twenty days after demand made by the consignor and payment or tender of payment by him of the lawful charges for transportation, shall forfeit and pay to such consignor a penalty of twenty-five dollars, where the value of the shipment is twenty-five dollars or less, and, where the value of the shipment is over twenty-five dollars, a penalty equal to the value of the shipment; the penalty not to exceed fifty dollars in any case: Provided, no penalty shall be collectible where the shipments, through no act of negligence of the company, is burned, stolen or otherwise destroyed: Provided further, that the penalties here named shall not be in derogation of any right the consignor may now have to recover of the company damages for the loss of any cash-on-delivery shipment or for negligent delay in handling the same.

1909, c. 866.

112. Failure to place name on produce shipped misdemeanor. Any person, firm or corporation selling or offering for sale or consignment any barrel, crate, box, case, package or other receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or other produce of any kind whatsoever, to be shipped to any point within or without the state of North Carolina, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that this section shall not apply to railroads, express companies and other transportation companies selling or offering for sale, for transportation or storage charges or any other charges accruing to such railroads, express companies or other transportation companies, any barrel, crate, box, case, package, or other receptacle containing berries, fruit, melons, potatoes, vegetables, truck or other produce.

1915, c. 193.

113. Unclaimed freight to be sold. Every railroad, steamboat, express or other transportation company which shall have had unclaimed freight, not perishable, in its possession for a period of six months, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of trans-

portation and storage of such freight and the expenses of the advertisement and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a state paper and also in a newspaper published at or nearest the place at which such freight was directed to be left, and also at the place where such sale is to take place. The expenses incurred for advertising shall be a lien upon such freight in a ratable proportion according to the value of each article, package or parcel, if more than one.

Rev., s. 2637; Code, s. 1985; 1871-2, c. 138, s. 48.

114. Sale of unclaimed perishable freight. In case such unclaimed freight shall in its nature be perishable, then the same may be sold as soon as it can be, on giving the notice required in the preceding section, after its receipt at the place where it was directed to be left.

Rev., s. 2638; Code, s. 1986; 1871-2, c. 138, s. 49.

115. Funds from unclaimed freight to be paid to state university. Such railroad, steamboat, express or other transportation company shall make an entry of the balance of the proceeds of the sale, if any, of each parcel of freight owned by or consigned to the same person, as near as can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership; if no person shall claim the surplus within five years, such surplus shall be paid to the state university.

Rev., s. 2639; Code, s. 1987; 1871-2, c. 138, s. 50.

ART. 12. STREET AND INTERURBAN RAILWAYS

116. May build and maintain water-power plants. Where any street or interurban railway company owns lands on one or both sides of a stream which can be used in developing a water-power, and desires to erect and maintain a water-power plant for the purpose of generating electricity to be used in operating such railway, then such railway company shall have the power to erect, maintain and operate such water-power plant for such purpose, and may build, maintain and operate any and all dams, ponds, canals, bridges, ferries, aqueducts, flumes, water-ways, wasteways, reservoirs, and all works, machinery, houses, shops and buildings necessary for the use and operation of a water-power plant for generating electricity. Whenever such company shall not own the entire water-front, or all of the lands, water rights, or other easements necessary to be used in fully developing such water-power, it shall have the power to acquire any other lands, water rights or easements which may be needed to fully develop such water-power; and if the company cannot agree with the owners for the purchase of such lands, water rights or other easements, the same may be condemned by the railway company for that purpose, and the procedure shall be the same as that provided for the condemnation of lands for railroads: Provided, that no dwelling-house, yard, garden, orchard or burial-ground shall be condemned for such purpose: Provided further, that such company shall not have the power to condemn any water-power, right or property of any person, firm or corporation engaged in the actual service of the general public, where such power, right or property is being used or held to be used or to be developed for use in connection with or in addition to any power actually used by such person, firm or corpora-

tion serving the general public. Any surplus electric power generated by any plant erected under the provisions of this section may be sold by such company upon reasonable terms.

1907, c. 302; 1913, c. 94.

117. Separate accommodations for different races; failure to provide misdemeanor. All street, interurban and suburban railway companies, engaged as common carriers in the transportation of passengers for hire in the state of North Carolina, shall provide and set apart so much of the front portion of each car operated by them as shall be necessary, for occupation by the white passengers therein, and shall likewise provide and set apart so much of the rear part of such car as shall be necessary, for occupation by the colored passengers therein, and shall require as far as practicable the white and colored passengers to occupy the respective parts of such car so set apart for each of them. The provisions of this section shall not apply to nurses or attendants of children or of the sick or infirm of a different race, while in attendance upon such children or such sick or infirm persons. Any officer, agent or other employee of any street railway company who shall willfully violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.

1907, c. 850, ss. 1, 5, 7; 1909, c. 851.

118. Passengers to take certain seats; violation of requirement misdemeanor. Any white person entering a street-car for the purpose of becoming a passenger therein shall, if necessary to carry out the purposes of the preceding section occupy the first vacant seat or unoccupied space in the aisle nearest the front of the car, and any colored person entering such car for a like purpose shall occupy the first vacant seat or unoccupied space in the aisle nearest the rear end of the car: Provided, however, that no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time unless or until all of the other seats in the car shall be occupied. Any person willfully violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. He may also be ejected from the car by the conductor and other agent or agents charged with the operation of such car, who are hereby invested with police powers to carry out the provisions of this section.

1907, c. 850, ss. 2, 6.

119. No liability for mistake in assigning passenger to wrong seat. No street, suburban or interurban railway company, its agents, servants or employees, shall be liable to any person on account of any mistake in the designation of any passenger to a seat or part of a car set apart for passengers of the other race.

1907, c. 850, s. 8.

120. Misconduct on car; riding on front platform misdemeanor. It shall be unlawful for any passenger to expectorate upon the floor or any other part of any street-car, or to use, while thereon, any loud, profane or indecent language, or to make any insulting or disparaging remark to or about any other passenger or person thereon within his or her hearing. It shall likewise be unlawful for any passenger to stand willfully upon the front platform, fender, bumper, running-board or steps of such car while the same is in motion, whether such pas-

senger has or has not paid the usual fare for riding on such car. Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. He may also be ejected from the car by the conductor and other agent or agents charged with the operation of such car, who are hereby invested with police powers to carry out the provisions of this section.

1907, c. 850, ss. 3, 6.

121. Passenger riding on rear platform assumes risk; copies of section to be posted. Any passenger who shall ride upon the rear platform of any street-car in motion, when there is room for such passenger either to sit or stand inside the car, shall be deemed to have assumed all the risks of being injured while so riding, as the result of any act of the street-car company: Provided, that such company shall make it appear that such passenger would not have been injured had he been on the inside of said car: Provided further, that before any street, interurban or suburban railway shall be allowed to invoke the provisions of this section it shall have copies thereof printed and framed and one copy hung in each end of all cars operated on its lines, and shall further have a placard hung in a conspicuous place on the rear of such cars, which shall read as follows: "Passengers are warned not to ride on this platform," and a placard hung on each side of open cars in a conspicuous place, which shall read as follows: "Passengers are warned not to ride on the running-board."

1907, c. 850, s. 4.

122. Street-cars to have vestibule fronts; failure to provide them misdemeanor. All street passenger railway companies shall use vestibule fronts, of frontage not less than four feet, on all passenger cars run by them on their lines during the latter half of the month of November and during the months of December, January, February and March of each year: Provided, that such companies shall not be required to close the sides of the vestibules: Provided further, that such companies may use cars without vestibule fronts in cases of temporary emergency in suitable weather, not to exceed four days in any one month within the period herein prescribed for the use of vestibule fronts. The corporation commission is hereby authorized to make exemptions from the provisions of this section in cases where in their judgment the enforcement of this section is unnecessary. Any such company that shall refuse or fail to comply with the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for each day of such refusal or failure.

Rev., ss. 2615, 3800; 1901, c. 743.

123. Street-cars to have fenders; failure to provide them misdemeanor. All street passenger railway companies shall use practical fenders in front of all passenger cars run by them. The corporation commission is hereby authorized to make exemptions from the provision of this section in cases where in their judgment the enforcement of this section is unnecessary. Any such company that shall refuse or fail to comply with the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for each day of such refusal or failure.

Rev., ss. 2616, 3801; 1901, c. 743, s. 2.

CHAPTER 67

REGISTER OF DEEDS

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24. Duties unperformed at expiration of term.
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ART. 1. THE OFFICE

1. Election and term of office. In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, a register of deeds.

Rev., s. 2650; Const., Art. VII, s. 1.

2. Oath of office. The register of deeds shall take the oath of office on the first Monday of December next after his election before the board of county commissioners.

Rev., s. 2652; Code, s. 3647; 1868, c. 35, s. 2; 1876-7, c. 276, s. 5.

3. Bond required. Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, payable to the state, and conditioned for the safe keeping of the books and records, and for the faithful discharge of the duties of his office, and shall renew his bond annually on the first Monday in December.

Rev., s. 301; Code, s. 3648; 1868, c. 35, s. 3; 1876-7, c. 276, s. 5; 1899, c. 54, s. 52.

NOTE. Bond in Dare County \$3,000. 1907, c. 75.

4. Vacancy in office. When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.

Rev., s. 2651; Code, s. 3649; 1868, c. 35, s. 4.

5. Deputies may be appointed. The registers of deeds of the several counties in this state are hereby authorized and empowered to appoint deputies, whose acts as such shall be valid and for which the registers of deeds shall officially be responsible. They shall file the certificate of the appointment of the deputy in the office of the clerk of the superior court, who shall record the same.

1909, c. 628, s. 1.

NOTE. For special acts for the appointment of deputies in certain counties, see Dare, 1907, c. 393; Durham, 1909, c. 91; Person, 1909, c. 546.

6. Office at courthouse. The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable.

Rev., s. 2653; Code, s. 3650; 1868, c. 35, s. 5.

7. Attendance at office. The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly.

Rev., s. 2654; Code, s. 3651; 1868, c. 35, s. 6.

8. Official seal. The office of register of deeds for every county in the state shall have and use an official seal, which seal shall be provided by the county commissioners of the several counties, and shall be of the same size and design as the seals now used by the clerk of the superior court, with the words "Office of Register of Deeds," the name of the county and the letters "North Carolina" surrounding the figures.

Rev., s. 2649; 1893, c. 119, s. 1.

ART. 2. THE DUTIES

9. Apply to clerk for instruments for registration. The register of deeds shall at least once a week apply to the clerk of the superior court of his county for all instruments of writing admitted to probate, and then remaining in the office of such clerk for registration, and also for all fees for registration due thereon; which fees the clerk of the superior court shall receive for the register.

Rev., s. 2655; Code, s. 3652; 1868, c. 35, s. 7.

10. Failure of clerk to deliver papers. In case the clerk fails to deliver such instruments of writing, and pay over such fees as are prescribed in the preceding section, on application of the register, the clerk shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the superior court, on motion in behalf of the register, on a notice of ten days thereof to the clerk.

Rev., s. 2656; Code, s. 3653; 1868, c. 35, s. 8.

11. Registration of instruments. 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.

Rev., s. 2658; Code, s. 3654; R. C. c. 37, s. 23; 1868, c. 35, s. 9.

12. Certify and register copies. When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall endorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose.

Rev., s. 2657; 1899, c. 302.

13. Liability for failure to register. 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 on his official bond, to the party injured by such delay.

Rev., s. 2659; Code, s. 3660; 1868, c. 35, s. 10.

14. Papers filed alphabetically. 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.

Rev., s. 2660; Code, s. 3661; 1868, c. 35, s. 11.

15. Transcribe and index books. 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 public records as the original books, and copies therefrom may be certified accordingly.

Rev., s. 2661; Code, s. 3662; 1868, c. 35, s. 12.

16. Number of survey in grants registered. The register of deeds in each county in this state, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey.

Rev., s. 2662; 1889, c. 522, s. 2.

NOTE. For requirement to register surveys, see State Lands, s. 32.

17. Certificate of survey registered. It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all indorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant.

Rev., s. 2663; 1905, c. 243.

18. General index kept. 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.

Rev., s. 2664; Code, s. 3663; 1868, c. 35, s. 13.

19. Index and cross-index of registered instruments. 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 or authorized to be registered; such 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, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and reference shall be made, opposite each name, to the page, title or number of the book in which is registered any instrument. A violation of this section shall be a misdemeanor.

Rev., ss. 2665, 3600; Code, s. 3664; 1899, c. 501; 1876-7, c. 93, s. 1.

20. Clerk to 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.

Rev., s. 2666; Code, s. 3656; 1868, c. 35, s. 15; Const., Art. VII, s. 2.

21. Notices to certain officers served by mail. 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.

Rev., s. 2667; Code, s. 3657; 1879, c. 328, ss. 1, 3.

22. Make out tax lists. The register shall make out the tax lists as directed by law, under the supervision of the board of county commissioners.

Rev., s. 2668; Code, s. 3658; 1868, c. 35, s. 16.

23. Keep list of statutes authorizing special tax. The register of deeds in each county, or the auditor in those counties having county auditors, must keep on file and subject to inspection by the public a list of the statutes authorizing a special tax levy in their respective counties, showing the year in which such special tax levy was authorized by the general assembly of North Carolina and the chapter of the public laws containing the authority for such special levy. Upon payment of a fee of one dollar the register of deeds or county auditor shall furnish to any one making application therefor a certified copy of said list of statutes.

1917, c. 182.

24. Duties unperformed at expiration of term. 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 commis-

sioners 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 to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby.

Rev., s. 2669; Code, s. 3655; 1868, c. 35, s. 14.

25. Register of deeds failing to discharge duties; penalty. If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office.

Rev., s. 3599; Code, s. 3659; 1868, c. 35, s. 18.

CHAPTER 68

RELIGIOUS SOCIETIES

1. Trustees may be appointed and removed.
2. Trustees may hold property.
3. Title to lands vested in trustees, or in societies.
4. Trustees may convey property.
5. House on vacant land vests title.

1. Trustees may be appointed and removed. The conference, synod, convention or other ecclesiastical body representing any church or religious denomination within the state, as also the religious societies and congregations within the state, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise.

Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 2; 1844, c. 47; 1848, c. 76.

2. Trustees may hold property. The trustees and their successors have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation; and they may sue or be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matters relating thereto. They shall be accountable to the churches, denominations, societies and congregations for the use and management of such property, and shall surrender it to any person authorized to demand it.

Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 3; 1844, c. 47; 1848, c. 76.

3. Title to lands vested in trustees, or in societies. 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 glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which such 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 such 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 such churches, denominations, societies and congregations, respectively, according to such intent.

Rev., s. 2672; Code, s. 3665; R. C., c. 97, s. 1; 1776, c. 107; 1796, c. 457, s. 4.

4. Trustees may convey property. The trustees of any religious body may mortgage or sell and convey in fee simple any land owned by such body, when directed so to do by such church, congregation, society or denomination, or its committee, board or body having charge of its finances, and all such conveyances so made or heretofore made, or hereafter to be made shall be effective to pass the land in fee simple to the purchaser or to the mortgagee for the purposes in such conveyances or mortgage expressed; and they may sell or mortgage its personal property.

Rev., s. 2673; 1855, c. 384; 1889, c. 484.

5. House on vacant land vests title. 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.

Rev., s. 2674; Code, s. 3666; R. C., c. 97, s. 2; 1778, c. 132, s. 6.

NOTE. For disturbing religious congregation, see Crimes, ss. 182, 235.

For obstructing way to church, see Crimes, s. 181.

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CHAPTER 69

ROADS AND HIGHWAYS

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ART. 1. STATE HIGHWAY COMMISSION

1. State highway commission established. A state highway commission is hereby established, whose duties it shall be to assist the counties in developing a state and county system of highways as set forth more specifically hereinafter.

1915, c. 113, s. 1.

2. How commission constituted. The state highway commission shall consist of the governor, three citizens of the state of North Carolina to be appointed by the governor, one from the eastern, one from the central, and one from the western portion of the state (one of whom shall be a member of the minority political party) the state geologist, a professor of civil engineering of the University of North Carolina, and a professor of the North Carolina State College of Agriculture and Engineering, said professors to be designated by the governor. The members of the commission shall be appointed and serve for four years and until their successors are appointed. The members of the commission shall, when employed in any manner required of them under this act, receive their actual expenses.

1915, c. 113, s. 2.

3. Governor to fill vacancies. The governor shall fill all vacancies in the commission caused by death or otherwise and he shall have the power to remove any member for due cause.

1915, c. 113, s. 3.

4. Offices and expenses of commission. The proper state authorities shall furnish and provide suitable offices for the state highway commission in the city of Raleigh, and shall provide it with the necessary office supplies, fixtures and stationery.

1915, c. 113, s. 5.

5. Assistants and clerks. The state highway commission may employ such assistants and clerks as in its opinion the needs of the state demand. The salaries paid such assistants and clerks shall be determined by the state highway commission.

1915, c. 113, s. 6.

6. State highway engineer; term. The commission shall appoint a civil engineer well versed in the science of road building and maintenance, who shall be the state highway engineer, whose compensation shall be fixed by the state highway commission. The term of office of the state highway engineer shall be six years from the date of his appointment unless removed from office for due cause by the highway commission.

1915, c. 113, s. 4.

7. Duties of highway engineer. Upon the written request of the road officials of any county desiring to avail themselves of the services of the highway engineer on the terms of this act, for advice in regard to the improvement of any bridge, road, roads or section thereof, the highway engineer shall survey or have surveyed such bridge, road, roads, or sections of road, and shall prepare, or have prepared, such maps, profiles, plans and specifications as are necessary in his judgment to determine the cost of the proper improvement of such bridge, road, roads, or sections of road; and these, together with the estimated cost, shall be presented to the board of county commissioners or other officials in authority, who made the request for such information, at their next regular meeting held after the completion of such surveys and estimates. If such bridge, road, roads, or section of road shall thereafter be built by the county officials it shall be constructed according to the plans and specifications as furnished by the highway engineer. In the event that the construction work on any such bridge, road, roads, or section of road is not started within twelve months after the highway engineer makes his report to the county officials, the county officials shall, and are hereby directed to, reimburse the state highway commission for the expense incurred by its office in obtaining the information furnished the county officials. Should, however, the construction be taken up at a later date, the highway engineer, when he takes charge of the actual construction shall return said amount to the county officials. The highway engineer, or his duly authorized assistants, shall have entire charge of the location, construction, and maintenance of all roads, bridges, etc., constructed under this section. The state highway engineer shall keep an accurate record of all costs and expenditures of his office. He shall supply technical information regarding roads to any citizen or officer in the state, and shall, from time to time, publish for public use such information as will be generally useful for road improvements. Such publications and his biennial report to the legislature shall be printed at the expense of the state, as other public documents.

1915, c. 113, s. 7.

8. State highway system. The state highway engineer shall from time to time make surveys, prepare plans, profiles, specifications, and estimates of the cost of a system of highways connecting by the most direct and practical route all the county seats and principal cities of the state. He shall make a detailed report to the state highway commission of the mileage and cost in each county. He shall state the type of road suitable for each section. He shall give the average number and class of teams which each section of road is at present accommodating and the probable increase in traffic which would follow improvements as recommended by him.

1915, c. 113, s. 8.

9. Location of road. In the location of roads provided for in the two preceding sections, the highway engineer shall so locate them as to serve the needs of the people in the immediate section in so far as this would not conflict with such roads being links in the system of highways provided for in the preceding section.

1915, c. 113, s. 9.

10. State highway engineer to consult commission. The state highway engineer may call into consultation, for any engineering problem confronting him, the state highway commission.

1915, c. 113, s. 10.

11. When commission may meet in counties. The state highway commission shall upon written request of the county commissioners of any county, call an open meeting to be held at the office of the county commissioners within such county, for the purpose of affording instruction relative to matters pertaining to road and bridge construction, maintenance and repairs. Such meeting shall be conducted by the state highway engineer or one of his assistants designated for the purpose by the state highway engineer. Upon receipt of the notice of the date of such meeting from the state highway commission the county commissioners shall call such meeting on the date set by the state highway commission, and shall be present themselves and notify the county engineer, the commissioners of each township and the superintendent of each road district within the county to be present at such meetings, in person. Each of the county, township and road district officials above mentioned shall be paid the regular per diem allowance; in the usual manner, for the actual time in attendance at such meetings. The members of the commission when employed in any manner required of them under this act shall receive their actual expenses.

1915, c. 113, s. 11.

12. Cooperation with federal government and other states. It shall also be the duty of the state highway commission, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of inter-county, inter-state and national highways.

1915, c. 113, s. 12.

13. Appropriation. The sum of ten thousand dollars annually or so much thereof as may be necessary, is hereby appropriated out of moneys in the state treasury not otherwise appropriated for the purpose of carrying out the provisions of this act.

1915, c. 113, s. 13.

14. Report of expenditures. The state highway commission shall on the first day of January and the first day of July of each year, make an itemized statement to the governor showing specifically for what purpose and how the moneys appropriated under this act were expended.

1915, c. 113, s. 14.

15. Cooperation with federal government under Federal Aid Road Act. The state of North Carolina, through its general assembly, hereby assents to the

provisions of the act of congress known as the Federal Aid Road Act, approved July eleventh, nineteen hundred and sixteen, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," (Thirty-ninth United States Statutes at Large, p. 355); and the state highway commission of North Carolina is hereby vested with power and authority on behalf of the state of North Carolina to cooperate with the secretary of agriculture of the United States of America in the construction and maintenance of roads as defined and determined by said Federal Aid Road Act of congress. The state highway commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the construction and maintenance of rural post roads under the provisions of said act of congress; and is authorized to receive and disburse such funds as the state may be entitled to receive from the federal government under the provisions of the said Federal Aid Road Act, and is authorized to receive and disburse such funds as may be appropriated by counties, individuals, or other sources for co-operative road work in this state.

1917, c. 22, s. 1.

ART. 2. GENERAL HIGHWAY LAW; LOCAL ROAD COMMISSION;
BONDS AND TAXES

Part 1. Bond Issues, Special Taxes and Funds

16. County issue of road bonds; petition and election; approved by state commission; bond limit. Bonds may and shall be issued by the board of county commissioners of any county for the purpose of laying out and opening, altering, or improving the public roads and bridges of county under the conditions and provisions hereinafter provided. The board of county commissioners of any county, upon the petition of one hundred freeholders of the county petitioning for an election for a bond issue, shall make an order providing for holding an election at the next election of county officers, or at any time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters of the county on the question of whether the board of county commissioners of such county shall issue bonds for such purpose: The petition must include the amount of bonds it is proposed to issue and the approximate number of miles of road that it is proposed to improve by such bond issue. No election shall be held until the board of county commissioners has been notified by the state highway commission in writing that the amount of bonds proposed to be issued will be sufficient to construct or reconstruct, alter or improve approximately the number of miles of road proposed to be improved, reconstructed, or altered, as set out in the petition. The maximum amount of bonds issued under this article in such county, together with all the bonds previously issued and remaining unpaid by such county, shall in no case exceed an amount equal to ten per cent of the total assessed valuation of the county.

1917, c. 284, s. 1.

17. Powers vested in road commission. Whenever it is stated in the petition to the board of county commissioners praying for a bond issue for road work, as is authorized in the preceding section, that the bonds thus authorized shall be issued and sold by the county road commission hereinafter created by this act.

or the existing road commission of the county in which the petition for road bonds is made, then the said county road commission or other road commission or board having charge of the road work in said county is hereby vested with all the power, rights, and authority now vested in the board of county commissioners of said county for issuing and selling the road bonds, as authorized in the petition, and said county road commission or other commission or board having charge of the road work in the county shall proceed to issue and sell bonds called for in the petition as hereinafter provided.

1917, c. 284, s. 2.

18. Apportionment by townships of funds from bond sale. Whenever it is stated in the petition to the board of county commissioners praying for a bond issue for road work, that the funds derived from the sale of such bonds shall be expended by the county road commission or other commission or board having charge of the road work of said county in the various townships composing the county, in proportion to the assessed tax valuation of each township, then whenever bonds are issued by the board of county commissioners or county road commission, as provided, the county road commission shall apportion the funds arising from the sale of said bonds and use same in the several townships of the county issuing said bonds, as nearly as may be in proportion to the assessed tax valuation of said township, the intention being that each township shall receive and have expended on roads within its borders, or on roads built for its benefit, a fair and equitable proportion of the money arising from the bond issue authorized by this act. The purchasers of said bonds shall not be required to see to the application of such funds.

1917, c. 284, s. 3.

19. Special road tax; petition and election; tax limit; approval of state commission. The board of county commissioners of any county, upon the petition of one hundred freeholders of said county petitioning the board of county commissioners to levy a special road tax for carrying on the road work of said county, shall make an order requiring an election to be held at the time of election of county officers, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters of the county on the question whether the board of county commissioners shall levy a tax for such purpose. The petition for such election must state the maximum rate for which such special road tax is to be levied, which rate shall not exceed fifty cents on the hundred dollars worth of property according to the last tax list, and one dollar and fifty cents on the poll, observing at all times the constitutional equation; and Provided, the petition also states approximately the number of miles of road to be improved by such special road tax and the length of time for which such special road tax shall be levied. The board of county commissioners, before calling such election, must be notified by the state highway commission in writing that the amount of money to be raised annually by the special road tax proposed will be sufficient to maintain and operate with economy a construction force suitable for the work proposed or will be sufficient to secure for the county reasonable contract prices for the work to be done, and that within the time named and for the amount thus to be raised the approximate number of miles of road can be built that is named in the petition.

1917, c. 284, s. 4.

20. When bond issues by townships authorized. At the end of three months after the seventh of March, nineteen hundred and seventeen, in any county that has not taken advantage of the provisions of this article and issued bonds as provided in section 16 of this chapter, or levied a special tax as provided in the preceding section, then any township may proceed to take advantage of the provisions hereinafter set forth.

1917, c. 284, s. 5.

21. Petition from township; election; approval of commission; bond limit. The board of county commissioners of any county, upon the petition of twenty-five freeholders of said township of said county for a bond issue for the construction or reconstruction of the public roads and bridges of said township, shall make an order providing for holding an election at the next election of county officers, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters of the township on the question of whether the board of county commissioners of such county shall issue bonds for such township for the purpose stated in the petition. The petition must state the amount of bonds it is proposed to issue and the approximate number of miles of road that it is proposed to improve by such bond issue. No election shall be held until the board of county commissioners has been notified by the state highway commission in writing that the amount of bonds proposed to be issued will be sufficient to construct or reconstruct, alter or improve, approximately the number of miles of road proposed to be constructed, reconstructed, or altered as set out in the petition. The maximum amount of bonds issued under this article in such township, together with all other bonds previously issued, including any county bonds for which the township valuation is liable and remaining unpaid for such township, shall not in any case exceed an amount equal to ten per cent of the total assessed valuation of the township.

1917, c. 284, s. 6.

22. Special road tax for townships; tax-limit; approval of commission. The board of county commissioners of any county, upon the petition of twenty-five freeholders of any township of any county petitioning the board of county commissioners to levy a special road tax for carrying on the road work of the township, shall make an order requiring an election to be held at the next election of county officers or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters of the township on the question whether the board of county commissioners shall levy a tax for such purposes. The petition for such election must state the maximum rate for which such special road tax is to be levied, which rate shall not exceed fifty cents on the one hundred dollars worth of property, according to the last tax list, and one dollar and fifty cents on the poll, observing at all times the constitutional equation. The petition must also state approximately the number of miles of road to be improved by said special road tax and the length of time for which such special road tax shall be levied. The board of county commissioners, before calling such election, must be notified by the state highway commission, in writing, that the amount of money to be raised annually by the special road tax proposed will be sufficient

to maintain and operate with economy a construction force suitable for the work proposed, or will be sufficient to secure for the county reasonable contract prices for the work to be done, and that within the time named, and for the amount thus to be raised, the approximate number of miles of road can be built that is named in this petition.

1917, c. 284, s. 7.

23. Bond issues in counties having township bond issues. The board of county commissioners of any county in which township bonds have been issued and sold for the construction of roads shall, upon petition of one hundred freeholders of said county petitioning for an election for a bond issue for road construction, make an order providing for holding an election at the next election of county officers or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters of the county on the question of whether the board of county commissioners of such county shall issue bonds for the purpose of providing funds for taking over the township bonds already issued for road purposes and of providing an additional amount with which to construct additional roads in such county. Such petition must state the amount of bonds which it is proposed to issue in excess of the amount required to cover the township bond issue, and also the approximate number of miles that it is proposed to improve by such bond issue. No election shall be held until the board of county commissioners has been notified by the state highway commission in writing that the amount of bonds proposed to be issued for road construction work will be sufficient to construct, reconstruct, or alter approximately the number of miles of road proposed to be improved by said bond issue. The maximum amount of bonds issued under this article in such county, together with all the bonds previously issued and remaining unpaid by such county, shall in no case exceed an amount equal to ten per cent of the total assessed valuation of the county. The township in which the bonds have been issued and which are taken over by the county shall not be subject to any additional tax on account of the county bonds issued to refund or buy in said township bonds, but shall be liable for its pro rata portion of the county bonds.

1917, c. 284, s. 8.

24. Bonds and taxes by road districts. Wherever there has been established in any county or counties of this state a road district, composed of one or more townships in one or more counties, or parts of one or more townships in one or more counties, such road district is herewith granted the same rights and privileges in regard to the issuing of bonds or levying of special road tax as is given to townships under the provisions of this article.

1917, c. 284, s. 9.

25. Petition and election for county road commission. Upon the petition of one hundred freeholders of any county petitioning for the creation of a county road commission, the board of county commissioners of said county shall make an order providing for holding an election at the next election of county officers or at any other time not less than thirty days from the date of said order, which shall be designated therein, to open the polls and take the sense of the qualified voters of the county on the question of whether there shall be created

in said county a county road commission. In the event that the majority of votes cast shall be for the creation of a county road commission at any election herein provided for, after the result has been declared and recorded as herein provided for there shall be and there is herewith created in said county a county road commission as provided hereinafter.

1917, c. 284, s. 10.

26. Qualified voters defined; law governing elections; registration; ballots; returns. The qualified voters at any special election held under the provisions of this article, until otherwise provided by general law, shall be those qualified to vote at the preceding regular November election and those who may have become of age and qualified since the preceding regular November election, except those who by commission of crimes or by removal from the district or county or for other legal causes have disqualified themselves to vote. Any election held under the provisions of this article shall be conducted in the same manner as is now or may hereafter be prescribed by law for holding elections for the members of the general assembly, except as herein provided. The said board of county commissioners shall appoint the registrars of election, the judges or inspectors, and any other election officers, and registration and challenge of voters shall be conducted in the same manner as is now or may hereafter be provided for the election of members of the general assembly; and said county commissioners may or may not order a new registration for any or all of said elections.

At any special election held under the provisions of this article for a bond issue, the ballots tendered and cast by the voters shall have written or printed upon them "For road bond issue" or "Against road bond issue," and all electors who favor the issuing of said bonds shall vote a ballot written or printed thereon "For road bond issue," and those opposed to the issuing of the bonds shall vote a ballot written or printed thereon "Against road bond issue"; and at any special election held under the provisions of this article, providing for a special road tax, the ballots tendered and cast by the voters shall have written or printed upon them "For special road tax" or "Against special road tax," and all electors who favor the levying of said special road tax shall vote a ballot written or printed thereon "For special road tax" and those opposed to levying the special road tax shall vote a ballot written or printed thereon "Against special road tax"; and at any special election held under the provisions of this article, providing for the creation of a county road commission, the ballots tendered and cast by the voters shall have written or printed upon them "For county road commission" or "Against county road commission"; and all electors who favor the creating of a county road commission shall vote a ballot written or printed thereon "For county road commission," and those opposed to creating a county road commission shall vote a ballot written or printed thereon "Against county road commission."

The vote shall be counted at the close of the polls and returned to the board of county commissioners or clerk of the board on the Thursday next following the election, and the board shall tabulate and declare the result of the election not later than its next regular meeting following the return of the vote of the election, all of which shall be recorded in the minutes of the board of county commissioners, and no other recording and declaring of the result of the election shall

be necessary. The result of the vote shall be counted, declared, and reported to the board of county commissioners as prescribed by law in the election of the members of the general assembly.

1917, c. 284, s. 11.

27. When bonds to be issued. In the event that the majority of the votes cast shall be "For road bond issue" at any election herein provided for, after the result has been declared and recorded as aforesaid, the board of county commissioners or county road commission, as authorized, of the county at its next regular meeting shall proceed to carry out the wishes of the voters as expressed at such election, as hereinafter provided in this article.

1917, c. 284, s. 12.

28. Levy of special road tax. In the event that the majority of the votes cast shall be "For special road tax" at any election herein provided for, after the result has been declared and recorded as aforesaid, the board of county commissioners of the county at its next regular meeting shall proceed to carry out the wishes of the voters as expressed at such election as hereinafter provided for in this article.

1917, c. 284, s. 13.

29. County road commission created. In the event that the majority of the votes cast shall be "For county road commission" at any election herein provided for, after the result has been declared and recorded as aforesaid the board of county commissioners at its next regular meeting shall proceed to carry out the wishes of the voters as expressed at such election as hereinafter provided for in this article.

1917, c. 284, s. 14.

30. Advertisement and sale of bonds; when noncompliance not to invalidate bonds. The board of county commissioners, or county road commission, or other commission of any county which is authorized to issue county, township, or road district bonds under the provisions of this article, shall then proceed with the least possible delay to issue such bonds in such denominations and of such class and for such term as may be deemed best by said board of county commissioners or other said commission. In making sale of the bonds authorized by this act, advertisement of same shall be made in a recognized financial paper of the country, or a newspaper of state-wide circulation, as well as in a local paper, for at least thirty days prior to receiving of bids by the board of county commissioners or county road commission. The advertisement shall state the date, the time and the place for the opening of bids, and the advertisement shall also state that all bids must be accompanied by certified check properly vouched for by a local bank, if any, of the county in which sale is to be consummated and for which bonds are issued; but if there is no bank in said county, then by any solvent bank in a neighboring county, and the amount of said check to be determined by the board of county commissioners or county road commission of the county proposing to issue the bonds. The state highway commission must be notified by the board of county commissioners or county road commission of the date, place, and time of sale of bonds authorized to be sold under this act, in order that the state highway commission, if it so desires, may have a representa-

time present who shall act in an advisory capacity with the board of county commissioners in the sale of the bonds. The noncompliance with the conditions herein required shall not be construed to invalidate the bonds issued which may have passed into the hands of innocent purchasers for value and without notice. No bonds shall be sold for less than their par value.

1917, c. 284, s. 15.

31. State or federal aid. If any act shall be passed at this or any subsequent session of the general assembly authorizing the state to loan money to the counties to aid in the building or improving of public roads, taking county bonds as collateral for said loan, or if any provisions shall be made for the federal government to loan money to the county for the purpose as stated above, then the board of county commissioners or county road commission is hereby authorized and empowered to avail themselves of the privileges and benefits of any such act.

1917, c. 284, s. 16.

32. No fees allowed officers. In selling the bonds and in handling the funds derived from the sale of the bonds, and in turning same over to the bank or banks of the county hereinafter authorized to be the depository of such funds, the board of county commissioners, the county road commission, or the treasurer of the county shall not be allowed any fees for handling such funds.

1917, c. 284, s. 17.

33. Levy of tax for interest on bonds; misappropriation punished. When any bonds are issued under the provisions of this article, the board of county commissioners shall levy annually the first Monday in May, or at such time as county taxes are levied, a special tax for the county, township, or road district, of such an amount on the one hundred dollars of property and on the poll as will provide a sufficient sum with which to pay the interest due on the bonds issued and pay whatever part of the principal of the bond issue may become due that year, and also to set aside the amount necessary to provide an adequate sinking fund with which to redeem or buy in the bonds. The taxes so levied shall be collected as other taxes and shall be kept as a separate fund, to be applied for the purposes as stated above, and it shall be a misdemeanor for the members of the board of county commissioners to use such fund for any other purpose.

1917, c. 284, s. 18.

34. Levy of special road tax. The board of county commissioners of any county which is authorized to levy a special road tax for county, township, or road district road work under the provisions of this article shall, beginning with the first Monday in May after the election authorizing such levy, proceed to levy each year, on the first Monday in May or at such time as county taxes are levied, the special road tax authorized by the election and for the number of years stated in the petition calling for the election.

1917, c. 284, s. 19.

35. Emergency fund or bonds provided for; limit. Wherever in any county, township, or road district a condition exists in connection with the location, construction, reconstruction, maintenance, or repair of the roads of said county or township or road district such that in the judgment of the county road commis-

sion or any other similar road commission or board having charge of the roads and bridges of the county, township, or road district, the fund available for such condition is insufficient for the work demanded, then, on application of the county road commission or any other similar road commission or board of the county, township, or road district, the board of county commissioners shall appropriate from the general fund of the county, or shall issue short time notes or bonds in sufficient amount for the work required. The amounts of such fund or bonds issued shall not in any one year exceed one per cent of the taxable valuation, both real and personal, of the county, township, or road district.

1917, c. 284, s. 20.

36. Fund for maintenance of roads. Whenever the board of county commissioners or county road commission of any county under the provisions of this article has issued and sold bonds or has levied a special road tax, it shall levy an additional special maintenance tax sufficient to raise an amount equal to not less than one or more than four per cent of the par value of said bonds issued for the road work of the county, township, or road district, or the amount that has been raised by the said special road tax, to be used for the purpose of maintaining the roads built through the expenditure of the funds raised from such bond issue or from such special road tax. The money thus raised shall be deposited by the sheriff to the credit of the county road commission hereinafter provided for in said bank or banks authorized to receive funds under the provisions of this article. This money shall be deposited as a maintenance fund, to be expended only for the maintenance of the roads constructed under the authority of this article.

1917, c. 284, s. 21.

37. Depository for road funds. All moneys derived from the sale of bonds authorized and sold under the provisions of this article or from the levy of the special road tax authorized under the provisions of this article shall be deposited by the board of county commissioners in such solvent bank or banks, if any, of said county, or if there is no bank in said county, then in any solvent bank in a neighboring county as will pay the highest rate of interest on daily balances as may be determined by the board of county commissioners; said moneys to be deposited in said bank or banks to the credit of the county road commission hereinafter provided for, and to be drawn upon by said commission as hereinafter directed.

1917, c. 284, s. 22.

38. Other funds deposited. Any other moneys, in whatever way collected or appropriated, which are designed to be used for the construction or maintenance of the roads of any county, township, or road district in which bonds for road work within such county, township, or road district have been issued and sold or in which special road tax for road improvement has been levied under the provisions of this article, shall be deposited in the same bank or banks as heretofore provided in which the moneys obtained from the bond issue or special road tax are deposited, and these moneys shall be deposited to the credit of the county road commission hereinafter provided for, and shall be drawn upon by said commission as hereinafter directed.

1917, c. 284, s. 23.

39. Monthly statements by depositories. The bank or banks in which the said road moneys designated in this article are deposited shall prepare monthly statements showing the amounts paid, to whom paid, and for what purposes, and submit same to the said county road commission, and the said road commission shall have said monthly statement posted at the courthouse door of such county.

1917, c. 284, s. 24.

Part 2. County Road Commission and Road Management

40. Appointment of a county road commission. Whenever a bond issue or a levy of a special road tax or the appointment of a county road commission is authorized as hereinbefore provided in this article, there shall be and there is herewith created in such county, except as hereinafter provided, a county road commission to be composed of three members, one of whom shall be at all times a member of the minority political party of the county, and who shall be appointed by the board of county commissioners. In making the first appointments one member shall be appointed for two years, one for four years, and one for six years; and thereafter the appointment shall be for six years. Nothing in this law shall be so construed as to prevent the reappointment of a member of this commission at the expiration of his term. Each member of the county road commission shall take and subscribe an oath before the clerk of the court of his county for the faithful performance of his duties as a member of the said commission: Provided, however, that when in any petition authorized by this act it is stated that the board of county commissioners or road commission or board already existing in such county shall have charge of the road work of such county, township, or road district, then the board of county commissioners shall not appoint a new county road commission as set forth in this section, but the said commission or board mentioned in the said petition shall become the county road commission for carrying out the purpose of this article.

. 1917, c. 284, s. 25.

41. Extension of jurisdiction of commission. Wherever a township or road district has taken advantage of the provisions of this article, so that a county commission has been created and appointed and has charge of the road work of such township or road district, and there should be in the same county in which such township or road district is located another or other townships which avail themselves of the privileges of this article, there shall be no additional county road commission appointed by the board of county commissioners as provided for herein, but the county road commission already appointed shall have charge of the road work in the additional township or townships or road district or districts of said county that may come under the provisions of this article.

1917, c. 284, s. 26.

42. Corporate powers; use of road funds. The county road commission and its successors in office be and they are hereby constituted a body corporate under and by virtue of the laws of North Carolina and by this article under the name and style of County Road Commission, and shall have all powers and authority granted to corporations of like nature by the laws of North Carolina, and by that name may sue and be sued, make contracts, acquire real and personal property by gift or devise, hold, exchange, and sell the same, and exercise such other rights

and privileges as are incident to other municipal corporations of like nature, such as the condemnation of land for the construction, widening or changing of any roads in the county, and such other powers as are necessary to carry out any and all the provisions of this article. The said county road commission shall use the funds derived from the sale of bonds or by levy of special tax, or whatever way derived, as authorized by this article, to locate, construct, reconstruct, surface, repair, improve, and maintain the public highways and bridges in the county, township, or road district under their jurisdiction; shall purchase such materials and purchase and hold, or contract for the use of such tools, machinery, implements, and teams as they may deem necessary for carrying on the road work of said county or township, and perform such other duties as are hereinafter provided for by this article.

1917, c. 284, s. 27.

43. Duties and powers of county road commissions. It shall be the duty of the said county road commission to take charge of laying out, opening, altering, maintaining, or discontinuing of any and all roads of said county, or of such roads as may be stated in the petition, authorizing the issuing of bonds or of levying special road tax or the formation of a county road commission, that are now maintained or may be maintained by the county as public roads; and it is hereby vested with all powers, rights, and authority now vested in the board of county commissioners and other commissions or boards or other road officials of said county for the general supervision of such roads of said county, and for the construction and repair thereof, by contract or otherwise, as may be deemed best: Provided, that if the bonds issued or the special road tax levied under the provisions of this article applies only to a township or road district, then the duties of the county road commission shall only apply to said township or road district.

1917, c. 284, s. 28.

44. Organization of road commissions; compensation of commissioners. The county road commission shall biennially from the date of its organization elect a chairman and a secretary, who shall hold office for two years and until their successors shall be elected and qualified. All moneys expended by said commission shall be by draft upon the bank or banks which are depositories for the said road fund, and said drafts shall be signed by the secretary and countersigned by the chairman, and shall show upon their face the purpose for which the money is expended. The members of the said county road commission shall receive pay only when acting jointly as a road commission, and such compensation shall be the same as paid to the members of the board of county commissioners of said county.

1917, c. 284, s. 29.

45. Vacancies filled. In case of any vacancy caused by death, resignation or otherwise, of any member of the county road commission, such vacancy shall be filled by the board of county commissioners for the unexpired term, as provided above for regular appointments.

1917, c. 284, s. 30.

46. Continuation of existing road management. Those counties or townships or road districts, coming under the provisions of this article, which already

have a road commission, or other commission or board which has charge of the road work, or in which the board of county commissioners have charge of the road work, and desire to retain such commission or board to have charge of the road work of said county, township, or road district, then such desire shall be stated in the petition praying for a bond election or special road tax; and if the bond election or special road tax is passed, then said board of county commissioners, or other board or commission stated in the petition, shall become the county road commission for all the purposes of this article, and shall be required to perform the duties that the county road commission created by this article is authorized to perform; if, however, no desire is stated in the petition praying for a bond election or special road tax that an existing road commission or board or the board of county commissioners shall retain charge of or have charge of the road work in such county, township, or road district, then in that event the county road commission authorized by this article shall be appointed by the board of county commissioners, and such appointment shall abolish the said county, township, or district road commission or board; but all the rights and authority conferred upon such commission or board herewith abolished are hereby conferred upon the county road commission herein enacted.

1917, c. 284, s. 31.

47. Road engineer to keep books and accounts. The county road commission is authorized to employ an expert road engineer at such compensation as may be fixed by said county road commission. The county road engineer, however appointed, may request, at any time, the advice of the state highway engineer in solving any problem that may arise, either technical, economical, or otherwise, that may be deemed by him to be of benefit to the county, and such advice shall be without any expense to the county or township. It shall be the duty of the engineer of the county, township, or road district coming under the provisions of this article to keep or have kept the necessary books and accounts showing in detail the expenditure for all work done through money derived by bonds issued or special road tax levied for road work in such county, township, or road district. The engineer shall keep or have kept in suitable way a cost accounting system showing the unit cost of various items entering into the construction of the roads, showing when and where the various elements of cost entering into the said work were used, giving the name of the road and the nearest station number to culverts, bridges, etc. It shall be his duty to keep approximate yardage costs, and approximate classification of the materials moved in all excavations made for the purpose of building such roads.

1917, c. 284, s. 32.

48. Assessments of damages and benefits. In opening new highways, widening and straightening old roads and repairing same, the county road commission created by this article, or any other road commission or board, or the board of county commissioners, having charge of the road work in any county, township, or road district, or the state highway commission, is hereby authorized through its agents to enter upon any land and locate and build such highways. If the said commission or board and the owner or owners of said land cannot agree as to the damages, if any, the said commission or board shall, after sixty days after said highway is completed, cause to be summoned three disinterested freeholders

of said county who shall go upon the land and assess the damages and benefits under the general law as it now exists. Before entering upon lands as authorized by this section it shall be the duty of the said commission or board to serve notice upon the owner or owners of said land, notifying them that the highway is to be located upon said land under authority of this article. In assessing the damages sustained by any landowner, the jury shall take into consideration the special benefits, if any, accruing to the landowner, and in determining such benefits consideration shall be given to the benefits the landowner has derived from the fact that any old road right of way has reverted back to said landowner by reason of the relocation and construction of the new road; and if such benefits shall exceed the damages, then the amount of such excess of benefits shall be assessed against the landowner and shall constitute a lien upon the land adjoining the road, and shall be collected by the sheriff in the same way as public taxes. No suit shall be instituted by the landowner for damages on account of location of the road under this article or the taking of timber or material until after sixty days after the completion of the road across the lands of such landowner, and no suit shall be brought by any landowner unless the same is commenced within six months after the completion of the road by or across the lands of the claimant. Either party may appeal to the superior court for the assessment of damages and benefits, where the matter shall be heard by the court and jury de novo. No cost shall be awarded against any county or township upon appeals when the recovery awarded through such appeal is not more favorable to appellant than the award of the referees.

1917, c. 284, s. 33.

49. Entry on land for material; obstruction of drains or ditches. The county road commission created by this article, or any other road commission or board, or the board of county commissioners, having charge of the road work in any county, township, or road district, or the state highway commission, is hereby authorized through its agents to enter upon any land in said county, to cut and carry away any timber except trees or groves on improved land planted or left for shade or ornament, dig or cause to be dug and carry away any gravel, sand, clay, dirt, or stone which may be necessary for the proper repair and construction of roads in said county, and make or cause to be made such drains or ditches upon any land adjoining or lying near any road in said county that the said commission or board may deem necessary for the better condition of the road; and the drains and ditches so made shall not be obstructed by the occupants of such lands or any other person; and any person obstructing such drains or ditches shall be guilty of a misdemeanor. Before entering upon land as authorized by this section, it shall be the duty of the said commission or board, through its representatives, to serve notice upon the owner or owners of said land, notifying them that certain material authorized to be taken by this section is required for the road work.

1917, c. 284, s. 34.

50. Cutting timber shading roads. The county road commission or other commission or board having charge of the road work in any county, township, or road district, or the state highway commission, through its agents is hereby authorized to enter upon any land adjoining or bordering on any county road

and cut the trees on such land for a distance in width of not over thirty feet from the edge of the right of way of said road; but such cutting must be necessary for the maintenance of the road, and trees or groves on improved land planted or left for shade or ornament shall not be cut. Due compensation shall be made for any damage sustained by the landowner, to be ascertained under the rules and regulations provided in the second section preceding.

1917, c. 284, s. 35.

51. Claims for timber or material. The owner of any land from which any timber or other material has been removed may present to the authorities his claim therefor in writing, and upon such presentment it shall be the duty of the said authorities to set a day not later than thirty days thereafter for the purpose of hearing and determining such claim. Upon the hearing and determination thereof, the claimant may appeal to the superior court of said county to have his cause tried as in other civil cases.

1917, c. 284, s. 36.

52. Width, alignment and grade of highways. The highways in any county, township, or road district constructed or improved under this article shall have a right of way of not less than forty feet, except where the road authorities or state highway commission deem it impracticable to acquire such width, and in such cases the width shall be as determined by said authorities. The alignment of the road shall be as straight as practicable and with no grade over four and one-half per cent, except as such grade is considered impracticable by the road engineer.

1917, c. 284, s. 37.

53. Deposit of money; transfer of equipment. Any moneys on hand in any county treasury or in the hands of any county treasurer or in any township or road district treasury, or in the hands of any township treasurer to the credit of the road funds of such county or township or road district at the time the location, construction, repair, and maintenance of the public roads in said county, township, or road district comes under the provisions of this article, shall be turned over to the bank or banks designated as the depository for the road fund of said county or township or road district by the board of county commissioners, or other authorities having charge of such funds, and shall become part of said road fund and shall be expended for the construction of the roads in said county, township, or road district as provided in this article. Whenever the construction of the roads of any county or township or road district comes under the provisions of this article, any teams, material, machinery, tools, supplies, or any property whatsoever belonging to the county or township or road district shall be turned over to the county road commission herein provided for, to be used by them for and in whatever way they deem best in constructing or improving the roads of said county or township or road district: Provided, that when the bonds issued or special road tax levied only applies to a township or road district then only such teams, materials, machinery, tools, supplies, or other property as belong to said township or road district shall be turned over to the county road commission.

1917, c. 284, s. 38.

54. County-line roads. When the proper location of any public road is such as to cause it to run along the dividing line between two counties or to traverse first a part of one county and then a part of the other county, thus making the road a "county-line road," then a representative or representation of the county road commission of each county, or, in case the county has no road commission, then of the board of county commissioners, shall, together with representative of the state highway commission, meet on the first Wednesday in March or as soon thereafter as practicable of each year and determine the amount necessary to maintain for the succeeding year the said "county-line road" in a proper manner, and also determine the best method of expending such sum in the most economical manner to accomplish the desired result; and each county commission shall then provide from the road funds at its disposal an amount equal to one-half of that previously determined as necessary to maintain said road in a proper manner, and shall use such sum in the maintenance of said road in such manner as is determined by the representatives of said commissions. In case the county commission desires and requests in writing that the state highway commission supervise and take charge of the maintenance of said "county-line road," then the said sum provided for the maintenance of said road by the said county commissions shall be placed by the said commissions at the disposal of the state highway commission, to be used for the maintenance of the road.

1917, c. 284, s. 39.

55. Construction by one county of county-line roads. When the survey for the location of a road is completed and it is found that the road when constructed will follow the dividing line between two counties or traverse first a part of one county and then a part of the other county, and thus making such a road a "county-line road," and satisfactory arrangements cannot be made between the road officials of the two interested counties for the construction of said "county-line road," then the road officials of the county desiring the construction of said road are hereby authorized to build said road, including that portion wholly within the other county, and pay for same out of the road funds of their county, and the road thus constructed shall become a public road of both counties and shall be maintained as provided in the preceding section for "county-line roads."

1917, c. 284, s. 40.

56. Extension of work to adjoining counties. When the county road commission or any other commission or board that has charge of the road work of any county has built a road to a county line of an adjoining county, which does not contain any connecting road, or if such connecting road is one that is in poor condition, and thus, there is a gap between the said county line to a good road in the adjoining county, and satisfactory arrangements cannot be made between the road officials of the two interested counties for the construction of a road connecting the two roads mentioned above, then the county road commission or other commission or board having charge of the road work of the county desiring the construction of said road in order to make said connection, and when necessary the board of county commissioners, are herewith authorized to build said connecting road in the adjoining county and pay the cost of such construction out of the road or other funds of the county desiring the construc-

tion of said road, and the road thus constructed shall become a public road of the county in which it is located; and shall be maintained by said county in which it is located in a manner to be approved by the state highway commission.

1917, c. 284, s. 41.

57. Work by county commission in municipalities. The county road commission provided for in this article, and any other commission or board having in charge the road work in any county or township of said county, or in any road district, is herewith authorized to expend a portion of the funds available for road work in said county, township, or road district upon the public roads of any incorporated town within said county, township, or road district having a population, as shown by the latest available federal census, of less than twenty-five hundred, and that portion of any street or road in an incorporated city or town having a population of twenty-five hundred or more, along which the houses average more than two hundred feet apart, whenever in their judgment the construction of such road within said incorporated city or town is to the interest of the county, township, or road district: Provided, that the board of aldermen or other governing body of said city or town agrees that the county road commission or other commission or board having charge of the road work for the county, township, or road district, have full charge of the road work in said city or town as authorized by this section.

1917, c. 284, s. 42.

58. Free labor required on roads. In those counties where the able-bodied men are required to work a certain number of days on the public roads of the county or township of such county, the labor of such men shall be under the jurisdiction and supervision of the county road commission, and the men shall be worked at such time and in such manner as said road commission may direct, in conformity with the county or township law governing such labor, except in so far as the following provisions amend such laws—

1. All able-bodied men of any county or township that are subject to work on the public roads of said county or township may be called out by the county road commission to work on such roads any time during the year for three consecutive days until the required number of days are worked out and the work-year shall begin with the first day of January.

2. No man shall be called upon for more days work than is prescribed in the act authorizing such labor in said county or township.

3. Any able-bodied man required to work on the roads may, in lieu thereof, pay to the chairman of the county road commission a sum equal to seventy-five cents per day for the number of days he may be required to work; and in such case he shall be relieved from all labor on the roads.

4. Such sum is paid to the county road commission prior to the time he is called upon to work the roads.

5. Any able-bodied man subject to work on the road who fails to report for work at the time called upon by the county road commission, or refuses to work as required by the county road commission, and has not paid to the county road commission the required sum in lieu of such labor, unless prevented from reporting for such duty by illness or other cause beyond his control, shall be guilty of

a misdemeanor, and upon conviction shall be fined not less than five dollars or more than twenty-five dollars, or imprisoned not less than five or more than ten days.

1917, c. 284, s. 43.

59. Prisoners on roads. Any person in any county that has a county road commission appointed under the provisions of this article, who shall be convicted in any of the courts of said county, superior, justice's or mayor's courts, and sentenced to work on the public roads, shall be assigned into the custody and control of the county road commission by the board of county commissioners, when said board is so requested by the county road commission. Said prisoners while in the custody and under the control of the said county road commission shall be employed on such road work as may be deemed best by the county road commission, and the expense of maintaining and guarding said convicts while so employed may be paid by the board of county commissioners out of the general fund of the county upon vouchers approved by the chairman and secretary of the county road commission. The county road commission shall have direct supervision of the care, feeding, and clothing of said prisoners, and shall provide the necessary sleeping quarters and camps necessary for the proper care of said prisoners. All prisoners' camps shall be maintained in a sanitary manner approved by the state board of health. The county road commission is also authorized, in their care and working of convicts, to divide the prisoners into classes or groups according to the character of the prisoner, and work any and all such prisoners as they deem best without guards and without stripes. Prisoners worked in this manner, without guards and stripes, shall be known as "honor prisoners," and shall be entitled to receive a reduction of at least twenty-five per cent and not more than fifty per cent of the time they are sentenced for satisfactory work and good behavior.

1917, c. 284, s. 44.

60. Road statistics. As it is necessary for the state highway commission to know as accurately as possible the number of miles and type of construction of the roads in each county in order to enable the state highway commission to supply the secretary of agriculture of the United States with the information he desires in connection with the operation of the Federal Aid Road Act, and to enable the state highway commission to carry on its work most efficiently and effectively, the chairman of the county road commission, or the chairman of whatever board or commission that has charge of the road work in such county or township of each and all the counties and townships of the state, is herewith authorized and directed to furnish to the state highway commission, upon blanks to be provided by said state highway commission, the number of miles of each type of road constructed, number of bonds issued, and amount of tax levied, and such other information and statistics regarding the road work of the county or township under his jurisdiction as the state highway commission may deem necessary.

1917, c. 284, s. 45.

61. Guard railings. The county road commission of any county, or whatever board has charge of the roads and road work of any county or township or

road district in said county, are herewith authorized and directed to provide suitable means to insure the safety of the public traveling over the roads of such county, township, or road district, by erecting, whenever it is considered necessary, substantial railings, walls, or other suitable structures for this purpose. If road officials of said county or township or road district fail to provide such satisfactory measures of insuring the safety of those traveling the roads of such county, township, or road district, then upon petition of twenty freeholders of the county, township, or road district who are frequent patrons of the road in question, the said county road commission, or whatever commission or board has charge of the road work of said county, township, or road district, shall, within ten days after receipt of said petition, begin erecting such satisfactory railing, wall, or other suitable structure for this purpose: Provided, that if in the judgment of the county road commission, or whatever commission or board has charge of the road work of said county, such railings, walls, or other suitable structures are not needed, then they shall advise with the state highway commission, and if such commission deems such railings, walls, or other suitable structure necessary for the protection of the patrons of the said road, the county road commission or other said commission or board shall erect such railings, walls, or other suitable structures as called for in the petition.

1917, c. 284, s. 46.

Part 3. Road Institutes

62. Road institutes. The members of the county road commission of any county, or the members of whatever commission or board who have charge of the road work in any county, township, or road district, are herewith authorized to attend the road institute held annually at the University of North Carolina, and the county road commission of any county, or whatever commission or board has charge of the road work in any county, township, or road district, are herewith authorized to detail any and all persons employed by said county in connection with the road work of said county, township, or road district to attend said institute, when in their judgment such attendance will inure to the benefit of the road work of said county, township, or road district; and the said road commission, or other commission or board, is herewith authorized to pay the expenses of the members of said county road commission or board, and other persons detailed to attend said road institute, out of the funds of the said county, township, or road district.

1917, c. 284, s. 47.

Part 4. Road Districts

63. Creation of road districts. Whenever it is desired to create a road district in any county, and provide funds for the location, construction, reconstruction, or maintenance of roads within such district, such road district may be created in the following manner: Upon petition of twenty-five freeholders living within the area of a proposed road district, which petition shall give the boundaries of the proposed district, together with the amount of bonds it is desired to issue for the district, or the amount of special tax it is desired to levy upon the proposed district, and when said petition is presented to the board of county commissioners it shall be the duty of the board of county commissioners of any county, upon receipt of such petition, to provide for holding an election at the

next election of county officers, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters living within the boundaries of the proposed road district on the question of whether the board of county commissioners of said county in which the proposed road district is located shall issue the bonds called for in the petition, or levy the special tax called for in the petition provided that there is included in the petition the approximate number of miles of road it is proposed to improve by such bond issue or special tax; but no election shall be held until the board of county commissioners has been notified by the state highway commission in writing that the amount of bonds proposed to be issued or special road tax proposed to be levied will be sufficient to construct, alter, or improve approximately the number of miles of road proposed to be improved: Provided, that the approximate amount of bonds proposed to be issued as called for in the petition, together with all bonds previously issued and remaining unpaid by said county for which the property of the road district is liable, shall in no case exceed an amount equal to ten per cent of the total assessed valuation of the area included within the proposed road district.

In case the petition for a road district calls for an election, the board of county commissioners shall proceed to call, hold, and report the election as hereinbefore provided for in the election in townships; and in case the result of the election is in favor of road bond issue or special road tax, then the said board of county commissioners shall declare the road district created, and proceed to carry out the wishes of the people of the district in regard to the issuing of bonds or the levying of special tax heretofore provided for townships or road districts.

1917, c. 284, s. 48.

64. Special road district; apportionment of assessments. A county road commission of any county, or whatever commission or board has charge of the road work of any county, shall have authority and power as hereinafter provided to cause to be relocated, constructed, reconstructed, or improved any public road of the county, or any part of such road, upon petition signed by the owners of sixty per cent of the land area in each and every subdivision hereinafter provided for; and the board of county commissioners are authorized and directed as hereinafter provided to levy and cause to be collected an assessment upon all lots, tracts, and parcels of land specially benefited by such improvement, for paying two-thirds of the cost and expense thereof, as hereinafter provided, which assessment shall become a first lien upon all property liable therefor prior and superior to all other liens and encumbrances, and to provide for the payment of such assessment either on the immediate payment plan or by installments, and to issue local road district warrants or bonds for such installments.

1917, c. 284, s. 49.

65. Petition for improvement of adjoining roads. The owners of sixty per cent of the land area in each and every subdivision hereafter provided for adjoining such county road or part thereof sought to be improved in any county in this state may present to the county road commission or whatever commission or board that has charge of the road work of any county, a petition setting forth that the petitioners are such owners, and that they desire such road or part thereof to be improved under the provisions of this article, the particular road

or portion thereof sought to be improved, the kind and nature of the improvement desired, and the mode of payment of the assessments to be levied for defraying the cost and expenses of such improvement, and the maximum cost of the proposed improvement.

1917, c. 284, s. 50.

66. Procedure upon petition for special road district, or road improvement. Upon the presentation of a petition as provided in the two preceding sections, the county road commission, or whatever commission or board has charge of the road work of any county, shall forthwith proceed to carry out the wishes of the petitioners: Provided, that before the county road commission, or whatever commission or board has charge of the road work of any county, shall act upon said petition the register of deeds shall certify to the commission that the petition represents at least sixty per cent of the land area in each and every subdivision hereinafter provided for adjoining the county road proposed to be improved; and that the county road commission, or whatever commission or board has charge of the road work of any county, shall, through its engineer, examine and survey and make plans and specifications and estimate of the cost of such construction and improvement as is desired by the petitioners; and if two-thirds of the estimated cost of such improvement is greater than the amount stated in the petition, then the county road commission, or whatever commission or board has charge of the road work of any county, shall reject such petition, except that they are authorized to do the work petitioned for. The total assessment charged against the property owners shall not be greater than the amount named in the petition.

The engineer shall examine and determine the lands that will be specially benefited by such improvement and which should be included within the local district to be assessed to defray the cost and expense of such improvement and to prepare the estimate rolls as hereinafter provided; the engineer shall also determine the cost of right of way, if any, for that portion of the road that it is necessary to relocate. As soon as the engineer has completed his report he shall present same to the county road commission, or whatever commission or board that has charge of the road work of such county, at their next meeting.

1917, c. 284, s. 51.

67. Local road districts constituted; apportionment of assessment. Such local road districts shall be constituted and the boundaries thereof fixed as follows: The road or portion thereof to be improved, coterminous with the improvement, shall be the central line through the district, and the bordering lands on each side, and within a distance of half a mile from the margin of said road and coterminous with the construction work or improvement, shall be included in and constitute the body of the local road district, and shall be subject to assessment to the extent above provided.

For the purpose of making an equitable apportionment of the assessment, such local road district shall be divided longitudinally into three parts, as follows: All land on both sides of said road, or portion thereof, to be improved, and within a distance of eight hundred and eighty feet from the margins thereof, shall constitute the first subdivision; all the land outside of the first subdivision and within eight hundred and eighty feet from the exterior margins thereof

shall constitute the second subdivision; and all the land outside of said second subdivision and within eight hundred and eighty feet from the exterior margins thereof shall constitute the third subdivision. Each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of forty-five per cent of not over two-thirds of the cost of the construction work or improvement of said road, including said incidental expenses, and it shall be subject to a lien therefor until it shall be paid; each separate tract or parcel of land in said second subdivision shall be assessed and subject to a charge for a proportional part of thirty-five per cent of not over two-thirds of the cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid; each tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of twenty per cent of not over two-thirds of the cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid.

The charge upon the several separate tracts or parcels of land in each subdivision shall be assessed ratably according to the front foot plan, that is to say, one foot of longitude measured along the road constituting the center of such improvement district and extending latitudinally across the subdivision shall be taken as the unit by which to determine the proportion of the assessment, so that a unit in each subdivision will be eight hundred and eighty square feet of superficial area. If the areas of said subdivisions are not equal to each other, the rates fixed for each subdivision shall be fixed on the basis that the benefit conferred on eight hundred and eighty square feet of land in subdivisions first, second, and third are related to each other as are the numbers forty-five, thirty-five, and twenty, respectively. This section is to imply that the property on each side of said road shall bear one-third of the cost and the county one-third.

1917, c. 284, s. 52.

68. Report of engineer; creation of district. The county road commission, or whatever commission or board has charge of the road work of any county, shall at their next meeting after the completion of the engineer's report relating to local road districts consider such report, and if it shall appear from said report that the whole amount of the cost and expense of said construction or improvement, and, together with any cost for right of way chargeable as a lien against the property specially benefited within such local road district, comes within the amount specified in the petition, the said county road commission, or whatever commission or board has charge of the road work of any county, shall make and enter upon their records an order that the said improvement be made, and creating such local road district for the payment of said cost and expenses of making said improvement, by special assessment of the property in said district specially benefited according to said engineer's report, be known and designated Local Road District, No. ---, in ----- County, North Carolina, and such report shall be kept on file in the office of the county road commission, or whatever commission or board that has charge of the road work of any county.

1917, c. 284, s. 53.

69. Work undertaken. After the making of such order and directing the making of such improvement and establishing such local road district, the county road commission, or other commission or board having charge of the road work

of said county, shall proceed to do the work under the same provisions and conditions as they are authorized to carry on road work for townships and counties. 1917, c. 284, s. 54.

70. Apportionment of expense; assessment roll, etc. When the final order for said improvement in the local road district shall have been made, the county road commission, or whatever commission or board has charge of the road work of said county, through its engineer or other representative shall proceed to apportion the estimated cost and expenses of said improvement upon the land embraced in said local road district according to the benefits to be derived therefrom, and not more than thirty days after the beginning of work on said improvement report to and file with the board of county commissioners an assessment roll in duplicate, which shall contain a description of each lot or parcel of land or part thereof to be assessed. The amount to be charged, levied, or assessed against each lot or parcel of land or part thereof, in proportion to the special benefits to be derived by each such lot or parcel or part thereof from such improvement, and the name of the owner of each such lot or parcel of land or part thereof, if known; but in no case shall a mistake in the name of the owner be fatal when the description of the property is correct.

As soon as said assessment roll shall have been so reported and filed, the board of county commissioners shall cause notice to be published for three consecutive weeks, which notice shall be published in a newspaper of the county, or, in case there is no newspaper in the county in which the local road district is located, then in a newspaper of an adjoining county, notifying all persons interested that said assessment roll has been filed, and requiring them to appear at the office of the board of county commissioners, at the county courthouse, at a time not less than fifteen days from the date of the last issue of said publication of said notice, and make objections thereto, if any they have. At the time fixed the board of county commissioners shall meet, and, if no objections have been filed to said assessment roll, they shall make and enter an order confirming the same; but if objections in writing have been filed by any of the landowners affected thereby the board of county commissioners shall proceed to hear such objections, and for that purpose shall hear any testimony that shall be offered by any party interested, and either one of the board of county commissioners shall be authorized to administer oaths to witnesses. After such hearing they shall make such corrections and changes, if any, as to them shall appear just and requisite to apportion the assessment to the benefits to be received from such improvement, and shall then make and enter an order approving and certifying such assessment roll, and levying and assuming the amounts thereof against each and all of the lots and parcels of land, or parts thereof, respectively, included in said roll as approved, and the same shall become a first lien thereon: Provided, that any landowner may appeal to the superior court from the decision of said board, on giving an appeal bond in the sum of one hundred dollars, but such appeal shall not hinder or delay the carrying out of the provisions of this act.

The cost and expenses of survey and of all preliminary proceedings and all other expenses included in organization of the local road district, and for the preparation, issuance, and disposal of the bonds or warrants for the payment of cost and expense of such improvements, and for the cost of the improvements for the construction and reconstruction of the roads in said local district shall be

paid out of the road fund and the general fund of the county in a ratio one to two; that is, one-third of all cost and expenses mentioned above shall be paid out of the road fund of the county by the county road commission, or whatever commission or board that has charge of the road work of said county; and the other two-thirds out of the general fund of the county; this latter being repaid in the assessments collected from the owners of the land jointly, under this act, in the local road district.

1917, c. 284, s. 55.

71. Maintenance. All roads laid out, constructed, or reconstructed or improved under the provisions of this article shall, after their construction, be maintained by the county road commission, or other commission or board having charge of the public roads of said county.

1917, c. 284, s. 56.

72. Methods of payment and collection of assessments. There shall be two methods of making payment of the special assessment chargeable against the several tracts and parcels of land included in the local road district authorized under this act, namely, that of "immediate payment" and that of "payment by bonds or warrants"; the method to be adopted and the period not exceeding ten years over which such bonds or warrants shall be made payable shall be that petitioned for as authorized herein. In case the payment of such assessments in local road districts is to be by the method of "immediate payment" the board of county commissioners shall, as soon as such assessment roll has been approved and certified, deliver the same to the sheriff of the county for the collection of such assessments. The sheriff shall give notice by publication for two consecutive weeks in a newspaper in the county, or, in case there is no paper in the county in which the local road district is located, then in a newspaper of an adjoining county, and shall mail a copy of such notice to the owner of the property assessed when the name of such owner and his postoffice address is known; but the failure to mail such notice shall not be fatal when publication thereof is made; which said notice shall state that such assessment roll has been certified to him for collection, and that unless payment is made within thirty days from date of such notice such assessment will become delinquent and shall bear interest at the rate of six per cent per annum; and if not paid before such assessment shall have become delinquent, a penalty of five per cent shall be added, and the sums delinquent shall be added on the annual tax roll for the current year against each lot, tract, and parcel so delinquent, and, with the interest and penalty, collected as other taxes, separate account being kept thereof; and if not paid within the time fixed for the payment of general county taxes, shall be collected as such taxes are collected, together with such additional charges and penalties as are authorized to be charged and collected on other delinquent taxes; and each lot, tract, or parcel so delinquent shall be sold for the amount of such assessment, with interest, penalty, and costs at the time and in the manner and by the same authority and process as lands and lots are sold for general county taxes.

1917, c. 284, s. 57.

73. Payment by bonds or warrants. In case the method of payment is to be "payment by bonds or warrants," the board of county commissioners, after

the assessment roll has been approved and certified as hereinbefore provided, shall, at the time of levying said assessment and in their order making such levy, provide and declare that the sum charged thereby against each of such tracts or parcels of land in said local road district may be paid in equal annual installments, with interest upon the whole sum so charged at the rate fixed in said order, specifying the number of such installments, which shall be equal to the number of years which the bonds or warrants issued to pay for the improvement may run before payment of the same may be demanded by the holder thereof; and each year thereafter the sheriff shall collect one of said installments, together with the interest due thereon, and all installments thereafter to become due in the same manner and with the same added penalty and interest, in case of delinquents, and by means of the same proceedings to enforce such payments by the sale of the land, and as hereinbefore provided for the collection of said assessment by the method of "immediate payment."

1917, c. 284, s. 58.

74. Issuance of bonds of district; payable from general fund. The board of county commissioners shall make and enter an order authorizing and directing the issuance of such warrants or bonds of the local road district that has been authorized by the petition for the improved road work in said district, which by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date may be fixed by the order, and payment of which shall not be demanded by the holder thereof until the end of said period, and they shall bear such interest as shall insure their being disposed of at par and as may be provided for in said order, not exceeding six per cent per annum, which interest shall be payable annually, and each warrant or bond shall have attached thereto interest coupons for each interest payment. Such warrants or bonds shall bear the date of issue and be made payable to bearer. The warrants or bonds and each coupon shall be signed by the chairman of the board of county commissioners, and shall be attested by the clerk of said board, and the seal of such board shall be affixed to each warrant or bond, but not to the coupon: Provided, that each coupon may be signed by facsimile signature of said officers. Such warrant or bond shall be printed, engraved, or lithographed on good bond paper, and state on its face that it is issued in accordance and compliance with this act, designating the same by title and date of approval. Such warrants or bonds shall be in denominations of not less than one hundred or more than one thousand dollars, and they shall refer to the improvement to pay for which the same shall be issued, and to the order and record thereof authorizing the same, and shall bear upon its face the designation of the local road district, thus: Local Road District, Number ---- in ----- County, North Carolina. The principal sum named in the warrant or bond, and the interest thereon, shall be payable out of the general fund of the county, the same to be reimbursed as the assessments are collected by the sheriff from the assessment on the lands in the local road district. Such warrants or bonds shall not be issued in excess of the amount named in the petition requesting organization of the local road district.

1917, c. 284, s. 59.

75. Notice of issuance of bonds; payment of assessments. In case the payment of the assessments provided for in the previous sections is by such special

warrants or bonds, then the sheriff shall give notice by publication for two consecutive weeks in a newspaper of the county, or in case there is no newspaper published in said county, then in a newspaper of an adjoining county, and shall mail a copy of such notice to the owner of the property assessed, when the name of such owner and the postoffice address is given; but the failure to mail such notice shall not be fatal when publication thereof is made; which said notice shall state that such assessment roll has been certified to the sheriff for collection, and that unless payment of the whole amount of such assessment is made within thirty days from the date of such notice special warrants or bonds will be issued against said property for the payment of said assessments, and thereafter the same will be payable in annual installments, with interest thereon at the rate provided for in said warrants or bonds. At any time within such thirty days any owner of lands within such local improvement district may pay the said assessment chargeable against said owner's lands, and release and discharge the same therefrom and from the operation and effect of such warrants or bonds; and no warrants or bonds shall be issued until twenty days after the expiration of such thirty days, nor for any amounts of such assessment so paid in full within such thirty days. The owner of any such lands may redeem the same from all liability for such assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lands at the time of such payment, with interest and all charges thereon to the date of the maturity of the installment next falling due. In all cases where any assessment or any installment thereof is paid as herein provided, the same shall be paid to the sheriff, and such funds shall be paid over by the sheriff into the general fund of the county.

1917, c. 284, s. 60.

Part 5. Definition of Terms

76. Definition of terms. When provision is made by any section of this article for some other commission to have charge of the road work of any county, township, or road district, as provided for in this article, then such commission shall for the purposes of this act be considered as the county road commission of such county, township, or road district, and all the duties and authorities conferred upon the county road commission authorized by this act are herewith conferred upon such commission acting as the county road commission; and wherever the words "county road commission" are used in this act they shall be construed to mean such other commission as has been conferred with the authority and duties of the county road commission as authorized by this act. That whenever the word "owner" is used in this act, it shall be construed to mean owner or owners, guardian of infants, idiots, lunatics, or inebriates owning lands, or agents for nonresident owners of land in this state, or other persons whose property rights may be materially affected.

1917, c. 284, s. 61.

ART. 3. TOWNSHIP ROAD BONDS AND ROAD COMMISSIONS

77. Road bonds by townships authorized; bond limit. For the purpose of laying out, establishing, altering, repairing, grading, constructing and improving in any way the public roads in various townships of the state, and for purchasing machinery, tools, etc., necessary for such improvements the boards of

county commissioners of any county are authorized, empowered and directed to issue coupon bonds bearing interest at a rate not to exceed six per cent per annum, payable semiannually at the office of the treasurer of the county issuing such bonds, to an amount not to exceed fifty thousand dollars for any one township in any county, in the manner and under the restrictions hereinafter provided, and the bonds so issued by the commissioners of the county shall be paid by the township for which they are issued, and shall not be chargeable against any property or polls outside of such township. The board of county commissioners in performing the duties of issuing, selling and purchasing bonds or doing any other thing under this article shall be deemed the agent of any township acting under this article.

1913, c. 122, s. 1; 1915, c. 237, s. 1.

78. Election to determine issuance; return of election; issue and sale of bonds.

Upon presentation of a petition in writing signed by not less than one-fourth of the qualified voters of any township, to the board of county commissioners of their county, requesting them to submit to the qualified voters of the township where such petitioners reside a proposition to issue bonds for the purposes named in the preceding section for a definite amount at a maximum rate of interest and to run for a period not to exceed fifty years, all to be named in said petition, the board of county commissioners shall within thirty days order an election to be held in such township and submit to the qualified voters therein the question of issuing bonds to the amount at the rate of interest and to run for a period specified in said petition, at which election all those qualified to vote who are in favor of said proposition, and shall vote a ballot on which shall be written or printed the words "For road bonds" and those opposed to the proposition shall vote a ballot on which shall be written or printed the words "Against road bonds," and the election for this purpose shall be conducted in the same manner and subject to the same rules and regulations as are or may be provided for the election of township officers by the general election laws of this state, unless in any manner otherwise provided for in this article.

The board of county commissioners shall at the time of ordering any election under this act, appoint one registrar and two judges of election in each precinct in said township to hold said election. The books shall be kept open for the registration of voters for twenty days preceding the day of election. For the purpose of registration the books used in the general election shall be delivered to and revised by the registrar, and the commissioners may order a new registration by giving thirty days notice of such registration. Such election shall be held after thirty days notice thereof, specifying the amount of the proposed bond issue, rate of interest and period for which bonds shall run shall have been posted at the courthouse, and at every polling place in the township where said election shall take place and published in four issues of some newspaper published in the county, if the board of county commissioners so order, and the returns thereof shall be made to the board of county commissioners, and returns recorded and result declared by said board as they may determine.

If a majority of the qualified voters vote "For road bonds," then the board of county commissioners shall issue coupon bonds to the amount at the rate of interest and to run for a period specified in the said petition and order of election, and the bonds shall upon their face indicate on account of what township

they are issued. They shall be in denominations of not less than one hundred dollars and not exceeding one thousand dollars each. They shall be signed by the chairman of the board of county commissioners and attested by the official seal and signature of the register of deeds of said county. The chairman of the board of county commissioners, under the direction of said board, shall sell the bonds so issued at not less than par value and for as much above par value as possible: Provided, that said bonds shall be issued and sold only as the funds are needed in the township for the purposes indicated herein: Provided, further, elections may be ordered and held upon petitions under the provisions of this act not oftener than every twelve months, in any township until the full amount of bonds authorized by this article shall have been issued for such township.

1913, c. 122, s. 2.

79. Tax for interest and sinking fund. The county commissioners or other county authorities who are legally authorized and empowered to levy taxes shall, in order to provide for payment of the bonds and interest thereon to be issued under the preceding section, compute and levy each year at the time of levying county taxes a sufficient tax upon the property and poll, observing the constitutional equation, in any township having issued bonds to pay the interest on the bonds issued on account of such township, and shall also levy a sufficient tax to create a sinking fund to provide for the payment of said bonds at maturity. Such taxes shall be levied and collected annually and under the same laws and regulations as shall be enforced for levying and collecting other county taxes.

1913, c. 122, s. 3.

80. Record of bonds; proceedings, and elections. The county commissioners of any county so issuing bonds shall provide a record which shall be kept by their clerk, in which shall be entered the name of every purchaser of a bond, the number of the bond purchased, the date of issue, when due, rate of interest, the township on account of which the bond is issued, and the amount received for said bond. They shall also cause to be kept a record of all proceedings, and elections, as well as a record of the bonds redeemed annually, and the bonds when redeemed and recorded shall be destroyed by fire in the presence of the board of commissioners and that fact recorded: Provided, the record of bonds for each township shall be kept separate.

1913, c. 122, s. 4.

81. Investment of excess fund from tax; provisions as to redemption; required statements in bonds; advertisement of sale. The funds raised by taxation in excess of the amount required to pay interest, if any, shall be safely invested by the board of county commissioners; and the county commissioners are authorized to purchase at par value any of such bonds from the excess fund, provided they are offered to them by the holder thereof; or the commissioners may stipulate in the bond when same are to be redeemable, provided it is not less than five nor more than forty years from the date of the bonds. The bonds when so issued, after election is proved by the commissioners, shall bear on their face the statement that the tax shall be levied by the county commissioners in accordance with this article for payment of interest and principal, full payment of which interest and principal is guaranteed by the county, though no polls or property outside of the township in whose name the bonds are issued shall be liable for such bonds

until the resources of the township shall be exhausted. All bonds issued under this article shall be sold at a public meeting of the board of county commissioners of the county in which the bonds are issued, after the bonds have been advertised for sale in at least one issue of a newspaper: Provided, that this provision as to advertising shall apply only to bonds sold after March tenth, one thousand nine hundred and seventeen.

1917, c. 207, ss. 1, 5; 1913, c. 122, s. 5.

82. Separate accounts of funds; bond of treasurer. The funds derived from the sale of any bonds hereinbefore provided for and the taxes levied and collected under this article on account of any township shall be turned over to the county treasurer and a separate account of each fund for the benefit of each township shall be kept separate from all other funds. But before any such funds shall be placed in his hands the treasurer shall execute a good and sufficient bond in the penal sum of fifty per cent more than the amount of money in his hands at any time for road purposes and payment of bonds and interest thereon on account of the several townships in the county, and for the faithful performance of such other duties as may devolve upon him as treasurer of said fund. The said bond shall not be less than five thousand dollars and shall be approved by the board of county commissioners and shall be recorded and kept as bonds of county officers are required to be kept.

1913, c. 122, s. 6.

83. Corporate powers of and judgments against commissioners. The board of county commissioners may sue and be sued, plead and be impleaded in any court of competent jurisdiction in this state touching the bonds issued on account of any township in any county issuing bonds under this article, or any matter connected therewith, or touching the road fund of any such township derived under this article, or on any contract made by or with the said board for carrying out the purposes of this article, and any judgment in favor of the board shall specify for the benefit of what township such judgment is rendered, and any judgment against the board shall specify what township is liable for the payment thereof, and the judgment shall be paid only out of the funds of such township, or by taxes derived from property and polls in such township.

1913, c. 122, s. 7.

84. Orders on funds; direction of expenditures. All orders for payment of any of said bonds and for interest on said bonds shall be made by the county commissioners, and shall specify thereon the purpose, and the amount for bonds and the amount for interest shall be on separate orders. The funds for other purposes shall be expended under the direction of the commissioners, or by the township supervisors with the consent of any of the commissioners, and paid upon the order of the commissioners, or in such manner and on such orders as the board of county commissioners may direct, and the board of commissioners shall make such rules and regulations, and such directions in this respect as they may see proper.

1913, c. 122, s. 8.

85. Use of proceeds of bonds; working convicts. The funds derived from sale of bonds on account of any township shall be used for the purpose of laying

out, establishing, altering, repairing, grading, constructing and improving in any manner public roads in the township so issuing bonds and for purchasing such material, machinery and improvements as may be necessary. The money so expended shall be as far as possible used for permanent improvements only. The county commissioners may at any regular meeting organize a convict force, and elect necessary officers and guards as provided by law, and shall work such convicts on the public roads of the townships, and the expenses shall be paid by the said townships. Any damage that may be awarded to any person by reason of establishing, altering or repairing any public roads on which permanent improvements are to be made in any township issuing bonds shall be paid by such township. The county commissioners may use the funds aforesaid on any roads within the township, in their discretion, unless the petition has designated certain roads for the expenditure of a part or all of said funds, in which case the funds shall be expended as provided in the petition. The designation of certain roads in the petition shall not be held to invalidate any election heretofore or hereafter held.

1917, c. 125, s. 1; 1913, c. 122, s. 9.

86. Appointment of township road commissioners. If at any election held in any township under this article the purposes of the article shall be ratified by a majority of the qualified voters of the township, then it shall be the duty of the board of county commissioners at their next meeting to appoint a board of township road commissioners, to be known as the Township Road Commission of -----Township. This township road commission shall consist of three freeholders of the township. The appointment of this township road commission shall be agreed upon and approved by the state highway commission. The term of office of the members of the township road commission shall be for one, two, and three years respectively for the first three years, and thereafter one member shall be appointed as above each year for a term or period of three years.

1917, c. 279, s. 1.

87. Incorporation of commission; use of funds. The said township road commission and its successors in office is hereby constituted a body corporate under and by virtue of the laws of North Carolina under the name and style of Township Road Commission, and shall have all powers and authority granted to corporations of like nature by the laws of North Carolina, and by that name may sue and be sued, make contracts, acquire real and personal property by gift or devise, hold, exchange, and sell the same, and exercise such other rights and privileges as are incident to other municipal corporations of like nature, such as the condemnation of land for the construction, widening, or changing of any roads in the county, and such other powers as are necessary to carry out any and all the provisions of this article. The said township road commission shall use the funds derived from the sale of bonds or by levy of special tax, or whatever way derived, as authorized by this article, to locate, construct, reconstruct, surface, repair, improve, and maintain the public highways and bridges in the township under their jurisdiction; shall purchase such materials and purchase and hold or contract for the use of such tools, machinery, implements, and teams

as they may deem necessary for carrying on the road work of the township, and perform such other duties as are hereinafter provided for by this article.

1917, c. 279, s. 1.

88. Duties and powers of commission. It shall be the duty of the township road commission to take charge of laying out, opening, altering, maintaining, or discontinuing of any and all roads of the township that are now maintained or may be maintained by the township as public roads, and it is hereby vested with all powers and rights and authorities now vested in the board of county commissioners or other commission or board or other road officials of such township for the general supervision of its roads, and for the construction and repair thereof, by contract or otherwise as may be deemed best.

1917, c. 279, s. 1.

89. Organization; drafts for money; pay of commissioners. The township road commission shall annually from the date of its organization elect a chairman and a secretary, who shall hold office for one year and until their successors shall be elected and qualified. All moneys expended by the commission shall be by draft upon the bank or banks which are depositaries for the road fund, and such drafts shall be signed by the secretary and countersigned by the chairman, and shall show upon their face the purpose for which the money is expended. The members of the township road commission shall receive pay only when acting jointly as a road commission, and such compensation at this time shall be the same as paid to the members of the board of county commissioners of said county.

1917, c. 279, s. 1.

90. When governor to appoint commissioners; vacancies. In the event the state highway commission does not approve the appointment made by the board of county commissioners for members of the township road commission, and an agreement cannot be reached by the above commissions, then the governor of the state shall appoint the necessary number of members to compose or complete the membership of the township road commission. In case of any vacancy caused by death, resignation, or otherwise, of any member of the township road commission, such vacancy shall be filled by the board of county commissioners for the unexpired term as provided above for regular appointments.

1917, c. 279, s. 1.

91. Township road engineer; duties; compensation; assistance from state; books and accounts. The township road commission is authorized and directed to employ an expert road engineer, who shall be approved by the state highway commission, at such compensation as may be fixed by the township road commission; or, if in the opinion of the state highway commission a whole-time engineer is not required for the work to be done by the township, then, if practicable, arrangements may be made for the employment of an engineer for such portion of his time as may be deemed necessary by the state highway commission. In case an engineer is not employed continuously by the township, then in the absence of the engineer a superintendent shall be appointed by the engineer, with the approval of the township road commission and the state highway commission, who shall have charge of the road work and act for the engineer in his absence. His compensation may be paid in part by the state highway commis-

sion when arrangements for such payment is made by the township road commission with the state highway commission. When the state furnishes to the township engineering assistance and supervision of road work, the acceptance by the township road commission of the state road engineer shall be considered as fulfilling the requirements of this article. The road engineer, whether appointed by the township road commission or furnished by the state highway commission, shall have general supervision and direction of all the road work of the township, supervise the plans and specifications of all road work, and see to their execution. He shall appoint and discharge, by and with the approval of the township road commission, all superintendents, foremen, supervisors, overseers, and other assistants needed in conducting the road work of the township in a satisfactory and economical manner. The township road engineer, however appointed, may request, at any time, the advice of the state highway engineer in solving any problem that may arise, either technical, economical, or otherwise, that may be deemed by him to be of benefit to the township, and such advice shall be without any expense to the township.

It shall be the duty of the engineer of the township coming under the provisions of this act to keep or have kept the necessary books and accounts showing in detail the expenditures for all work done through money derived by bonds issued or special road tax levied for road work in such township. The engineer shall keep or have kept in suitable way a cost accounting system showing the unit cost of various items entering into the construction of the roads, showing when and where the various elements of cost entering into the said work were used, giving the name of the road and the nearest station number to culverts, bridges, etc. It shall be his duty to keep approximate yardage, costs, and approximate classification of the materials moved in all excavations made for the purpose of building such roads.

1917, c. 279, s. 1.

92. Entry on lands; damages; excess of benefits a lien on lands; suits. In opening new highways, widening and straightening old roads and repairing same, the township road commission through its agents is hereby authorized to enter upon any land and locate and build such highways. If the township road commission and the owner or owners of said land cannot agree as to the damages, if any, the township road commission shall, after sixty days after said highway is completed, cause to be summoned three disinterested freeholders of said township who shall go upon the land and assess the damages and benefits under the general law as it now exists. Before entering upon lands as authorized by this section it shall be the duty of the township road commission to serve notice upon the owner or owners of said land, notifying them that the highway is to be located upon said land under authority of this article. In assessing the damages sustained by any landowner, the jury shall take into consideration the special benefits, if any, accruing to the landowner, and in determining such benefits consideration shall be given to the benefits the landowner has derived from the fact that any old road right of way has reverted back to said landowner by reason of the relocation and construction of the new road, and if such benefits shall exceed the damages, then the amount of such excess of benefits shall be assessed against the landowner and shall constitute a lien upon the land adjoining the road, and shall be collected by the sheriff in the same way as public taxes.

No suit shall be instituted by the landowner for damages on account of location of the road under this article until after sixty days after the completion of the road across the lands of such landowner, and no suit shall be brought by any landowner unless the same is commenced within six months after the completion of the road by or across the lands of the claimant. Either party may appeal to the superior court for the assessment of damages and benefits, where the matter shall be heard by the court and jury *de novo*. No cost shall be awarded against any township upon appeal when net damages awarded through such appeal are not greater than given by the referees.

1917, c. 279, s. 1.

93. Entry on land for material; drains or ditches; obstruction. The township road commission through their officers and agents are hereby authorized to enter upon any land near or adjoining any public road of said township, to cut and carry away any timber except trees or groves on improved land planted or left for shade or ornament, dig or cause to be dug and carry away any gravel, sand, clay, dirt, or stone which may be necessary for the proper repair and construction of roads in said township, and make or cause to be made such drains or ditches upon any land adjoining or lying near any road in said township that the township road commission may deem necessary for the better condition of the road; and the drains and ditches so made shall not be obstructed by the occupants of such lands or any other person; and any person obstructing such drains or ditches shall be guilty of a misdemeanor. Before entering upon land as authorized by this section, it shall be the duty of the township road commission, through its representatives, to serve notice upon the owner or owners of the land, notifying them that certain material authorized to be taken by this section is required for the road work.

1917, c. 279, s. 1.

94. Presentation of and hearing on claims. The owner of any land from which any timber or other material has been removed may present to the township road commission his claim therefor in writing, and upon such presentment it shall be the duty of the township road commission to set a day not earlier than sixty days after the removal of such timber or material for the purpose of hearing his claim. Upon the hearing thereof the claimant may appeal to the superior court of the county in which said township is located, to have his cause tried as in other civil cases.

1917, c. 279, s. 1.

95. Deposits of proceeds of bonds. All moneys derived from the sale of bonds authorized and sold under the provisions of this act shall be deposited by the board of county commissioners in such solvent bank or banks, if any, of said township, or if there is no bank in said township, then in any solvent bank in a neighboring township or county as will pay the highest rate of interest on daily balances as may be determined by the board of county commissioners; said moneys to be deposited in such bank or banks to the credit of the township road commission, and to be drawn upon by the commission as hereinbefore directed.

1917, c. 279, s. 1.

96. Deposits of other road funds. Any other moneys, in whatever way collected or appropriated, which are designed to be used for the construction or

maintenance of roads in any township in which bonds for road work within such township have been issued and sold shall be deposited in the same bank or banks in which the moneys obtained from the bond issue or special road tax are deposited, and these moneys shall be deposited to the credit of the township road commission, and shall be drawn upon by said commission.

1917, c. 279, s. 1.

97. Monthly statements. The bank or banks in which the road moneys designated in this act are deposited shall prepare monthly statements showing the amounts paid, to whom paid, and for what purposes, and submit same to the township road commission, and the road commission shall have such monthly statement posted at the courthouse door of the county in which the township is located.

1917, c. 279, s. 1.

97a. Local acts not affected. Nothing in this article shall be construed to repeal any local road laws of any county and shall not in any way affect them.

1917, c. 279, s. 1.

ART. 4. ROAD OFFICIALS

98. Public roads designated; authority of supervisors and county commissioners. All roads and ferries that have been laid out or appointed by virtue of any act of assembly, or any order of court, are hereby declared to be public roads and ferries; and the justices of the peace in each township shall have the supervision and control of the public roads in their respective townships. They shall, with respect to this work, constitute and be styled the board of supervisors of public roads of such township, and under that name, for the purposes aforesaid, they are hereby incorporated the board of supervisors of public roads, and the board of county commissioners, as hereafter in this chapter set forth, shall have full power and authority within their respective counties to appoint and settle ferries, to order the laying out of public roads where necessary, to appoint where bridges shall be made, to discontinue such roads and ferries as shall be found useless, and to alter roads so as to make them more useful. But upon the adoption of road commissions by counties or townships, as provided in this chapter, the powers and authority conferred or exercised under this section are transferred to such road commissions within such counties or townships.

Rev., s. 2681; Code, s. 2014; 1887, c. 73; 1889, c. 543; 1893, c. 141; 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.

NOTE. For road commissions, see this chapter, ss. 2, 3, and Art. 7, s. 142.

99. Local: County commissioners to regulate roads and bridges. The board of county commissioners shall have power, and it shall be their duty, to make rules and ordinances, not inconsistent with the acts of the general assembly, to regulate the use of the public roads, highways and bridges of their respective counties. They shall have power to make rules and ordinances to regulate the weight of loads permitted to be hauled on the public roads and highways, and as to the width of tires permitted to be used; and may prohibit the carrying thereon of such loads, and the use of such tires or vehicles as they may deem needlessly injurious or destructive to such roads or bridges. In making such ordinances, they may have regard to the conditions of the various roads or parts

thereof, and the conditions of traffic thereon, and make different rules and ordinances applicable thereto. Any person who shall needlessly violate an ordinance made in pursuance of the authority herein given, or who shall aid, abet or assist in such violation, shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

This section shall apply only to the counties of Alamance, Anson, Beaufort, Bertie, Brunswick, Camden, Cabarrus, Cherokee, Columbus, Cumberland, Davidson, Duplin, Durham, Franklin, Granville, Guilford, Hertford, Hoke, Iredell, Johnston, Lee, Madison, McDowell, Macon, Montgomery, Northampton, Pitt, Pasquotank, Randolph, Richmond, Sampson, Tyrrell, Yancey, Washington.

1915, c. 264, ss. 1, 2, 3.

100. Meetings of supervisors prescribed. The board of supervisors shall meet at some place in their respective townships to be agreed upon by themselves, or, in the absence of such agreement, to be named by their chairman, on the first Saturday of February and August, for the purpose of consulting on the subject of the condition of the roads in their township, and may hold special meetings at other times, upon ten days written notice by the chairman to each member of the board, stating the time and place of such meeting. They shall once in each year, during the week of their meeting in August, go over and personally examine all the roads in their township. They shall annually at their meeting in February elect some one of their number chairman. Where the board is composed of more than three members it shall take three members to constitute a quorum of said board for the transaction of business.

Rev., s. 2712; 1909, c. 364, ss. 2, 3; Code, s. 2015; 1879, c. 82, s. 2; 1880, c. 30, s. 1.

101. Supervisors appoint overseers, designate workers and allot hands. The board of supervisors shall, annually at the meeting in August, divide the roads of their townships into sections and appoint overseers for such sections at said meeting. They shall at the same time allot the hands to the overseers, and shall also designate the boundaries or points to which each resident shall be liable to work on each section, and shall within five days after such meeting certify to each overseer written notice of his appointment, with a list of the hands assigned to his section. The board of supervisors may at any time alter the sections or allotment, but shall give notice thereof to the overseer. Such overseer shall serve, and be liable as such for neglect of duty, until he shall be relieved by the board, which shall be done only upon his showing that his road is in good condition as prescribed by law. The overseer may resign after the expiration of twelve months, provided his road shall be in good repair and the board of supervisors shall so find; and any overseer so resigning, and whose resignation has been accepted by the board, shall not without his consent be again appointed overseer until after the expiration of two years from the date of his resignation. When a public road shall be a dividing line between townships, the board of commissioners of the county shall determine as to how said road shall be divided, with notice as to the working of said road. The hands may be allotted to a road by allotting all who live or shall live within certain boundaries to be fixed by the board of supervisors, in which event a list of the hands by name need not be given, but the list shall specify the hands living in the prescribed territory.

Rev., s. 2715; Code, s. 2016; 1879, c. 82, ss. 3, 7; 1880, c. 30, s. 1; 1887, c. 93, s. 1.

102. To have orders appointing overseers served within thirty days; penalties. The board of supervisors of the township, within ten days after the rise of the board, shall furnish the constable with two copies of each order appointing overseers of roads that may have been made during the sitting of the board. And the constable shall apply at the office of the board, within ten days after the rise of every meeting of the board, for such orders, and, on receiving them, shall, within twenty days, serve each overseer of roads with a copy of the order, or leave the same at his usual habitation; and the other copy shall be returned to the next meeting of the board of supervisors, with the date of its reception by him and the date of the service indorsed thereon, or the date when it was left at the residence of the said overseer. And if either the board or constable shall fail to perform any duty enjoined by this section, he shall forfeit ten dollars to the county, to be recovered at any time, by notice to show cause at the instance of the solicitor, who shall prosecute the same in the name of the state: Provided, the delivery to the overseer of the order appointing him made by the board of supervisors of the township, or any one of them, shall be deemed and held to be a legal service of the same.

Rev., s. 2714; Code, s. 2043; 1891, c. 519; R. C., c. 101, s. 8; 1812, c. 845, ss. 1, 2; 1813, c. 859, ss. 1, 2.

103. Supervisors annually report to superior court. The board of supervisors shall annually make report to the first term of the superior court of their county after the first Monday in August of the condition of the roads of their township, and if the meetings provided for in this chapter have been held by said board, the judge holding such term of the superior court shall, after his charge to the grand jury and before they shall retire to their room, call upon the clerk of the court for such reports, and they shall then and there be delivered to the foreman of the grand jury.

Rev., s. 2713; Code, s. 2024; 1879, c. 82, s. 10.

104. Supervisors neglecting duties punished. If any board of supervisors shall fail to make any report required by law, or to discharge any duty imposed by law, the members thereof shall be guilty of a misdemeanor. The indictment may be against the board jointly, or against the justices composing said board, or any one or more of them severally.

Rev., s. 3770; Code, s. 2024; 1879, c. 82, s. 10.

105. Overseers to report on state of road and work done; result when delinquency appears. 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 were paid the one dollar as provided. In all cases the report provided for in this section must state either that the overseer has worked the hands allotted to his section of road the full limit of time allowed by law, or that his section of road of which he is overseer is not in need of any further work at the time such oath is made and subscribed to by the overseer. 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 supervisors, or any one of them, to issue a warrant for the arrest of any such hand, and shall put him upon trial for the offense: Provided, that nothing herein contained shall prevent the overseer of the road from prosecuting, at any time after the offense 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 offense.

Rev., s. 2716; Code, s. 2021; 1879, c. 82, s. 7; 1880, c. 30, s. 4; 1909, c. 110, s. 1.

106. Overseers to report on collections and expenditures of money. The said overseers shall, at the meeting of the supervisors in August, 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. 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, 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 offense.

Rev., s. 2717; Code, s. 2022; 1879, c. 82, s. 8.

107. Officials of road district to report financial condition annually. The board of road commissioners or other officials in charge of the roads of any county, township, or road district be and they are hereby required and directed to make out an annual itemized statement of the receipts and disbursements and of the financial condition of such road district for the calendar year, and shall, on or before the first day of February of each year, post a copy of the statement for the previous year at the courthouse door of the county, and shall file a copy of the same with the register of deeds, who shall produce such copy, on request, for the inspection of any taxpayer of such road district. And if any person or persons shall fail to perform the duties required of him by this act, he shall be guilty of a misdemeanor.

1917, c. 189, s. 1.

108. Overseer neglecting duties punished. If any overseer of a road shall willfully neglect any of the duties imposed on him by law, he shall be guilty of a misdemeanor, and fined not to exceed fifty dollars or imprisoned not to exceed thirty days.

Rev., s. 3785; Code, s. 1054; 1889, c. 504; R. C., c. 34, s. 39; 1786, c. 256, s. 4.

ART. 5. LABOR ON AND REGULATION OF PUBLIC ROADS

109. All able-bodied males to work on roads. All able-bodied male persons between the ages of eighteen years and forty-five years (between twenty-one years and forty-five years in Columbus and Tyrrell counties) shall be required under the provisions of this chapter to work on the public roads, except the members of the board of supervisors of public roads; but no person shall be compelled to work more than six days in any one year, except in case of damage

resulting from a storm: Provided, that ten days instead of six days shall be the limit as to the counties west of the Blue Ridge.

Rev., s. 2725; Code, s. 2017; 1879, c. 82, s. 4; 1880, c. 30, s. 2; 1826, c. 26; 1905, c. 136.

NOTE. For system of working and maintaining roads under the road commission plan, see this chapter, Art. 2, part 2.

110. Exemptions from duty to work. No person between the ages prescribed shall be exempted from working upon the public roads, except such as shall be exempted by the general assembly, or by the board of supervisors of the township, on account personal infirmity, of which the said board shall be the sole judge. No male student attending any school, college, academy or other institution of learning shall be compelled to perform any road duty or to work on any street or road, or to furnish a person to work in his place, or to pay any sum of money in lieu of such work, on the roads or streets in the county, city, town or township in which such institution of learning is located; but this exemption shall not extend to any male person subject to road duty, who before becoming a student within the exemption, was a bona fide and legally qualified resident of the district.

Rev., s. 2726; Code, s. 2018; R. C., c. 101, s. 12; 1784, c. 227, ss. 8, 9; 1826, c. 26, ss. 1, 2; 1907, c. 945.

111. Overseers summon to work; notice; amount and conduct of work; substitutions allowed. The overseer of the road shall, as often as the road shall require, not more than six days in any one year, summon the hands of his section to work on the road, but the said hands shall not be required to work continuously for a longer time at any one time than two days, and at least fifteen days shall intervene between workings, except in case of special damage to the road, resulting from a storm. The notice shall be at least three days before the day named for the work, and shall state the hour and the place for the meeting of the hands, and what implement the hand shall bring with him. Every person liable to work on the road who has been so summoned shall appear at the time and place named, and with the implement directed, and shall work on the road under the direction of the overseer until discharged by him: Provided, that no hand shall be required to work for a less time than seven hours nor a longer time than ten hours in any one day.

Any person summoned as aforesaid who shall, by twelve o'clock of the day preceding the one appointed for work on the road, pay to the overseer the sum of one dollar shall be relieved from working on the road for one day. The money thus collected by the overseer shall be by him applied on the working and repairing of the road.

Any person who shall furnish one able-bodied hand as a substitute, with the implement directed, shall be held to have complied with this chapter.

Rev., s. 2721; Code, s. 2019; 1879, c. 82, s. 5; 1880, c. 30, s. 3.

112. Overseers allot tasks to workers. 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 six days, and that nothing in this section shall be a defense to the overseer, when prosecuted for default concerning the condition of the road.

Rev., s. 2718; Code, s. 2026; R. C., c. 101, s. 13; 1784, c. 227, s. 10.

113. Notice to work on road, how served. When an overseer shall not be able to personally notify the hands three days before the day appointed for working the road, he shall leave at the house of each hand a written summons, specifying the day on which they are required to attend, the place of the road to be worked, and the kind of tools to be brought or used; and the said written summons, left as aforesaid, shall be deemed sufficient notice to the hands required to be notified; and all penalties recovered by an overseer, for default of working on the road, shall be applied by him to the repair of the road of which he is, or may have been overseer.

Rev., s. 2720; Code, s. 2044; R. C., c. 101, s. 10; 1842, c. 65.

114. Penalty for failing to work roads. If any person liable to work on the road shall fail to attend and work, as provided by law, when summoned so to do, unless he shall have paid the one dollar as provided, he shall be guilty of a misdemeanor, and fined not less than two dollars nor more than five dollars, or imprisoned not exceeding five days, 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.

Rev., s. 3779; Code, s. 2020; 1885, c. 392; R. C., c. 101, s. 11; 1817, c. 935, s. 2; 1825, c. 1287; 1879, c. 82, s. 6.

115. Appropriation of earth and timber for roads. 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.

Rev., s. 2719; Code, s. 2027; R. C., c. 101, s. 18; 1785, c. 256, s. 1; 1818, c. 976, s. 1.

116. Compensation for earth and timber taken for roads. The owner of any land or timber used for building or repairing public roads, may file his petition before the board of commissioners 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 section two thousand seven hundred and nineteen shall not apply to the lands adjoining or contiguous to the causeway, or great road leading across Eagle's island to Wilmington.

Rev., s. 2728; Code, s. 2028; R. C., c. 101, s. 16; 1818, c. 976, s. 2.

117. Width of roads. 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 center 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.

Rev., s. 2682; Code, s. 2025; R. C., c. 101, s. 14; 1784, c. 227, s. 2; 1880, c. 30, s. 6.

118. Guide posts at forks and crossings. The boards of county commissioners shall cause to be erected and maintained at the various crossings and forks of the public highways of each county guide posts with proper inscriptions and devices thereon indicating the direction to and distance from the most important town or vicinity within ten miles of such guide posts. Such post shall be of substantial timber and the lettering thereon shall be not less than two inches in height and of legible character. The cost of the erection of such guide posts shall be paid from the county road fund. In those counties in which road commissions have been established the duty of the erection of such guide posts shall devolve upon the road commissions instead of the board of county commissioners. Any person who shall willfully deface or destroy any such guide post shall, upon conviction therefor, be fined not less than five dollars nor more than twenty-five dollars.

1917, c. 24, ss. 1, 2, 3, 4.

119. Overseers' duty as to signs at crossings. 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.

Rev., s. 2722; Code, s. 2030; R. C., c. 101, s. 18; 1784, c. 227, s. 11; 1812, c. 846.

120. High water marks at fords; overseers liable. If any overseer of roads shall fail to establish high-water marks or signals on both sides of any river, creek or stream which is used as a ford for a public highway, and to permanently fix the same, he shall be guilty of a misdemeanor.

Rev., s. 3782; 1889, c. 517.

121. Mile posts to be maintained; overseers liable. 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 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 number 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.

Rev., s. 2723; Code, s. 2032; R. C., c. 101, s. 20; 1784, c. 227, s. 11.

121a. Injuring signs and mile-posts misdemeanor. If any person shall needlessly remove, knock down or deface any public sign-post, arms, or any mile-mark, he shall be guilty of a misdemeanor.

Rev., s. 3783; Code, s. 2031; R. C., c. 101, s. 19; 1784, c. 227, s. 11; 1812, c. 846.

122. Footways at streams, etc.; ten years maintenance establishes right. 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.

Rev., s. 2695; Code, s. 2029; R. C., c. 101, s. 17; 1817, c. 940, ss. 1, 2.

123. Gates across highways may be allowed on petition. Any person desiring to erect a gate across a public road may file his petition before the board of supervisors of the township where the road lies; whereupon publication shall be made at the courthouse and on the land of the person so applying and at three public places in said township until the next succeeding meeting, of such application, specifying the road, the place for the gate and name of the petitioner; and all persons interested in the convenient traveling or transportation on said road shall have leave to appear and defend, demur, or plead to said petition; and if, at that meeting, it shall appear that such publication has been made, the supervisors may, at their discretion, authorize the petitioner, at his cost, to erect a gate as prayed for.

Rev., s. 2711; Code, s. 2058; R. C., c. 101, s. 39; 1834, c. 16, ss. 2, 3, 4; 1905, c. 88.

124. Leaving gates open; penalty. If any person shall leave open, break down or otherwise injure any gate lawfully across any public road, he shall forfeit and pay for every such offense ten dollars to the person erecting the same or his assigns of the land, and if the offense shall be maliciously or wantonly done, he shall be guilty of a misdemeanor.

Rev., s. 3781; Code, s. 2058; 1885, c. 45.

125. Fords across boundaries to be kept in order. Where a river or stream across which there is a ford is the dividing line between any counties, townships, road districts or road sections, it shall be the duty of the board of county commissioners, road and highway commissioners, or supervisors, superintendents, and overseers having in charge the construction, maintenance, or working of a road or highway leading to such river or stream, to work and keep in good condition the part of such ford from such road or highway to the middle of the ford. Any person or persons failing to comply with the provisions of this act shall be guilty of a misdemeanor and punished by a fine not exceeding fifty dollars, or imprisoned not exceeding thirty days.

1917, c. 251, s. 1.

125a. Obstructing highways and roads misdemeanor. If any person shall willfully alter, change or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right

of way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a misdemeanor, and fined or imprisoned, or both. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court.

Rev., s. 3784; Code, s. 2065; 1872-3, c. 189, s. 6; 1883, c. 383.

NOTE. See also, Crimes, s. 181.

126. Obstructing highways by dirt or water; liability. Any person throwing a bank of dirt in the main road shall be compelled to spread the same. When any ditch or drain is cut in such a way as to turn water into any public road the person cutting the ditch or drain shall be compelled to cut another ditch or drain as may be necessary to take the water from said road.

Rev., s. 2697; Code, s. 2036.

127. Obstructing highway drains, misdemeanor. Any person who shall obstruct any drains along or leading from any public road in the state shall be guilty of a misdemeanor, and punished by a fine of not less than ten, nor more than one hundred dollars.

1917, c. 253.

NOTE. See this chapter, ss. 49, 93.

128. Traction engines may use roads. It shall be lawful for any person to run and use traction engines and road steamers upon the public roads.

Rev., s. 2727; Code, s. 2061; 1870-1, c. 162.

129. Injuring roads by hauling logs; damage and penalty. If any person, company or corporation shall damage any public road, bridge or causeway by hauling logs or sawmill timber thereon, and shall not repair the damage done thereto within five days after being notified of said damage by the overseer of said road, or by any member of the board of supervisors of the township in which said damaged road is situated, he shall be guilty of a misdemeanor, and shall be fined not less than ten nor more than fifty dollars, or be imprisoned not exceeding thirty days: Provided, if any person shall pay the damage as assessed by the board of supervisors for injury to such road, the payment of such damages shall be a complete bar to any criminal prosecution under this section, and if any criminal prosecution shall have been commenced prior to the payment of said damages, all further proceedings in said criminal prosecution may be ended by the defendant paying the cost necessarily incurred in said criminal prosecution and satisfying the court that said damages and all proper costs have been paid.

Rev., s. 3778; 1893, c. 416, s. 2; 1889, c. 503, s. 2.

130. Local: Settlement of damages from hauling logs in certain counties. If any of the public roads in Anson, Beaufort, Bertie, Clay, Columbus, Currituck, Dare, Gates, Halifax, Lenoir, Macon, Pasquotank, Pitt, Rutherford, Stokes, Swain, Tyrrell and Yancey counties shall be used by any person engaged in hauling logs or wood, whether such hauling be by the employees or agents of any other person, company or corporation, or by contractors for any other person, company or corporation, and the public roads shall become damaged by such use, upon complaint made to the chairman of the board of supervisors of the public roads of the township in which such damaged road is situated, he shall

summon the person, company or corporation, or the manager of such person, company or corporation, alleged by such complainant to have damaged such road, before a called or regular meeting of the board of road supervisors of such township in which such alleged damaged road is situated, within ten days after complaint is made to him, and said board of road supervisors shall investigate by visiting and inspecting such damaged road, and they shall hear evidence on oath, as to the condition of such damaged road and the cause of its bad condition, and the damage done to such road by the hauling of logs over such road by such person, company or corporation; and if the board of supervisors shall find such road or any part thereof damaged by the hauling of logs over the same, the person, company or corporation, or their agents, employees or contractors, alleged in the complaint to have damaged such road or any part thereof, they shall assess against such person, company, or corporation an amount of money sufficient to repair such road. And the board of road supervisors shall return to the clerk of the superior court the amount of such assessment as a judgment of the board of township road supervisors, and the clerk shall docket this transcript and it shall thereupon become a judgment of the superior court, and the clerk shall issue execution against such delinquent person or corporation for the assessed damages as other executions and the sheriff shall pay the proceeds of said judgment to the clerk of the superior court, to be applied by the board of township supervisors to the repair of such damaged road.

Rev., s. 3777; 1889, c. 503, ss. 1-3; 1893, c. 416; 1899, c. 712; 1901, c. 189.

ART. 6. ESTABLISHMENT, ALTERATION, AND DISCONTINUANCE OF PUBLIC ROADS

131. County commissioners to establish or discontinue; no more than five jurors required. The board of commissioners of the county only shall have the right to lay out and establish and discontinue public roads. In laying out and establishing roads, and for the purpose of assessing damage to property by reason of the same, no greater number of jurors than five shall be summoned or be required.

Rev., s. 2683.

132. Petition for public road or ferry; contents; notice required. The board of county commissioners shall not establish any ferry, or order the laying out of any public road, or discontinue or alter such road or ferry, unless upon petition in writing. Unless it appear to the board that every person, over whose lands the said road may pass, or whose ferry shall be within two miles of the place at which another ferry is prayed to be established, shall have had twenty days notice of the intention to file such petition, the same shall be filed in the office of the clerk of the board until the succeeding meeting of the board, and notice thereof be posted during the same period at the courthouse door; at which meeting the board shall hear the allegations set forth in the petition, and if sufficient reason be shown, the board shall appoint and settle or discontinue the ferry, or order the laying out, or discontinue or alter the road, as the case may be.

Rev., s. 2684; Code, s. 2038; R. C., c. 101, s. 2; 1813, c. 862, s. 1.

NOTE. By adoption of road commissions the powers of county commissioners under this section are suspended, see this chapter, s. 98.

133. Public road laid out by three freeholders under oath; damages assessed a county charge. All public roads shall be laid out by a jury of three freeholders, who shall be summoned by the sheriff to meet at one of the termini of the proposed road, and, being duly sworn by the sheriff or other person authorized to administer oaths, shall lay out the road to the greatest advantage of the inhabitants, and with as little prejudice as may be to lands and enclosures. The jury shall also on oath assess such damage as private persons may sustain, and all damages assessed by them shall be deemed a county charge.

Rev., s. 2685; Code, s. 2040; 1885, c. 65; R. C., c. 101, s. 4; 1872-3, c. 189, s. 3; 1879, c. 82, s. 9.

134. Appeal from commissioners to court; bond; trial de novo. Any person may appeal to the superior court at term time from the determination of the board of county commissioners, and if any person shall appeal from the board on a petition, he shall give bond to the opposing party as provided in other cases of appeal, and the superior court at term shall hear the whole matter anew; and where any proceeding is instituted to lay out, establish, alter or discontinue public roads or to appoint and settle ferries, and the said proceeding is carried to the superior court in term time by appeal or otherwise, the parties to said proceeding shall be entitled to have every issue of fact joined in said proceeding tried in the superior court in term time by jury, and from the judgment of the superior court either party may appeal to the supreme court as is provided by law for other appeals.

Rev., s. 2690; Code, s. 2039; R. C., c. 101, s. 3; 1813, c. 862, s. 1; 1879, c. 258.

135. Petition for discontinuance; condition for maintenance of new road; duties of commissioners; when old road closed. Whenever, upon petition of any person, a road shall be changed and, as a condition thereof, it shall be required by the board that he put the proposed road in good condition, he may, at any time thereafter, tender the same to the overseer, who shall receive it, if it be in such condition as is required for highways; and if not, he shall reject it; and in either case he shall report and certify the fact to said board where the same may be considered; and said board shall hear all persons interested in the matter of receiving or rejecting the road; and the decision of the board shall be conclusive as to the condition of the road; but the old road shall not be closed until it be discontinued by order of the board.

Rev., s. 2692; Code, s. 2041; R. C., c. 101, s. 5; 1784, c. 227, s. 13; 1813, c. 862, s. 1.

136. How landowner may change location on his own land. In addition to the mode prescribed in the preceding section for turning roads, the following method may be observed by any one who desires to change a road from one part of his land to another part, namely: Such person shall lay out the same, and after putting it in such good condition as highways are directed to be, shall apply to a justice of the peace, who thereupon shall notify the overseer of the road, and summon two freeholders to meet on the premises at a given day; and the said freeholders, being duly sworn, shall, with the justice, view and examine carefully the road which is proposed in place of the other, and all matters and facts tending to show whether the change should be allowed. They shall report, in writing subscribed by them, the result of their consideration to the next meet-

ing of the board of supervisors, which may confirm or reject their report: Provided, that such justice and freeholders shall be disinterested in the land, and not of kin or affinity to the applicant.

Rev.. s. 2693; Code, s. 2042; R. C. c. 101, s. 6; 1834, c. 22.

ART. 7. BRIDGES

137. Erection and maintenance of public bridges; county line bridges. When it shall become necessary to build, rebuild, or repair any public road or highway bridge in any township, and the same cannot be done by the road trustees, supervisors, or other official body having supervision over the public roads of such township, with the labor and funds at their command, or in their hands, for such purpose, then the board of commissioners of the county in which said township is situate may, in their discretion, build, rebuild, or repair such bridge, and the same shall thereafter become a charge upon the county only in case the said township road officials shall be unable, from the labor and funds at their command, or in their hands, to keep said bridge in repair.

Whenever it shall become necessary to build, rebuild, or repair any public road or highway bridge over any stream which divides one county from another the board of commissioners of each county may join in an agreement for building, rebuilding, and repairing the same, and the cost thereof shall be defrayed by the two counties in proportion to the number of taxable polls in each, unless otherwise agreed upon between the boards of commissioners of such counties. Bridges in this section provided for shall be deemed necessary in all cases where public roads or highways shall have been regularly laid off in each county, according to law, to the banks of any stream dividing one county from another, if there be no passable ford across said stream at said point. The total cost of any bridge constructed pursuant to the provisions of this section shall not exceed one-fourth of one per cent of the total assessed value of all taxable real and personal property in the two counties engaged in the construction of such bridge: Provided, that the total cost to any county for any one bridge shall not exceed forty thousand dollars.

1917. c. 103, s. 1 (a), (b); 1917. c. 173, s. 1.

138. Bonds for bridges; terms and denomination; no sale below par. For the purpose of raising funds with which to defray the cost of building or rebuilding any bridge pursuant to this section, the boards of commissioners of the respective counties shall each have full power and authority, subject to the foregoing limitations, to issue bonds of said respective counties to an amount not to exceed the actual cost of such bridge. Said bonds to be in denominations of one thousand dollars, or less, with interest coupons attached, payable semi-annually, at such time and place as may be directed by such boards, and to be in such form and tenor, and transferable in such way, and the principal thereof payable at such time or times, not exceeding forty years from the date thereof, and at such place or places as such board may determine: Provided, that none of such bonds shall be disposed of either by sale, exchange, hypothecation, or otherwise for a less price than their face value.

1917. c. 103, s. 1 (c).

139. Special tax to provide for bonds. The county commissioners or other county authorities who are legally authorized and empowered to levy taxes shall, in order to provide for payment of the bonds to be issued hereunder, and interest thereon, compute and levy each year at the time of levying other county taxes a sufficient tax upon all real and personal property in said county to pay the interest on the said bonds, and shall also levy a sufficient tax to create a sinking fund to provide for the payment of said bonds at maturity. Such taxes shall be levied and collected annually and under the same laws and regulations as shall be in force for levying and collecting other county taxes.

1917, c. 103, s. 1 (d).

140. Record of bonds. The county commissioners of any county so issuing bonds shall provide a record which shall be kept by their clerk, in which shall be entered the name of every purchaser of a bond, the number of the bond purchased, the date of issue, when due, rate of interest, and the amount received for said bond. They shall also cause to be kept a record of all proceedings, as well as a record of the bonds redeemed annually, and the bonds when redeemed and recorded shall be destroyed by fire in the presence of the board of commissioners, and that fact recorded.

1917, c. 103, s. 1 (e).

141. Investment of excess funds from tax; provisions as to redemption; conditions expressed on bond. The fund raised by taxation in excess of the amount required to pay interest, if any, shall be safely invested by the board of county commissioners, and the county commissioners are authorized to purchase any of said bonds to amount of such excess annually, and after ten years they may purchase at not exceeding their par value one twenty-fifth of the bonds issued for any county; and if no holder of said bonds shall offer to sell such amount, then the said county commissioners are authorized to designate such bonds as they may desire to purchase, and after the designation of such bonds and the notice thereof given to a newspaper published in the county, if the holder of the bonds neglects or refuses to surrender the same and receive their par value, with interest accrued thereon at the time of such notice, then the holders shall not receive any interest subsequently accruing: Provided, the said bonds designated shall express such conditions on their face.

1917, c. 103, s. 1 (f).

See also, Rev., s. 2696, and Code, s. 2034.

142. Exercise of powers, where county commissioners superseded. The powers conferred and the duties imposed on the board of commissioners by this article shall be exercised and performed by the board of road commissioners or the board of highway commissioners or other bridge-governing board, by whatever name known, in counties where the powers and duties of boards of county commissioners in respect to bridges have been transferred or given by law to such board of road commissioners or highway commissioners or other bridge-governing board.

1917, c. 103, s. 2.

143. Statutes under which bridge bonds may issue. County boards of commissioners or other bridge-governing body in any county may operate under the

foregoing provisions or under the provisions of any special act in force in said county, or under provisions of any general act relating to bridges hereafter passed by the general assembly. All laws and clauses of laws, general or special, in conflict with this amendment are hereby repealed, only to the extent of such conflict.

1917, c. 103, s. 3.

144. Duty as to bridges of millowners on, or persons ditching or enlarging ditches across, highways. 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 milldam, 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 reason of the continuance of said mill, or milldam, ditch, drain or canal. Nothing herein shall be construed to extend to any mill which was erected before the laying off of such road, unless the road was laid off by the request of the owner of the mill. The duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners of the mill, or other property, for the benefit of which the said ditch, drain or canal was cut. When any ditch or drain originally constructed across any public road, and bridged for the convenience and safety of the traveling public, has been or may hereafter be enlarged by the owner of adjacent lands to drain his lands, it shall be the duty of such owner to keep up and in repair all bridges crossing such ditch, drain or canal, and such charge shall be imposed upon all subsequent owners of the lands so drained.

Rev., s. 2697; Code, s. 2036; 1887, c. 261; R. C., c. 101, s. 24; 1817, c. 941, s. 1; 1846, c. 95, s. 1; 1881, c. 290.

145. Liability for failure to maintain bridges; penalty and damages. If any owner of a water-mill, situated on any public road, or any other person whose duty it is under this chapter to keep up and repair bridges built across any public road or across any ditch, drain, or canal, shall refuse or neglect to keep up and repair, or shall suffer to remain out of repair for the space of ten days, unless repair was prevented by unavoidable circumstances, any bridges which by law he may be required to keep up and repair, he shall be guilty of a misdemeanor and shall be liable for such damages as may be sustained.

Rev., ss. 2703, 3772, 3773; Code, ss. 1086, 2037; R. C., c. 34, s. 40, c. 101, s. 25; 1817, c. 941, ss. 2, 3; 1876-7, cc. 90, 211.

146. Railroad and turnpike companies to maintain bridges which they make necessary. All railroad, plankroad and turnpike companies, shall keep up, at their own expense, any bridge on or over county, or incorporated roads, when the building of such bridge was made necessary in establishing their respective roads; and on failure to do so, shall forfeit and pay twenty-five dollars to any person who may sue for the same, and in addition shall be guilty of a misdemeanor.

Rev., ss. 2700, 3775; Code, s. 2054; R. C., c. 101, s. 35; 1838, c. 5, ss. 1-4.

147. Counties to provide draws for vessels. The county or counties which may erect bridges shall, by their boards of commissioners, provide and keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels. When any such draw shall be necessary to be erected for the passage of timber-rafts, said draw may not exceed twenty feet in width.

Rev., s. 2698; Code, s. 2053; 1891, c. 168; R. C., c. 101, s. 34.

148. Owner of bridge to provide draws on notice. Owners of steamboats or other craft, who may intend to navigate any river or creek over which any person may have a bridge, may give three months notice of such intention in one of the public journals of the state, published nearest the river or creek intended to be navigated, and to the owner of the bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of the bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months default thereafter.

Rev., s. 2699; Code, s. 2052; R. C., c. 101, s. 32; 1846, c. 51, ss. 1, 2; 1838-9, c. 5.

149. Railroad and turnpike companies to provide draws. Railroad, plank-road and turnpike companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass.

Rev., s. 2701; Code, s. 2051; R. C., c. 101, s. 32; 1846, c. 51, ss. 1, 2.

150. Solicitor to prosecute for injury to bridges. The solicitors of the superior court are authorized and directed to institute suits in the name of the state, in the counties wherein the injuries may be done, for the recovery of damages, against all persons who shall willfully or negligently injure any public bridge belonging to or situate in any county or counties, by forcibly running any decked vessel, boat or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered shall be for the use of the county or counties injured; and if the plaintiff fail, the costs shall be paid by the county or counties for whose use the suit is brought, and in the same proportion in which the recovery would be divided.

Rev., s. 2705; Code, s. 2055; R. C., c. 101, s. 36; 1846, c. 11, ss. 1, 2.

151. County liable on commissioners' contracts as to bridge. Every contract and order by the board of county commissioners entered into or made as authorized by this chapter for or concerning the building, keeping up or repairing bridges, in such manner as to them may seem most proper, shall be valid against the county.

Rev., s. 2702; Code, s. 2035; 1887, c. 370, s. 2; R. C., c. 101, s. 23; 1784, c. 227, s. 6.

152. Expenses of bridges borne by counties. The expense of building and keeping up public bridges in the 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 be situated; and it shall be the duty of the commissioners to adjust this burden equally among the people of their respective counties, and they shall exercise a due supervision over the action of the respective boards of supervisors of the townships, so as to prevent the board of any township from establishing any unnecessary number of bridges in its respective township.

Rev., s. 2704; Code, s. 2060; 1869-70, c. 219.

153. Fastening vessels to bridges misdemeanor. If any person shall fasten any decked vessel or steamer to any bridge that crosses a navigable stream, he shall be guilty of a misdemeanor, and in the case of a bridge that crosses a county line, may be prosecuted in either county.

Rev., s. 3774; Code, s. 2050; 1887, c. 93, s. 3; R. C., c. 101, s. 31; R. S., c. 104; 1858-9, c. 58, s. 1.

153a. Fast driving over bridges misdemeanor. If any person shall ride or drive over any public bridge at a rate of speed faster than a walk, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that this section shall not apply to any bridge unless the county commissioners shall keep posted at each end of such bridge a notice forbidding the riding or driving over such bridge at a rate of speed faster than a walk.

Rev., s. 3780.

ART. 8. FERRIES AND TOLL BRIDGES

154. Commissioners may establish toll bridges. Whenever, from the rapidity or width of any stream, it may be too burdensome to build and keep up a bridge across the same, at the expense of those who are taxable for that purpose, the board of commissioners of the county, or counties, chargeable therewith, may jointly and severally (as the case may be) contract for the building thereof, by allowing the builder to take tolls, at such rate and for such time, on all persons, horses, carriages and other things passing over the bridge, as may be agreed on between the board of commissioners and the builder; which tolls shall be common to all persons. And such bridges shall be built in the manner the board or boards may direct, and shall be kept in good repair by the builder, his heirs and assigns, during the time the tolls are to be enjoyed.

Rev., s. 2706; Code, s. 2045; R. C., c. 101, s. 26; 1784, c. 227, s. 7; 1817, c. 939, s. 2; 1817, c. 940, s. 3.

155. Condemnation of ferry sites. Wherever a public ferry has been or may hereafter be established, the board of county commissioners of the county in which any such ferry is or may be located shall have power to condemn land, not exceeding one acre for each public ferry, adjacent or convenient to said ferry, upon which to erect necessary buildings for the use and convenience of ferrymen and the traveling public, under the same rules and regulations as are provided by law for condemning land for public roads; and upon the payment or offer of payment, to the owner of said land, of the amount awarded to him therefor, title to the same shall vest in the county in which said land is situate. Nothing in this section shall be construed to deprive the owner of land so condemned of the right of appeal to the superior court.

Rev., s. 2691; 1880, c. 447.

156. Commissioners to regulate ferriage. The board of commissioners of each county shall, once a year, or oftener if necessary, at the meeting to be held next after the first day of January, rate the prices of such ferries as shall be kept within their respective counties; and ferries lying between two counties shall be rated at a joint meeting of the commissioners of the two counties, to be held at such time and place as may be agreed upon by the commissioners of the two counties, and any ferry keeper who shall ask, demand, or receive a greater price for ferriage than shall be rated by the board or boards of commissioners, shall forfeit and pay five dollars for every offense to the party aggrieved. Every person who owns a public ferry, and refuses to keep it up at the rates allowed by the board, shall for every such offense forfeit five dollars.

Rev., s. 2707; 1907, c. 221, s. 1; Code, s. 2046; R. C., c. 101, s. 27; 1779, c. 160, s. 2.

Tolls are not regulated by joint boards of commissioners in the counties of Camden, Catawba, Gaston, Halifax, Iredell, Lincoln, Mecklenburg, Northampton, Onslow, Pasquotank and Surry. See 1907, c. 221, s. 1.

157. Owner of ferry may substitute toll-bridge. In all cases, where the proprietor of a ferry shall prefer building a good and substantial bridge over any water-course instead of keeping a ferry, he may do so; and may claim and hold such bridge under the same rights, and in the same manner, by which the ferry is claimed and held, and under the same rules, regulations, restrictions and penalties as other toll-bridges: Provided, that no more toll shall be demanded for passing any such bridge than is granted by law for the ferriage, unless by agreement with the board of commissioners: Provided further, that in all such bridges the proprietor shall erect a draw, where the free navigation of the stream may require it.

Rev., s. 2708; Code, s. 2047; R. C., c. 101, s. 28; 1806, c. 706.

158. Owners of toll-bridges and ferries to give bond; actions on bond. The board of commissioners of each county shall compel every person that may own a toll-bridge, or keep a public ferry, within the county, to give bond with good surety in the sum of one thousand dollars, payable to the state of North Carolina, conditioned that he will constantly keep such bridge in good repair, or, as the case may be, provide and keep good and sufficient boats, or other proper craft, always to be well attended, for the passing of travelers or other persons, their horses, carriages and effects; and will indemnify and save harmless every person who may be endamaged, by reason of any default in his undertaking. And if any person shall receive damage, because such ferryman or keeper of a toll-bridge shall not have complied with the conditions of his bond, he may bring suit thereon in the name of the state, and recover his damages.

Rev., s. 2709; Code, s. 2048; R. C., c. 101, s. 29; 1784, c. 227, s. 15.

159. Right of action of person detained at ferry. If any person shall be detained at any public ferry by reason of the ferryman not having sufficient boats or other proper crafts at hand, or by his neglecting to do his duty in any other respect, he may recover before a justice of the peace, against such ferryman, the sum of ten dollars, as a penalty for every such default or neglect.

Rev., s. 2709; Code, s. 2448; R. C., c. 101, s. 29; R. S., c. 101, s. 29.

160. Penalty on unauthorized ferry. If any unauthorized person shall pretend to keep a ferry or to transport for pay any person or his effects, within five

miles of any ferry on the same river or water, which theretofore may have been appointed, he shall forfeit and pay two dollars for every such offense, to the nearest ferryman: Provided, that any person who may contract for carrying the mail, may keep a boat for the sole purpose of transporting the same, and such passengers as may travel in the coach therewith, across any ferry; but such contractor shall not transport across such ferry any other passengers than such as travel by the coach.

Rev., s. 2710; Code, s. 2049; R. C., c. 101, s. 30; 1764, c. 72, s. 1; 1787, c. 273; 1883, c. 381.

ART. 9. CONVICT LABOR ON ROADS

161. Application for convicts. Any county or township or good roads district that desires to use convict labor in the construction or improvement of its highways shall apply first to the geological and economic survey to lay out and make plans for said work or to approve plans already made. The said county, township or good roads district shall then apply to the board or state prison directors for the number of convicts desired for the work, this number in no case to be less than forty.

Ex. Sess. 1913, c. 37, ss. 1, 2.

162. Duty of directors of state prison. The board of directors, as soon as possible after the receipt of the application and the approval of the council of state, shall furnish the labor requested and proceed to construct or improve the highway under the direction of the state geological and economic survey. All applications from counties, townships or good roads districts, for convict labor shall be honored in turn, according to the date of their receipt, except that no county, township or good roads district may use at any time more than one hundred convicts if an application from another county is pending and no labor is available for it.

Ex. Sess. 1913, c. 37, ss. 3, 4.

163. Compensation paid to state; how expense divided. Counties, townships, or good roads district using convict labor shall pay to the state therefor the sum of not less than one dollar per day for each laborer, shall furnish quarters, to be approved by the board of prison directors, for prisoners and employees; it shall also provide pure drinking water and necessary firewood for camp use, and shall furnish overseers to direct the work. All other expenses of every kind whatever shall be borne by the board of prison directors.

Ex. Sess. 1913, c. 37, s. 5.

164. Certain existing contracts not affected. This article shall not interfere with or apply to the agreements now existing and in force between the authorized authorities of the state and the Elkin and Alleghany Railroad Company, the Statesville Air Line Railroad Company, the public road in Madison County, under chapter four hundred and sixty-four, Public-Local Laws of one thousand nine hundred and thirteen; the Watauga and Yadkin Valley Railroad Company and the Hickorynut Gap dirt road now being constructed by the state and leading across the Blue Ridge Mountains through the county of Henderson. Should the said railroad companies at any time fail to carry out the provisions of the agreement existing between them and the authorities of the state, then the

state shall be under no further obligation to furnish convict labor, and may at once withdraw such labor from the railroad company failing to carry out its agreement.

Ex. Sess. 1913, c. 37, s. 6.

165. Convicts on state farm to be reserved. The state farm or penitentiary authorities or council of state shall at all times reserve a sufficient number of convicts to properly cultivate and conduct the state farm.

Ex. Sess. 1913, c. 37, s. 7.

ART. 10. CARTWAYS, CHURCHROADS AND THE LIKE

166. Road supervisors establish or discontinue cartways; number of jurors; appeal. The board of supervisors shall have the right to lay out and discontinue cartways. In laying out and establishing roads and cartways, and for the purpose of assessing damage to property by reason of the same, no greater number of jurors than five shall be summoned or be required. Either party may appeal from the decision of the board of commissioners of the county.

Code, s. 2023; 1879, c. 82, s. 9.

167. Cartways and tramways laid out; procedure; cartways to be open to public; appeal. If any person be settled upon or cultivating any land, or shall own any standing timber, or be working any mines or minerals to which there is leading no public road, or which is not convenient to water, and it shall appear necessary, reasonable and just that such person shall have a private way to a public road or water-course or railroad over the lands of other persons, he may file his petition before the board of supervisors of the township at a regular or special meeting praying for a cartway, tram or railway to be kept open across such other persons' lands, leading to some public road, ferry, bridge, public landing or water-course or railroad; and upon his making it appear to the board that the adverse party has had ten days notice of his intention, the board shall hear the allegations of the petitioner and the objections of the adverse party or parties, and if sufficient reason be shown, shall order the constable to summon a jury of five freeholders, to view the premises, and lay off a cartway, tram or railway, not less than fourteen feet wide, and assess the damages the owner of such land may sustain thereby; which, with the expense of making the way, shall be paid by the petitioner. The cartways established under this section shall be kept open for the free passage of all persons on foot or horseback, and all carts and wagons, and the petitioner and others who use said road may from time to time grade or repair said road as they may desire without doing any injury to the adjoining lands. If the notice aforesaid shall not have been given, the board shall cause such petition to be filed with their chairman until their next meeting, when they shall proceed to hear and determine the same, and the petitioner or the adverse party may appeal from the order of the supervisors to the board of commissioners of the county, and from the order of the board of commissioners to the superior court at term, when the issues of fact shall be tried by a jury, and from the judgment of the superior court to the supreme court, as in other cases of appeal.

Rev., s. 2686; Code, s. 2056; 1917, c. 282, s. 1; 1917, c. 187, s. 1; 1909, c. 364, s. 1; 1903, c. 102; 1887, c. 46; R. C., c. 101, s. 37; 1798, c. 508, s. 1; 1822, c. 1139, s. 1; 1879, c. 258.

168. Discontinuance of cartways, etc.; gates and stockguards; duration of right. Cartways, tramways or railways laid off according to the provisions of this chapter, may be changed or discontinued upon application by any person concerned, under the same rules of proceeding as they may be first laid off, and upon such terms as to the board of supervisors shall seem equitable and just. Cartways, tramways or railways for the removal of timber, shall continue for a period not longer than five years, and in entering cultivated land, shall protect the same by sufficient stockguards. And any person through whose land a cartway may pass may erect gates across the same, which shall be kept in good repair.

Rev., s. 2694; Code, s. 2057; 1887, c. 46, s. 2; R. C., c. 101, s. 38; 1798, c. 508, ss. 1, 2, 3; 1834, c. 16, s. 1; 1887, c. 266.

169. Church roads laid out on petition; procedure. The board of supervisors in each township is authorized to order the laying out of necessary roads to any church or other place of public worship in the township, to discontinue such roads when they may be found useless, and to alter the same so as to make them more useful. The right of way herein provided for shall terminate whenever the church or place of worship shall cease to be used as such. The board of supervisors shall not order the laying out of any such road or discontinue or alter the same except upon petition, in writing, nor shall they hear such petition, unless it is made to appear that every person over whose lands the road may pass shall have had ten days notice of the intention to file such petition, by personal service of notice in writing, or if the owner is unknown or there is no owner, agent or attorney of such owner resident in this state, then by notice thereof posted up at the courthouse door of the county in which the township is situated and at two public places in the township for the space of ten days. Upon the hearing of the petition, if sufficient reason is shown, the board of supervisors shall order the laying out, or shall discontinue or alter the road as the case may be, and from their determination any party dissatisfied may appeal as is provided with reference to the laying off of cartways. Such road shall be laid out to the greatest advantage of the inhabitants and with as little prejudice as may be to lands and enclosures, within twenty days from the notification of their appointment by three disinterested freeholders, to be appointed by the board of supervisors; and such damage as any individuals may sustain shall be ascertained by such freeholders, and a report thereof with the proceedings had by them shall be made to the board of supervisors. All damages so assessed by the freeholders shall be paid by the petitioners, and until paid there shall be no confirmation of the report of the freeholders, and the laying out shall be of no effect.

Rev., ss. 2687, 2689; Code, ss. 2062, 2064; 1872-3, c. 189, ss. 1-3, 5.

NOTE. As to obstructing cartways, church roads, etc., see this chapter, s. 125a; Crimes, s. 181.

CHAPTER 70

SALARIES AND FEES

ART. 1. PAYMENT OF SALARIES AND FEES.

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- 50. Local modifications as to fees of sheriffs.
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ART. 1. PAYMENT OF SALARIES AND FEES

1. Salaries payable monthly. All annual salaries shall be paid monthly out of any money in the treasury not otherwise appropriated.

Rev., s. 2772; Code, s. 3731; 1893, c. 54.

2. Legislative employees paid on certificate of presiding officers. The auditor is authorized 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.

Rev., s. 2735; Code, s. 2873; 1870-1, res., p. 508.

3. Payment of fees; when to be paid in advance. The several officers named in this chapter shall receive the fees herein prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers; and no officer shall be compelled to perform any service, unless his fee be paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the state, or of a county, for the benefit of the state or county, the fees need not be paid in advance; but if for the state, shall

be paid by the state, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance.

Rev., s. 2804; Code, ss. 3758, 1173.

3a. Fees of state officers; disposition and accounting. All fees from whatever source which may hereafter be collected by any of the officers or employees of the state, except officers and clerk of the supreme court, shall be paid by the heads of the departments into the state treasury within thirty days from their collection, and the money paid shall be converted into the general fund. An itemized statement thereof shall be rendered each month to the state treasurer. No officer or employee of the state shall receive any compensation other than the salaries fixed in this chapter, except as provided by way of fees or by special appropriation or from any departmental fund.

1907, cc. 830, s. 1; 994, s. 1.

4. Copy-sheet defined. A copy-sheet shall consist of one hundred words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1855," "\$250.90," shall be estimated and charged as one word.

Rev., s. 2805; Code, s. 3757; R. C., c. 102, s. 42; 1868-9, c. 279, s. 556.

ART. 2. LEGISLATIVE DEPARTMENT

5. Members of general assembly and presiding officers. The members of the general assembly for the term for which they have been elected, shall receive as a compensation for their services the sum of four dollars per day for each day of their session, for a period not exceeding sixty days; and should they remain longer in session, they shall serve without compensation. They shall also be entitled to receive ten cents per mile, both while coming to the seat of government and while returning home, the said distance to be computed by the nearest line or route of public travel. The compensation of the presiding officers of the two houses shall be six dollars per day and mileage. Should an extra session of the general assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty days.

Rev., s. 2729; Const., Art. II, s. 28.

6. Clerks and doorkeepers. The principal and his assistant clerks, the engrossing clerks and doorkeepers and assistant doorkeepers of the general assembly, and the chief clerk and assistants, appointed by the secretary of state to supervise the enrollment of bills and resolutions, shall each receive four dollars per day, during the session of the general assembly, and the same mileage as members of the general assembly.

Rev., s. 2730; Code, ss. 2871, 2872; 1903, c. 5, s. 2; 1901, c. 631; 1899, cc. 6, 7; 1897, c. 52.

7. Copyists. Copyists employed in copying engrossed or enrolled bills and resolutions of the general assembly shall receive ten cents per sheet, which shall include the making of one carbon copy.

Rev., s. 2731; 1903, c. 5.

8. Principal clerks; extra compensation. The principal clerks of the general assembly shall be allowed two hundred dollars as a compensation for indexing the journals of their respective houses, and three hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the general assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office of the secretary of state.

Rev., s. 2732; Code, s. 2868; 1866-7, c. 71; 1881, c. 292; 1911, c. 116.

9. Temporary doorkeepers. The persons appointed to place the two halls of the general assembly in order, and to wait upon the members until doorkeepers can be regularly appointed, shall be allowed, as a compensation, the sum of four dollars each for their daily attendance and services.

Rev., s. 2734; Code, s. 2871; R. C., c. 52, s. 38; 1846, c. 63, s. 2.

10. Committee to examine treasurer's and auditor's books. The committee appointed by the general assembly to examine the books of the treasurer and auditor and insurance commissioner shall receive the same per diem for the number of days engaged at the offices in Raleigh, and mileage to and from the city of Raleigh, as is received by members of the general assembly.

Rev., s. 2740; Code, s. 3360; 1885, c. 334.

ART. 3. EXECUTIVE DEPARTMENT

11. Governor. The salary of the governor shall be six thousand five hundred dollars per annum. He shall be allowed annually the sum of six hundred dollars as traveling expenses in attending to the business for the state and for expenses out of the state and in the state in representing the interest of the state and people, incident to the duties of his office, the said allowance to be paid monthly. The auditor of the state is directed to issue a warrant for said expenses upon voucher being filed showing the amount of expense and the nature of the services rendered.

Rev., s. 2736; Code, s. 3720; 1879, c. 240; 1901, c. 8; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235.

12. Private secretary to governor; salary and fees. The private secretary to the governor shall be allowed an annual salary of twenty-five hundred dollars, and he shall charge and collect the following fees, to be paid by the persons for whom the services are rendered, namely: For the commission of a judge, solicitor, senator in congress, representative in congress, notary public, or a place of profit, two dollars and fifty cents each; for a testimonial, one dollar; for affixing the seal to a grant, twenty-five cents; and for affixing the great seal of the state to state bonds, ten cents. All fees, except fifty cents on each commission issued, which shall be retained by the private secretary for his services, received by the private secretary shall be paid into the treasury quarterly. He shall be ex officio secretary of the board of internal improvements, and shall be allowed five dollars per day for each day the board is in session.

Rev., s. 2737; Code, ss. 1689, 3721; R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Pr. 1901, c. 405; 1903, c. 729; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214.

13. Executive secretary. There shall be an executive secretary to the governor. The executive secretary shall receive a salary of twelve hundred dollars

annually, and shall not be required to do clerical work for or allowed to receive pay from the adjutant-general's office, for which three hundred dollars has heretofore been allowed; and for additional clerical assistance the executive department shall be allowed a sum not exceeding twelve hundred dollars per annum.

Rev., s. 2738; Code, s. 3722; 1876-7, p. 589, res.; 1881, c. 218; 1907, c. 830, s. 2; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214.

14. Lieutenant-governor. Whenever the lieutenant-governor shall attend any meeting of state officials or otherwise, which he is required by law to attend, he shall be entitled to receive as compensation the per diem allowed him under the constitution as president of the senate for the time required in attending said meeting, together with his necessary traveling expenses in going to and from said meeting. The amount to which he shall be entitled shall be certified to by him, and shall be paid to him by the state treasurer upon the proper warrant.

1911, c. 103.

15. Office of state treasurer. The salary of the treasurer shall be three thousand five hundred dollars per year. The salaries of the employees of the department of the state treasurer shall be as follows: Chief clerk, twenty-five hundred dollars per year; teller, eighteen hundred dollars per year; institution clerk, fifteen hundred dollars per year; bond clerk, fifteen hundred dollars per year; corporation tax clerk, twelve hundred dollars per year; stenographer, twelve hundred dollars per year.

Rev., s. 2739; Code, s. 3723; 1891, c. 505; 1907, c. 830, s. 3; 1907, c. 994, s. 2; 1917, c. 161.

16. Office of secretary of state. The salary of the secretary of state shall be three thousand five hundred dollars per annum, payable monthly (and one thousand two hundred dollars for clerical assistance). All fees received by him shall be paid into the treasury, unless otherwise directed by law; such fees to be paid in quarterly. The secretary of state shall also be allowed six hundred dollars for extra clerical assistance in the discharge of the duties of his office, and the treasurer shall pay the same, upon the warrant of the auditor, out of the fees collected by the secretary of state and paid into the treasury. The secretary of state shall appoint a clerk, who shall be designated the corporation clerk. He shall be paid, out of the moneys derived from the organization taxes on corporations, a salary of two thousand dollars annually, and shall perform such duties as the secretary of state shall require of him. The salary of the grant clerk shall be eighteen hundred dollars annually; and that of the stenographer nine hundred dollars annually.

Rev., s. 2741; Code, s. 3724; 1901, c. 2, s. 108; 1905, c. 549; 1879, c. 240, s. 6; 1881, p. 632, res.; 1907, c. 830, ss. 2, 4; 1907, c. 994, s. 2.

17. Secretary of state; fees to be collected. The secretary of state shall collect the following fees, namely: copying and certifying a will, grant or patent not exceeding two copy-sheets, fifty cents, and for every additional copy-sheet, ten cents; correcting an error not made by himself in a patent, fifty cents; copying and certifying a plot and survey, fifty cents for each warrant or for each six hundred and forty acres contained in the plot or survey, not to exceed five dollars for one copy; receiving surveyor's return, making out, recording and endorsing

grants, sixty cents; each certificate, ten cents; filing and recording a copy of a judgment vacating a grant and all other services thereon, fifty cents; copying an entry from the journals of the assembly, forty cents; copying and certifying the laws of other states, twenty cents for each copy-sheet; and in all cases not otherwise provided for, the secretary of state shall receive for copies of records from his office, one dollar for the first three copy-sheets and ten cents a copy-sheet thereafter.

Rev., s. 2742; Code, s. 3725; R. C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79.

18. Fees on returns to secretary of state. All officers required to make returns to the secretary of state shall receive for such returns five cents per copy-sheet, to be audited on the certificate of the secretary of state, and paid as other claims against the state.

Rev., s. 2743; Code, s. 3759; 1868-9, c. 279, s. 557.

19. Assistant to secretary of state; for indexing laws, etc. The assistant to the secretary of state who shall index the laws and prepare the laws and captions for publication shall receive a compensation of five hundred dollars.

Rev., s. 2733; 1903, c. 3.

20. Office of state auditor. The auditor shall receive a salary of three thousand dollars per annum, and shall be allowed no fee or other compensation whatever. The salaries of the employees in the state auditor's department shall be as follows, and no more: The chief clerk shall receive a salary of two thousand dollars annually; the tax clerk shall receive fifteen hundred dollars annually; and a stenographer shall receive nine hundred dollars annually. The state auditor is authorized to expend annually, out of funds not otherwise appropriated, an amount not exceeding three hundred dollars to pay a pension clerk, who may be a member of his office force, for the purpose of carrying into effect the pension laws of the state.

Rev., s. 2744; Code, s. 3726; 1879, c. 240, s. 7; 1881, c. 213; 1885, c. 352; 1899, c. 433; 1891, c. 334, s. 5; 1907, c. 830, s. 5; 1907, c. 994, s. 2; 1911, c. 108, s. 1; 1911, c. 136, s. 1; 1913, c. 172.

21. Office of superintendent of public instruction. The superintendent of public instruction shall receive an annual salary of three thousand dollars and actual traveling expenses. The chief clerk in the department shall receive an annual salary of two thousand dollars. The loan fund clerk shall receive an annual salary of eighteen hundred dollars, the same to be paid out of the state loan fund for building public schoolhouses. The stenographer shall receive an annual salary of twelve hundred dollars.

Rev., s. 2745; Code, s. 2737; 1879, c. 240, s. 8; 1901, c. 4, ss. 9, 11; 1903, c. 435, s. 2; 1903, c. 567, s. 6; 1903, c. 603; 1905, c. 533, ss. 2, 15, 16; 1907, c. 830, ss. 6, 11; 1907, c. 994; 1915, c. 247; 1917, cc. 167, 285.

NOTE. There are certain employees in the office of superintendent of public instruction whose salary is fixed by the board of education and the superintendent under powers conferred upon them by law, see the chapter, Education.

Supervisor of teacher training, \$2,500. 1907, c. 856.

Director of schools for adult illiterates, \$1,800, and traveling expenses. 1917, c. 224.

Members of the state board of examiners and institute conductors, three members at \$2,500 per year, three members at \$2,000 and \$500 annually for traveling expenses. 1917, c. 146.

22. Office of attorney-general. The attorney-general shall receive an annual salary of three thousand dollars and, also, one hundred dollars for each term of the supreme court which he shall attend and the fees allowed by law. The assistant attorney-general shall receive a salary of fifteen hundred dollars per year, payable monthly. The attorney-general shall also be allowed a stenographer at a salary of nine hundred dollars per year.

Rev., s. 2746; Code, ss. 3728, 3729; 1889, c. 274; 1893, c. 379; 1907, c. 830, s. 7; 1907, c. 994, s. 2; 1909, c. 804; 1911, c. 94.

23. Fees of attorney-general. In all appeals to the supreme court of persons convicted of criminal offenses, 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.

Rev., s. 2747; Code, s. 3737; 1873-4, c. 170.

24. Commissioner of agriculture. The salary of the commissioner of agriculture shall be three thousand five hundred dollars per year, to be paid monthly out of the receipts of the agricultural department.

Rev., s. 2749; 1901, c. 479, s. 4; 1905, c. 529; 1907, c. 887, s. 1; 1913, c. 58.

25. Office of commissioner of labor and printing. The salary of the commissioner of labor and printing shall be three thousand dollars per annum; and the salary of the assistant commissioner shall be two thousand dollars per annum. They shall also receive their actual traveling expenses while traveling for the purpose of collecting the information and statistics as provided by law. The salary of the stenographer in the department shall be nine hundred dollars per annum.

Rev., s. 2753; 1899, c. 373, s. 3; 1907, cc. 930, 989; 1915, cc. 157, 177.

26. Office of insurance commissioner. The salaries in the department of insurance shall be as follows: The insurance commissioner, three thousand five hundred dollars per year; deputy insurance commissioner, two thousand dollars per year; deputy and actuary, two thousand two hundred dollars per year; deputy insurance commissioner and accountant eighteen hundred dollars per year; chief clerk and assistant, two thousand dollars per year; license clerk, twelve hundred dollars per year; cashier and stenographer, eleven hundred dollars per year.

Rev., s. 2756; 1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; 1903, c. 771, s. 3; 1907, c. 830, s. 10; 1907, c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70.

27. Office of state librarian. The salary of the state librarian shall be fifteen hundred dollars per annum. He shall be allowed one assistant at a salary of nine hundred dollars per annum and a second assistant at a salary of five hundred dollars annually. He shall be allowed the sum of two hundred and fifty dollars per annum for services as custodian of the document library, and the sum of one dollar per day during the sessions of the general assembly, for keeping the document library open. The state librarian shall be allowed to charge the fee of fifty cents for each seal and certificate, and in addition thereto he shall receive ten cents per copy-sheet for all documents, papers, copies of instruments of every description whatsoever pertaining to his office which he shall be called upon to furnish to any person interested in same, to be paid by

party securing such copy of record. The state librarian is authorized to employ a janitor at a salary of sixty dollars a month.

Rev., s. 2748; Code, s. 3604; 1901, c. 503, s. 1; 1887, c. 258, s. 3; 1889, res., p. 519; 1905, c. 537; 1907, c. 647; 1909, c. 246, 887; Ex. Sess. 1913, c. 33; 1915, c. 74.

28. Adjutant-general. The salary of the adjutant-general shall be three thousand dollars per annum. The adjutant-general shall reside at the state capital during his term of office.

Rev., s. 2750; Code, ss. 3275, 3730; 1899, c. 390, ss. 2, 3; 1879, c. 240, s. 10; 1883, c. 283, s. 2; 1907, c. 803, s. 1; 1911, c. 110, s. 1; 1915, c. 118.

29. Office of corporation commission. The salary of the corporation commissioners shall be three thousand dollars per annum each, and in addition thereto thereto five hundred dollars per annum each as state tax commissioners; and also actual traveling expenses while on official business. The salary of the clerk of the corporation commission shall be twenty-four hundred dollars per annum, and the commissioners may, out of the expense fund of the corporation commission, allow such clerk an extra allowance above his regular salary in such manner as in their judgment may be expedient, not exceeding three hundred dollars. The first assistant clerk to the corporation commission shall receive a salary of fifteen hundred dollars per annum, and the second assistant clerk shall receive a salary of twelve hundred dollars per annum.

Rev., s. 2754; 1899, c. 164, s. 31, c. 688; 1901, c. 7, s. 2; 1903, c. 251, ss. 2, 3; 1905, c. 590, s. 3; 1907, cc. 830, 989, 994, 999; 1911, c. 147.

NOTE. See for clerks and assistants to the commission, the chapter, Corporation Commission, s. 10.

For fees for bank examinations, see the chapter, Banks, s. 29.

30. Presidential electors. Presidential electors shall be allowed for their traveling expenses to and from the city of Raleigh and their attendance, the same compensation as may be allowed members of the general assembly, and shall be entitled to the same privileges.

Rev., s. 2761; 1901, c. 89, s. 84.

31. State standard-keeper. The state standard-keeper shall be allowed such compensation for his services as the governor shall deem adequate, not exceeding one hundred dollars a year.

Rev., s. 2759; Code, s. 3845; 1866-7, p. 228; 1881, c. 199, s. 4.

32. Keeper of capitol. The salary of the keeper of the capitol, or superintendent of public buildings and grounds, shall be twelve hundred dollars per annum, which shall include his compensation as keeper of the arsenal.

Rev., s. 2806; Code, ss. 2302, 2303; 1907, c. 989; 1915, c. 150.

33. Servants and employees:

1. Servants of the state departments. The governor's office, the treasurer's office, the secretary of state's office, the auditor's office and the corporation commission shall each be allowed one servant, and the offices of superintendent of public instruction and the attorney-general shall together be allowed one servant. Such servants shall receive each as compensation the sum of ten dollars and fifty cents per week, except the servant in the office of the superintendent of public instruction who shall receive twelve dollars per week.

2. *Janitors and watchmen.* The night watchman and janitor of the capitol building and the gardener of capitol square shall each receive two dollars and fifty cents per day. The janitor of the capitol building shall receive, in addition to his regular compensation, one dollar per week for attending to and keeping clean the water-closets in the capitol building. The night watchman at the supreme court room shall receive fourteen dollars per week and the fireman at the supreme court room and the capitol building shall receive seventeen dollars and fifty cents per week. The night watchman at the governor's mansion shall receive fourteen dollars per week. The night watchman at the department of agriculture shall receive sixty dollars per month, to be paid out of funds belonging to the department. The adjutant-general may employ a janitor whose salary shall be ten dollars and fifty cents per week. The commissioner of labor and printing may employ a janitor whose salary shall be five dollars per week. The custodian for the state departments building shall receive a salary not to exceed eighteen dollars per week, the janitor, a salary not to exceed seventeen dollars per week, and the elevator operator a salary not to exceed seven dollars and fifty cents per week; and the keeper of public buildings and grounds is authorized to add their names to his weekly pay-roll, and the state auditor is directed to draw his warrant on the state treasurer for an amount sufficient to pay the above allowances. The custodian of the administration building shall receive as compensation for his services the sum of ninety dollars per month.

3. *Supreme court employees.* The keeper of the capitol is authorized and empowered to keep upon his pay-roll three servants or employees of the supreme court, two of whom shall receive ten dollars and fifty cents each per week, and the other four dollars and sixty-six cents per week. The justices of the supreme court may employ one additional servant for service in the supreme court, to be carried on the pay-rolls at ten dollars and fifty cents per week.

4. *Engineer and fireman of central heating plant.* An engineer, and fireman if necessary, for the central heating plant may be employed, whose duties and salary shall be fixed by the board of public buildings and grounds.

The servants and employees mentioned in this section shall be paid by the state treasurer unless otherwise specified herein.

Rev., s. 2762; Code, s. 3732; 1893, c. 306; 1899, c. 482; 1901, c. 624; 1907, c. 830, s. 11; 1907, c. 989; 1909, cc. 116, 797, 826; 1913, c. 96, s. 2; 1913, c. 108; Ex. Sess. 1913, c. 59; 1915, cc. 187, 232, 247.

34. *Laborer's leave of absence.* Every laborer, waiter and messenger permanently employed under authority of law in and about the public buildings and grounds at a salary who shall have served faithfully therein for the space of one continuous year, shall be entitled to fifteen days leave of absence per annum, with full pay at the end of every year of such service.

Rev., s. 2763; 1897, c. 274; 1907, c. 117.

ART. 4. JUDICIAL DEPARTMENT

35. *Supreme court justices.* Each justice of the supreme court shall be paid an annual salary of four thousand dollars, and two hundred and fifty dollars annually in lieu of and in commutation for traveling expenses. They shall each be allowed nine hundred dollars annually for stenographer or clerk.

Rev., s. 2764; Code, s. 3733; 1891, c. 193; 1903, c. 805; 1905, c. 208; 1907, cc. 841, 988; 1909, c. 486; 1911, c. 82; 1915, c. 44.

36. Superior court judges. The salary of each of the judges of the superior court shall be three thousand two hundred and fifty dollars per annum, and seven hundred and fifty dollars is allowed each per annum to furnish traveling and other necessary expenses incident to rotation, payable monthly. They shall also receive one hundred dollars per week and their actual expenses incurred in attending and holding special terms of court by assignment of the governor, which expenses shall be paid by the county in which such special term is held.

Rev., s. 2765; Code, ss. 918, 3734; 1891, c. 193; 1901, c. 167; 1905, c. 208; 1907, c. 988; 1909, c. 85; 1911, c. 82.

NOTE. See chapter, Courts, s. 47.

37. Certificates of courts held by judges. Every judge of the superior court shall produce a certificate from the clerk of each county of his having held the court of the county according to law; and for every such certificate omitted to be produced, there shall be a deduction from his salary of one hundred dollars, unless he shall be prevented by sickness or other unavoidable cause.

Rev., s. 2766; Code, s. 3735; R. C., c. 102, s. 4; 1868-9, c. 46, s. 7; 1879, c. 240, s. 5.

38. Solicitors; general compensation. The solicitors of the several judicial districts shall receive twenty dollars for each term of the superior court they shall attend, warrant by the auditor to issue therefor upon a certificate of such attendance from the clerk of the court; and the fees as prescribed in the following section.

Rev., s. 2767; Code, s. 3736; 1879, c. 240, s. 12.

39. Fees of solicitors. The solicitors shall, in addition to the general compensation allowed them by the state, receive the following fees, and no other, namely:

For every conviction under an indictment charging a capital crime, whether by plea or verdict, twenty-five dollars.

For perjury, forgery, counterfeiting, passing or attempting to pass or sell any forged or counterfeited paper or evidence of debt; maliciously injuring or attempting to injure any railroad or railroad car, or any person traveling on such railroad car; stealing or obliterating records; stealing, concealing, destroying or obliterating any will; maliciously burning or attempting to burn houses or bridges, seduction, slander of an innocent woman, and embezzlement; breaking into houses otherwise than burglariously; misdemeanors of accessories after the fact to felonies; in each of the above cases, fifteen dollars.

For larceny, receiving stolen goods, frauds, maims, deceits and escapes, eight dollars.

For all other offenses, five 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, except that for convictions under an indictment charging a capital crime, whether by plea or verdict, forgery, perjury, conspiracy, seduction, slander of an innocent woman, embezzlement, breaking into houses otherwise than burglariously, and when defendants are convicted and assigned to work on the public roads of any county in this state, they shall receive full fees: Provided, that no larger fee than ten dollars shall be taxed for the solicitor in an indictment against the

justices of the peace of any county, as justices, when there are more than three justices who are found guilty.

The solicitors of the several judicial districts and criminal courts shall prosecute all penalties, and forfeited recognizances entered in their courts respectively, and as compensation for their services shall receive a sum to be fixed by the court, not more than five per centum of the amount collected upon such penalty or forfeited recognizance.

For performing his duty for the appointment of a receiver of an estate of a minor, he shall receive not to exceed ten dollars, to be fixed by the judge; and in passing on the returns of the receivers in such cases where the estate of the infant does not exceed five hundred dollars, the fee of the solicitor shall not exceed five dollars, and where the estate exceeds five hundred dollars, his fee shall not exceed ten dollars, to be fixed by the judge, and in each case to be paid out of the fund.

Rev., s. 2768; Code, s. 3737; 1873-4, c. 170; 1885, c. 130; 1895, c. 14; 1901, c. 4, s. 5; 1915, c. 86.

40. Clerk of Supreme court. The clerk of the supreme court shall receive an annual salary of three hundred dollars, to be paid semiannually, 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 fieri 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-five cents.

Rev., s. 2769; Code, s. 3738; R. C., c. 102, ss. 25, 26; 1870-1, c. 139, s. 7.

41. Janitor and fireman of supreme court building. The janitor of the supreme court shall be appointed by said court. He shall act also as assistant librarian of the supreme court. As janitor he shall receive fifteen dollars per week, and for acting as assistant librarian he shall receive thirty dollars per month. The fireman of the supreme court building shall be appointed by the chief justice and associate justices of the supreme court. When not engaged in his duties as fireman he shall act as assistant janitor of the supreme court building, and shall assist in the cleaning and care of such building and perform such other duties as may be designated by the said justices of the supreme court.

1907, c. 732; 1909, cc. 687, 721; 1911, c. 156.

42. Marshal of supreme court. The salary of the marshal of the supreme court shall be fifteen hundred dollars per annum; and he shall perform the duties of librarian without additional compensation.

Rev., s. 2770; Code, ss. 950, 3606; 1889, c. 482; 1873-4, c. 34; 1881, c. 306; 1907, c. 732; 1909, c. 687.

43. Supreme court reporter. The compensation of the supreme court reporter shall not exceed fifteen hundred dollars per annum, to be fixed by the court. He is authorized and empowered to employ a stenographer and clerk at a yearly salary of not exceeding six hundred dollars, payable monthly directly to the person so employed by the reporter, by voucher drawn by the state auditor on the state treasurer, out of the general funds of the state.

Rev., s. 2771; Code, ss. 3363, 3728; 1893, c. 379; 1897, c. 429; 1911, c. 107; 1913, c. 59; 1917, c. 272.

ART. 5. COUNTY OFFICERS

44. Clerk of superior court. The fees of the clerk of the superior court shall be the following, and no other, namely:

Advertising and selling under mortgage in lieu of bond, two dollars for sales of real estate and one dollar for sales of personal property.

Affidavit, including jurat and certificate, twenty-five cents.

Appeal from justice of the peace, fifty cents.

Appeal from the clerk to the judge, fifty cents.

Appeal to the supreme court, including certificate and seal, two dollars.

Appointing and qualifying justices of the peace, to be paid by the justice, twenty-five cents.

Apprenticing infant, including indenture, one dollar.

Attachment, order in, fifty cents.

Auditing account of receiver, executor, administrator, guardian or other trustee, required to render accounts, if not over three hundred dollars, fifty cents; if over three hundred dollars and not exceeding one thousand dollars, eighty cents; if over one thousand dollars, one dollar.

Auditing final settlement of receiver, executor, administrator, guardian or other trustee, required to render accounts, one-half of one per cent of the amount on which commissions are allowed to such trustee, for all sums not exceeding one thousand dollars; and for all sums over one thousand dollars, one-tenth of one per cent on such excess; but such fees shall not exceed fifteen dollars, unless there be a contest, when the clerk shall have one per cent on the said excess over one thousand dollars; but in no instance shall his fees exceed twenty-five dollars.

Auditing and recording the final account of commissioners appointed to sell real estate, one-half of the fees allowed for auditing and recording final accounts of executors.

Bill of costs, preparing same, twenty-five cents.

Bond or undertaking, including justification, sixty cents.

Canceling notice of lis pendens, twenty-five cents.

Capias, each defendant, one dollar.

Capias, when the defendant is not arrested thereunder, shall be such sum as the commissioners of his county may allow.

Caveat to a will, entering and docketing same for trial, one dollar.

Certificate, except where it is a charge against the county, twenty-five cents; and where it is a charge against the county, the fee shall be such sum not exceeding twenty-five cents as the board of commissioners shall allow.

Commission, issuing, seventy-five cents.

Continuance, thirty cents.

Docketing ex parte proceedings, fifty cents.

Docketing indictment, twenty-five cents.

Docketing liens, twenty-five cents.

Docketing judgment, twenty-five cents.

Docketing summons, twenty-five cents.

Execution and return thereon, including docketing, fifty cents; and certifying return to clerk of any county where judgment is docketed, twenty-five cents.

Filing all papers, ten cents for each case.

Guardian, appointment of, including taking bond and justification, one dollar.

Impaneling jury, ten cents.

Indexing judgment on cross-index book, ten cents for the judgment regardless of number of parties.

Indexing liens on lien book, ten cents.

Indictment, each defendant in the bill, sixty cents.

Injunction, order for, including taking bond or undertaking and justification, one dollar.

Judgment, final, in term-time, civil action, one dollar.

Judgment, final, against each defendant, in criminal actions, one dollar.

Judgment, final, before the clerk, fifty cents.

Judgment by confession, without notice, all services, three dollars.

Judgment in favor of widow for year's support, fifty cents.

Judgment nisi, entering against a defaulting witness or juror, on bail bond or recognizance, twenty-five cents.

Juror ticket, including jurat, ten cents.

Justification of sureties on any bond or undertaking, except as otherwise provided, fifty cents.

Letters of administration, including bond and justification of sureties, one dollar.

Motions, entry and record of, twenty-five cents.

Notices, twenty-five cents, and for each name over one in same paper, ten cents additional.

Notifying solicitors of removal of guardian, one dollar.

Order enlarging time for pleading, and all interlocutory orders, in special proceedings and civil actions, twenty-five cents.

Order of arrest, one dollar.

Order for appearance of apprentice, on complaint of master, one dollar; for appearance of master on complaint of apprentice, one dollar.

Order for the registration of a deed or other writing, which has been proved or acknowledged in another county, or before a judge, justice, notary or other officer, except a chattel mortgage, twenty-five cents.

Postage, actual amount necessarily expended.

Presentment, each person presented, ten cents.

Probate of a deed or other writing, proved by a witness, including the certificate, twenty-five cents.

Probate of a deed or other writing, acknowledged by the signers or makers, including all except married women, who acknowledge at the same time, with the certificate thereof, twenty-five cents.

Probate of a deed, or other writing, executed by a married woman, for her acknowledgment and private examination, with the certificate thereof, twenty-five cents.

Probate of limited partnership, fifty cents.

Probate of will in common form and letters testamentary, one dollar.

Qualifying justice of the peace, to be paid by the justice, twenty-five cents.

Qualifying members of the board of commissioners, to be paid by the commissioners, twenty-five cents.

Recognizance, each party where no bond is taken, twenty-five cents.

Recording and copying papers, per copy-sheet, ten cents.

Recording names, qualification, and expiration of term of office of justices of the peace, five cents for each name.

Registering trained nurses, including certificate of registration, fifty cents.

Recording certificates of incorporation of corporations, three dollars.

Recording names of jurors as required by law, five cents for each name.

Resignation of guardian, relinquishment of right to administer, or to qualify as executor, receiving, filing and noting same, twenty-five cents.

Seal of office, when necessary, twenty-five cents.

Subpœna, each name, fifteen cents.

Summons, in civil actions or special proceedings, including all the names therein, one dollar, and for every copy thereof, twenty-five cents.

Transcript of judgment, twenty-five cents.

Transcript of any matter of record or papers on file, per copy-sheet, ten cents.

Trial of any cause, or stating an account, as referee, pursuant to order of the judge, such allowance as the judge may make.

Witness ticket, including jurat, ten cents.

Five per cent commissions shall be allowed the clerk on all fines, penalties, amercements and taxes paid the clerk by virtue of his office; and three per cent on all sums of money not exceeding five hundred dollars placed in his hands by virtue of his office, except on judgments, decrees, and executions; and upon the excess over five hundred dollars of such sums, one per cent.

Rev., s. 2773; Code, ss. 229, 1789, 3109, 3739; 1885, c. 199; 1893, c. 52, s. 4; 1897, c. 68; 1899, c. 17, s. 2; 1899, c. 247, s. 3; 1899, cc. 578, 261; 1901, cc. 121, 614, s. 3; 1903, c. 359, s. 6; 1905, c. 360, s. 3.

NOTE. For compensation of clerk on settlement of decedent's estate, see Administration, s. 152.

For fees in organization of corporations, see Corporations, s. 104.

In many counties the clerk has been put upon a salary basis.

45. Local modifications as to clerk's fees. For the probate of a short form lien bond, or lien bond and chattel mortgage combined, the clerk shall receive ten cents in the following counties: Alamance, Alleghany, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Greene, Harnett, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Union, Vance, Warren, Washington, Watauga, Wayne, Wilson.

Rev., s. 2773; 1907, c. 717; 1909, c. 502; P. L. 1917, c. 182.

In Anson, this fee is twenty cents.

P. L. 1913, c. 49.

In Bertie County the clerk of the superior court shall collect the sum of fifteen cents for each crop lien or lien bond probated by him for registration in Bertie County, including all services connected therewith.

P. L. 1915, c. 163.

In Forsyth County the clerk shall receive fifteen cents for the probate of a deed or other writing, acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof. He shall also receive fifteen cents for the probate of a deed or other writing, proved by a witness, including the certificate.

P. L. 1913, c. 626.

In Jackson County in addition to the fees now allowed by law the clerk shall receive the sum of five dollars for writing up the minutes of each day's session of the superior court of the county, to be paid by the county.

P. L. 1913, c. 182.

In Robeson County the board of county commissioners may make an allowance to the clerk of the superior court for keeping the records of the court and transcribing the minutes, to be paid out of the general county fund.

* Rev., s. 2773.

46. Coroners. Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county.

It is the duty of every coroner, where he or any juryman deems it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and services ten dollars, and such further sum as the commissioners of the county may deem reasonable.

Rev., s. 2775; Code, s. 3743; 1903, c. 781.

NOTE. For coroners' fees in counties noted see acts cited.

Buncombe, Rev., 2775; P. L. 1911, c. 556.

Brunswick and New Hanover, P. L. 1917, c. 680.

47. Register of deeds. The register of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such per diem as such board may respectively allow, not exceeding two dollars; and shall be allowed the following fees for his services as register of deeds:

For registering any deed or other writing authorized to be registered by them, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, eighty cents; and for every additional copy-sheet, ten cents.

Registering chattel mortgage, statutory form, twenty cents.

For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instruments for registration and at the time of filing, one dollar.

For a copy of any record or any paper in their offices, like fees as for registering the same.

For issuing each notice required by the county commissioners, including subpoenas for witnesses, fifteen cents. This shall not include county orders on the treasury.

Recording and issuing each order of commissioners, ten cents. Where a standing order is made for the payment of money, monthly or otherwise, there shall be charged but one fee therefor.

Making out original tax list, two cents for each name thereon; for each name on each copy required to be made, two cents.

Issuing marriage license, one dollar.

For transcript and certificate of limited partnership, fifty cents.

For recording the election returns from the various voting precincts, ten cents per copy-sheet, to be paid by the county.

For attaching and indexing subdivisions or plats now allowed by law to be registered, fifty cents; for transcribing and indexing subdivisions and plats, seventy-five cents. If such subdivision or plat contains more than three lots or tracts of land, the register of deeds shall be entitled to charge twenty-five cents for transcribing each and every lot or tract of land in excess of three that is contained in such plat or subdivision, but in no case shall the fees exceed five dollars for transcribing and indexing such plat or subdivision.

Rev., s. 2776; Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; 1899, c. 247, s. 3; 1899, cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; 1911, c. 55, s. 3.

NOTE. In many counties the register of deeds has been put upon a salary basis.

48. Local modifications as to fees of registers of deeds. The register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, fifty cents in the counties of Davidson, Halifax, Northampton, Scotland, Union, Vance, Warren and Wayne; thirty cents in the counties of Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Washington, Watauga and Wilson; twenty cents in the counties of Chatham, Columbus, Cleveland, Iredell, Johnston and Mecklenburg.

Rev., s. 2776; 1907, cc. 421, 636, 717; 1909, cc. 23, 532; P. L. 1913, c. 49; P. L. 1917, c. 182.

In Alexander County the board of county commissioners are authorized and empowered to pay the register of deeds the sum of one cent each per name for indexing births and deaths in said county. Likewise in Cleveland County.

P. L. 1915, c. 513; P. L. 1917, c. 423.

In Catawba County the register of deeds shall be allowed as a fee for his services for registering any deed of trust, in which real property is conveyed to a trustee to secure a loan from a building and loan association, the sum of eighty cents.

1909, c. 43.

In Forsyth County the register shall receive for registering any deed or other writing authorized to be registered, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, sixty-five cents; and for every additional copy-sheet, ten cents: Provided, that the registration of any deed of trust shall not cost more than one dollar and ten cents, where the same does not contain more than four copy-sheets, and for every additional copy-sheet, ten cents each.

Rev., s. 2776; P. L. 1913, c. 626; P. L. Ex. Sess. 1913, c. 177.

In Jackson County the register shall, for his service in acting as clerk of the board of commissioners, for recording minutes, and doing other clerical work for or under the direction of the board of commissioners, receive three dollars per day, to be paid by the county.

P. L. 1913, c. 182.

In Tyrrell County the register shall receive for canceling mortgages, deeds of trust or instruments intended to secure the payment of money, fifteen cents.

1909, c. 780.

In Union County the county commissioners may revise the fees and commissions which may be charged by the register of deeds, and may fix all such fees and commissions at such amounts and rates as in their judgment will give the register of deeds and his deputies and assistants reasonable compensation. The fees and commissions so fixed shall be the legal fees chargeable by and payable to the register of deeds.

P. L. 1917, c. 366.

In Wake County the register of deeds shall charge and receive the following fees for registration of the papers herein mentioned, to wit: For registering lien bond, fifty cents; for registering short form of chattel mortgage provided for securing a sum not exceeding three hundred dollars, thirty cents; for registering short form of agricultural lien and chattel mortgage for advances, thirty cents; for registering short form of crop lien to secure advances and chattel mortgage to secure preexisting debt, and to give additional security to the lien, thirty cents; for registering short form notes given for the purchase price of personal property or combining also a conveyance of the property or other additional property as security, and retaining title to the property sold, twenty cents.

P. L. 1915, c. 138.

In Yadkin County the fees for recording chattel mortgages, crop liens, conditional sales, etc., shall be twenty cents for the first two copy-sheets or fraction thereof and ten cents for each additional copy-sheet or fraction thereof.

P. L. 1911, c. 414.

49. Sheriffs. Sheriffs shall be allowed the following fees and expenses, and no other, namely:

Executing summons or any other writ or notice, sixty cents; but the board of county commissioners may fix a less sum than sixty cents, but not less than thirty cents, for the service of each road order.

Arrest of a defendant in a civil action and taking bail including attendance to justify, and all services connected therewith, one dollar.

Arrest of a person indicted, including all services connected with the taking and justification of bail, one dollar.

Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents.

Executing subpoena on a witness, thirty cents.

Conveying a prisoner to jail to another county, ten cents per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, one dollar.

In claim and delivery for serving the original papers in each case, sixty cents, and for taking the property claimed, one dollar, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, two dollars per day and actual necessary expenses; also one dollar a day and actual necessary expenses for each guard, not to exceed one guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the state treasurer upon the warrant of the auditor, out of any money in the treasury not otherwise appropriated. The sheriff shall file with the auditor the affidavit above mentioned, together with a fully itemized account, to be sworn to before the auditor, showing the number of days requisite for coming and returning and the actual expense of conveying said convicts and the guard necessary for their safe-keeping, and if the auditor approves said account, he shall issue his warrant on the treasurer for the amount thereof.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commissions for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, fifteen cents.

Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, fifty cents.

The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

A capital execution, ten dollars, and actual expense of burying the body.

Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on the special venire.

For serving any writ or other process with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and ten cents per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs.

For levying an attachment, one dollar.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, one dollar; and for attendance, to qualify commissioners for any other purpose, seventy-five cents.

Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser.

Service of writ of ejectment, one dollar.

For every execution, either in civil or criminal cases, fifty cents.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service, not only the fees allowed by law, but a further compensation of five cents for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled.

Rev., s. 2777; Code, ss. 931, 2135, 2089, 2090, 3752; 1885, c. 262; 1891, cc. 112, 143; 1903, c. 541; 1901, c. 64; R. C., c. 102, s. 21; R. C., c. 31, s. 56; 1822, c. 1132.

NOTE. For serving process from corporation commission, see Corporation Commission, Art. 6.

For sheriff's compensation for duties connected with collection of taxes, see Taxation, Art. 13.

In many counties the sheriff has been put upon a salary basis.

50. Local modifications as to fees of sheriffs. The sheriff of Hyde County shall be allowed the sum of two dollars for serving all warrants or capiases or other criminal processes on the waters of Pamlico Sound or on the waters of any bay in Hyde County. Whenever such sheriff is compelled to go by boat or vessel a distance of more than two miles from any shore or landing in Hyde and of Dare County to serve any civil process upon the waters of Pamlico Sound and waters of Dare County or any bay in Hyde County, such sheriff, in addition to the fee prescribed by law for serving such process, may add the expense of hiring such boat or vessel, which cost or expense shall be taxed by the clerk of the superior court of the county from which such process issued in the bill of costs in the action in which such process issued. Sheriffs and constables of

Hyde and Carteret counties shall receive three dollars for every process executed on board of any boat or vessel lying in the waters between Ocracoke Island, Hyde County, and Portsmouth in Carteret County.

Rev., s. 2777; 1907, c. 206.

The sheriff of Dare County shall be allowed his actual traveling expenses incurred by him in serving warrants, capiases or other criminal processes on the waters of Dare County or at any point in Dare County across the water.

1909, c. 527.

For every illicit distillery seized as required by law the sheriffs of Haywood, Lincoln, Pitt and Transylvania counties shall receive the sum of twenty dollars, which shall be allowed by the commissioners of the county in which the seizure was made.

Ex. Sess. 1908, s. 97.

For each person summoned on a special venire the sheriff of Robeson County shall receive thirty cents; but not for a special venire ordered to be summoned from the bystanders, in which case he shall receive ten cents for each person so summoned.

1909, c. 317.

51. County treasurer. The county treasurer shall receive as compensation in full for all services required of him such a sum, not exceeding one-half of one per cent on moneys received and not exceeding two and a half per cent on moneys disbursed by him as the board of commissioners of the county may allow. As treasurer of the county school fund he shall receive such sum as the board of education may allow him, not exceeding two per cent on disbursements: Provided, that said treasurer shall be allowed no commission or compensation for receipts and disbursements of any loan or loans made to the county by the state board of education out of the state literary fund for the building of schoolhouses: Provided, that in counties where the treasurer's total compensation cannot exceed two hundred and fifty dollars per annum the treasurer may be allowed, in the discretion of the board of county commissioners and of the board of education, as to the school fund, a sum not exceeding two and one-half per cent on his receipts and not exceeding two and one-half per cent on his disbursements of all funds handled by him; but the compensation allowed by virtue of the provisions of this last proviso shall not be operative to give a total compensation in excess of two hundred and fifty dollars per annum to such treasurers.

Rev., s. 2778; Code, s. 770; 1899, c. 233; 1909, c. 577; 1913, c. 144.

NOTE. For special commission allowed treasurer in Martin County, see Rev., s. 2778.

In many counties the treasurer has been put upon a salary basis.

52. County superintendent of public instruction. The salary of the county superintendent of schools shall be fixed by the county board of education. It shall not be less than three dollars per day while engaged in the service of the public schools. The county board of education may fix an annual salary not to exceed four per cent of the disbursements for schools under his supervision. The county board of education of any county whose total school fund exceeds fifteen thousand dollars may employ a county superintendent for all of his time at such salary as may be fixed by said board.

Rev., s. 2782; 1901, c. 4, s. 44; 1903, c. 435, s. 19; 1909, c. 525.

53. County board of education. The members of the county board of education shall receive three dollars per diem and five cents a mile to and from their respective places of meeting.

Rev., s. 2786; 1901, c. 4, s. 27; 1915, c. 236, s. 2.

NOTE. For local variations in counties noted, see acts cited.

Durham, 1909, c. 545.

Guilford, 1909, c. 341; P. L. 1913, c. 810.

Robeson, P. L. 1913, c. 526.

54. County board of pensions. Each member of the county board of pensions shall be entitled to two dollars a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners.

Rev., s. 2783; 1903, c. 273, s. 19.

55. County standard-keeper. Standard-keepers shall be entitled to receive the following fees, and no other, namely: for examining and adjusting a pair of steelyards, twenty-five cents; every weight of half a pound and upwards, five cents; every set of weights below half a pound, including one piece of each denomination; five cents; for a yard stick, or other measure of cloth, five cents; every bushel, half bushel, peck or other measure used in measuring grain, meal or salt, ten cents; each measure for liquors or wines, three cents, and for extra work on bushel and half-bushel measures a sum not exceeding twenty-five cents in any one case; and for every surveyor's chain, fifty cents.

Rev., s. 2780; Code, s. 3753; 1889, c. 406; R. C., c. 102, s. 37; 1870-1, c. 139, s. 3; 1874-5, c. 110.

NOTE. For compensation of state standard-keeper, see chapter, Weights and Measures.

56. Finance committee. The members of the finance committee shall each receive such compensation for the performance of his duties as the board of commissioners may allow, not exceeding three dollars per day; but they shall not be paid for more than ten days in any one year.

Rev., s. 2781; Code, s. 763; 1871-2, c. 71, s. 5; 1873-4, c. 107.

57. Committee to examine treasurer's books. The board of commissioners shall allow to the committee who examine the books and moneys of the treasurer the same pay per diem that is received by a member of the board, not to exceed pay for one day's service for each examination.

Rev., s. 2779; Code, s. 774; 1879, c. 33.

58. Election officers. The registrar shall receive three cents for each name registered in the new registration when ordered, and thereafter in the revision of the registration book, he shall receive one cent for each name copied from the original registration book. Each chairman of the county board of elections shall be allowed two dollars per day for the time actually employed, and five cents per mile for distance traveled, for making the returns for senators, and each sheriff shall receive thirty cents for each notice he is required to serve under the law providing for holding elections. The compensation allowed officers shall be paid by the county treasurer after being audited by the board of county commissioners. Clerks and registers of deeds shall also be allowed the usual registration fees for recording the election returns, to be paid by the county. The board of state canvassers may employ two clerks at a compensation of four dol-

lars each per day, during the session of the board of state canvassers. The members of the county board of elections shall each be allowed two dollars per day for each day they may be actually employed in the performance of their duties. The registrars and judges of election shall be entitled to such compensation as may be fixed by the board of commissioners of their county, not to exceed two dollars each for holding the election. The election constables or bailiffs shall be entitled to two dollars per day each; and the registrar or judge of election, who shall act as returning officer, shall be allowed two dollars payable out of the county treasury: Provided, that the registrars shall receive, in addition to the compensation herein allowed for each name registered, the sum of two dollars per day for each Saturday during the period of registration, and on which they attend at the several polling places for the purpose of registering voters or receiving and hearing challenges: Provided further, that in addition to the compensation herein allowed the several election officers it shall be lawful for the county commissioners to pay to the several members of the county board of elections and also to the several registrars such additional compensation as may be by them considered just and fair.

Rev., s. 2784; 1901, c. 89, s. 62; 1905, c. 434; 1907, c. 760.

59. County commissioners. Except where otherwise provided by law, each county commissioner shall receive for his services and expenses in attending the meetings of the board not exceeding two dollars per day, as a majority of the board may fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed five cents per mile.

Rev., s. 2785; Code, s. 709; 1907, c. 500.

NOTE. For local laws as to pay of county commissioners in the counties listed below see the acts referred to.

Ashe, P. L. 1911, c. 251; P. L. 1915, c. 121.

Avery, P. L. 1915, c. 231.

Beaufort, 1907, c. 351.

Bertie, P. L. 1913, c. 358.

Bladen, P. L. 1913, c. 756.

Brunswick, Rev., s. 2785; 1907, c. 974.

Buncombe, 1907, c. 942; P. L. 1911, c. 308; P. L. 1915, c. 794.

Burke, P. L. 1911, c. 349.

Caswell, 1909, c. 370; P. L. 1911, c. 191.

Catawba, P. L. 1911, c. 331; P. L. 1913, c. 632.

Chatham, P. L. 1913, c. 485.

Cherokee, P. L. 1911, c. 306.

Cleveland, 1907, c. 907.

Columbus, P. L. 1911, c. 307; P. L. 1913, c. 529.

Craven, Rev., s. 2785.

Cumberland, P. L. 1911, c. 118.

Currituck, Rev., s. 2785.

Davidson, P. L. 1911, c. 511; P. L. 1913, c. 485.

Duplin, P. L. 1917, c. 472.

Durham, 1907, c. 536; P. L. 1911, c. 674.

Edgecombe, 1907, c. 561.

Forsyth, P. L. 1911, c. 690.

Franklin, P. L. 1911, c. 338.

Gaston, 1907, c. 904; P. L. 1911, c. 152.

Granville, Rev., s. 2785; 1909, c. 646; P. L. 1911, c. 350.

Greene, P. L. 1915, c. 539.

Guilford, 1907, c. 13; P. L. 1911, c. 190; P. L. 1913, c. 810.

Halifax, P. L. 1911, c. 649; P. L. 1913, c. 485.

Haywood, 1909, c. 228; P. L. 1913, c. 755; P. L. Ex. Sess. 1913, c. 227.

Hertford, P. L. 1911, c. 712; P. L. 1913, cc. 47, 118.

Hoke, P. L. 1911, c. 741.
 Hyde, 1907, c. 394; P. L. 1917, c. 159.
 Iredell, P. L. 1913, c. 401.
 Jackson, P. L. 1911, c. 419.
 Johnston, Rev., s. 2785; 1909, c. 41.
 Madison, 1907, c. 651.
 Martin, P. L. 1915, c. 229.
 McDowell, 1907, c. 132; P. L. 1917, c. 242.
 Mecklenburg, Rev., s. 2785.
 Mitchell, 1909, c. 254.
 Montgomery, P. L. 1911, c. 63.
 Moore, P. L. 1915, c. 282.
 Nash, P. L. 1911, c. 665.
 New Hanover, P. L. 1913, c. 293.
 Northampton, Rev., s. 2785.
 Onslow, Rev., s. 2785; 1909, c. 476; 1909, c. 606.
 Orange, 1907, c. 536.
 Pamlico, P. L. 1913, c. 635.
 Pasquotank, P. L. 1911, c. 352; P. L. 1913, c. 485; P. L. 1915, c. 25.
 Pender, 1909, c. 685.
 Person, P. L. 1915, c. 4.
 Pitt, P. L. 1911, c. 98.
 Richmond, 1909, c. 101.
 Robeson, 1909, c. 249.
 Rockingham, 1907, c. 448; P. L. Ex. Sess. 1913, c. 231.
 Rowan, P. L. 1915, c. 612.
 Rutherford, 1907, c. 737.
 Sampson, P. L. 1913, c. 279.
 Scotland, P. L. 1917, c. 190.
 Stanly, P. L. 1917, c. 271.
 Stokes, P. L. 1911, c. 45.
 Swain, P. L. 1917, c. 210.
 Transylvania, P. L. 1911, c. 252.
 Union, 1907, c. 347.
 Vance, P. L. 1911, c. 474.
 Wake, 1909, c. 573.
 Warren, P. L. 1913, c. 485.
 Watauga, P. L. 1913, c. 485.
 Wayne, P. L. 1915, c. 522.
 Wilkes, P. L. 1913, c. 414; P. L. 1913, c. 485.
 Wilson, P. L. 1913, c. 827.
 Yadkin, P. L. 1913, c. 321.
 Yancey, Rev., s. 2785; 1909, c. 384.

ART. 6. TOWNSHIP OFFICERS

60. Constable. Constables shall be allowed the same fees as sheriffs.

Rev., s. 2787; Code, s. 3742; 1883, c. 108.

NOTE. For fees in Pitt and Halifax, see P. L. 1917, c. 652.

61. Justices of the peace. That justices of the peace shall receive the following fees, and none other: For attachment with one defendant, twenty-five cents, and if more than one defendant, ten cents for each additional defendant; transcript of judgment, ten cents; summons, twenty cents, if more than one defendant in the same case, for each additional defendant, ten cents; subpoena for each witness, ten cents; trial when issues are joined, seventy-five cents, and if no issues are joined, then a fee of forty cents for trial and judgment; taking an affidavit, bond or undertaking, or for an order of publication, or an order to seize property, twenty-five cents; for jury trial and entering verdict, seventy-five cents; execution, twenty-five cents; renewal of execution, ten cents; return

to an appeal, thirty cents; order of arrest in civil actions, twenty-five cents; warrant of arrest in criminal and bastardy cases, including affidavit or complaint, fifty cents; warrant of commitment, twenty-five cents; taking depositions on order or commission, per one hundred words, ten cents; garnishment for taxes, and making necessary return and certificate of same, twenty-five cents; for hearing petition for widow's year's allowance, issuing notice to commissioners and allotting the same, one dollar; for filing and docketing laborers' liens, fifty cents; probate of a deed or other writing proved by a witness, including the certificate, twenty-five cents; probate of a deed or other writing executed by a married woman, proper acknowledgment and private examination, with the certificate thereof, twenty-five cents; probate of a deed or other writing acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof, twenty-five cents; probating chattel mortgage, including the certificate, ten cents; for issuing all papers and copies thereof in an action for claim and delivery, and the trial of the same, if issues are joined, when there is one defendant, one dollar and fifty cents, and if more than one defendant in action, fifty cents for each additional defendant, and ten cents for each subpoena issued in said cause, and twenty-five cents for taking the replevy bond, when one is given: Provided, that when the trial of such a cause shall have been removed from before the justice of the peace issuing the said papers, the justice of the peace sitting in trial of such cause shall receive fifty cents of the above costs for such trial and judgment.

Rev., s. 2788; Code, ss. 2135, 3748; 1870-1, c. 130, s. 9; 1883, c. 368; 1885, c. 86; 1903, c. 225; 1907, c. 967; 1917, c. 260.

ART. 7. COMMISSIONERS

62. Condemnation commissioners. The commissioners appointed, under any order of court, to condemn any land, for any railroad or other company or corporation in proceedings to condemn land under and by virtue of any right of eminent domain, shall each receive three dollars per day for each day they are engaged in the performance of their duties.

Rev., s. 2790; Code, s. 1946.

63. Commissioners to make partition. The commissioners appointed by any court to make partition of any land, timber or real estate of any kind, or any personal property, shall each receive per diem for his services the sum of not exceeding two dollars, in the discretion of the court.

Rev., s. 2791; Code, ss. 1901, 1922; 1913, c. 18.

64. Commissioners to make sale in partition. In sales of real estate or personalty for partition the allowance to the commissioner for making such sale, and for all services therewith, and for making title shall be as follows: For sales of five hundred dollars or less, not more than ten dollars; for sales of over five hundred dollars, two per centum, up to a compensation of forty dollars, and when the allowance shall amount to forty dollars, any additional compensation shall not exceed the rate of one per centum on the excess over two thousand dollars.

Rev., s. 2792; Code, s. 1910.

65. Commissioners to divide land lying in this and another state. The commissioners appointed to divide lands lying in this and another state shall be entitled to three dollars per day for their services; which, with all fees, expenses and costs, shall be paid as the court may direct.

Rev., s. 2793; Code, s. 1916; 1868-9, c. 122, s. 26.

66. Commissioners to assess damages for mills. Every commissioner appointed in any proceeding to assess the damages arising from the location of any mill, as provided for in the chapter on Mills, shall be entitled to receive two dollars per day.

Rev., s. 2794; Code, s. 1863.

67. Commissioners in drainage proceedings. Each commissioner appointed in proceedings under the chapter on drainage shall be entitled to receive one dollar and fifty cents per day.

Rev., s. 2795.

68. Commissioners of affidavits. Commissioners of affidavits, and those who are authorized by law to act as such, shall receive the following fees, and no other, namely: for an affidavit taken and certified, forty cents; affixing his official seal, twenty-five cents.

Rev., s. 2796; Code, s. 3741.

69. Person allotting widow's year's allowance. Any person appointed by any court or justice of the peace, or summoned by any sheriff to allot or set apart to any widow a year's allowance under the statute, and who shall serve, shall be paid the sum of one dollar per day or fraction of the day engaged, and the same shall be taxed as a part of the bill of costs of the proceeding.

1907, c. 223; 1913, c. 18.

70. Person allotting dower. Any person designated to allot or assign to any widow dower in her husband's land, and who shall serve, shall be paid not exceeding two dollars per day in the discretion of the court, and the same shall be taxed as a part of the bill of costs of the proceeding.

1913, c. 18.

71. Receivers; selling as commissioners. Receivers of property appointed by any order of court, in any proceedings or action, shall be allowed such commissions as may be fixed by the court appointing them, not exceeding five per cent on the amount received and disbursed by them.

Rev., s. 2797; 1901, c. 2, s. 88; Code, s. 379, subsec. 4.

NOTE. For compensation of surviving partner settling partnership estate, see chapter. Partnership.

ART. 8. MISCELLANEOUS

72. Fees of jurors. Jurors shall receive such sum as the county commissioners may fix, not exceeding one dollar and fifty cents for each day's attendance at court or inquest, and mileage at the rate of five cents per mile; they shall also be allowed such ferriage and tolls as they may have necessarily incurred. The same pay shall be allowed to special jurors as talesmen, who shall be summoned to serve and do serve, but they shall not be allowed any mileage or ferriage.

73. Local modifications as to pay of jurors. All who are summoned to appear as special veniremen, who do actually attend and who are not drawn as jurors shall be entitled to prove and receive one day's pay of one dollar each without mileage, except in the following counties: Alamance, Alexander, Alleghany, Anson, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Franklin, Gaston, Graham, Haywood, Hyde, Iredell, Jackson, Jones, Lenoir, Lincoln, McDowell, Macon, Madison, Mitchell, Nash, New Hanover, Pamlico, Pasquotank, Pender, Richmond, Rockingham, Sampson, Stanly, Stokes, Tyrrell, Union, Watauga, Wayne, Wilson, Yadkin, Yancey.

Rev., s. 2798; Code, s. 3747; R. C., c. 28, s. 15; 1870-1, c. 139, s. 6; 1881, c. 53; 1885, c. 344; 1887, c. 188; 1891, c. 187; 1895, c. 254; 1897, c. 280; 1901, c. 320; 1903, cc. 152, 341; 1905, cc. 1, 40, 83, 116, 134, 171, 215, 218, 255, 301; 1907, cc. 57, 88; 1909, c. 37; P. L. 1913, c. 403.

In Alamance and Orange counties all regular and tales jurors shall receive two dollars per day, and five cents per mile traveled each way shall be allowed regular jurors, and also to tales jurors if required to serve more than one day. All jurors summoned upon special venire in capital cases, but not chosen to serve as jurors in the case, shall receive one dollar per day.

1907, c. 633; 1908, c. 64.

In Alexander County all grand, petit and tales jurors summoned to attend and attending the superior courts shall receive per day what shall be allowed by the county commissioners, not less than one dollar and fifty cents per day nor more than two dollars per day, and five cents per mile for travel going to and returning from court, to be fixed by the commissioners.

1907, c. 391.

In Anson County the pay of jurors shall be one dollar and fifty cents per day and mileage. The pay of talesmen shall be one dollar per day without mileage or ferriage. Each person summoned to attend superior court as a special venireman, and does attend, but does not serve upon the jury in any case, shall be entitled to prove his attendance and shall be paid one dollar per day and the same mileage as regular jurors.

Rev., s. 2798; 1907, c. 86.

In Ashe County all jurors who are summoned and serve on the jury in the superior courts shall receive two dollars per day for their services and five cents per mile to and from the county seat.

1909, c. 462; P. L. 1915, c. 124.

In Beaufort County all grand, petit and tales jurors summoned to attend and attending the superior courts shall receive two dollars per day and five cents per mile of travel in going to and from court. Tales jurors who are summoned and serve on the jury shall receive one dollar and fifty cents per day.

1907, c. 118.

In Bertie County all grand and petit jurors summoned to attend and attending any of the superior courts shall receive two dollars per day and five cents per mile of travel going to and returning from court. Tales jurors who are summoned and serve on the jury shall receive one dollar per day and no mileage.

P. L. 1913, c. 121.

In Bladen County all regular jurors shall be paid two dollars per day and five cents per mile each way.

In Brunswick County the pay of regular jurors shall be two dollars per day and mileage, and all talesmen jurors shall be paid one dollar per day, and all special veniremen summoned shall be paid one dollar per day.

P. L. 1913, c. 248.

In Buncombe County all regular and tales jurors shall receive two dollars per day and mileage at the rate of five cents per mile.

P. L. 1913, c. 357.

In Burke County jurors shall receive two dollars for each day's attendance at court or inquest, and mileage at the rate of five cents per mile and such tolls and ferriage as they may have necessarily incurred: Provided, tales jurors summoned while in the presence of the court and serving less than three successive days at one term shall only be allowed one dollar and fifty cents per day and no mileage.

1907, c. 695.

In Caldwell County all jurors who are summoned and serve on the jury in the superior courts shall receive two dollars per day and five cents per mile, and all jurors summoned in capital cases as special venire shall receive the same pay as other jurors, whether they be chosen or not on the jury.

1907, c. 845.

In Camden County all jurors who are summoned and who serve on the jury in the superior courts shall receive one dollar and fifty cents per day for their services, and five cents per mile each way, each day, and all tales jurors who serve shall receive one dollar per day and no mileage, and all jurors summoned in capital cases, and who serve as special veniremen, shall receive one dollar and fifty cents per day for their services and five cents per mile each way; and those who were summoned and do not serve shall receive one dollar per day, and no mileage.

P. L. 1915, c. 120.

In Carteret County all grand, petit and tales jurors summoned to attend and attending the superior courts shall receive two dollars per day and five cents per mile going to and from the court.

1907, c. 186.

In Caswell County the commissioners are directed to pay all regular jurors two dollars per day and mileage as now provided by law.

P. L. 1911, c. 64.

In Chatham County the commissioners shall pay all regular jurors summoned by their order two dollars per day and mileage as now provided by law.

1907, c. 30.

In Cherokee County all regularly drawn jurors shall receive one dollar and fifty cents per day for each day they attend court as jurors, and five cents per mile traveled to and from court one time. All persons summoned as special veniremen in capital cases and attending court, but who do not serve as jurors,

shall receive one dollar per day; and all special veniremen summoned in such cases, and who do serve on the jury, shall receive one dollar and fifty cents per day, and five cents per mile traveled to and from court one time. All persons who serve as tales jurors shall receive one dollar and fifty cents per day for each day they serve.

1907, c. 156.

In Chowan County all regular jurors shall be paid the sum of two dollars per day and mileage as is now allowed by law.

P. L. 1913, c. 117.

In Clay County all grand and petit jurors summoned who do attend superior court shall be allowed two dollars per day for their services as jurors and five cents per mile for travel going to and returning from court. All special veniremen who are summoned to attend and do attend such courts who are not accepted as jurors shall be allowed the sum of one dollar each.

P. L. 1913, c. 126.

In Cleveland County all jurors, either talesmen or special veniremen, who shall serve as jurors of either civil or criminal causes shall be paid the sum of two dollars per day and mileage as now provided by law. All special veniremen summoned to appear at any term of the criminal courts or at any special term for the trial of criminal cases, who are not chosen and who do not sit as jurors in the trial of any criminal cause for the purpose of which they are summoned, shall also receive the sum of two dollars for their said service and attendance upon said court, and in addition thereto such mileage as the law now provided and allows, as in the case of regular jurors and no more.

P. L. 1911, c. 57.

In Columbus County all grand, petit and tales jurors summoned to attend and attending the superior courts shall be allowed two dollars per day for their services and five cents per mile for travel going to and from court. All special veniremen who are summoned to attend and who do attend said courts but who are not accepted as jurors shall be allowed the sum of one dollar each.

1907, c. 70.

In Craven County the regular jurors and such veniremen as shall be taken in the trial of capital cases shall be paid the sum of two dollars per day and mileage; and talesmen shall receive one dollar and fifty cents per day, but no mileage except when ordered to return another day.

1909, c. 913; P. L. 1913, c. 117.

In Cumberland County the jurors who serve shall receive two dollars per day and mileage; and all special veniremen shall receive one dollar per day and mileage.

1907, c. 105.

In Currituck County the commissioners are authorized, in their discretion, to pay all regular jurors summoned by their order two dollars per day and mileage as now provided by law. Talesmen summoned to serve and who do serve shall be allowed not exceeding one dollar and fifty cents and no mileage.

Rev., s. 2798.

In Dare County regular jurors and all special veniremen and tales jurors for the superior court shall be paid two dollars per day for each day's services and the mileage provided by law.

1909, c. 813.

In Davidson County all jurors summoned to serve in the superior court shall receive two dollars per day and five cents per mile one way for their services. All tales jurors shall receive seventy-five cents per day and no mileage. All special veniremen who attend superior court and who do not serve shall be paid one dollar per day, without mileage.

P. L. 1913, c. 117; P. L. 1915, c. 292; P. L. 1917, c. 38.

In Duplin County the jurors regularly drawn by the commissioners to serve as jurors at all regular and all special terms of superior court shall receive two dollars per day and three cents per mile for the distance to and from their homes. The tales jurors who are summoned by the sheriff from the bystanders to serve as tales jurors shall receive one dollar and fifty cents per day and three cents per mile for the distance to and from their homes. All special veniremen summoned to serve on any special venire in capital cases and who are rejected and do not serve on said venire shall receive one dollar per day and no mileage. The county commissioners are directed to pay the jurors according to the provisions of this paragraph.

1909, c. 75.

In Durham County the compensation to be paid regular jurors in attendance upon any of the superior courts of the county shall be such sum as the county commissioners may fix, not exceeding two dollars for each day's attendance at court, and mileage at the rate of five cents per mile. The same pay allowed regular jurors shall be allowed special jurors as talesmen, who shall be summoned to serve and who do serve, but they shall not be allowed any mileage. All who are summoned to appear as special veniremen, who do actually attend, and who are not drawn as jurors, shall be entitled to prove and receive one day's pay of one dollar each, with mileage.

1907, c. 284.

In Edgecombe County each regular juror shall receive for his services and expenses in attending superior court the sum of two dollars per day, and five cents per mile for the actual distance in traveling to and from the county seat. All tales jurors shall receive one dollar and fifty cents per day, and no mileage.

1907, c. 33.

In Forsyth County all jurors shall receive the sum of two dollars for each day's attendance at court or inquest, and mileage at the rate of five cents per mile. They shall also receive such ferriage or tolls as they may have incurred. The same pay shall be allowed to special jurors as talesmen who shall be summoned to serve and do serve more than one day.

P. L. 1913, c. 652; P. L. Ex. Sess. 1913, c. 212.

In Franklin County the commissioners are authorized and directed to pay the regular jurors the sum of two dollars per day and the mileage now authorized by law.

P. L. 1913, c. 4.

In Gaston County the regular jurors and such veniremen as shall be taken in the trial of capital cases shall be paid the sum of two dollars per day and mileage as now provided by law; and talesmen shall receive two dollars per day when ordered by the court to return another day.

1909, c. 109; P. L. 1911, c. 39.

In Gates County all regular and tales jurors shall receive not less than one dollar and fifty cents and not more than two dollars as fixed by the county commissioners, and mileage.

Rev., s. 2798.

In Graham County all jurors who are summoned and serve shall receive one dollar and fifty cents per day and five cents per mile; and all jurors summoned in capital cases as special venire shall be paid the same as other jurors, whether they serve on the jury or not: Provided, the board of county commissioners shall so order.

1909, c. 462.

In Granville County all regular and tales jurors shall receive two dollars per day.

1909, c. 784.

In Greene County all regular jurors shall receive two dollars per day and all tales jurors shall receive two dollars per day without mileage. Special veniremen shall receive seventy-five cents per day.

Rev., s. 2798.

In Guilford County the commissioners are authorized at their discretion to fix the pay of all regular jurors and such veniremen as shall be taken or accepted in the trial of capital cases at not more than two dollars and mileage, as now provided by law.

1907, c. 163.

In Halifax and Harnett counties the regular jurors and such special veniremen and tales jurors as shall be taken in the trial of capital cases shall be paid two dollars per day and the mileage provided by law.

Rev., s. 2798.

In Haywood County all regular jurors shall receive one dollar and fifty cents per day, and five cents per mile each way coming from and going to their homes one time.

1907, c. 236.

In Henderson County all regular jurors drawn and summoned and not relieved from service shall receive one dollar and fifty cents per day and no mileage, and all talesmen who are summoned and serve shall receive one dollar per day, without mileage; all veniremen who are summoned and serve shall receive one dollar and fifty cents per day and no mileage, and all veniremen who are summoned and appear, but who do not serve, shall receive one dollar per day for one day only, and no mileage.

1909, c. 542.

In Hertford County all jurors who are summoned and who serve on the jury in the superior courts shall receive two dollars per day for their services and five cents per mile each way, and all tales jurors who serve shall receive one dollar and fifty cents per day and no mileage; and all jurors summoned in capital cases and who serve as special veniremen shall receive two dollars per day and five cents per mile each way, and those who were summoned and do not serve shall receive one dollar each per day and no mileage.

P. L. 1913, c. 95.

In Hyde County the regular jurors shall receive three dollars per day, including their regular mileage of five cents per mile, and talesmen jurors shall receive two dollars per day.

P. L. 1913, c. 68; P. L. 1917, c. 240.

In Iredell County all regular and tales jurors shall receive two dollars per day. Any person summoned as a special venireman and who attends shall be allowed the same mileage and pay as a regular juror is allowed in said county.

1909, c. 9; P. L. 1913, c. 438.

In Jackson County all jurors who are summoned and serve shall receive one dollar and fifty cents per day and five cents per mile; and all jurors summoned in capital cases as special venire shall be paid the same as other jurors, whether they serve on the jury or not: Provided, the board of county commissioners shall so order.

1909, c. 462.

In Johnston County jurors shall receive such sum as the county commissioners may fix, not exceeding two dollars for each day's attendance at court or inquest, and mileage at the rate of five cents per mile; and they shall also be allowed such ferriage or tolls as they may have necessarily incurred.

1909, c. 41.

In Jones County all regular and tales jurors shall receive not less than one dollar and fifty cents and not more than two dollars as fixed by the county commissioners, and mileage.

1909, c. 131.

In Lenoir County the pay of jurors shall be one dollar and fifty cents per day and mileage.

Rev., s. 2798.

In McDowell County tales jurors shall not receive more than one dollar per day, with mileage.

1909, c. 8.

In Madison County jurors serving at any term of superior court shall receive two dollars per day and the mileage allowed by law. Special veniremen shall receive mileage and ferriage or tolls.

P. L. 1917, c. 290; Rev., s. 2798.

In Martin County the commissioners are authorized, in their discretion, to pay all regular jurors summoned by their order two dollars per day and mileage, as now provided by law.

Rev., s. 2798.

In Mecklenburg County the county commissioners are authorized at their discretion to fix the pay of all regular jurors and such veniremen as shall be taken or accepted in the trial of criminal cases at not more than two dollars per day and mileage as now provided by law.

Ex. Sess. 1908, c. 16.

In Montgomery County jurors shall be paid as follows: Regular jurors in the superior court shall receive two dollars per day and mileage, five cents a mile each way, as now provided by law. Tales jurors shall be paid two dollars per day and no mileage, unless required to serve more than one day, in which event they shall be allowed five cents per mile one way: Provided, that in cases tales jurors serve less than one full day, they shall receive the sum of one dollar only.

1907, c. 183; P. L. 1915, c. 243.

In Moore County regular jurors shall receive one dollar and fifty cents per day for each day they attend as jurors, and five cents per mile for each mile traveled to and from court one time. All persons summoned as special veniremen in capital cases, who attend court, but who do not serve as jurors, shall receive one dollar per day; and all special veniremen summoned in such cases, and who serve on the jury, shall receive one dollar and fifty cents per day and five cents per mile for each mile traveled to and from court one time. All persons who serve as tales jurors shall receive one dollar and fifty cents for each day they serve as jurors.

1907, c. 93.

In Nash County each regular juror shall receive for his services and expenses in attendance upon superior court the sum of two dollars per day and five cents per mile for the actual distance in traveling to and from the county seat. All tales jurors shall receive one dollar and fifty cents per day for each day's attendance, and no mileage. All who are summoned to appear as special veniremen in any capital case and who do actually serve shall receive two dollars per day for each day's attendance and the same mileage as regular jurors; and all who are summoned as special veniremen who do actually attend and who are not drawn as jurors, shall be entitled to prove and receive one day's pay of one dollar each, without mileage.

1907, c. 115.

In New Hanover County the pay of jurors shall be one dollar and fifty cents per day and mileage.

Rev., s. 2798.

In Northampton County the regular jurors and such special veniremen and tales jurors as shall be taken in the trial of capital cases shall be paid the sum of two dollars per day and mileage as allowed by law.

Rev., s. 2798.

In Onslow County all grand and petit jurors summoned to attend and attending superior court shall receive per day what shall be allowed by the county commissioners, not less than two dollars nor more than two dollars and fifty cents per day, and five cents per mile for travel going to and returning from court, to be fixed by the commissioners. Tales jurors shall receive what is allowed by the general law.

1907, c. 129.

In Pamlico County all grand, petit and tales jurors summoned to attend and attending superior court shall receive two dollars per day and five cents per mile for travel going to and returning from court: Provided, that all tales jurors summoned from the bystanders shall receive no pay for travel unless required to serve more than one day, in which event they shall receive five cents per mile for returning from court.

P. L. 1913, c. 117.

In Pasquotank County jurors shall be paid as follows: Regular jurors in the superior court shall be paid, while serving, two dollars per day and mileage both ways, and jurors on coroner's inquest shall be paid two dollars per day, without mileage. Special veniremen, when drawn from the box, shall be paid one dollar per day and mileage one way.

P. L. 1913, c. 354.

In Pender County the pay of jurors shall be one dollar and fifty cents per day and mileage. The pay of talesmen shall be one dollar per day without mileage or ferriage. All special veniremen who attend and do not serve shall receive one dollar per day and mileage at the rate of five cents per mile. In all cases of removal of an action or cause from an adjoining county, the special veniremen who do not serve shall be paid by the county from which the case was removed, and shall receive the same pay as other special veniremen in Pender County who do not serve.

Rev., s. 2798; P. L. 1913, c. 300.

In Perquimans County all regularly summoned jurors attending court shall be paid not less than one dollar and fifty cents nor more than two dollars per day and mileage. All tales jurors shall be paid not less than one dollar nor more than one dollar and fifty cents per day.

1907, c. 744.

In Person County the commissioners are authorized and directed to pay all regular jurors summoned by their order two dollars per day and mileage, and to pay all tales jurors one dollar and fifty cents per day, without mileage. All persons summoned as special veniremen in capital cases and accepted as jurors shall receive two dollars per day and mileage; but if not accepted, they shall only receive one dollar per day and mileage.

P. L. 1915, c. 306.

In Pitt County jurors in the superior court shall receive two dollars and fifty cents instead of two dollars as is now provided.

Ex. Sess. 1913, c. 85; P. L. 1915, c. 23.

In Polk County the county commissioners are authorized and directed to pay all regular jurors summoned by their order one dollar and fifty cents per day and mileage as allowed by law. Tales jurors shall receive the same amount without mileage.

1909, c. 377.

In Richmond County jurors shall receive one dollar and fifty cents for each day's attendance on court or inquest and mileage at the rate of five cents per

mile. Special veniremen who attend and who are not drawn as jurors shall receive one day's pay of one dollar and mileage at the rate of five cents.

1909, c. 156.

In Robeson County jurors shall be paid as follows: Regular jurors in the superior court shall receive, while serving, two dollars per day and mileage both ways; jurors on coroner's inquest shall be paid two dollars per day, without mileage; special veniremen, when drawn from the box, shall be paid one dollar per day and mileage one way.

1907, c. 521; Ex. Sess. 1908, c. 10.

In Rockingham County the county commissioners are authorized at their discretion to fix the pay of all regular jurors and such veniremen as shall be taken or accepted in the trial of capital cases at not more than two dollars per day and mileage, as now provided by law. The same pay shall be allowed to special jurors and talesmen who shall be summoned to serve and do serve, but they shall not be allowed any mileage or ferriage. All persons who are summoned to appear as special veniremen, who do actually attend and who are not drawn as jurors, shall be entitled to prove and receive one day's pay of one dollar each, without mileage.

1909, c. 588.

In Rowan County all grand, petit and tales jurors summoned to attend and attending superior court shall receive per day what shall be allowed by the county commissioners, not less than two dollars nor more than two dollars and fifty cents per day, and five cents per mile for travel going to and returning from court, to be fixed by the commissioners. The commissioners may, in its discretion, provide for jurors to be paid two and one-half cents per mile for travel going to and returning from court, or lodging in lieu thereof, for each day after the first day of attendance, in addition to the per diem and mileage already provided by law.

1907, c. 129; P. L. 1915, c. 612.

In Rutherford County the pay of jurors shall be two dollars for each day's attendance at court or inquest, and mileage at the rate of five cents per mile; and the pay of tales jurors shall be the same without mileage.

1907, c. 57.

In Sampson County all regular jurors, special veniremen who actually serve in capital cases, and jurors summoned in group under special direction of the court, shall each receive two dollars per day for each day's attendance, with mileage at five cents per mile. Tales jurors summoned from the bystanders in court, and jurors attending upon coroner's inquest shall each receive one dollar and a half per day for each day's attendance, but shall receive no mileage. Special veniremen who are summoned in capital cases and who actually attend but do not sit upon the trial of the case shall receive one dollar per day for each day's attendance, but shall receive no mileage.

P. L. 1913, c. 117.

In Stanly County all regular jurors shall receive one dollar and fifty cents for each day's attendance upon any superior court or inquest, and mileage at

the rate of five cents per mile, but the county commissioners may increase the compensation of regular jurors only for superior court to not exceeding three dollars per day and mileage. All tales jurors shall receive one dollar and twenty-five cents per day, without mileage. All special veniremen who actually serve shall receive one dollar and fifty cents per day with mileage at the rate of five cents per mile. All special veniremen who attend, but who do not serve, shall receive one-half the pay of a regular juror, with mileage at the rate of five cents per mile.

P. L. 1911, c. 36; P. L. 1917, c. 563.

In Stokes County all jurors who are summoned and who serve on the jury in the superior court shall receive two dollars per day and five cents per mile each way; and all tales jurors who serve shall receive one dollar and fifty cents per day and no mileage. All jurors summoned in capital cases and who serve as special venire shall receive two dollars per day and five cents per mile each way, and those summoned and who do not serve shall receive one dollar each per day and no mileage.

1909, c. 179.

In Swain County all jurors who are summoned and serve shall receive two dollars per day and five cents per mile for their services, and all jurors summoned in capital cases as special venire shall be paid the same as other jurors, whether they serve on the jury or not: Provided, the board of county commissioners shall so order.

1909, c. 462; P. L. 1915, c. 241.

In Union County all grand, petit and tales jurors summoned to attend and attending superior court shall receive per day what shall be allowed by the county commissioners, not less than two dollars nor more than two dollars and fifty cents per day, and five cents per mile for travel going to and returning from court, to be fixed by the commissioners.

Rev., s. 2798; 1907, c. 129.

In Vance County the county commissioners are authorized, in their discretion, to fix the pay of all regular jurors, and such special veniremen as shall be taken or accepted in the trial of capital cases, at not less than one dollar and fifty cents and not more than two dollars per day and mileage as now provided by law. Tales and special jurors who serve in the superior court shall receive the same per diem as regular jurors, but they shall not receive any mileage. All persons who are summoned to serve as special veniremen and who are not drawn or accepted shall be entitled to receive the same pay for one day and mileage as regular jurors. But no person summoned as a regular juror, or as a special venireman, and excused from service at his request, shall receive any pay or any mileage.

P. L. 1915, c. 232.

In Wake County all regular jurors shall receive two dollars per day and mileage at the rate of five cents per mile, and all tales jurors shall receive one dollar and fifty cents per day. All jurors summoned on special venires shall receive one dollar and a half a day and mileage, unless they act as jurors, in which event they shall receive two dollars per day and mileage.

1909, c. 552.

In Warren County the regular jurors and such veniremen as shall be taken in the trial of capital cases shall be paid two dollars per day and mileage as now provided by law; and talesmen and special veniremen who are summoned but do not serve shall receive one dollar and fifty cents per day, but no mileage, except talesmen who are ordered to return another day.

P. L. 1913, c. 5.

In Washington County all grand, petit and tales jurors summoned to attend and attending superior court shall receive what shall be allowed by the county commissioners, not less than one dollar and fifty cents nor more than two dollars per day, and five cents per mile for travel going to and returning from court.

1907, c. 498.

In Wayne County the commissioners are authorized and directed to pay the regular jurors two dollars per day and the mileage now authorized by law; tales jurors shall receive two dollars per day and no mileage. Each member of a special venire who has been summoned and attends, but does not serve as a juror, shall be paid one-half fees.

1907, c. 40; P. L. 1913, c. 117.

In Wilkes County all jurors, either talesmen or special veniremen, who shall serve as jurors of either civil or criminal causes, shall be paid two dollars per day and mileage as the law now provides and allows. All special veniremen summoned to appear at any term of the criminal courts or at any term for the trial of criminal cases, who are not chosen and who do not sit as jurors in the trial of any criminal cause for the purpose of which they are summoned, shall also receive two dollars for their service and attendance upon said court, and in addition thereto such mileage for their attendance as the law now provides and allows, as in the case of regular jurors and no more.

P. L. 1911, c. 57.

In Wilson County the pay of jurors attending superior court shall be as follows: Each regular juror shall receive two dollars for each day he serves, and no mileage. Each tales juror shall receive one dollar and twenty-five cents for each day he serves, and no mileage. Each special venireman, when not empaneled for jury service, shall receive fifty cents, and no mileage, and when empaneled, shall receive two dollars for each day he serves and no mileage.

1909, c. 60.

In Yadkin County regular jurors and such veniremen as shall be taken in the trial of capital cases shall be paid two dollars per day and mileage as now provided by law; and talesmen and special veniremen who are summoned but do not serve shall receive one dollar and a half per day, but no mileage, except talesmen when ordered to return another day.

P. L. 1911, c. 646.

74. Fees of jailers. Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding twenty-five cents per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed fifty per cent on the above sum. But whatever sum

may be fixed on by the commissioners shall be recorded, and shall not be altered within one year thereafter.

Rev., s. 2799; Code, s. 3746; R. C., c. 102, s. 38; 1879, c. 87.

75. Fees of notaries. Notaries public and other persons acting as such shall be allowed the sum of fifty cents for protesting for nonacceptance or for nonpayment, or for both when done at the same time, any order, draft, note, bond or bill or any other thing necessary to be protested, and the sum of ten cents for each notice sent in connection therewith. For other necessary services, where no fee is fixed they shall be allowed twenty cents for every ninety words. Cases of protest concerning vessels or other cargoes shall not be affected by this section.

Rev., s. 2800; Code, s. 3749; 1889, c. 446; 1895, c. 296; 1903, c. 734.

76. Fees of entry-taker. Entry-takers shall receive the following fees, and no other, namely: For an entry, including all services, forty cents; issuing each duplicate warrant, when thereto required, twenty-five cents; for posting and advertising, the applicant shall pay the entry-taker one dollar, and the costs of the newspaper advertisement.

Rev., s. 2801; Code, ss. 2765, 3744; R. C., c. 102, s. 32; 1870-1, c. 139, s. 3; 1903, c. 272, s. 3.

77. Fees of surveyors and chain-carriers. Surveyors appointed by courts to survey any lands, the boundaries of which may come in question in any suit or proceeding pending therein, or called upon by the commissioners to assist in surveying and dividing the lands of intestates or others, held in common, shall receive the following fees, and no other, namely: For every survey on an entry containing three hundred acres or less, one dollar and sixty cents, and for every hundred more than that quantity, forty cents; for surveying lands in dispute, by order of court, traveling to and from the place, and performing the duty, two dollars per day, or such greater sum as the court may allow; for assisting in surveying and dividing the lands of intestates, or others, held in common, when called upon by the commissioners appointed to make partition, or in laying off dower; traveling to and from the place, and performing the duty, two dollars per day. For assisting in surveying and allotting the homestead exemption of any person when summoned to do so by the sheriff or other lawful officer, for traveling to and from the place and performing the duty, two dollars per day, which shall be taxed in the bill of costs. In all surveys made by order of the court, the chain-carriers shall be allowed such compensation as the court may determine, not exceeding one dollar each per day; and in matters of disputed boundary, which may come in question, in any suit, the court may make to the surveyor such allowance for plots as it may deem reasonable, which, with the allowance to chain-carriers, shall be taxed as costs.

Rev., s. 2802; Code, s. 3754; 1893, c. 58, s. 2; 1905, cc. 182, 263.

NOTE. For fees for registering surveys, see State Lands, s. 35.

For local laws regulating surveyors' fees in counties noted, see acts cited.

Anson, 1907, c. 715.

Edgecombe, Montgomery and Nash, 1909, c. 738; P. L. 1911, c. 423.

Lee, P. L. 1917, c. 198.

Richmond, P. L. 1913, c. 516.

Robeson, P. L. 1917, c. 79.

Wilson, P. L. 1913, c. 136.

Brunswick, Catawba, Cleveland, McDowell, Mitchell, Rowan, Stokes and Wayne, Rev., s. 2802; P. L. 1911, cc. 264, 551; P. L. 1913, cc. 517, 792; P. L. 1915, c. 607; P. L. 1917, c. 558.

78. Fees and mileage of witnesses. The fees of witnesses, whether attending at a term of court or before the clerk, or a referee, or commissioner, or arbitrator, shall be one dollar per day. They shall also receive mileage, to be fixed by the county commissioners of their respective counties, at a rate not to exceed five cents per mile for every mile necessarily traveled from their respective homes in going to and returning from the place of examination by the ordinary route, and ferriage and toll paid in going and returning. If attending out of their counties, they shall receive one dollar per day and five cents per mile going and returning by the ordinary route, and toll and ferriage expenses. Provided, that witnesses before courts of justices of the peace shall receive fifty cents per day in civil cases, and in criminal actions of which justices of the peace have final jurisdiction, witnesses attending the courts of justices of the peace, under subpœna, shall receive fifty cents per day, and in hearings before coroners witnesses shall receive fifty cents per day and no mileage; but the party cast shall not pay for more than two witnesses subpœnaed to prove any one material fact, and no prosecutor or complainant shall pay any costs, unless the justice shall find that the prosecution was malicious and frivolous: Provided further, that experts, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may in its discretion order. Witnesses attending before the corporation commission shall receive two dollars per day and five cents per mile traveled by the nearest practicable route. All witnesses subpœnaed to attend courts of justices of the peace in Franklin County in the trial of civil or criminal cases in any township other than their resident townships shall be paid the same per diem and mileage that is now paid witnesses attending the superior courts.

Rev., s. 2803; Code, ss. 2860, 3756; 1891, c. 147; 1905, cc. 279, 522; P. L. 1911, c. 402.

NOTE. For mileage of witnesses before legislative committee, see General Assembly.

For where county pays half fees, see Costs.

For collection of witnesses' fees, see Costs.

CHAPTER 71

SHERIFF

ART. 1. THE OFFICE.

1. Election and term of office.
2. Disqualification for the office.
3. Sheriff may resign.
4. Removed for misdemeanor in office.
5. Vacancy filled; duties performed by coroner.

ART. 2. SHERIFF'S BONDS.

6. Sheriff to execute three bonds.
7. County commissioners to take and approve bonds.
8. Duty of commissioners when bonds insufficient.
9. Liability of commissioners.
10. Liability of sureties.

ART. 3. DUTIES OF SHERIFF.

11. To receipt for process.
12. Execute process; penalty for false return.
13. Sufficient notice in case of amercement.
14. Execute summons, order on judgment.
15. Liability of outgoing sheriff for unexecuted process.
16. Payment of money collected on execution.
17. Deposit county tax money with treasurer.
18. Publish list of delinquent tax-payers.
19. Liability for escape under civil process.
20. Custody of jail.
21. Prevent entering jail for lynching; county liable.
22. Not to farm office.
23. Obligation taken by sheriff payable to himself.

ART. 1. THE OFFICE

1. Election and term of office. In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold his office for two years.

Rev., s. 2808; Const., Art. IV, s. 24.

2. Disqualifications for the office. No person shall be eligible to the office of sheriff who is not of the age of twenty-one years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the general assembly, or practicing attorney, or who theretofore has been sheriff of such county, and has failed to settle with and fully pay up to every officer the taxes which were due from him.

Rev., s. 2809; Code, ss. 2067, 2068, 2069; R. C., c. 105, ss. 5, 6, 7; 1777, c. 118, ss. 2, 4; 1806, c. 699, s. 2; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3.

3. Sheriff may resign. Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff.

Rev., s. 2810; Code, s. 2077; R. C., c. 105, s. 15; 1777, c. 118, s. 1; 1808, c. 752.

4. Removal for misdemeanor in office. If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office.

Rev., s. 2811; Code, s. 2071; R. C., c. 105, s. 11; R. S., c. 109, s. 11; 1829, c. 5, s. 8.

5. Vacancy filled; duties performed by coroner. If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

Rev., s. 2811; Code, s. 2071; R. C., c. 105, s. 11; R. S., c. 109, s. 11; 1829, c. 5, s. 8.

NOTE. In Polk County, vacancy is filled by the governor. 1909, c. 594.

ART. 2. SHERIFF'S BONDS

6. Sheriff to execute three bonds. The sheriff shall execute three several bonds, payable to the state of North Carolina, as follows:

One conditioned for the collection and settlement of state taxes according to law, a sum not exceeding the amount of the taxes assessed upon the county for state purposes in the previous year.

One conditioned for the collection and settlement of county and other local taxes according to law, a sum not exceeding the amount of such county and other local taxes for the previous year.

The third bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars, in the discretion of the board of county commissioners, and shall be 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 to whom the same shall be due, his executors, administrators, attorneys, or agents; and in all other things well and 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.

Rev., s. 298; Code, s. 2073; R. C., c. 105, s. 13; 1777, c. 118, s. 1; 1823, c. 1223; 1879, c. 109; 1895, c. 270, ss. 1, 2; 1899, c. 207, s. 2; 1903, c. 12; 1899, c. 54, s. 52.

NOTE. For local provisions as to sheriff's bonds in Craven County, see Rev., s. 298; 1899, c. 207.

7. County commissioners to take and approve bonds. The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safe-keeping. The bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or reenter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected.

Rev., s. 2812; Code, ss. 2066, 2068; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; R. C., c. 105, s. 6; 1806, c. 699, s. 2; 1830, c. 2830, c. 25, s. 2.

8. Duty of commissioners when bonds insufficient. It shall be the duty of the board of county commissioners whenever they shall be of opinion that the

bonds of the sheriff of their county are insufficient, to notify the sheriff in writing to appear within ten days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bonds, or to justify his bonds, it shall be the duty of the board to elect forthwith some suitable person in the county as sheriff for the unexpired term, who shall give proper and lawful bonds and be subject to like obligations and penalties.

Rev., s. 2813; Code, s. 2074; 1879, c. 109, s. 2.

9. Liability of commissioners. If any board of county commissioners shall fail to comply in good faith with the provisions of this subchapter, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district.

Rev., s. 2814; Code, s. 2075; 1868-9, c. 245, s. 3.

10. Liability of sureties. The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty.

Rev., s. 2815; Code, s. 2076; R. C., c. 105, s. 14; 1829, c. 33.

ART. 3. DUTIES OF SHERIFF

11. To receipt for process. Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties.

Rev., s. 2816; Code, s. 2081; R. C., c. 105, s. 18; 1848, c. 97.

NOTE. For duty to indorse date of receiving process, see s. 914.

12. Execute process; penalty for false return. Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding term after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved, and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages.

Every sheriff and his deputies, and every constable shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting one hundred dollars for each neglect or refusal, where such process shall be delivered to him ten days before

the return day thereof, to be paid to the party aggrieved by order of such court, upon motion and proof of such delivery, unless the sheriff or constable can show sufficient cause to the court at a day within three months from the date of the entry of the judgment nisi, of which the officer shall be duly notified.

Rev., s. 2817; Code, s. 2079; 1899, c. 25; R. C., c. 105, s. 17; 1777, c. 218, s. 5; 1821, c. 1110; 1874, c. 33.

NOTE. For duty, and penalty for failure, in entering date of receipt of process, see s. 914.

13. Sufficient notice in case of amercement. In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court, where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court.

Rev., s. 2818; Code, s. 446; 1871-2, c. 74, s. 4.

14. Execute summons, order or judgment. Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law.

Rev., s. 2819; Code, s. 598; C. C. P., s. 354.

15. Liability of outgoing sheriff for unexecuted process. Any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties.

Rev., s. 2820; Code, s. 2088; R. C., c. 105, s. 25.

16. Payment of money collected on execution. In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars, to be collected as other penalties.

Rev., s. 2821; Code, s. 2080.

17. Deposit county tax money with treasurer. Every sheriff shall deposit the county and other local taxes, by him collected, with the county treasurer, if there be a county treasurer, as often as he shall collect or have in his possession at any one time of such county or local taxes, a sum equal to five hundred dollars.

Rev., s. 298; Code, s. 2073.

18. Publish list of delinquent taxpayers. 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 courthouse 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.

Rev., ss. 2826, 3587; Code, s. 2092; 1876-7, c. 78, ss. 1, 2, 3.

19. Liability for escape under civil process. When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment for not performing a judgment for the payment of any sum of money, and shall willfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors, or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the execution or attachment, and damages for detaining the same.

Rev., s. 2823; Code, s. 2083; R. C., c. 105, s. 20; 13 Edw. I. c. 11; 1777, c. 118, ss. 10, 11.

20. Custody of jail. The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof.

Rev., s. 2824; Code, s. 2085; R. C., c. 105, s. 22.

21. Prevent entering jail for lynching; county liable. When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county wherein whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this state.

Rev., s. 2825; 1893, c. 461, s. 7.

22. Not to farm office. No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one-half to the use of the county, and the other half to the person suing for the same.

Rev., s. 2828; Code, s. 2084; R. C., c. 105, s. 21; 23 Hen. VI, c. 10.

23. Obligation taken by sheriff, payable to himself. The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case, any other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services, and the allowance given and provided by law.

Rev., s. 2829; Code, s. 2082; R. C., c. 105, s. 19; 1777, c. 118, s. 8.

CHAPTER 72

STATUTORY CONSTRUCTION

1. Repeal of statute not to affect actions.
2. Rules for construction of statutes.
3. Construction of amended statute.

1. Repeal of statute not to affect actions. The repeal of a statute shall not affect any action brought before the repeal, for any forfeitures incurred, or for the recovery of any rights accruing under such statute.

Rev., s. 2830; Code, s. 3764; R. C., c. 108, s. 1; 1830, c. 4; 1879, c. 163; 1881, c. 48.

2. Rules for construction of statutes. In the construction of all statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the same statute, that is to say:

Rev., s. 2831; R. C., c. 108, s. 2.

1. Singular and plural number, masculine gender, etc. Every word, importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number only, shall extend and be applied to one person or thing, as well as to several persons or things; and every word importing the masculine gender only, shall extend and be applied to females as well as to males, unless the context clearly shows to the contrary.

2. Authority to three or more exercised by majority. All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

3. "Month" and "year." The word "month" shall be construed to mean a calendar month, unless otherwise expressed; and the word "year," a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

4. Leap-year, how counted. In every leap-year, the increasing day and the day before, in all legal proceedings, shall be counted as one day.

R. C., c. 31, s. 108; R. S., c. 31, s. 113; 21 Hen. III.

5. "Oath" and "sworn." The word "oath" shall be construed to include "affirmation," in all cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall be construed to include the word "affirmed."

6. "Person" and "property." The word "person" shall extend and be applied to bodies politic and corporate, as well as to individuals, unless the context clearly shows to the contrary. The words "real property" shall be coextensive with lands, tenements and hereditaments. The words "personal property" shall include moneys, goods, chattels, choses in action and evidences of debt,

including all things capable of ownership, not descendible to the heirs at law. The word "property" shall include all property, both real and personal.

7. "*Preceding*" and "*following*." The words "preceding" and "following," when used by way of reference to any section of a statute shall be construed to mean the section next preceding or next following that in which such reference is made; unless when some other section is expressly designated in such reference.

8. "*Seal*." In all cases in which the seal of any court or public office shall be required by law to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression made by means of a wafer or of wax affixed thereto.

9. "*Will*." The term "will" shall be construed to include codicils as well as wills.

10. "*Written*" and "*in writing*." The words "written" and "in writing," may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters: Provided, that in all cases where a written signature is required by law, the same shall be in a proper handwriting, or in a proper mark.

11. "*State*" and "*United States*." The word "state," when applied to the different parts of the United States, shall be construed to extend to and include the District of Columbia and the several territories, so-called; and the words "United States" shall be construed to include the said district and territories and all dependencies.

12. "*Imprisonment for one month*," *how construed*. The words "imprisonment for one month," wherever used in any of the statutes, shall be construed to mean "imprisonment for thirty days."

Rev., s. 2831; Code, s. 3765; R. C., c. 108.

3. Construction of amended statutes. Where a part of a statute is amended it is not to be considered as having been repealed and reenacted in the amended form; but the portions which are not altered are to be considered as having been the law since their enactment, and the new provisions as having been enacted at the time of the amendment.

Rev., s. 2832; Code, s. 3766; 1868-9, c. 270, s. 22; 1870-1, c. 111.

CHAPTER 73

STRAYS

1. Notice to owner of stray, or to register of deeds.
2. Owner may reclaim.
3. When and how strays sold.
4. Failure to comply with stray law misdemeanor.

1. Notice to owner of stray, or to register of deeds. Any person who shall take up any stray horse, mare, colt, mule, ass or jennet, neat cattle, hog or sheep, shall within ten days after taking up such stray inform the owner, if to him known, if not, he shall inform the register of deeds of the supposed age, marks, brands and color of the stray, and that the same was taken up at his plantation or place of abode; whereupon the register of deeds shall record such information in a book kept by him for that purpose, for which service the taker-up of the stray shall pay a fee of twenty-five cents, except for hogs and sheep, for which the fee shall be ten cents. The register of deeds shall at once publish a notice of the taking up of such stray, by posting the same at the courthouse door, and if the cost does not exceed two dollars, then in some newspaper published in the county. Such notices shall be published for thirty days, and shall contain a full and complete description of the stray and of all marks or brands on the same, and when and where the same was taken up. The fees for publishing such notices shall be paid by the party taking up the stray.

Rev., s. 2833; Code, s. 3768; 1874-5, c. 258, s. 2.

2. Owner may reclaim. When any stray has been taken up, the owner may at any time before a sale reclaim such stray by proving his ownership and paying to the party capturing the same the actual costs paid the register of deeds as provided in the preceding section, together with the actual costs of keeping such stray, as fixed by the county commissioners. The board of commissioners of the several counties shall fix a scale of costs for keeping strays.

Rev., s. 2834.

3. When and how strays sold. If the owner of any stray shall fail to claim the same within thirty days after the publication of the notice required by law, the person taking up the stray shall cause the stray to be appraised by the nearest magistrate and two freeholders, none of whom shall receive any fees for such services. Such appraisement shall give a full and accurate description of such stray and shall by the magistrate be returned to the register of deeds, and by him recorded in his book for strays; and the register of deeds shall issue an order to the sheriff directing him to sell such stray, and the sheriff shall sell such stray at public auction after ten days public advertisement as for sales of personal property under execution; and out of the proceeds he shall pay the cost of publishing the notices as to strays, the costs of keeping and the costs of sale, and shall pay the surplus to the county treasurer for the benefit of the public school fund of the county. The county board of education shall, at any time within twelve months after such funds have been paid to the county treasurer,

upon due proof of ownership, issue an order commanding the county treasurer to pay to the owner of the stray the net amount paid the county treasurer as the proceeds of the sale of the stray.

Rev., s. 2835.

NOTE. For stock running at large, see Fences and Stock Laws.

4. Failure to comply with stray law misdemeanor. If any person shall fail to comply with any of the requirements of law as to strays, he shall be guilty of a misdemeanor and upon conviction be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3306.

CHAPTER 74

SUNDAYS AND HOLIDAYS

1. Work in ordinary calling on Sunday forbidden.
 - 1a. Hunting or going armed on Sunday.
2. Local: Sale of articles on Sunday in Forsyth.
3. What process executed on Sunday.
4. Dates of public holidays.
5. Acts to be done on Sunday or holidays.

1. Work in ordinary calling on Sunday forbidden. 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.

Rev., s. 2836; Code, s. 3782; R. C., c. 115; 1741, c. 30, s. 2.

1a. Hunting or going armed on Sunday. If any person shall, except in defense of his own property, hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shotgun, rifle or pistol, he shall be guilty of a misdemeanor, and pay a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days.

Rev., 3842; Code, s. 3783; 1868-9, c. 18, ss. 1, 2.

2. Local: Sale of articles on Sunday in Forsyth. No person, firm or corporation in Forsyth County shall expose for sale, sell or offer for sale on Sunday, any goods, wares or merchandise within one mile of the corporate limits of any incorporated town or city; and no store, shop, or other place of business in which goods, wares or merchandise of any kind are kept for sale shall keep open doors from twelve o'clock Saturday night until twelve o'clock Sunday night: Provided, that this section shall not be construed to apply to hotels or boarding-houses, or to restaurants or cafes furnishing meals to actual guests, where the same are not otherwise prohibited by law from keeping open on Sunday: Provided further, that drug stores, with licensed pharmacists, may be kept open for the sale of goods to be used for medical or surgical purposes, and for the sale of cigars and tobacco; and cigar stands and news stands may sell cigars, tobacco and newspapers: Provided further, that ice dealers and dairies may remain open for the sale and delivery of ice and dairy products. Nothing in this section shall be construed to prohibit livery stables or garages from operating on Sunday or to prohibit publication and sale of newspapers. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.

P. L. 1917, c. 597.

3. What process executed on Sunday. It shall not be lawful for any sheriff, constable, or other officer to execute any summons, capias, or other process on Sunday, unless the same be issued for treason, felony or misdemeanor.

Rev., s. 2837; Code, s. 928; R. C., c. 31, s. 54; 1777, c. 118, s. 6.

4. Dates of public holidays. The first day of January, the nineteenth day of January, the twenty-second day of February, the twelfth day of April, the tenth day of May, the twentieth day of May, the fourth day of July, the first Monday in September, Tuesday after the first Monday in November when a general election is held, the day appointed by the governor as a thanksgiving day, and the twenty-fifth day of December of each and every year, are declared to be public holidays; and whenever any such holiday shall fall upon Sunday, the Monday following shall be a public holiday.

Rev., s. 2838; Code, s. 3784; 1891, c. 58; 1899, c. 410; 1901, c. 25; 1881, c. 294; 1907, c. 996; 1909, c. 888.

5. Acts to be done on Sunday or holidays. Where the day or the last day for doing an act required or permitted by law to be done falls on Sunday or on a holiday the act may be done on the next succeeding secular or business day.

Rev., s. 2839; Code, ss. 3784, 3785, 3786; 1899, c. 733, s. 194.

NOTE. Arrest on Sunday in civil action, see Civil Procedure, s. 371.

Computing time, Sunday not counted, see Civil Procedure, s. 524.

Fishing on Sunday, see Fish and Fisheries.

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Negotiable instrument maturing on Sunday or holiday. Negotiable Instruments, s. 90.

Trains running on Sunday. Railroads, s. 62.

CHAPTER 75

SURETYSHIP

1. Surety and principal distinguished in judgment and execution.
2. Principal liable on execution before surety.
3. Summary remedy of surety against principal.
4. Subrogation of surety paying debt of deceased principal.
5. Contribution among sureties.
6. Dissenting surety not liable to surety on stay of execution.
7. Surety may notify creditor to sue.
8. How notice served.
9. Failure of creditor to sue discharges surety; exceptions.
10. Cancellation of contract of suretyship in case of common carrier and employee.

1. Surety and principal distinguished in judgment and execution. 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.

Rev., s. 2840; Code, s. 2100; R. C., c. 31, s. 124; 1826, c. 31, s. 1.

2. Principal liable on execution before surety. When an execution, indorsed as aforesaid, shall come to the hands of any officer for collection, he shall levy on all the property of the principal, or so much thereof as shall be necessary to satisfy the execution, and for want of sufficient property of the principal, also on the property of the surety, and make sale of all the property of the principal levied on before that of the surety.

Rev., s. 2841; Code, s. 2101; R. C., c. 31, s. 125; 1826, c. 31, s. 2.

3. Summary remedy of surety against principal. Any person, who may have paid money for and on account of those for whom he became surety, upon producing to the superior court, or any justice of the peace having jurisdiction of the same, a receipt, and showing that an execution has issued, and he has satisfied the same, and making it appear by sufficient testimony, that he has laid out and expended any sum of money, as the surety of such person, may move the court or justice of the peace, as the case may be, for judgment against his principal, for the amount which he has actually paid; a citation having previously issued against the principal to show cause why execution should not be awarded; and should the principal not show sufficient cause, the court or justice shall award execution against the estate of the principal.

Rev., s. 2842; Code, s. 2093; R. C., c. 110, s. 1; 1797, c. 487, s. 1.

4. Subrogation of surety paying debt of deceased principal. Whenever a surety, or his representative, shall pay the debt of his deceased principal, the claim thus accruing shall have such priority in the administration of the assets of the principal as had the debt before its payment.

Rev., s. 2843; Code, s. 2096; R. C., c. 110, s. 4; 1829, c. 23.

5 Contribution among sureties. Where there are two or more sureties for the performance of a contract, and one or more of them may have been compelled to perform and satisfy the same, or any part thereof, and the principal shall be insolvent, or out of the state, such surety may have and maintain an action against every other surety, for a just and ratable proportion of the sum which may have been paid as aforesaid, whether of principal, interest or cost.

Rev., s. 2844; Code, s. 2094; R. C., c. 110, s. 2; 1807, c. 722.

6. Dissenting surety not liable to surety on stay of execution. Whenever any judgment shall be obtained before a justice, against a principal and his surety, and the principal debtor shall desire to stay the execution thereon, but the surety is unwilling that such stay shall be had, the surety may cause his dissent thereto to be entered by the justice, which shall absolve him from all liability to the surety who may stay the same. And the constable or other officer, who may have the collection of the debt, shall make the money out of the property of the principal debtor, and that of the surety for the stay of execution, if he can, before he shall sell the property of the surety before judgment.

Rev., s. 2845; Code, s. 2095; R. C., c. 110, s. 3; 1829, c. 6, ss. 1, 2.

7. Surety may notify creditor to sue. 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 the 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 becomes 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 such 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.

Rev., s. 2846; Code, s. 2097; 1868-9, c. 232, s. 1.

8. How notice served. Such notice shall be 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.

Rev., s. 2848; Code, s. 2099; 1868-9, c. 232, s. 3.

9. Failure of creditor to sue discharges surety; exceptions. 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 such 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 cosurety 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.

Rev., s. 2847; Code, s. 2098; 1868-9, c. 232, s. 2.

10. Cancellation of contract of suretyship in case of common carrier and employee. Whenever an employee of a common carrier authorized to do business in this state is required to give a bond or undertaking of any nature whatever with a bonding company or companies, as surety thereon, any such employee who shall have given such bond or undertaking shall, upon the breach of any of the conditions thereof by the other party or parties thereto, have the power to cancel the same by giving the surety or sureties thereon, for the benefit of whom same shall have been made, at least ten days notice in writing, setting out in full the reason for canceling the same. Any such notice to a company, corporation or association may be served by leaving the same with any person upon whom service of legal process upon such company, corporation or association may be had. Any surety on any such bond or undertaking shall, upon the breach of any of the conditions thereof by the common carrier employee for whom same shall have been made, have power to cancel the same by giving such employee at least ten days notice in writing, and upon demand, set out in full the reasons for canceling same, the notice to be signed by an agent or manager of such surety. Nothing herein shall affect any right of action accruing to any person upon the breach of a contract; nor shall any bonding company furnishing the information which causes it to withdraw from the bond, be liable in any action at the instance of the party aggrieved for damages, nor be required to disclose to the party aggrieved the sources of information that caused it to withdraw from the bond. But any bonding company may be required to give evidence in any action brought by the party aggrieved against the party or person furnishing the information causing the company to withdraw as surety.

Any person, officer or manager, company, corporation, association or firm who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than five hundred dollars nor more than one thousand dollars.

1913, c. 17.

NOTE. For penalty of surety on executor's bond, see Administration.
For evidence against principal as against surety, see Bonds, s. 34.

CHAPTER 76

TRADEMARKS, BRANDS AND MARKS

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ART. 1. TRADEMARKS

1. Adoption and filing for registry. It shall be unlawful for any person to adopt for his protection and file for registry, as in this chapter provided, any label, trademark, term or design that has been used or is intended to be used for the purpose of designating, making known or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly made, manufactured, produced, prepared, packed or put on sale by any such person, or to or upon which any work or labor has been applied or expended by any such person, or by any member of any corporation that has adopted and filed for registry any such label, trademark, term or design as aforesaid, or announcing or indicating that the same have been made in whole or in part by any such person or corporation, or by any member thereof.

Rev., s. 3012; 1903, c. 271.

2. Property rights protected by filing for registry. Whenever any person shall adopt and file for registry any label, trademark, term or design pursuant to the provisions of this chapter, the property, privileges, rights, remedies and interests in and to any such label, trademark, term or design, and in and to the use of same, provided or given by this chapter to, or otherwise conferred upon or enjoyed by, the person filing the same for the registry, shall be fully and completely secured, preserved and protected as the property of those entitled to the same before any such label, trademark, term or design has been actually applied to any goods, wares, merchandise, or product of labor, and put upon the market for sale or otherwise, and before any use or appropriation of any such label, trademark, term or design has been made in connection with any such goods, wares, merchandise or product of labor, as well as after the same has been used or applied to designate, make known or distinguish any such goods, wares, merchandise, or product of labor and they have been put upon the market.

Rev., s. 3013; 1903, c. 271, s. 2.

3. Filing to be with secretary of state; contents of affidavits; fees. Any person who has heretofore adopted and used, or shall hereafter adopt and use any label, trademark, term or design, as in this chapter provided, may file the same for registry in the office of the secretary of state, by leaving two copies, facsimiles or counterparts thereof, with the said secretary, and filing therewith a statement in the form of an affidavit, subscribed and sworn to by any such person, or by any officer, agent or attorney if a corporation, specifying the person by whom any such label, trademark, term or design is filed, and the class or character of the goods, wares, merchandise or products of labor to which the same has been, or is intended to be appropriated or applied, and that the person so filing the same has the right to the use of the said label, trademark, term or design, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, without the permission or authority of the person filing the same, and that the copies, facsimiles or counterparts filed therewith, are true and correct copies, facsimiles or counterparts of the genuine label, trademark, term or design of the person filing the same, and there be paid for such registry a fee of one dollar to the secretary of state for the use of the state, and the same recording fees by law for recording certificate of organization of corporations.

Rev., s. 3014; 1903, c. 271, s. 3.

3a. Registration; certified copies evidence; fees. The secretary of state, upon the filing of any such label, trademark, term or design, that is not in conflict with the next section, shall register the same, and shall deliver to the person filing the same as many certified copies thereof, with his certificate of such registry, as any such person may request, and for every such copy and certificate there shall be paid to the secretary of state, for the use of the state, a fee of one dollar; and any such certified copy and certificate shall be admissible in evidence and competent and sufficient proof of the adoption, filing and registry of any such label, trademark, term or design, by any such person in any action or judicial proceeding in any of the courts of this state, and of due compliance with the provisions of this chapter.

Rev., s. 3015; 1903, c. 271, s. 4.

4. Transfer of trademarks. The right to use any registered label, trademark, term or design shall be granted only by an instrument in writing, duly filed in the office of the secretary of state. The fees for recording or filing such transfer and issuing copies thereof shall be the same as for filing such label, trademark, term or design.

Rev., s. 3016.

5. Similar trademarks refused registration. It shall not be lawful for the secretary of state to register for any person any label, trademark, term or design that is the identical form of any other label, trademark, term or design theretofore filed by any other person, or that bears any such near resemblance thereto as may be calculated to deceive, or that would be liable to be mistaken therefor.

Rev., s. 3017; 1903, c. 271, s. 5.

6. Fraudulent registration; penalty. Any person who shall file or procure the filing and registry of any label, trademark, term or design in the office of the secretary of state under the provisions of this chapter, by making any false or fraudulent representations or declarations, with fraudulent intent, shall be liable to pay any damages sustained in consequence of any such registry, to be recovered by or in behalf of the party injured thereby.

Rev., s. 3018; 1903, c. 271, s. 5.

7. Use of counterfeit trademarks unlawful. Whenever any person has adopted and filed for registry any label, trademark, term or design, as provided by law, and the same shall have been registered pursuant to law, it shall be unlawful for any other person to manufacture, use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term or design, or have in possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor to which or on which any counterfeit or imitation of any such label, trademark, term or design is attached, affixed, printed, stamped, impressed or displayed, or to sell or dispose of, or offer to sell or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, stamped, impressed or displayed.

Rev., s. 3019; 1903, c. 271, s. 6.

8. Unauthorized use unlawful; use under license. Whenever any person has adopted and registered any label, trademark, term or design, as provided by law, it shall be unlawful for any other person to make any use, sale, offer for sale or display of the genuine label, trademark, term or design of any such person filing the same, or to have any such genuine label, trademark, term or design in possession with intent that the same shall be used, sold, offered for sale, or displayed, or that the same shall be applied, attached or displayed in any manner whatever to or on any goods, wares or merchandise, or to sell, offer to sell, or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trademark, term or design of any such person is attached, affixed, or displayed, or to make any use whatever of any such genuine label, trademark, term or design, without first obtaining in every such case the license of the person adopting, filing and registering the same; and any such license may be revoked and terminated at any time upon notice, and thereafter any use thereof shall be unlawful.

Rev., s. 3020; 1903, c. 271, s. 7.

9. Remedies; damages; profits; destruction of counterfeits. Any person who has registered any label, trademark, term or design under the provisions of this chapter shall have a right of action against any person for the unauthorized use of such label, trademark, term or design, and the courts shall by appropriate remedies prevent the unauthorized or unlawful use, manufacture or display of any label, trademark, term or design, or the imitation or counterfeit thereof, or the sale, disposal or display of any articles of property on which any counterfeit or imitation of any registered label, trademark, term or design, or on which any genuine label, trademark, term or design may be used or displayed without proper authority; and shall further secure and protect all persons in all rights of property and interest which they may have in any label, trademark, term or design registered under this chapter; and the court shall award to the plaintiff any and all damages resulting from any such wrongful use of any such label, trademark, term or design; and any counterfeit or imitation of any labels, trademarks, terms, or designs and any die, engraving, mould or mechanical device or the manufacture of the same in the possession or under the control of the defendant, shall be delivered up to an officer of the court, to be destroyed, and any such genuine labels, trademarks, terms or designs, in the possession or under the control of any such defendant shall be delivered to the plaintiff.

Rev., s. 3021; 1903, c. 271, s. 8.

10. Concurrent action for penalty. In addition to any other rights, remedies or penalties provided by this chapter, and as concurrent therewith, any person who shall violate any of the provisions of this chapter shall be liable to a penalty of two hundred dollars, to be recovered by any person who has filed any such label, trademark, term or design.

Rev., s. 3022; 1903, c. 271, s. 9.

11. Use of private marks or labels to defraud, misdemeanor. If any person shall knowingly and willfully forge, or counterfeit or cause or procure to be forged or counterfeited, the private marks, tokens, stamps or labels of any mechanic, manufacturer or other person, being a resident of the United States,

with intent to deceive and defraud the purchasers, mechanics, or manufacturers of any goods, wares or merchandise whatsoever, upon conviction thereof he shall be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment of not less than thirty days or more than five years, or both fine and imprisonment, at the discretion of the court.

Rev., s. 3852; Code, s. 1038; 1870-1, c. 253, s. 1.

12. Selling goods with forged marks or labels, misdemeanor. If any person shall vend any goods, wares or merchandise having thereon any forged or counterfeited marks, tokens, stamps or labels purporting to be the marks, tokens, stamps or labels of any person being a resident of the United States, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, he shall be guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both fine and imprisonment, at the discretion of the court.

Rev., s. 3850; Code, s. 1039; 1870-1, c. 253, s. 2.

13. Misbranding sacks to defraud, misdemeanor. If any person shall knowingly use the mark or brand of any other person on any sack, or shall knowingly impress on any sack the mark or brand of another person, with intent to defraud or for the purpose of enhancing the value of his own property, the person so offending shall be guilty of a misdemeanor, and punished as if convicted of larceny.

Rev., s. 3851; Code, s. 1040; 1874-5, c. 225.

ART. 2. TIMBER MARKS

14. Timber dealers may adopt. Any person dealing in timber in any form shall be known as a timber dealer and as such may adopt a trademark, in the manner and with the effect in this subchapter provided.

Rev., s. 3023; 1903, c. 261, s. 1.

15. How adopted, registered and published. Every such dealer desiring to adopt a trademark may do so by the execution of a writing in form and effect as follows:

TRADEMARK

Notice is hereby given that I (or we, etc., as the case may be) have adopted the following trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to wit: (Here insert the words, letters, figures, etc., constituting the trademark, or if it be any device other than words, letters or figures, insert a facsimile thereof).

Dated this _____ day of _____, 19_____

A. _____ B. _____

Such writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be registered in the office of the register of deeds of the county in which the principal office or place of business of such timber dealer may be, in a book to be kept for that purpose marked Registry of Timber Marks, also in office of secretary of state, and a copy thereof shall be published at least once in each week for four successive weeks in some newspaper printed in such county, or if there be no such newspaper printed therein, then in some newspaper of general circulation in such county.

Rev., s. 3024; 1889, c. 142; 1903, c. 261, s. 2.

16. Property in and use of trademarks. Every trademark so adopted shall, from the date thereof, be the exclusive property of the person adopting the same. The proprietor of such trademark, shall, in using the same, cause it to be plainly stamped, branded or otherwise impressed upon each piece of timber upon which the same is placed.

Rev., s. 3025; 1889, c. 142; 1903, c. 261, ss. 3, 4.

17. Effect of branding timber purchased. When timber is purchased by the proprietor of any such trademark, and the said trademark is placed thereon as hereinbefore provided, such timber shall thenceforth be deemed the property of such purchaser, without any other or further delivery thereof, and such timber shall thereafter be at the risk of the purchaser, unless otherwise provided by contract in writing between the parties.

Rev., s. 3026; 1889, c. 142; 1903, c. 261, s. 6.

18. Trademark on timber evidence of ownership. In any action, suit or contest, in which the title to any timber, upon which any trademark has been placed as aforesaid, shall come in question, it shall be presumed that such timber was the property of the proprietor of such trademark, in the absence of satisfactory proof to the contrary.

Rev., s. 3027; 1903, c. 261, s. 7.

19. Fraudulent use of timber trademark, misdemeanor. If any person shall use or attempt to use any timber trademark without the written consent of the proprietor thereof, or falsely and fraudulently place any trademark on timber not the property of the owner of such trademark without his written consent, or intentionally and without lawful authority remove, deface or destroy any timber trademark or the imprint thereof on any timber or intentionally put any such timber in such a position, or place so remote from the stream from which it was taken, or on which it was afloat as to render it inconvenient or unnecessarily expensive to replace the same in such stream, he shall be guilty of a misdemeanor.

Rev., s. 3854; 1903, c. 261, ss. 3-5.

20. Larceny of branded timber. If any person shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark is stamped, branded or otherwise impressed, or shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark has been intentionally and without lawful authority removed, defaced or destroyed, he shall be deemed guilty of larceny thereof and punished as in other cases of larceny.

Rev., s. 3855; 1903, c. 261, s. 5.

21. Altering timber trademark larceny. If any person shall willfully change, alter, erase or destroy any registered timber mark or brand put or cut upon any logs, timber, lumber or boards, except by the consent of the owner thereof, with intent to steal the said logs or timber, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both; if the same shall have been done with a felonious intent, such person shall be guilty of larceny and punished as for that offense.

Rev., s. 3855; 1889, c. 142, s. 3; 1903, c. 41.

22. Possession of branded logs without consent, misdemeanor. If any person shall knowingly and willfully take up or have in his possession any log, timber, lumber or board upon which a registered timber mark or brand has been put or cut, except by the consent of the owner thereof, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both.

Rev., s. 3856; 1889, c. 142, s. 4; 1903, c. 42.

ART. 3. MINERAL WATERS AND BEVERAGES

23. Description of name, labels, or marks filed and published. Any person, partnership or corporation, engaged in manufacturing, bottling, selling or dealing in mineral, soda or aerated waters, beers, lager-beer, milk or other beverages, in kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or other vessels, with his name or other marks or devices printed, impressed, or otherwise produced thereon, or upon labels pasted thereon, shall file with the clerk of the superior court of the county in which his principal office or place of business (or in the case of a foreign corporation, its principal office or place of business or agency) is located, a description of the names, marks, or devices so used by him, and cause such description to be printed twice a week for two successive weeks in some daily newspaper published in said county, if there be a daily newspaper published therein, and if not, then in some newspaper published in said county once a week for two successive weeks. The description of the names, marks or devices, before being filed as aforesaid, shall be signed by the person filing the same, or in case of a partnership, by a partner, or in case of a corporation, by one of its officers or managers, and shall be acknowledged by the person signing the same as his act, or as the act of said partnership or corporation, before an officer competent to take acknowledgments of deeds. The publication hereby required need only be a brief description sufficient for identification, of such names or marks, and need not contain a certified copy of the acknowledgment. The provisions of this act shall apply to all vessels enumerated above upon which said names or marks shall appear as aforesaid, whether or not any of the same shall be in existence at the time of said filing and publication.

1907, c. 901, s. 1.

24. Clerk to record description. The several clerks of the superior courts mentioned in the preceding section shall record in some book of record in their custody, all such descriptions filed with them, and also copies of the said advertisement in the newspaper certified to by the publishers thereof, and shall furnish copies thereof, duly certified by them in the usual manner, to any person who may apply therefor, and shall receive for the recording of such copies a fee of fifty cents. Such certified copies shall be evidence that the provisions of the preceding section have been complied with, and shall be prima facie evidence of the title of the person, named therein, to the vessels upon which his name, marks, labels or devices appear as described in said description.

1907, c. 901, s. 2.

25. Refilling vessels and defacing marks forbidden; punishment. After any person has filed and published his description of such names, marks or devices,

in accordance with the preceding provisions of this act, it shall be unlawful for any persons to fill in any way the vessels upon which such names or other marks are printed, impressed or otherwise produced, with any water or beverage enumerated in this act, or to deface, remove or conceal such names or other marks, thereon, with intent to convert the same to his use, or to have on sale, offer for sale, traffic in, handle in the course of business, transport, or to take or collect from ash or garbage receptacles or from public or private premises, or to keep in stock, store or dispose of or deal or traffic in same, or any parts thereof, without the written consent of the person whose name or other marks are upon such vessels, or to willfully break, destroy or otherwise injure any of the articles mentioned in this section. Any person who shall do any of the acts declared to be unlawful by this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense by imprisonment of not less than ten days or more than one year, or by a fine of three dollars, for each of such kegs, casks or barrels, and one dollar for each of such boxes, trays, crates, bottles, syphons, or any other vessels so unlawfully used.; and for the second and subsequent offense by imprisonment for not less than twenty days or more than one year, or by a fine of not less than two dollars or more than five dollars for each vessel unlawfully used, or by both such fine and imprisonment, at the discretion of the court before whom such offense is tried: Provided, this section shall not apply to such vessels as the bottler charges his customers for at the time of sale of the goods.

1907, c. 901, s. 3.

26. Disposal of fine. In the event of a fine being imposed by any court for any offenses under this article, one-half thereof shall go to the state and one-half to the informer, to be collected as other fines are collected.

1907, c. 901, s. 3.

27. Possession of vessels as evidence of offense. If any person shall be found to be in possession of any of the vessels mentioned above in this act, or any parts thereof, and the persons whose names, marks or devices have been placed thereon, as above provided have complied with the provisions of this act, and the persons so found in possession thereof shall be charged with any of the offenses mentioned in the preceding section, then such possession shall be prima facie evidence that such person is guilty of the offenses so charged: Provided, this section shall not apply to bottlers who receive such vessels in the course of business and mixed and exchanged in shipment, when such bottler within a reasonable time notifies the owners thereof of the location thereof.

1907, c. 901, s. 4.

28. Search warrants. If the owner of any vessel mentioned in section one of this act who has complied with the provisions thereof, or the officer, agent or employee of such owner shall make an affidavit before a justice of the peace asserting that he has reason to believe and does believe that any person is in actual or constructive possession of, or is making use of any article above mentioned or any part thereof, or in any way declared to be unlawful by section three of this article, the justice may issue his search warrant to any sheriff, constable or other officer of the law to whom such warrant may be directed, and cause the premises designated in the warrant to be searched; and if article above

mentioned or any part thereof shall be found upon the premises so designated, the officer executing such search warrant shall thereupon report the same, under his oath, to the justice who shall thereupon, upon said report and upon the oath of any person or persons charging any violations of section three of this article, issue his warrant for the arrest of the person against whom the charge is made, and cause him together with such articles, to be brought before him for trial.

1907, c. 901, s. 5.

29. Concurrent jurisdiction of justices. The justices of the peace in the counties of this state shall have concurrent jurisdiction with the superior courts of their respective counties in the case of persons arrested for violation of the above provisions of this article, and such justices of the peace shall proceed to hear and determine such cases when the parties arrested are brought before them, in all cases where the punishment fixed in this act is such as to give the justices jurisdiction under the Constitution and laws of this state. And if such person shall be found to be guilty of the violation of any of the provisions of this article, the court trying such person and imposing the punishment herein prescribed shall also award possession to the owner of all the property involved in such violation.

1907, c. 901, s. 6.

30. Accepting deposit not deemed sale. The requiring, taking or accepting of any deposit for any purpose upon any vessel above enumerated shall not be deemed to constitute a sale of such property, either optional, conditional or otherwise, in any proceedings under this act.

1907, c. 901, s. 7.

31. When refiling description not required. Any person, partnership, or corporation that has heretofore filed and published a description of his name, marks or devices for the purposes mentioned in section one of this article, in accordance with the law existing at the time of such filing and publication, shall not be required to again file such description, but shall be entitled to all the benefits of this act as fully as if he had complied with all the provisions thereof.

1907, c. 901, s. 8.

32. Application of the article. The provisions of this article do not apply to any person using the vessels enumerated above for the beverages placed therein by the owners, or who after consumption of the contents, is in possession of the same, while awaiting the return to the owners, nor shall the provisions of this act apply to any garbage man collecting the same in the regular course of his business: Provided, this act shall not apply to beer and mineral water bottles shipped into this state from other states.

1907, c. 901, s. 9.

ART. 4. FARM NAMES

33. Registration of farm names authorized. Any owner of a farm in the state of North Carolina may have the name of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the register of deeds, of the county in which the farm is located, and the register of deeds shall furnish to such landowner a proper certificate setting forth the name and description of the lands.

1915, c. 108, s. 1.

34. After registry, similar name not registered. When any name has been recorded as the name of any farm in such county, the name, or one so nearly like it as to produce confusion, shall not be recorded as the name of any other farm in the same county.

1915, c. 108, s. 1.

35. Distinctive name required. No name shall be registered as the name of a farm where such proposed name or one so nearly like it as to produce confusion has been so used in connection with another farm in the same county as to become generally known prior to the ratification of this act, unless the name used has also prior to the ratification of this act become well known as the name of the farm proposed to be registered; and in this event two or more farms in the same county may be registered with the same name with some prefix or suffix added to distinguish them.

1915, c. 108, s. 2.

36. Application for registry; publication and hearing. Before a name shall be registered the clerk shall have publication made at least once a week for four weeks in some secular newspaper published in the county, if one is so published, and if one is not so published, then one having a general circulation in the county, giving the name of the applicant, the proposed name of registration and a sufficient description to identify the farm and the time of the return; and if the owner or clerk knows of another farm in the county of the same or very similar name, a summons shall be served on the owner thereof at least ten days before the return day. On the return day any person, firm or corporation may file claim to the name and the clerk may pass upon the claim and award the name to any party with the right to appeal by the aggrieved party to the superior court within ten days, as in other cases, and on such appeal the judge shall decide the matters unless a jury be demanded by some party.

1915, c. 108, s. 2.

37. Fees for registration. Any person having the name of his farm recorded as provided in this article, shall first pay to the register of deeds a fee of one dollar, which fee shall be paid to the county treasurer as other fees are to be paid to the county treasurer by such register of deeds: Provided, that in counties where the fee system obtains, the fees herein mentioned shall go to the register of deeds of such counties.

1915, c. 108, s. 3.

38. When transfer of farm carries name. When any owner of a farm, the name of which has been recorded as provided in this article, transfers by deed or otherwise, the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then, in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed or conveyance.

1915, c. 108, s. 4.

39. Cancellation of registry; fee. When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name, the following: "This name is canceled and I hereby release all rights thereunder," which shall be signed by the person

canceling such name, and attested by the register of deeds. For such latter service the register of deeds shall charge a fee of twenty-five cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him.

1915, c. 108, s. 5.

40. Article not applicable to certain counties. This article shall not apply to the counties of Surry, Stokes, and Sampson.

1915, c. 108, s. 6.

ART. 5. STAMPING OF GOLD AND SILVER ARTICLES

41. Marking gold articles regulated. It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed any mark, indicating or designed to indicate, that the gold, or alloy or gold therein is of a greater degree of fineness than its actual fineness, unless the actual fineness, in the case of flat-ware and watch-cases, is not less by more than three one-thousandths parts, and in the case of all other articles is not less by more than one-half karat than the fineness indicated, according to the standards and subject to the qualifications hereinafter set forth.

In any test for ascertaining the fineness of gold or alloy in the articles, according to the required standards, the part of the gold or alloy taken for the test, analysis or assay shall be a part not containing or having attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of the articles. In addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned in this section (except watch-cases), including all solder or alloy of inferior metal used for brazing or uniting the parts (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than one karat than the fineness indicated by the mark used as above indicated. Violation of this section is a misdemeanor, punishable as provided in this article.

1907, c. 331, s. 1.

42. Marking silver articles regulated. It shall be unlawful to make for sale or sell or offer to sell or dispose of or have in possession with intent to sell or dispose of—

1. Any article of merchandise made in whole or in part of silver or any alloy of silver, and having marked, stamped, branded or engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the words “sterling silver” or “sterling” or any colorable imitation thereof, unless nine hundred and twenty-five one-thousandths or the component parts of the metal appearing or purporting to be silver, of which the article is manufactured, are pure silver, subject to the qualifications hereinafter set forth: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard.

2. Any article of merchandise made in whole or in part of silver or of any alloy of silver, and having marked, stamped, branded, engraved or imprinted thereon, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the words "coin" or "coin silver," or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver, of which the article is manufactured, are pure silver, subject to the qualifications hereinafter set forth: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

3. Any article of merchandise made in whole or in part of silver or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any mark or word (other than the word "sterling" or the word "coin") indicating, or designed to indicate, that the silver or alloy of silver in the article is of a greater degree of fineness than its actual fineness, unless the actual fineness is not less by more than four one-thousandths parts than the actual fineness indicated by the use of such mark or word, subject to the qualifications hereinafter set forth.

In any test for ascertaining the fineness of the articles mentioned in this section, according to the foregoing standards, the part taken for test, analysis or assay shall be a part not containing or having attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article. In addition to the foregoing test and standards, the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in this section, including all solder or alloy of inferior fineness used for brazing or uniting the parts (all such silver, alloy or solder being assayed as one piece), shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark employed as above indicated. Violation of this section is a misdemeanor punishable as provided in this article.

1907. c. 331, s. 2.

43. Marking articles of gold plate regulated. It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering or sheet of gold, or of any alloy of gold, which article is known in the market as "rolled gold plate," "gold plate," "gold-filled," or "gold electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless such word be accompanied by other words plainly indicating that such article or some part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold-filled, as the case may be. Violation of this section is a misdemeanor, punishable as provided in this article.

1907, c. 331, s. 3.

44. Marking articles of silver plate regulated. It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering or sheet of silver or of any alloy of silver, which article is known in the market as "silver plate" or "silver electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the word "sterling" or the word "coin," either alone or in conjunction with any other words or marks. Violation of this section is a misdemeanor, punishable as provided in this article.

1907, c. 331, s. 4.

45. Violation of article misdemeanor. Every person, firm, corporation or association guilty of a violation of any one of the preceding sections of this article, and every officer, manager, director or managing agent of any such person, firm, corporation or association directly participating in such violation or consenting thereto, shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, at the discretion of the court: Provided, that if the person charged with violation of this act shall prove that the article concerning which the charge was made was manufactured prior to the thirteenth day of June, one thousand nine hundred and seven, then the charge shall be dismissed.

1907, c. 331, s. 5.

ART. 6. CATTLE BRANDS

46. Owners of stock to register brand or marks. Every person who has any horses, cattle, hogs or sheep may have an earmark or brand different from the earmark or brand of all other persons, which he shall record with the clerk of the board of commissioners of the county where his horses, cattle, hogs or sheep are; and he may brand all horses eighteen months old and upwards with the said brand, and earmark all his hogs and sheep six months old and upwards with the said earmark; and earmark or brand all his cattle twelve months old and upwards; and if any dispute shall arise about any earmark or brand, the same shall be decided by the record thereof.

Rev., s. 3028; Code, s. 2317; R. C., c. 17, s. 1.

CHAPTER 77

TRUSTEES

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6. Clerk's power to accept resignation.
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8. Parties; hearing successors appointed.
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10. Appeal; stay effected by appeal.
11. On appeal judge determines facts.
12. Final accounting before resignation.
13. Resignation effective on settlement with successor.
14. Court to appoint successor; bond required.
15. Rights and duties devolve on successor.

ART. 4. CHARITABLE TRUSTS.

16. Trustees to file accounts.
17. Action for account; court to enforce trust.
18. Fees allowed solicitor.

ART. 1. INVESTMENT AND DEPOSIT OF TRUST FUNDS

1. Certain investments deemed cash. Guardians, executors, administrators, and others acting in a fiduciary capacity, having surplus funds of their wards, estates and cestuis que trustent to loan, may invest in United States bonds, or any securities for which the United States are responsible, including farm loan bonds issued by Federal land banks, or in bonds of the state of North Carolina issued since the year one thousand eight hundred and seventy-two; or in drainage bonds duly issued under the provisions of Article 5 of chapter entitled Drainage; and in settlements by guardians, executors, administrators, trustees, and others acting in a fiduciary capacity, such bonds or other securities of the United States, and such bonds of the state of North Carolina, and such drainage bonds, and such road bonds shall be deemed cash to the amount actually paid for same, including the premium, if any, paid for such bonds or other securities, and may be paid as such by the transfer thereof to the persons entitled.

Rev., s. 1792; Code, s. 1594; 1870-1, c. 197; 1885, c. 389; 1917, c. 6, s. 9; 1917, c. 67, s. 1; 1917, c. 152, s. 7; 1917, c. 191, s. 1; 1917, c. 269, s. 5.

2. Trust funds deposited at trustee's risk. No provision in any charter or certificate of organization of any corporation permitting deposits therein by any guardian, executor or other trustee or fiduciary, or by any county, bonded or other officer, shall operate or be construed to relieve or discharge them, or either of them, from official responsibility, or to relieve them, or either of them, or their sureties, from liability on their official bonds.

Rev., s. 1793; 1889, c. 470.

ART. 2. REMOVAL OF TRUST FUNDS FROM STATE

3. Proceeding to remove trust funds of nonresidents. When any personal estate in this state is vested in a trustee resident therein, and those having the beneficial interest in the said estate are nonresidents of this state, the clerk of the superior court of the county in which the said trustee resides may, on a petition filed for that purpose, order him or his personal representative to pay, transfer, and deliver the said estate, or any part of it, to a nonresident trustee appointed by some court of record in the state in which the said beneficiary or beneficiaries reside. No such order of any clerk shall be valid and in force until approved by the resident judge of said judicial district, or the judge holding court in such district.

1911, c. 161, s. 1.

4. Removal ordered on notice; bond of nonresident trustee. No such order shall be made, in the case of a petition, until notice of the application shall have been given to all persons interested in such trust estate, as now required by law in other special proceedings, nor until the court shall be satisfied by authentic documentary evidence that the nonresident trustee, appointed as aforesaid, has given bond, with sufficient surety, for the faithful execution of the trust, nor until it is satisfied that the payment and removal of such estate out of the state will not prejudice the right of any person interested or to become interested therein.

1911, c. 161, s. 2.

5. Order of removal discharges resident trustee. When any guardian or committee, trustee or other person in this state, shall pay over, transfer, or deliver any estate in his hands or vested in him, under any order or decree made in pursuance of this act, he shall be discharged from all responsibility therefor

1911, c. 161, s. 3.

ART. 3. RESIGNATION OF TRUSTEE

6. Clerk's power to accept resignations. The clerks of the superior courts of this state have power and jurisdiction to accept the resignation of executors, administrators, guardians, trustees, and other fiduciaries and to appoint their successors in the manner provided by this article.

1911, c. 39, s. 1.

7. Petition; contents and verification. When any executor, administrator, guardian, trustee, or other fiduciary desires to resign his trust, he shall file his petition in the office of the clerk of the superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualification of the applicant as such fiduciary, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the cestuis que trustent and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the fiduciary and due

the estate, together with a full statement of the reasons why the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.

1911, c. 39, s. 2.

8. Parties; hearing; successor appointed. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding with the fiduciary as plaintiff and the cestuis que trustent as defendants, and shall issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The cestuis que trustent, creditors, or any other person interested in the trust estate, have the right to answer said petition or traverse the same and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the cestuis que trustent demand that the resignation of the fiduciary be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the cestuis que trustent, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petition in the manner provided in this article.

1911, c. 39, s. 3.

9. Resignation allowed; costs; judge's approval. In making an order allowing the fiduciary to resign the clerk shall make such order concerning the costs of the proceedings and commissions to the fiduciary as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same become effective.

1911, c. 39, s. 3.

10. Appeal; stay effected by appeal. Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If the clerk allows the resignation, and an appeal is taken from his decision, such appeal shall have the effect to stay the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.

1911, c. 39, s. 4.

11. On appeal judge determines facts. Upon an appeal taken from the clerk to the judge, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the supreme court.

1911, c. 39, s. 5.

12. Final accounting before resignation. No executor, administrator, guardian, trustee, or other fiduciary shall be allowed or permitted to resign his trust until he shall first file with the court his final account of the trust estate, and until the court shall be satisfied that the said account is true and correct.

1911, c. 39, s. 6.

13. Resignation effective on settlement with successor. In case the resignation of the fiduciary is accepted by the court, the same shall not go into effect, or release or discharge the fiduciary from liability, until he shall have accounted to his successor in full for all moneys, securities, property or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate.

1911, c. 39, s. 6.

14. Court to appoint successor; bond required. If the court shall allow any executor, administrator, guardian, trustee, or other fiduciary to resign his trust upon compliance with the provisions of this act, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such executor, administrator, guardian, trustee, or other fiduciary; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court, in a sum double the value of the property to come into his hands, conditioned upon the faithful performance of his duties as such fiduciary and for the payment to the persons entitled to receive the same of all moneys, assets, or other things of value which may come into his hands. All bonds executed under the provisions of this act shall be filed with the clerk, and shall be recorded in his office in a book to be kept for that purpose.

1911, c. 39, s. 7.

15. Rights and duties devolve on successor. Upon the acceptance by the court of the resignation of any executor, administrator, guardian, trustee, or other fiduciary, and upon the appointment by the court of his successor in the manner provided by this act, the substituted trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee.

1911, c. 39, s. 8.

ART. 4. CHARITABLE TRUSTS

16. Trustees to file accounts. When real or personal property has been granted by deed, will, or otherwise, for such charitable purposes as are allowed by law, it shall be the duty of those to whom are confided the management of the property and the execution of the trust, to deliver in writing a full and particular account thereof to the clerk of the superior court of the county where the charity is to take effect, on the first Monday in February in each year, to be filed among the records of the court, and spread upon the record of accounts.

Rev., s. 3922; Code, s. 2342; R. C., c. 18, s. 1; 1832, c. 14, s. 1; 43 Eliz., c. 4.

17. Action for account; court to enforce trust. If the preceding section be not complied with, or there is reason to believe that the property has been mismanaged through negligence or fraud, it shall be the duty of the clerk of the superior court to give notice thereof to the attorney-general or solicitor who represents the state in the superior court for that county; and it shall be his duty to bring an action in the name of the state against the grantees, executors, or trustees of the charitable fund, calling on them to render a full and minute account of their proceedings in relation to the administration of the fund and

the execution of the trust. The attorney-general or solicitor may also, at the suggestion of two reputable citizens, commence an action as aforesaid; and, in either case, the court may make such order and decree as shall seem best calculated to enforce the performance of the trust.

Rev., s. 3923; Code, ss. 2343, 2344; R. C., c. 18, ss. 2, 3; 1832, c. 14, ss. 2, 3.

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

Rev., s. 3924; Code, s. 2345; R. C., c. 18, s. 4; 1832, c. 14, s. 4.

CHAPTER 78

WAREHOUSE RECEIPTS

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ART. 1. GENERAL PROVISIONS

1. Name of act. This act may be cited as the Uniform Warehouse Receipts act.

1917, c. 37, s. 62.

2. Terms defined. In this act, unless the context or subject-matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership of two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

A thing is done “in good faith” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

1917, c. 37, s. 58.

3. Uniform construction. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

1917, c. 37, s. 57.

4. General law applied. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

1917, c. 37, s. 56.

5. Prior receipts not affected. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act, March 1, 1917.
1917, c. 37, s. 59.

ART. 2. ISSUE OF WAREHOUSE RECEIPTS

6. Who may issue receipts. Warehouse receipts may be issued by any warehouseman.
1917, c. 37, s. 1.

7. What receipt must contain. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

1. The location of the warehouse where the goods are stored.
2. The date of issue of the receipt.
3. The consecutive number of the receipt.
4. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.
5. The rate of storage charges.
6. A description of the goods or of the packages containing them.
7. The signature of the warehouseman, which may be made by his authorized agent.
8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is at the time of the issue of the receipt unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred, and the purpose thereof, is sufficient. A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

Rev., s. 3023; 1917, c. 37, s. 2.

8. Other terms inserted; exceptions. A warehouseman may insert in a receipt issued by him any other terms and conditions, provided that such terms and conditions shall not—

1. Be contrary to the provisions of this act.
2. In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

1917, c. 37, s. 3.

9. Nonnegotiable receipts. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt.

1917, c. 37, s. 4.

10. Nonnegotiable receipts marked. A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable may, at his

option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Rev., s. 3032; 1917, c. 37, s. 7.

11. Negotiable receipts. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provisions shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void.

Rev., s. 3032; 1917, c. 37, s. 5.

12. Duplicate negotiable receipts. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

1917, c. 37, s. 6.

ART. 3. OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN ON RECEIPTS

13. Delivery of goods on proper demand. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

1. An offer to satisfy the warehouseman's lien;

2. An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and

3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

1917, c. 37, s. 8.

14. To whom goods may be delivered. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

1. The person lawfully entitled to the possession of the goods, or his agent;

2. A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods or who has written authority from the person so entitled, either indorsed upon the receipt or written upon another paper; or

3. A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

1917, c. 37, s. 9.

15. Liability for wrong delivery. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (2) and (3) of the preceding section, and though he delivered the goods as authorized by said subdivisions, he shall be so liable if prior to such delivery he had either—

1. Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

2. Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

1917, c. 37, s. 10.

16. Liability on receipt not taken up on delivery. Except as hereafter provided in this article when the goods may have been sold to satisfy warehouseman's charges or because of their perishable or hazardous nature, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable, to any one who purchases for value and in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

1917, c. 37, s. 11.

17. Liability on receipt for partial delivery. Except when goods may have been sold to satisfy warehouseman's lien or because of their perishable or hazardous nature, as hereafter provided in this article, where a warehouseman delivers a part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel the receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

1917, c. 37, s. 12.

18. Effect of alteration of receipt. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

1. Immaterial,

2. Authorized, or

3. Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the altera-

tion shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

1917, c. 37, s. 13.

19. Delivery in case of lost receipt. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also, in its discretion, order the payment of the warehouseman's reasonable costs. The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

1917, c. 37, s. 14.

20. Effect of issuing duplicate receipt. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

1917, c. 37, s. 15.

21. Claim of title no defense for nondelivery; exceptions. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

1917, c. 37, s. 16.

22. Interpleader in conflicting claims. If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate, require all known claimants to interplead.

1917, c. 37, s. 17.

23. Reasonable time to investigate conflicting claims. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

1917, c. 37, s. 18.

24. Title in third person no defense; exceptions. Except as provided in the two preceding sections and except when the goods may have been delivered to the person authorized to have such delivery, as heretofore provided in this article, or

when the goods may have been sold to satisfy the warehouseman's lien or because of their perishable or hazardous nature, as hereafter provided in this article, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

1917, c. 37, s. 19.

25. Failure to deliver goods as described. A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them or upon packages containing them or by a statement that the goods are said to be goods of a certain kind or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

1917, c. 37, s. 20.

26. Liability for negligence. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise; but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

1917, c. 37, s. 21.

27. Goods kept separate. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

1917, c. 37, s. 22.

28. Effect of confusion of goods. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

Rev., s. 3034; 1917, c. 37, s. 23.

28a. Liability of warehouseman for confusion of goods. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

1917, c. 37, s. 24.

29. Goods not subject to attachment or execution. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession

of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

1917, c. 37, s. 25.

30. Creditor's remedy against receipt. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

1917, c. 37, s. 26.

31. Warehouseman's lien. Subject to the subsequent provisions of this article specifying what liens may be enforced against a negotiable receipt, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

1917, c. 37, s. 27.

NOTE. See chapter on Liens.

32. Against what goods lien enforced. Subject to the subsequent provisions of this article specifying what liens may be enforced against a negotiable receipt, a warehouseman's lien may be enforced—

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

1917, c. 37, s. 28.

33. Loss of lien. A warehouseman loses his lien upon goods—

1. By surrendering possession thereof, or

2. By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

1917, c. 37, s. 29.

34. What liens enforced against negotiable receipts. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerate other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within

the terms for a warehouseman's lien as heretofore provided in this article, although the amount of the charges so enumerated is not stated in the receipt.
1917, c. 37, s. 30.

35. Right to retain until liens satisfied. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.
1917, c. 37, s. 31.

36. Other legal remedies for warehouseman. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.
1917, c. 37, s. 32.

37. Enforcement of liens. A warehouseman's lien for a claim which has become due may be satisfied as follows:

1. *Notice given.* The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

a. An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

b. A brief description of the goods against which the lien exists;

c. A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered or from the time when the notice should reach its destination according to the due course of post if the notice is sent by mail; and

d. A statement that unless the claims are paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

2. *Sale of goods.* In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

3. *Right of claimant to pay charges.* At any time before the goods are sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise, the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

Rev., ss. 3036, 3037, 3038; 1917, c. 37, s. 33.

38. **Sale of perishable goods.** If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods and to remove them from the warehouse; and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

Rev., ss. 3039, 3040; 1917, c. 37, s. 34.

39. **Other remedies not excluded.** The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

Rev., s. 3041; 117, c. 37, s. 35.

40. **Liability discharged by sale for liens.** After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

1917, c. 37, s. 36.

ART. 4. NEGOTIATION AND TRANSFER OF RECEIPTS

41. **Negotiation by delivery.** A negotiable receipt may be negotiated by delivery—

1. Where by the terms of the receipt the warehouseman undertakes to deliver the goods to the bearer; or

2. Where by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where by the terms of a negotiable receipt the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

1917, c. 37, s. 37.

42. Negotiation by indorsement. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are by the terms of the receipt deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

1917, c. 37, s. 38.

43. Transfer of nonnegotiable receipts. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

1917, c. 37, s. 39.

44. By whom receipt negotiated. A negotiable receipt may be negotiated—

1. By the owner thereof, or

2. By any person to whom the possession or custody of the receipt has been entrusted by the owner, if by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

1917, c. 37, s. 40.

45. Rights acquired by negotiation. A person to whom a negotiable receipt has been duly negotiated acquires thereby—

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

1917, c. 37, s. 41.

46. Rights acquired by transfer. A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferer, the title of the goods, subject to the terms of any agreement with the transferer. If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferer or transferee of a nonnegotiable receipt, the title of the

transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferer, or by a notification to the warehouseman by the transferer or a subsequent purchaser from the transferer of a subsequent sale of the goods by the transferer.

1917, c. 37, s. 42.

47. Right to compel indorsement. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferer is essential for negotiation, the transferee acquires a right against the transferer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

1917, c. 37, s. 43.

48. Warranties in negotiation and transfer. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

1. That the receipt is genuine;
2. That he has a legal right to negotiate or transfer it;
3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and
4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a receipt the goods represented thereby.

1917, c. 37, s. 44.

49. Indorser not liable for failure of prior parties. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

1917, c. 37, s. 45.

50. No warranty by collection of debt secured by receipt. A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

1917, c. 37, s. 46.

51. Rights of bona fide holder not affected by fraud. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

1917, c. 37, s. 47.

52. Subsequent purchasers protected. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

1917. c. 37, s. 48.

53. Right of purchaser superior to seller's lien. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

1917. c. 37, s. 49.

ART. 5. CRIMINAL OFFENSES

54. Issuing receipt for goods not stored. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

1917. c. 37, s. 50.

55. Issuing receipt with false statement. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both.

1917. c. 37, s. 51.

56. Issuing fraudulent duplicates. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings for delivery as heretofore provided in this chapter, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

1917. c. 37, s. 52.

57. Failure to state in receipt the interest of warehouseman. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both.

1917, c. 37, s. 53.

58. Delivering goods without obtaining receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, except in the cases heretofore provided for in this chapter for the delivery of goods upon a lost receipt and for the sale of goods to satisfy the warehouseman's lien or because of their perishable or hazardous nature, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both.

1917, c. 37, s. 54.

59. Fraudulent deposit and negotiation. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both.

1917, c. 37, s. 55.

CHAPTER 79

WIDOWS

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28. Judgment, and order for commissioners.
29. Duty of commissioners; amount of allowance.
30. Exceptions to the report.
31. Confirmation of report; execution.

ART. 1. DISSENT FROM WILL

1. **Time and manner of dissent.** Every widow may dissent from her husband's will before the clerk of the superior court of the county in which such will is proved, at any time within six months after the probate. The dissent may be in person, or by attorney authorized in writing, executed by the widow and attested by at least one witness and duly proved. The dissent, whether in person or by attorney, shall be filed as a record of court. If the widow be an infant or insane, she may dissent by her guardian.

Rev., s. 3080; Code, s. 2108; 1868-9, c. 93, s. 37.

2. Effect of dissent. Upon such dissent, the widow shall have the same rights and estates in the real and personal property of her husband as if he had died intestate.

Rev., s. 3081; Code, s. 2109; R. C., c. 118, s. 12; 1868-9, c. 93, s. 38.

3. Widow's interest not liable for husband's debts. The dower or right of dower of a widow, and such lands as may be devised to her by his will, if such lands do not exceed the quantity she would be entitled to by right of dower, although she has not dissented from such will, shall not be subject to the payment of debts due from the estate of her husband, during the term of her life.

Rev., s. 3082; Code, ss. 2104, 2105; R. C., c. 118, s. 8; 1868-9, c. 93, s. 34; 1791, c. 351, s. 4.

ART. 2. DOWER

4. Who entitled to dower. Widows shall be endowed as at common law as in this chapter defined: Provided, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the felonious slaying of her husband, or being accessory before the fact to the felonious slaying of her husband, she shall thereby lose all right to dower in the lands and tenements of her husband; and any such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of dower.

Rev., s. 3083; Code, s. 2102; 1889, c. 499; 1868-9, c. 93, s. 32; 1871-2, c. 193, s. 44.

5. In what property widow entitled to dower. Subject to the provision in the preceding section every married woman, upon the death of her husband intestate, or in case she shall dissent from his will, shall be entitled to an estate for her life in one-third in value of all the lands, tenements and hereditaments whereof her husband was seized and possessed at any time during the coverture, in which third part shall be included the dwelling-house in which her husband usually resided, together with offices, outhouses, buildings and improvements thereunto belonging or appertaining; she shall in like manner be entitled to such an estate in all legal rights of redemption and equities of redemption or other equitable estates in lands, tenements and hereditaments whereof her husband was seized in fee at any time during the coverture, subject to all valid incumbrances existing before the coverture or made during it with her free consent lawfully appearing thereto. The jury summoned for the purpose of assigning dower to a widow shall not be restricted to assign the same in every separate and distinct tract of land, but may allot her dower in one or more tracts, having a due regard to the interest of the heirs as well as to the right of the widow. This section shall not be construed so as to compel the jury selected to allot dower to allot the dwelling-house in which the husband usually resided, when the widow shall request that the same be allotted in other property.

Rev., s. 3084; Code, s. 2103; R. C., c. 118, s. 3; R. S., c. 121, s. 3; 1827, c. 46; 1869-70, c. 176; 1883, c. 175; 1908, c. 132.

6. Dower not affected by conveyance of husband; exception. No alienation of the husband alone, with or without covenant of warranty, shall have any other or further effect than to pass his interest in such estate, subject to the dower right of his wife: Provided, that a mortgage or trust deed by the husband to secure the purchase-money, or any part thereof, of land bought by him, shall,

without the wife executing the deed, be effectual to pass the whole interest according to the provisions of the said deed.

Rev., s. 3085; Code, s. 2106; 1868-9, c. 93, s. 35.

7. Dower conveyed by wife's joinder in deed. The right to dower under this chapter shall pass and be effectual against any widow or person claiming under her upon the wife joining with her husband in the deed of conveyance and being privately examined as to her consent thereto in the manner prescribed by law.

Rev., s. 3086; Code, s. 2107; 1868-9, c. 93, s. 36.

NOTE. See chapter, Married Women.

ART. 3. ALLOTMENT OF DOWER

8. By agreement between widow and heir. If the personal property of a decedent be sufficient to pay his debts and charges of administration, the heir or devisee with the widow may, by deed, agree to an assignment of her dower.

Rev., s. 3087; Code, s. 2110; 1868-9, c. 93, s. 39.

9. Petition filed in superior court. If no such agreement be made, the widow may apply for assignment of dower by petition in the superior court, and, if she fail to make such application within three months after the death of her husband, any heir or devisee may file a petition reciting the facts that the widow is entitled to dower on certain lands and has not applied for it, and demand that her dower be assigned to her. In all cases the widow and all heirs and devisees and persons in possession of, or claiming estates in, the lands shall be made parties, and the court shall hear and pass upon the petition in like manner as in other cases of special proceedings.

Rev., s. 3088; Code, ss. 2111, 2112; 1891, c. 133; 1868-9, c. 93, ss. 40, 41.

10. Dower assigned by jurors summoned by sheriff. If dower be adjudged, it shall be assigned by a jury of three persons qualified to act as jurors, unless one of the parties demand a greater number, not exceeding twelve, who shall be summoned by the sheriff to meet on the premises or some part thereof, and being duly sworn by the sheriff or other person authorized to administer oaths, shall proceed to allot and set apart to the widow her dower in said premises according to law and make report of their proceedings under their hands within five days to the clerk of the superior court.

When the husband dies seized and possessed of lands in any other county than that in which dower is to be assigned, the clerk of the superior court of the county in which dower is to be assigned shall, upon application of the widow entitled to dower issue a commission to the sheriff of such other county requiring him to summons three or more persons, as may be asked in said application, qualified to act as jurors, to go upon the lands of said husband in the county of said sheriff and assess the value of the same after being duly sworn by the sheriff for that purpose, and report their assessment under their hands and seals through the sheriff, who shall countersign the same as their report to the clerk issuing said commission; and said report in the hands of the jury summoned to assign the dower shall be considered by them a true valuation of the lands

mentioned in the report, and said last-mentioned jury shall be deemed to have met on the lands thus assessed and shall assign the dower accordingly.

Rev., s. 3089; Code, s. 2113; 1893, c. 314; 1868-9, c. 93, s. 42.

11. Notice to parties of meeting of jury. The parties to such proceeding, or their attorneys, if within the county, shall be notified of the time and place of meeting of the jury appointed to assign dower, at least five days before the meeting.

Rev., s. 3090; Code, s. 2114; 1868-9, c. 93, s. 43.

NOTE. For allotment in proceeds of sale for partition, see Partition.

ART. 4. YEAR'S ALLOWANCE

Part 1. Nature of Allowance

12. Who entitled to allowance. Every widow of an intestate, or of a testator from whose will she has dissented, shall be entitled, besides her distributive share in her husband's personal estate, to an allowance therefrom, for the support of herself and her family for one year after his decease, and such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of her husband: Provided, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the murder of her husband, or of being accessory before the fact to the murder of her husband, she shall thereby lose all right to a year's provision, and to a distributive share from the personal property of her husband, and such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of such rights and estates.

Rev., s. 3091; Code, s. 2116; 1889, c. 499, s. 2; 1868-9, c. 93, s. 81; 1871-2, c. 193, s. 44; 1880, c. 42.

13. Amount allowed. Except in cases in which a larger allowance is hereinafter provided for, the value of a year's allowance shall be three hundred dollars, and one hundred dollars in addition thereto for every member of the family besides the widow.

Rev., s. 3092; Code, s. 2118; 1868-9, c. 93, s. 10.

14. Family defined. The family of the deceased, for the purposes of this chapter, shall be deemed to be, besides the widow, any child with which she may be pregnant at the death of her husband, every child, either of the deceased or of the widow, and every other person to whom the deceased or widow stood in place of a parent, who was residing with the deceased at his death, and whose age did not then exceed fifteen years.

Rev., s. 3093; Code, s. 2119; 1868-9, c. 93, s. 11; 1909, c. 93.

15. When children entitled to allowance. If a man die intestate leaving no widow surviving him, or if his widow die before her year's allowance is assigned her, then, there shall be assigned to every other member of the family, as in this chapter defined, the sum of one hundred dollars each, which shall be turned over immediately to the guardian and used by him in the care and education of the members of the family, respectively; and if there be no guardian, it shall be received and disbursed by the clerk of the superior court for their benefit.

Rev., s. 3094; 1889, c. 496.

16. From what property assigned. Such allowance shall be assigned from the crop, stock and provisions of the deceased in his possession, at the time of his death, if there be a sufficiency thereof in value; and if there be a deficiency, it shall be made up by the personal representative from the personal estate of the deceased.

Rev., s. 3095; Code, s. 2117; 1868-9, c. 93, s. 9.

Part 2. Assigned by Justice of the Peace

17. Duty of personal representative. It shall be the duty of every administrator, collector, or executor of a will, from which the widow of a testator has dissented, on application in writing, signed by the widow of such intestate or testator, at any time within one year after the decease of the husband, to assign to her a year's allowance 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. If there be no widow, or if she should die before the year's provision is assigned, the personal representative shall assign one hundred dollars to every other member of the family as defined in this chapter; but if there be no personal representative it shall be assigned by a justice of the peace, upon the application of the guardian or next friend of the children entitled.

Rev., s. 3096; Code, s. 2120; 1889, c. 496; 1868-9, c. 93, s. 12.

18. Value of property ascertained. The value of stock, crop and provisions assigned to the widow, as well as that of the articles consumed, shall be ascertained by a justice of the peace and two persons qualified to act as jurors of the county in which administration was granted or the will proved.

Rev., s. 3097; Code, s. 2121; 1868-9, c. 93, s. 13.

19. Procedure for assignment. Upon the application of the widow, the personal representative of the deceased shall apply to a justice of the peace of the township in which the deceased resided, or some adjoining township, to summon two persons qualified to act as jurors, who, having been sworn by the justice to act impartially, shall, with him, ascertain the number of the family of the deceased according to the definition given in this chapter, 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 this chapter: Provided, that in case there shall be no administration upon such estate, or in the event that the personal representative shall fail or refuse to apply to a justice of the peace as aforesaid for the space of ten days after the widow shall have filed with him the application as aforesaid, or if the widow shall be the personal representative, she may make the application, and it shall be the duty of the justice to proceed in the same manner as though the application had been made by the 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 such property, and the right to collect the debts thus allotted: Provided further, that where the widow and personal effects of the

deceased husband shall have been removed from the township or county where deceased husband resided before his death, the widow may apply to any justice of the peace of any township or county where such personal property is located, and it shall be the duty of such justice to allot and assign the year's allowance as if the husband had resided and died in that township.

Rev., s. 3098; Code, s. 2122; 1891, c. 13; 1899, c. 531; 1870-1, c. 263.

20. Report of commissioners. The commissioners shall make and sign three lists of the articles assigned to the widow, stating the quantity and value of each, the number in 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, within twenty days after the assignment to the superior court of the county, and the clerk shall file and record the same and enter judgment against the personal representative, to be paid when assets shall come into his hands, for any residue found in favor of the widow.

Rev., s. 3099; Code, s. 2123; 1868-9, c. 93, s. 15.

21. Right of appeal. The personal representative, or the widow, or infant by his guardian or next friend, or any creditor, legatee or distributee of the deceased, may appeal from the finding of the commissioners to the superior court of the county, and, within ten days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding ten days after the service of the citation.

Rev., s. 3100; Code, s. 2124; 1897, c. 442; 1868-9, c. 93, s. 16.

22. Hearing on appeal. At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided as other issues are directed to be. When the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the commissioners.

Rev., s. 3101; Code, s. 2125; 1868-9, c. 93, s. 17.

23. Personal representative entitled to credit. Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

Rev., s. 3102; Code, s. 2126; 1868-9, c. 93, s. 18.

24. When above allowance is in full. If the estate of a deceased be insolvent, or if his personal estate does not exceed two thousand dollars, the allowance for the year's support of his widow and her family shall not, in any case, exceed the value prescribed above; and the allowance made to her as above prescribed shall preclude her from any further allowance.

Rev., s. 3103; Code, s. 2127; 1868-9, c. 93, s. 19.

Part 3. Assigned in Superior Court

25. Widow may apply to superior court. It shall not, however, be obligatory on a widow to have her support assigned as above prescribed. Without applying to the personal representative of her deceased husband, she may, at any time within one year after the death of her husband, apply to the superior court of the county in which the will was proved, or administration granted, to have a year's support for herself and her family assigned to her.

Rev., s. 3104; Code, s. 2128; 1868-9, c. 93, s. 20.

26. Nature of proceeding; parties. 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 defendant, and the proceedings shall be as prescribed for special proceedings between parties.

Rev., s. 3105; Code, s. 2129; 1868-9, c. 93, s. 21.

27. What complaint must show. 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.

Rev., s. 3106; Code, s. 2130; 1868-9, c. 93, s. 22.

28. Judgment, and order for commissioners. 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.

Rev., s. 3107; Code, s. 2131; 1868-9, c. 93, s. 23.

29. Duty of commissioners; amount of allowance. The said commissioners shall be sworn by the justice and shall proceed as prescribed in this chapter, except that they may assign to the widow 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. This report shall be returned by the justice to the court.

Rev., s. 3108; Code, s. 2132; 1868-9, c. 93, s. 24.

30. Exceptions to the report. The personal representative, or any creditor, distributee or legatee of the deceased, within twenty days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within twenty, and not less than ten days after service of the notice, and answer the same, the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties.

Rev., s. 3109; Code, s. 2133; 1868-9, c. 93, s. 25.

31. Confirmation of report; execution. If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases.

Rev., s. 3110; Code, s. 2134; 1868-9, c. 93, s. 26.

CHAPTER 80

WILLS

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ART. 1. EXECUTION OF WILL

1. Infants incapable. No person shall be capable of disposing of real or personal estate by will, until he shall have attained the age of twenty-one years.

Rev., s. 3111; Code, s. 2137; R. C., c. 119, s. 2; 1811, c. 280.

2. Married woman capable. A married woman owning real or personal property may dispose of the same by will.

Rev., s. 3112; Code, s. 2138; R. C., c. 119, s. 3; 1844, c. 88, s. 8.

3. Local: Wills of married women in Gaston. All devises and bequests heretofore or hereafter made by any married woman to her husband shall be void, if such married woman has thereafter or shall hereafter become insane, and if a decree of divorce a vinculo matrimonii or a mensa et thoro has been obtained or shall hereafter be obtained by either party to such marriage: Provided, that this section shall apply only to Gaston County.

1908, c. 138.

4. Formal execution. No last will or testament shall be good or sufficient, in law, to convey or give any estate, real or personal, unless such last will shall have been written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least, no one of whom shall be interested in the devise or bequest of the estate, except as hereinafter provided; or, unless such last will and testament be found among the valuable papers and effects of any deceased person, or shall have been lodged in the hands of any person for safe-keeping, and the same shall be in the handwriting of such deceased person, with his name subscribed thereto, or inserted in some part of such will; and if such handwriting shall be proved, by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be, then such will shall be sufficient to give and convey real and personal estate.

Rev., s. 3113; Code, s. 2136; R. C., c. 119, s. 1; 1784, c. 204, s. 11; 1784, c. 225, s. 5; 1840, c. 62; 1846, c. 54.

5. Execution of power of appointment by will. No appointment, made by will in exercise of any power, shall be valid, unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Rev., s. 3114; Code, s. 2139; R. C., c. 119, s. 4; 1844, c. 88, s. 9.

ART. 2. REVOCATION OF WILL

6. Revocation by writing or by cancellation or destruction. No will or testament in writing, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same, by the testator himself, or in his presence and by his direction and consent; but all wills or testaments shall remain and continue in force, until the same be burnt, canceled, torn, or obliterated by the testator, or in his presence and by his consent and direction; or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the testator, signed by him, or some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least; or unless the same be altered or revoked by some other will or codicil in writing,

or other writing of the testator, all of which shall be in the handwriting of the testator, and his name subscribed thereto or inserted therein, and lodged by him with some person for safe-keeping, or left by him in some secure place, or among his valuable papers and effects, every part of which will or codicil or other writing shall be proved to be in the handwriting of the testator, by three witnesses at least.

Rev., s. 3115; Code, s. 2176; R. C., c. 119, s. 22; 1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62.

7. Revocation by marriage; exception. All wills shall be revoked by subsequent marriage of the maker except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his heirs, executor or administrator, or the person entitled as his next of kin, under the statute of distributions.

Rev., s. 3116; Code, s. 2177; R. C., c. 119, s. 23; 1844, c. 88, s. 10.

8. No revocation by altered circumstances. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

Rev., s. 3117; Code, s. 2178; R. C., c. 119, s. 24; 1844, c. 88, s. 11.

9. No revocation by subsequent conveyance. No conveyance or other act made or done subsequently to the execution of a will of, or relating to any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of, by will at the time of his death.

Rev., s. 3118; Code, s. 2179; R. C., c. 119, s. 25; 1844, c. 88, s. 2.

ART. 3. WITNESSES TO WILL

10. Executor competent witness. No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Rev., s. 3119; Code, s. 2146; R. C., c. 119, s. 9.

11. Beneficiary competent; interest rendered void. If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, estate, interest, legacy, or appointment of or affecting any real or personal estate shall be thereby given or made, such devise, estate, interest, legacy, or appointment shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person, or any person claiming under such person, or wife or husband, be void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof.

Rev., s. 3120; Code, s. 2147; R. C., c. 119, s. 10.

ART. 4. PROBATE OF WILL

12. Executor may apply for probate. Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the same admitted to probate.

Rev., s. 3122; Code, s. 2151; C. C. P., s. 439.

13. Executor failing, beneficiary may apply. If no executor apply to have the will proved within sixty days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may make such application, upon ten days notice thereof to the executor.

Rev., s. 3123; Code, s. 2152; C. C. P., s. 440.

14. Clerk may compel production of will. Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the state, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt.

Rev., s. 3124; Code, s. 2154; C. C. P., s. 442.

15. What shown on application. On application to the clerk of the superior court, he must ascertain by affidavit of the applicant—

1. That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

2. The value and nature of the testator's property, as near as can be ascertained.

3. The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of the parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known. Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate.

Rev., s. 3125; Code, s. 2153; C. C. P., s. 441.

16. Proof and examination in writing. Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office.

Rev., s. 3126; Code, s. 2149; C. C. P., s. 437.

17. Manner of probate. Wills and testaments must be admitted to probate only in the following manner:

1. In case of a written will, with witnesses, on the oath of at least two of the subscribing witnesses, if living; but when any one or more of the subscribing witnesses to such will are dead, or reside out of the state, or cannot after due diligence be found within the state, or are insane or otherwise incompetent to testify, then such proof may be taken of the handwriting, both of the testator and of the witness or witnesses so dead, absent, insane or incompetent, and also of such other circumstances as will satisfy the clerk of the superior court of the genuineness and the due execution of such will. In all cases where the testator

executed the will by making his mark, and where any one or more of the subscribing witnesses are dead or reside out of the state, or are insane or otherwise incompetent to testify, it shall not be necessary to prove the handwriting of the testator, but proof of the handwriting of the subscribing witness or witnesses so dead, absent, insane or incompetent shall be sufficient. The probate of all wills heretofore taken in compliance with the requirements of this section are hereby declared to be valid.

2. In case of a holograph will, on the oath of at least three credible witnesses, who state that they verily believe such will and every part thereof is in the handwriting of the person whose will it purports to be, and whose name must be subscribed thereto, or inserted in some part thereof. It must further appear on the oath of some one of the witnesses, or of some other credible person, that such will was found among the valuable papers and effects of the decedent, or was lodged in the hands of some person for safe-keeping.

3. In case of a nuncupative will, on the oath of at least two credible witnesses present at the making thereof, who state that they were specially required to bear witness thereto by the testator himself. It must also be proved that such nuncupative will was made in the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days, unless he died on a journey or from home. No nuncupative will shall be proved by the witnesses after six months from the making thereof, unless it was put in writing within ten days from such making; nor shall it be proved till a citation has been first issued or publication been made for six weeks in some newspaper published in the state, to call in the widow and next of kin to contest such will if they think proper.

Rev., s. 3127; Code, s. 2148; 1893, c. 269; 1901, c. 276; C. C. P., s. 435.

18. Probate conclusive until vacated. Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal.

Rev., s. 3128; Code, s. 2150; C. C. P., s. 438.

19. Wills filed in clerk's office. All original wills shall remain in the clerk's office, among the records of the court, where the same shall be proved, and to such wills any person may have access, as to the other records.

Rev., s. 3129; Code, s. 2173; R. C., c. 119, s. 19; 1777, c. 115, s. 59.

20. Certified copy of will proved in another state. When a will, made by a citizen of this state, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this state, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original.

Rev., s. 3130; Code, s. 2157; C. C. P., s. 445; R. C., c. 44, s. 9; 1802, c. 623.

21. Probate of will made out of the state. Whenever it is suggested to the clerk of the superior court, by affidavit or otherwise, that a will has been made

without the state, or that a will has been made in the state, and the witnesses thereto have moved out of the state, disposing of or charging land or other property within the state, the clerk of the superior court of the county where the property is situated may issue a commission to such person as he may select, authorizing the commissioner to take the examination of such witnesses as may be produced, touching the execution thereof, and upon return of such commission, with the examination, he may adjudge the will to be duly proved or otherwise, as in cases on the oral examination of witnesses before him, and if duly proved, such will shall be recorded.

Rev., s. 3131; Code, s. 2155; 1899, c. 55; C. C. P., s. 443.

22. Probate when witnesses are nonresident. Where one or more of the subscribing witnesses to the will of a testator, resident in this state, reside in another state, the examination of such witnesses may be had, taken and subscribed in the form of an affidavit, before a notary public residing in the county and state in which the witnesses reside; and the affidavits, so taken and subscribed, shall be transmitted by the notary public, under his hand and official seal, to the clerk of the court before whom the will has been filed for probate. If such affidavits are, upon examination by the clerk, found to establish the facts necessary to be established before the clerk to authorize the probate of the will, if the witnesses had appeared before him personally, then it shall be the duty of the clerk to order the will to probate, and record the will with the same effect as if the subscribing witnesses had appeared before him in person and been examined under oath.

1917, c. 183.

23. Probate when witnesses in another county. When a will is offered for probate in one county of this state and the witnesses reside in another county, the clerk of the court before whom such will is offered shall have power and authority to issue a subpoena for the witnesses requiring them to appear before him and prove the will; and the clerk shall likewise have power and authority to issue a commission to take the deposition of such witnesses when they reside more than seventy-five miles from the place where the will is to be probated, such deposition and commission to be returned and the clerk to adjudge the will to be duly proven. Also, when it shall be found as a fact upon affidavit or other proof, by the clerk of any county where a will is to be probated, that any witness to the will resides outside of the county, and seventy-five miles or less from the place where the will is to be probated, and that the witness is so infirm of body as to be unable to appear in person before the clerk to prove the will, then the clerk shall have the power and authority to issue a commission to take the deposition of the witness, the commission and deposition of the witness to be returned, and the clerk to adjudge the will to be duly proved thereon as if the witness had appeared in person before him.

Rev., s. 3132; 1899, c. 55; 1911, c. 13.

24. Certified copy of will of nonresident recorded. Whenever any will made by a citizen or subject of any other state or country is duly proved and allowed in such state or country according to the laws thereof, a copy or exemplification of such will, duly certified and authenticated by the clerk of the court in which such will has been proved and allowed, if within the United States, or by any ambas-

sador, minister, consul or commercial agent of the United States under his official seal when produced or exhibited before the clerk of the superior court of any county wherein any property of the testator may be, shall be allowed, filed and recorded in the same manner as if the original and not the copy had been produced, proved and allowed before such clerk. But when any will contains any devise or disposition of real estate in this state, such devise or disposition shall not have any validity or operation, unless the will is executed according to the laws of this state; and that fact must appear affirmatively in the certified probate or exemplification of the will; and if it does not so appear, the clerk before whom the copy is exhibited shall have power to issue a commission for taking proofs, touching the execution of the will, as prescribed in the preceding section; and the same may be adjudged duly proved, and shall be recorded as herein provided.

Rev., s. 3133; Code, s. 2156; 1885, c. 393; C. C. P., s. 444; 1883, c. 144.

25. Probates validated where proof taken by commission or another clerk. In all cases of the probate of any will heretofore made in common form before any clerk of the superior courts of this state, where the testimony of the subscribing witnesses has been taken in the state or out of it by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county of this state, and the will admitted to probate upon such testimony, the proceedings are validated.

Rev., s. 3134; 1899, c. 680.

26. Probates by deputy clerk validated in certain counties. All probates of wills heretofore made before a deputy clerk of the superior court, wherein no contest or suit is pending for the purpose of annulling the probate, shall be deemed to have been probated before the clerk of the superior court, and the acts of the deputy clerk in probating the same shall be deemed as effectual and valid in law as if done by the clerk in person. This section shall apply only to Burke and Scotland counties.

1907, c. 669.

27. Probates in another state before 1860 validated. In all cases where any will devises land in this state, and the original will was duly admitted to probate in some other state prior to the year one thousand eight hundred and sixty, and a certified copy of such will and the probate thereof has been admitted to probate and record in any county in this state, and it in any way appears from such recorded copy that there were two subscribing witnesses to such will, and its execution was proved by the examination of such witnesses when the original was admitted to probate, such will shall be held and considered, and is hereby declared to be, good and valid for the purpose of passing title to the lands devised thereby, situated in this state, as fully and completely as if the original will had been duly executed and admitted to probate and recorded in this state in accordance with the laws of this state: Provided, that this act shall in no way affect pending actions or suits or any vested rights.

1913, c. 93, s. 1.

28. Wills in Haywood. All wills recorded by the clerk of the superior court of Haywood County, under and by virtue of chapter eight of the laws of one thousand eight hundred and eighty-five, shall be deemed and held to have been

duly probated and recorded, subject to the right of any person interested to show by competent proof that said will has never been proved and recorded.

Rev., s. 1614; 1885, c. 8.

ART. 5. CAVEAT TO WILL

29. When and by whom caveat filed. At the time of application for probate of any will, and the probate thereof in common form, or at any time within seven years thereafter, any person entitled under such will, or interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will: Provided, that if any person entitled to file a caveat be within the age of twenty-one years, or a married woman, or insane, or imprisoned, then such person may file a caveat within three years after the removal of such disability.

Rev., s. 3135; Code, s. 2158; C. C. P., s. 446; 1907, c. 862.

30. Bond given and cause transferred to trial docket. Upon any caveator giving bond, with sufficient surety to be approved by the clerk, in the sum of two hundred dollars, payable to the propounder of the will, conditioned to pay all costs which may be adjudged against such caveator in the superior court, by reason of his failure to prosecute his suit with effect, or deposit the money or give a mortgage in lieu of such bond, or shall file affidavits and satisfy the clerk of his inability to give such bonds or secure such costs, the clerk shall transfer the cause to the superior court for trial; and he shall also forthwith issue a citation to all devisees, legatees or other parties in interest within the state, and cause publication to be made, for four weeks, in some newspaper printed in the state, for nonresidents to appear at the term of the superior court, to which the proceeding is transferred, and to make themselves proper parties to the proceeding, if they choose. At the term of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the persons so cited, either those who make themselves parties with the caveators, or whose interests appear to him antagonistic to that of the propounders of the will, and who shall appear to him to be able so to do, to file such bond within such time as he shall direct and before trial, and on failure to file such bond the judge shall dismiss the proceeding.

Rev., s. 3136; Code, s. 2159; 1899, c. 13; 1901, c. 748; C. C. P., s. 447; 1909, c. 74.

31. Affidavit of deceased witness as evidence. Whenever the subscribing witness to any will shall die, or be absent beyond the state, it shall be competent upon any issue of devisavit vel non, to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will.

Rev., s. 3121; 1899, c. 680, s. 2.

32. Caveat suspends proceedings under will. Where a caveat is entered and bond given, the clerk of the superior court shall forthwith issue an order to any personal representative, having the estate in charge, to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts, until a decision of the issue is had.

Rev., s. 3137; Code, s. 2160; C. C. P., s. 448.

ART. 6. CONSTRUCTION OF WILL

33. Devise presumed to be in fee. When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity.

Rev., s. 3138; Code, s. 2180; R. C., c. 119, s. 26; 1784, c. 204, s. 12.

34. Probate necessary to pass title; rights of innocent purchasers. No will shall be effectual to pass real or personal estate, unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof, against the heirs and devisees of the testator, whenever the probate thereof, under the like circumstances, would be conclusive against the next of kin and legatees of the testator: Provided, that the probate and registration of any will shall not affect the rights of innocent purchasers for value from the heirs at law of the testator when such purchase is made more than two years after the death of such testator, unless the will has been fraudulently withheld from probate.

Rev., s. 3139; Code, s. 2174; R. C., c. 119, s. 20; 1784, c. 225, s. 6; 1915, c. 219.

35. What property passes by will. Any testator, by his will duly executed, may devise, bequeath, or dispose of all real and personal estate, which he shall be entitled to at the time of his death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon his heirs at law, or upon his executor or administrator; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons, in whom the same may become vested, or whether he may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to, at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Rev., s. 3140; Code, s. 2140; R. C., c. 119, s. 5; 1844, c. 88, s. 1.

36. Will relates to death of testator. Every will shall be construed with reference to the real and personal estate comprised therein, to speak and take effect, as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Rev., s. 3141; Code, s. 2141; R. C., c. 119, s. 16; 1844, c. 88, s. 3.

37. Lapsed and void devises pass under residuary clause. Unless a contrary intention shall appear by the will such real estate or interest therein, as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or

otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

Rev., s. 3142; Code, s. 2142; R. C., c. 119, s. 7; 1844, c. 88, s. 4.

38. General gift by will an execution of power of appointment. A general devise of the real estate of the testator, or of his real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Rev., s. 3143; Code, s. 2143; R. C., c. 119, s. 8; 1844, c. 88, s. 5.

39. Gifts to children dying before testator pass to their issue. When any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person as shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect and vest a title to such estate in the issue surviving, if there be any, in the same manner, proportions and estates as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Rev., s. 3144; Code, s. 2144; 1868-9, c. 113, s. 61.

40. After-born children share in testator's estate. Children born after the making of the parent's will, and whose parent shall die without making any provision for them, shall be entitled to such share and proportion of the parent's estate as if he or she had died intestate, and the rights of any such after-born child shall be a lien on every part of the parent's estate, until his several share thereof is set apart in the manner prescribed in this chapter.

Rev., s. 3145; Code, s. 2145; 1868-9, c. 113, s. 62.

41. Administrator c. t. a. must observe will. In all cases where letters of administration with the will annexed are granted, the will of the testator must be observed and performed by the administrator with the will annexed, both in respect to real and personal property, and an administrator with the will annexed has all the rights and powers, and is subject to the same duties as if he had been named executor in the will.

Rev., s. 3146; Code, s. 2168; C. C. P., s. 455.

NOTE. For matters relating to the administration of the estate, see chapter, Administration.

CHAPTER 81

CRIMES AND PUNISHMENTS

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- 197. Refusal of witness to appear or to testify in investigations of lynchings.
- 198. Resisting officers.
- 199. Failing to aid police officers.
- 200. Intimidating or interfering with jurors and witnesses.
- 201. Failing to attend as witness before legislative committees.

ART. 28. MISCONDUCT IN PUBLIC OFFICE.

- 202. Buying and selling offices.
- 203. Acting as officer before qualifying as such.
- 204. Willfully failing to discharge duties.
- 205. Failing to make reports and discharge other duties.
- 206. Swearing falsely to official reports.
- 207. Making of false report by bank examiners; accepting bribes.
- 208. Director of public trust contracting for his own benefit.
- 209. Speculating in claims against towns, cities and the state.
- 210. Acting as agent for those furnishing supplies for schools and other state institutions.
- 211. Buying school supplies from interested officer.
- 212. Selling bonds without giving proper notice.
- 213. Allowing prisoners to escape; burden of proof.
- 214. Solicitor to prosecute officer for escape.
- 215. Disposing of public documents or refusing to deliver them over to successor.
- 216. Failing to return process or making false return.
- 217. Failing to surrender tax list for inspection and correction.
- 218. Failing to file report of fines.
- 219. Failure of ex-justice of the peace to turn over books and papers.

ART. 29. MISCONDUCT IN PRIVATE OFFICE.

- 220. Failure of certain railroad officers to account with successors.
- 221. Malfeasance of bank officers and agents.
- 222. Making false entries in banking accounts; misrepresenting assets and liabilities of banks.

ART. 30. PRISON BREACH AND PRISONERS.

- 223. Escape of hired prisoners from custody.
- 224. Prison breach and escape.
- 225. Permitting escape of or maltreating hired convicts.
- 226. Conveying messages and weapons to convicts and other prisoners.

- 227. Injury to prisoner by jailer.
- 228. Confining prisoners in improper apartments.
- 229. Requiring female prisoners to work in chain-gang.

SUBCHAPTER 10. OFFENSES AGAINST THE PUBLIC PEACE.

ART. 31. OFFENSES AGAINST THE PUBLIC PEACE.

- 230. Carrying concealed weapons.
- 231. Sending, accepting or bearing challenges to fight duels.
- 232. Engaging in and betting on prize fights.
- 233. Disturbing picnics, entertainments and other meetings.
- 234. Disturbing schools and scientific and temperance meetings; injuring property of schools and temperance societies.
- 235. Disturbing religious congregations.
- 236. Detectives going armed in a body.

SUBCHAPTER 11. OFFENSES AGAINST THE PUBLIC SAFETY.

ART. 32. OFFENSES AGAINST THE PUBLIC SAFETY.

- 237. Maliciously injuring property of railroads and other carriers; causing death or other physical injury thereby.
- 238. Injuring without malice property of railroads and other carriers; causing death or other physical injury thereby.
- 239. Shooting or throwing at trains or passengers.
- 240. Operating trains and street cars while intoxicated.
- 241. Displaying false lights on seashore.
- 242. Local: Building unguarded barbed-wire fences along public highways.
- 243. Exploding dynamite cartridges and bombs.
- 244. Storing explosives near causeway on Eagle's Island.
- 245. Keeping for sale or selling explosives without a license.
- 246. Failing to enclose marl beds.

SUBCHAPTER 12. GENERAL POLICE REGULATIONS.

ART. 33. LOTTERIES AND GAMING.

- 247. Advertising lotteries.
- 248. Dealing in lotteries.
- 249. Selling lottery tickets and acting as agent for lotteries.
- 250. Gambling.
- 251. Allowing gambling in houses of public entertainment; duty of police officers; penalty.
- 252. Gambling with faro-banks and tables.
- 253. Keeping gaming tables or betting thereat.
- 254. Allowing gaming tables on premises.
- 255. Gaming tables to be destroyed by justices and police officers.
- 256. Persons suspected of knowing of gambling places to be summoned as witnesses; immunity of witnesses from prosecution.
- 257. Evidence of witnesses not to be used against them.
- 258. Property exhibited by gamblers to be seized; disposition of same.
- 259. Opposing destruction of gaming tables and seizure of property.

ART. 34. PROTECTION OF MINORS.

- 260. Selling cigarettes to minors.
- 261. Aiding minors in procuring cigarettes; duty of police officers.
- 262. Selling or giving weapons to minors.
- 263. Permitting young children to use dangerous firearms.
- 264. Permitting minors to enter barrooms, billiard rooms and bowling alleys.
- 265. Exposing children to fire.
- 266. Marrying female under fourteen years old.
- 267. Separating child under six months old from mother.
- 268. Failing to pay minors for doing certain work.

ART. 35. PROTECTION OF THE FAMILY.

- 269. Abandonment of family by husband.
- 270. Evidence that abandonment was willful.
- 271. Order of support from husband's property or earnings.
- 272. Failure of husband to provide adequate support for family.

ART. 36. INTOXICATING LIQUORS.

- 273. Adulteration of liquors.
- 274. Selling recipe for adulterating liquors.
- 275. Manufacturing or selling poisonous liquors.
- 276. Selling or giving away liquor near political speaking.
- 277. Giving intoxicants to unmarried minors under seventeen years old.
- 278. Selling or giving intoxicants to unmarried minors by dealers; liability for exemplary damages.

ART. 37. PUBLIC DRUNKENNESS.

- 279. Public drinking on railway passenger cars; copy of section to be posted.
- 280. Local: Public drunkenness.

ART. 38. VAGRANTS AND TRAMPS.

- 281. Persons classed as vagrants.
- 282. Police officers to furnish list of disorderly houses; inmates competent and compellable to testify.
- 283. Tramp defined and punishment provided; certain persons excepted.
- 284. Trespassing and the carrying of dangerous weapons by tramps.
- 285. Malicious injuries by tramps to persons and property.
- 286. Arrest of tramps by persons who are not officers.

ART. 39. REGULATION OF SALES.

- 287. Selling or offering for sale meat of diseased animals.
- 288. Unauthorized dealing in railroad tickets.
- 289. Sale of cotton at night under certain conditions.
- 290. Local: Sale of corn at night in less than five-bushel lots.

ART. 40. REGULATION OF RELATION OF EMPLOYER AND EMPLOYEE.

- 291. Enticing servant to leave master.
- 292. Local: Hiring servant who has unlawfully left employer.
- 293. Enticing seamen from vessel.
- 294. Secreting or harboring deserting seamen.
- 295. Search warrants for deserting seamen.
- 296. Appeals in cases of deserting seamen regulated.
- 297. Influencing agents and servants in violating duties owed employers.
- 298. Witness required to give self-criminating evidence; no suit or prosecution to be founded thereon.
- 299. Blacklisting employees.
- 300. Conspiring to blacklist employees.
- 301. Issuing nontransferable script to laborers.

ART. 41. REGULATION OF RELATION OF LANDLORD AND TENANT.

- 302. Local: Violation of certain contracts between landlord and tenant.
- 303. Local: Tenant neglecting crop; landlord failing to make advances; harboring or employing delinquent tenant.
- 304. Local: Tenant violating contract not to rent land from others.

ART. 42. CRUELTY TO ANIMALS.

- 305. Cruelty to animals; construction of section.
- 306. Instigating or promoting cruelty to animals.
- 307. Bear-baiting, cock-fighting and similar amusements.
- 308. Conveying animals in a cruel manner.

ART. 43. PROTECTION OF ANIMALS AGAINST CONTAGIOUS DISEASES.

- 309. Selling, using or exposing diseased animals.
- 310. Animals affected with glanders to be killed.
- 311. Hogs affected with cholera to be segregated and confined.
- 312. Shipping hogs from cholera-infected territory.
- 313. Distributing, selling or using hog-cholera virus without permission.

ART. 44. PROTECTION OF LIVESTOCK RUNNING AT LARGE.

- 314. Failing to show hide and ears of livestock killed while running at large.
- 315. Molesting or injuring livestock.
- 316. Altering the brands of and misbranding another's livestock.
- 317. Placing poisonous shrubs and vegetables in public places.

ART. 45. PROTECTION OF LETTERS, TELEGRAMS AND TELEPHONE MESSAGES.

- 318. Wrongfully obtaining or divulging knowledge of telephonic messages.
- 319. Violating privacy of telegraphic messages; failure to transmit and deliver same promptly.
- 320. Unauthorized opening, reading or publishing of sealed letters and telegrams.

ART. 46. MISCELLANEOUS POLICE REGULATIONS.

- 321. Desecration of state and national flag.
- 322. Injuring notices and advertisements.
- 323. Defacing or destroying public notices and advertisements.
- 324. Erecting signals and notices in imitation of those of railroads.
- 325. Furnishing intoxicants, poisons or firearms to inmates of charitable and penal institutions.
- 326. Usurious loans on household and kitchen furniture.
- 327. Digging ginseng on another's land during certain months.
- 328. Shooting rifles across Currituck Sound and waters of Dare County.

SUBCHAPTER 1. GENERAL PROVISIONS

ART. 1. FELONIES AND MISDEMEANORS

1. Felonies and misdemeanors defined. A felony is a crime which is or may be punishable by either death or imprisonment in the state's prison. Any other crime is a misdemeanor.

Rev., s. 3291; 1891, c. 205, s. 1.

2. Punishment of felonies. Every person who shall be convicted of any felony for which no specific punishment is prescribed by statute, shall be imprisoned in the county jail or state prison not exceeding two years, or be fined, in the discretion of the court, or if the offense be infamous, the person offending shall be imprisoned in the county jail or state prison not less than four months nor more than ten years, or be fined.

Rev., s. 3292; Code, s. 1096; R. C., c. 34, s. 27.

3. Punishment of misdemeanors. All misdemeanors, where a specific punishment is not prescribed, shall be punished as misdemeanors at common law; but if the offense be infamous, or done in secrecy and malice, or with deceit and intent to defraud, the offender shall be punished by imprisonment in the county jail for not less than four months nor more than ten years, or shall be fined.

Rev., s. 3293; Code, s. 1097; R. C., c. 34, s. 120.

4. Violation of town ordinance misdemeanor; punishment. If any person shall violate an ordinance of a city or town, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

Rev., s. 3702; Code, s. 3820; 1871-2, c. 195, s. 2.

ART. 2. PRINCIPALS AND ACCESSORIES

5. Accessories before the fact; trial and punishment. If any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute, the person so counseling, procuring or commanding shall be guilty of felony, and may be

indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished. The offense of the person so counseling, procuring or commanding, howsoever indicted, may be inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offense had been committed at the same place as the principal felony or where the principal felony is triable, although such offense may have been committed at any place within or without the limits of the state. In case the principal felony shall have been committed within the body of any county, and the offense of counseling, procuring or commanding shall have been committed within the body of any other county, the last mentioned offense may be inquired of, tried, determined, and punished in either of such counties: Provided, that no person who shall be once duly tried for any such offense, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offense.

Rev., s. 3287; Code, s. 977; R. C., c. 34, s. 53; 1797, c. 485, s. 1; 1852, c. 58.

6. Punishment of accessories before the fact. Any person who shall be convicted as an accessory before the fact in either of the crimes of murder, arson, burglary or rape, shall be imprisoned for life in the state's prison. An accessory before the fact to the stealing of any horse, mare, gelding or mule, on being duly convicted thereof, shall be imprisoned in the state's prison for not less than five nor more than twenty years, in the discretion of the court. Every accessory before the fact in any other felony shall be punished by imprisonment in the state prison or county jail for not more than ten years, or may be fined in the discretion of the court.

Rev., s. 3290; Code, s. 980; 1868-9, c. 31, s. 2; 1874-5, c. 212.

7. Accessories after the fact; trial and punishment. If any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute made, or to be made, such person shall be guilty of a felony, and may be indicted and convicted together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted for such felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years, and may also be fined in the discretion of the court. The offense of such person may be inquired of, tried, determined and punished by any court which shall have jurisdiction of the principal felon, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed without the limits of the state; and in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other county, the offense of

such person guilty of a felony as aforesaid may be inquired of, tried, determined, and punished in either of said counties: Provided, that no person who shall be once duly tried for such felony shall be again indicted or tried for the same offense.

Rev., s. 3289; Code, s. 978; R. C., c. 34. s. 54; 1797, c. 485, s. 1; 1852, c. 58.

SUBCHAPTER 2. OFFENSES AGAINST THE STATE

ART. 3. REBELLION

8. Rebellion against the state. If any person shall incite, set on foot, assist or engage in a rebellion or insurrection against the authority of the state of North Carolina or the laws thereof, or shall give aid or comfort thereto, every person so offending in any of the ways aforesaid shall be guilty of a felony, and, shall be punished by imprisonment in the state's prison for not more than fifteen years and by a fine of not more than ten thousand dollars.

Rev., s. 3437; Code, s. 1106; 1868, c. 60, s. 2; 1861, c. 18; 1866, c. 64; Const., Art. IV, s. 5.

9. Conspiring to rebel against the state. If two or more persons shall conspire together to overthrow or put down, or to destroy by force, the government of North Carolina, or to levy war against the government of the state, or to oppose by force the authority of such government, or by force or threats to intimidate, or to prevent, hinder or delay the execution of any law of the state, or by force or fraud to seize or take possession of any firearms or other property of the state, against the will or contrary to the authority of such state, every person so offending in any of the ways aforesaid shall be guilty of a felony and shall be imprisoned not more than ten years in the state's prison and be fined not exceeding five thousand dollars.

Rev., s. 3438; Code, s. 1107; 1868, c. 60, s. 1.

10. Secret political and military organizations forbidden. If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character; or shall form or organize or combine and agree with any other person or persons to form or organize any such organization; or as a member of any secret political or military party or organization shall use, or agree to use, any certain signs or grips or passwords, or any disguise of the person or voice, or any disguise whatsoever for the advancement of its object, and shall take or administer any extra-judicial oath or other secret, solemn pledge, or any like secret means; or if any two or more persons, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or circumventing the laws, shall secretly assemble, combine or agree together, and the more effectually to accomplish such purposes, or any of them, shall use any certain signs, or grips, or passwords, or any disguise of the person or voice, or other disguise whatsoever, or shall take or administer any extra-judicial oath or other secret, solemn pledge; or if any persons shall band together and assemble to muster, drill or practice any military evolutions except by virtue of the authority of an

officer recognized by law, or of an instructor in institutions or schools in which such evolutions form a part of the course of instruction; or if any person shall knowingly permit any of the acts and things herein forbidden to be had, done or performed on his premises, or on any premises under his control; or if any person being a member of any such secret political or military organization shall not at once abandon the same and separate himself entirely therefrom, every person so offending shall be guilty of a misdemeanor, and shall be fined not less than ten nor more than two hundred dollars, or be imprisoned, or both, at the discretion of the court.

Rev., s. 3439; Code, s. 1095; 1870-1, c. 133; 1868-9, c. 267; 1871-2, c. 143.

ART. 4. COUNTERFEITING AND ISSUING MONETARY SUBSTITUTES

11. Counterfeiting coin and uttering coin that is counterfeit. If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting the resemblance or similitude or likeness of a Spanish milled dollar, or any coin of gold or silver which is in common use and received in the discharge of contracts by the citizens of the state; or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or bring into the state from any other place with intent to pass, utter, publish or sell as true, any such false, forged or counterfeited coin, knowing the same to be false, forged or counterfeited, with intent to defraud any person whatsoever, every person so offending shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years.

Rev., s. 3422; Code, s. 1035; R. C., c. 34, s. 64; 1811, c. 814, s. 3.

12. Possessing tools for counterfeiting. If any person shall have in his possession any instrument for the purpose of making any counterfeit similitude or likeness of a Spanish milled dollar, or other coin made of gold or silver which is in common use and received in discharge of contracts by the citizens of the state and shall be duly convicted thereof, the person so offending shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years, or be fined not more than five hundred dollars.

Rev., s. 3423; Code, s. 1036; R. C., c. 34, s. 65; 1811, c. 814, s. 4.

13. Issuing substitutes for money without authority. If any person or corporation unless the same be expressly allowed by law, shall issue any bill, due bill, order, ticket, certificate of deposit, promissory note or obligation, or any other kind of security, whatever may be its form or name, with the intent that the same shall circulate or pass as the representative of, or as a substitute for, money, he shall forfeit and pay for each offense the sum of fifty dollars; and if the offender be a corporation, it shall in addition forfeit its charter. Every person or corporation offending against this section, or aiding or assisting therein, shall be guilty of a misdemeanor.

Rev., s. 3711; Code, s. 2493; 1895, c. 127; R. C., c. 36, s. 5.

14. Receiving or passing unauthorized substitutes for money. If any person or corporation shall pass or receive, as the representative of, or as the substitute

for, money, any bill, check, certificate, promissory note, or other security of the kind mentioned in the preceding section, whether the same be issued within or without the state, such person or corporation, and the officers and agents of such corporation aiding therein, who shall offend against this section shall for every such offense forfeit and pay five dollars, and shall be guilty of a misdemeanor.

Rev., s. 3712; Code, s. 2494; 1895, c. 127; R. C., c. 36, s. 6.

SUBCHAPTER 3. OFFENSES AGAINST THE ELECTIVE FRANCHISE

ART. 5. CORRUPT PRACTICES AT ELECTIONS

15. Certain acts declared misdemeanors. Any person who shall in connection with any primary, special, general or other election in this state, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful—

1. *To fail as election officer to perform duties.* For any person to fail as an officer or as a judge or registrar of election, or as a member of any election or canvassing board, to prepare the books, tickets and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to make the returns, or to perform any other duty within the time and in the manner required by law.

Rev., s. 3396; 1901, c. 89, s. 46; 1913, c. 164, s. 1.

2. *To act as election officer after removal.* For any person to continue, or attempt, to act as a judge or registrar of election, or as a member of any election board, after having been legally removed from such position, and after having been given notice of such removal.

Rev., s. 3399; 1901, c. 89, s. 10; 1913, c. 164, s. 1.

3. *To interfere with elections and the duties of election officers.* For any person to break up, or by force or violence to stay or interfere with, the holding of any election, to interfere with the possession of any ballot box, election book, ticket or return sheet by those entitled to the possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any election or canvassing board.

Rev., s. 3385; 1901, c. 89, s. 51; 1913, c. 164, s. 1.

4. *To disturb election officers in the performance of their duties.* For any person to be guilty of boisterous conduct so as to disturb any member of any election or canvassing board, or any judge or registrar of elections, in the performance of his duties as imposed by law.

Rev., s. 3385; 1901, c. 89, s. 51; 1913, c. 164, s. 1.

5. *To bet on elections.* For any person to bet or wager any money or other thing of value on any election.

Rev., s. 3384; 1901, c. 89, s. 55; 1913, c. 164, s. 1.

6. *To intimidate or oppress voters.* For any person to directly or indirectly discharge or threaten to discharge from employment or otherwise intimidate or oppress any legally qualified voter on account of any vote such voter may cast, or consider casting, or intend to cast or not to cast, or which he may have failed to cast.

Rev., s. 3387; 1901, c. 89, s. 53; 1913, c. 164, s. 1.

7. *To make contributions toward campaigns without properly reporting same.* For any person to spend or contribute directly or indirectly any money or other thing of value to aid in the campaign or election of any candidate for any office in a primary or in a general election, unless the same be reported immediately to such candidate, to the end that it may be included by him in the reports required of him by law, or unless such contribution be reported to the campaign committee of such candidate within the meaning of "campaign committee" as herein defined. The term "campaign committee," as used in this subsection shall embrace only such committees as are designated by candidates for office before primary elections and reported to the secretary of state at least thirty days before any such primary election by those who are candidates for any office embracing a greater territory than a county, and reported to the clerk of the superior court in the county of the candidate at least thirty days prior to the primary election by those who are candidates for any office to be voted for only by the electors in a particular county or subdivision thereof. It shall be the duty of each candidate to receive from such campaign committee, and of each campaign committee of each candidate to give to the candidate appointing such committee, all the information they may have, and for such campaign committee and candidate to embrace such information in the reports required of them by law, and it shall be unlawful for the candidate and the members of his campaign committee to fail to do so.

1913, c. 164, s. 1.

8. *To fail before primary elections to report campaign receipts and disbursements.* For any person who is a candidate or member of the campaign committee to fail to report under oath, within the time required by law for the report from such candidate, the amount of money received in connection with or in aid of his campaign, the sources thereof, and for what purposes it has been applied. The report to be made by the campaign committee of any candidate before the primary shall be made in duplicate, one copy thereof to be filed with the candidate and one copy to be filed with the officer to whom such candidate is required to report, and shall be made within the time required for a report from such candidate.

1913, c. 164, s. 1.

9. *To expend more than a certain sum for campaign purposes before primary elections.* For any person who is a candidate for any political office before a primary to expend or knowingly assent to or permit the expenditure of more than fifty per cent of what the annual salary of such person will be if elected to the office for which he is a candidate, except that a candidate for governor and a candidate for the United States senate may spend or allow others to spend a total amount, which shall not be greater than the annual salary would be

if the candidate were elected to such office, and such candidate may lawfully pay in addition his transportation expenses and board and lodging bills while campaigning for such office.

1913, c. 164, s. 1.

10. To fail before general elections to report campaign receipts and disbursements. For any person who is a member of any executive, managing or other committee of any political party for any county or subdivision of any county in the state, to fail to report to the clerk of the court of such county, not more than fifteen nor less than ten days before any general election, the amount of money received by such committee for campaign purposes, and within twenty days after the election to make a similar report of money received and from whom, and the purposes for which it was used such report to be made under oath by the secretary or chairman of the committee, who has full knowledge of all the details of the committee's affairs; or for any chairman or secretary of such committee of a political party having a territory embracing more than one county to fail to make, within the time required by law, similar reports to the secretary of state.

1913, c. 164, s. 1.

11. To publish unsigned derogatory charges concerning candidates. For any person to publish in any newspaper or pamphlet, or otherwise, any charge derogatory to any candidate, or calculated to affect the candidate's chances of election to office, unless such publication be signed by the party giving publicity to and being responsible for such charge.

1913, c. 164, s. 1.

12. To circulate false derogatory charges concerning candidates. For any person to publish or cause to be circulated derogatory reports with reference to any candidate, known by the person publishing or circulating such report to be false, when such report is calculated or intended to affect the chances of such candidate for such office.

1913, c. 164, s. 1.

13. To promise political appointments in securing political support. For any person to give or promise, in return for political support or influence, any political appointment or support for political office.

1913, c. 164, s. 1.

16. Certain acts declared felonies. Any person who shall in connection with any primary, special, general or other election in this state do any of the acts and things declared in this section to be unlawful, shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison not less than four months, or fined not less than one thousand dollars, or both, in the discretion of the court. It shall be unlawful—

1. To register in more than one precinct or impersonate other voters. For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct, or fraudulently to cause or procure his name, or that of any other person, to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such

person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter.

Rev., s. 3395; 1901, c. 89, s. 70; 1913, c. 164, s. 2.

2. To buy and sell votes. For any person to give or promise or request or accept at any time before or after any such election any money, property or other thing of value whatever, in return for the vote of any elector.

Rev., s. 3386; 1901, c. 89, s. 54; 1913, c. 164, s. 2.

3. To make fraudulent entries and returns. For any person who is an election officer, a member of a canvassing or election board or other officer charged with any duty with respect to any election, knowingly to make any false or fraudulent entry on any election book, or any false or fraudulent return, or knowingly to make, or cause to be made, any false statement on any ticket, or to do any fraudulent act, or knowingly and fraudulently to omit to do any act or make any report legally required of such person.

1913, c. 164, s. 2.

4. To swear falsely in connection with elections. For any person knowingly to swear falsely with respect to any matter pertaining to any such election.

1913, c. 164, s. 2.

5. To qualify any one fraudulently as an elector. For any person falsely to make or present any exemption from poll tax, tax receipt, certificate or other paper to qualify any person fraudulently as an elector, or to attempt thereby to secure to any person the privilege of voting.

Rev., s. 3401; 1901, c. 89, s. 13; 1913, c. 164, s. 2.

17. Persons pardoned compellable to testify. Any person subpoenaed by the state to testify relative to any offense arising under the provisions of the two preceding sections shall be required to testify, but such person shall be immune from prosecution and shall be pardoned for any violation of law about which such person is so required to testify.

1913, c. 164, s. 3.

ART. 6. OTHER OFFENSES AGAINST THE ELECTIVE FRANCHISE

18. Disposing of liquor at or near polling places. If any person shall give away or shall sell any intoxicating liquor, 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, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred nor more than one thousand dollars.

Rev., s. 3389; 1901, c. 89, s. 76; 1905, c. 531.

19. Voting of felons at elections. If any person convicted of a crime which excludes him from the right of suffrage shall vote at an election, without having been restored to the right of citizenship, he shall be guilty of a felony and punished by a fine not exceeding one thousand dollars, or imprisoned in the state's prison not exceeding two years, or both.

Rev., s. 3388; 1901, c. 89, s. 71.

20. Corrupt taking of oath by voter. If any person shall corruptly take the oath prescribed for voters, he shall be guilty of perjury, and shall be fined not less than five hundred dollars nor more than one thousand dollars, and shall be imprisoned in the state's prison not less than two nor more than five years.

Rev., s. 3390; 1901, c. 89, s. 49.

21. False oath of voter in registering. If any person shall knowingly register under the permanent registration law who is not qualified within the meaning of that law and article six, section four, of the constitution, or if any person shall knowingly take any false oath in registering under the same, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than five years.

Rev., s. 3392; 1901, c. 550, s. 12.

22. Voting illegally at elections; fraudulent entries by registrars and clerks. If any person shall, with intent to commit a fraud, register or vote at more than one box or more than one time, or shall induce another to do so, or if any person shall illegally vote at any election, he shall be guilty of a felony and shall be imprisoned in the state's prison 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. If any registrar of voters, or any clerk or copyist, shall make any entry or copy with intent to commit a fraud, he shall be guilty of a like offense.

Rev., s. 3394; 1901, c. 89, s. 48.

23. Willful failure of returning officer to discharge duty. If any chairman of the county board of elections, or other returning officer whatever, shall willfully, or of malice, 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, representatives in congress, justices of the supreme court, judges of the superior court, solicitors, electors for president and vice president of the United States or other officers, the person so offending shall be guilty of a felony, and 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.

Rev., s. 3391; 1901, c. 89, s. 47.

24. Willful failure of registration officer to discharge duty. If any officer charged with any duty under the permanent registration law willfully fails and neglects to perform the same, he shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and be fined not more than one thousand dollars or imprisoned not more than five years.

Rev., s. 3393; 1901, c. 550, s. 11.

24a. Making false returns or tampering with poll books. If any person shall make, certify, deliver or transmit a false return of an election held in this state, or make any erasure or alteration in the poll books, he shall be guilty of a felony and shall be imprisoned in the state's prison not less than one year, and shall, in addition, forfeit and pay five hundred dollars, one-half to the use of the person who shall sue for the same, and the other half to the use of the state.

Rev., s. 3397; 1901, c. 89, s. 83.

25. Refusing to furnish copy of election returns. If any register of deeds or clerk of the superior court shall refuse to make and give to any person a duly certified copy of the returns of any election, or of a tabulated statement of any election, the returns of which are by law deposited in his office, upon the tender of the fees therefor, he shall be guilty of a misdemeanor, and upon conviction shall be dismissed from office and imprisoned for one year.

Rev., s. 3398; 1901, c. 89, s. 83.

26. Failing to furnish poll-tax list. If any sheriff or tax collector shall fail, between the first day of May and the tenth day of May of any year in which a general election occurs, to certify to the clerk of the superior court of his county a list of all persons who have paid their poll tax for the previous year, he shall be guilty of a misdemeanor.

Rev., s. 3400; 1901, c. 89, s. 13.

27. Failing to give or falsely dating poll-tax receipt. If any tax collector or sheriff shall willfully fail to give a tax receipt to any person paying his poll tax, or shall falsely date any tax receipt or duplicate thereof, he shall be guilty of a misdemeanor, and shall be punished in the discretion of the court.

Rev., s. 3402; 1901, c. 89, s. 13.

28. Using funds of insurance companies for political purposes. No insurance company or association, including fraternal beneficiary associations, doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars. Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The insurance commissioner may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding.

1907, c. 121.

SUBCHAPTER 4. OFFENSES AGAINST THE PERSON

ART. 7. HOMICIDE

29. Murder in the first and second degree defined; punishment. A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death. All other kinds of murder shall be deemed murder in the second degree, and shall be punished with imprisonment of not less than two nor more than thirty years in the state prison.

Rev., s. 3631; 1893, c. 85; 1893, c. 281.

30. Punishment for manslaughter. If any person shall commit the crime of manslaughter he shall be punished by imprisonment in the county jail or state prison for not less than four months nor more than twenty years.

Rev., s. 3632; Code, s. 1055; 1879, c. 255; R. C., c. 34, s. 24; 4 Hen. VII, c. 13; 1816, c. 918.

31. Punishment for second offense of manslaughter. If any person, having been convicted of the crime of manslaughter and sentenced thereon, shall be convicted of a second crime of the like nature, he shall be imprisoned in the state prison not less than five nor more than sixty years; and in every such case of conviction for such second offense, the prior conviction of the same person and sentence thereon may be shown to the court.

Rev., s. 3633; Code, s. 1056; R. C., c. 34, s. 25.

32. Killing adversary in duel; aiders and abettors declared accessories. If any person fight a duel in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction thereof, shall suffer death; and all their aiders or abettors shall be considered accessories before the fact.

Rev., s. 3629; Code, s. 1013; R. C., c. 34, s. 3; 1802, c. 608, s. 2.

NOTE. For the offense of sending, accepting or bearing a challenge to fight a duel, see s. 231 of this chapter.

ART. 8. RAPE AND KINDRED OFFENSES

33. Punishment for rape. Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death.

Rev., s. 3637; Code, s. 1101; R. C., c. 34, s. 5; 18 Eliz., c. 7; 1868-9, c. 167, s. 2; 1917, c. 29.

34. Punishment for assault with intent to commit rape. Every person convicted of an assault with intent to commit a rape upon the body of any female, shall be imprisoned in the state's prison not less than one nor more than fifteen years.

Rev., s. 3638; Code, s. 1102; 1868-9, c. 167, s. 3; R. C., c. 107, s. 44; 1823, c. 1229; 1917, c. 162, s. 1.

35. Emission not necessary to constitute rape and buggery. It shall not be necessary upon the trial of any indictment for the offenses of rape, carnally knowing and abusing any female child under twelve years old, and buggery, to prove the actual emission of seed in order to constitute the offense, but the offense shall be completed upon proof of penetration only.

Rev., s. 3639; Code, s. 1105; 1860-1, c. 30; 1917, c. 29.

36. Obtaining carnal knowledge of married woman by personating husband. If any person shall have carnal knowledge of any married woman by fraud in personating her husband, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison at hard labor for not less than ten nor more than twenty years.

Rev., s. 3624; Code, s. 1103; 1881, c. 89, s. 1.

37. Attempted carnal knowledge of married woman by personating husband. Every person convicted 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 state's prison at hard labor for not less than five nor more than fifteen years.

Rev., s. 3625; Code, s. 1104; 1881, c. 89, s. 2.

38. Obtaining carnal knowledge of virtuous girls between twelve and fourteen years old. If any person shall unlawfully carnally know or abuse any female child over twelve and under fourteen years old, who has never before had sexual intercourse with any person, he shall be guilty of a felony and shall be fined or imprisoned in the state's prison, in the discretion of the court.

Rev., s. 3348; 1895, c. 295; 1917, c. 29.

ART. 9. ASSAULTS

39. Malicious castration. If any person, of malice aforethought, shall unlawfully castrate any other person, or cut off, maim or disfigure any of the privy members of any person, with intent to murder, maim, disfigure, disable or render impotent such person, the person so offending shall suffer imprisonment in the state's prison for not less than five nor more than sixty years.

Rev., s. 3627; Code, s. 999; R. C., c. 34, s. 4; 1831, c. 40, s. 1; 1868-9, c. 167, s. 6.

40. Castration or other maiming without malice aforethought. If any person shall, on purpose and unlawfully, but without malice aforethought, cut or slit the nose, bite or cut off the nose, or a lip or an ear, or disable any limb or member of any other person, or castrate any other person, or cut off, maim or disfigure any of the privy members of any other person, with intent to kill, maim, disfigure, disable or render impotent such person, the person so offending shall be imprisoned in the county jail or state's prison not less than six months nor more than ten years, and fined, in the discretion of the court.

Rev., s. 3626; Code, s. 1000; R. C., c. 34, s. 47; 1754, c. 56; 1791, c. 339, ss. 2, 3; 1831, c. 40, s. 2.

41. Malicious maiming. If any person shall, of malice aforethought, unlawfully cut out or disable the tongue or put out an eye of any other person, with intent to murder, maim or disfigure, the person so offending, his counselors,

abettors and aiders, knowing of and privy to the offense, shall, for the first offense, be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, and be fined, in the discretion of the court; and for the second offense shall be imprisoned in the state's prison not less than five nor more than sixty years.

Rev., s. 3636; Code, s. 1080; R. C., c. 34, s. 14; 1754, c. 56; 1791, c. 339, s. 1; 1831, c. 12; 22 and 23 Car. II, c. 1 (Coventry Act).

42. Maliciously assaulting in a secret manner. If any person shall in a secret manner maliciously commit an assault and battery with any deadly weapon upon another by waylaying or otherwise, with intent to kill such other person, he shall be guilty of a felony and shall be punished by imprisonment in jail or in the penitentiary for not less than twelve months nor more than twenty years, or by a fine not exceeding two thousand dollars, or both, in the discretion of the court.

Rev., s. 3621; 1887, c. 32.

43. Punishment for assault. In all cases of an assault, with or without intent to kill or injure, the person convicted shall be punished by fine or imprisonment, or both, at the discretion of the court: Provided, that where no deadly weapon has been used and no serious damage done, the punishment in assaults, assaults and batteries, and affrays shall not exceed a fine of fifty dollars or imprisonment for thirty days; but this proviso shall not apply to cases of assault with intent to kill or with intent to commit rape, or to cases of assault or assault and battery by any man or boy over eighteen years old on any female person.

Rev., s. 3620; Code, s. 987; 1870-1, c. 43, s. 2; 1873-4, c. 176, s. 6; 1879, c. 92, ss. 2, 6; 1911, c. 193.

44. Assaulting by pointing gun. If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of an assault, and upon conviction of the same shall be fined, imprisoned, or both, at the discretion of the court.

Rev., s. 3622; 1889, c. 527.

ART. 10. HAZING

45. Hazing; definition and punishment. It shall be unlawful for any student in any college or school in this state to engage in what is known as hazing, or to aid or abet any other student in the commission of this offense. For the purposes of this section hazing is defined as follows: "to annoy any student by playing abusive or ridiculous tricks upon him, to frighten, scold, beat or harass him, or to subject him to personal indignity." Any violation of this section shall constitute a misdemeanor.

1913, c. 169, ss. 1, 2, 3, 4.

46. Expulsion from school; duty of faculty to expel. Upon conviction of any student of the offense of hazing, or of aiding or abetting in the commission of this offense, he shall, in addition to any punishment imposed by the court, be expelled from the college or school he is attending. The faculty or governing board of any college or school charged with the duty of expulsion of students for proper cause shall, upon such conviction at once expel the offender, and a failure to do so shall be a misdemeanor.

1913, c. 169, ss. 5, 6.

47. Certain persons and schools excepted; copy of article to be posted. This article shall not apply to females, nor to schools or colleges not keeping boarders, nor to schools keeping less than ten student boarders. A copy of this article shall be framed and hung or displayed in every college or school to which it applies.

1913, c. 169, s. 3.

48. Witnesses in hazing trials; no indictment to be founded on self-criminating testimony. In all trials for the offense of hazing any student or other person subpoenaed as a witness in behalf of the state shall be required to testify if called upon to do so: Provided, however, that no student or other person so testifying shall be amenable or subject to indictment on account of, or by reason of, such testimony.

1913, c. 169, s. 8.

ART. 11. KIDNAPPING AND ABDUCTION

49. Punishment for kidnapping. If any person shall forcibly or fraudulently kidnap any person, he shall be guilty of a felony, and upon conviction may be punished in the discretion of the court, not exceeding twenty years in the state's prison.

* Rev., s. 3634; 1901, c. 699, s. 1.

50. Enticing minors out of the state for the purpose of employment. If any person shall employ and carry beyond the limits of this state any minor, or shall induce any minor to go beyond the limits of this state, for the purpose of employment without the consent in writing, duly authenticated, of the parent, guardian or other person having authority over such minor, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than five hundred and not more than one thousand dollars for each offense. The fact of the employment and going out of the state of the minor, or of the going out of the state by the minor, at the solicitation of the person for the purpose of employment, shall be prima facie evidence of knowledge that the person employed or solicited to go beyond the limits of the state is a minor.

Rev., s. 3630; 1891, c. 45.

51. Abduction of children. If any one shall abduct or by any means induce any child under the age of fourteen years, who shall reside with its 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, he shall be guilty of a felony, and on conviction shall be fined or imprisoned in the state's prison for a period not exceeding fifteen years.

Rev., s. 3358; Code, s. 973; 1879, c. 81.

52. Conspiring to abduct children. If any one 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 designated in the preceding section, or shall reside at school, to leave such persons or the school, he shall be guilty of a felony, and on conviction shall be punished as prescribed in the preceding sec-

tion: Provided, that no one who may be a nearer blood relation to the child than the persons named in the preceding section shall be indicted for either of said offenses.

Rev., s. 3359; Code, s. 974; 1879, c. 81, s. 2.

53. Abduction of married women. If any male person shall abduct or elope with the wife of another, he shall be guilty of a felony, and upon conviction shall be imprisoned not less than one year nor more than ten years: Provided, that the woman, since her marriage, has been an innocent and virtuous woman: Provided further, that no conviction shall be had upon the unsupported testimony of any such married woman.

Rev., s. 3360; 1903, c. 362.

ART. 12. ABORTION AND KINDRED OFFENSES

54. Using drugs or instruments to destroy unborn child. If any person shall willfully 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 other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of the mother, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than one year nor more than ten years, and be fined at the discretion of the court.

Rev., s. 3618; Code, s. 975; 1881, c. 351, s. 1.

55. Using drugs or instruments to produce miscarriage or injure pregnant woman. If any person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be guilty of a felony, and shall be imprisoned in the jail or state's prison for not less than one year nor more than five years and shall be fined, at the discretion of the court.

Rev., s. 3619; Code, s. 976; 1881, c. 351, s. 2.

56. Concealing birth of child. If any person shall, by secretly burying or otherwise disposing of the dead body of a new-born child, endeavor to conceal the birth of such child, such person shall be guilty of a felony, and punished by fine or imprisonment, or both, such imprisonment to be in the county jail or state's prison, at the discretion of the court: Provided, that the imprisonment in the state's prison shall in no case exceed a term of ten years: Provided further, that nothing in this section shall be construed to prevent the mother, who may be guilty of the homicide of her child, from being prosecuted and punished for the same according to the principles of the common law. Any person aiding, counseling or abetting any woman in concealing the birth of her child shall be guilty of a misdemeanor.

Rev., s. 3623; Code, s. 1004; R. C., c. 34, s. 28; 1818, c. 985; 1883, c. 390; 21 Jac. I. c. 27. See 43 Geo. III. c. 58, s. 3; 9 Geo. IV, c. 31, s. 14.

ART. 13. LIBEL AND SLANDER

57. Communicating libelous matter to newspapers. If any person shall state, deliver or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person or corporation, and thereby secure the publication of the same, he shall be guilty of a misdemeanor.

Rev., s. 3635; 1901, c. 557, ss. 2, 3.

NOTE. For punishment of libel by newspaper, see chapter, Libel and Slander.

58. Slandering innocent women. If any person shall attempt, in a wanton and malicious manner, to destroy the reputation of an innocent woman by words, written or spoken, which amount to a charge of incontinency, every person so offending shall be guilty of a misdemeanor.

Rev., s. 3640; Code, s. 1113; 1879, c. 156.

59. Slandering banks and trust companies. Any person who shall willfully and maliciously make, circulate or transmit to another any statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, savings bank, banking institution or trust company doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment in the discretion of the court.

1915, c. 273.

SUBCHAPTER 5. OFFENSES AGAINST THE HABITATION
AND OTHER BUILDINGS

ART. 14. BURGLARY AND OTHER HOUSEBREAKINGS

60. First and second degree burglary. There shall be two degrees in the crime of burglary as defined at the common law. If the crime be committed in a dwelling-house, or in a room used as a sleeping apartment in any building, and any person is in the actual occupation of any part of said dwelling-house or sleeping apartment at the time of the commission of such crime, it shall be burglary in the first degree. If such crime be committed in a dwelling-house or sleeping apartment not actually occupied by any one at the time of the commission of the crime, or if it be committed in any house within the curtilage of a dwelling-house or in any building not a dwelling-house, but in which is a room used as a sleeping apartment and not actually occupied as such at the time of the commission of the crime, it shall be burglary in the second degree.

Rev., s. 3331; 1889, c. 434, s. 1.

61 Punishment for burglary. Any person convicted, according to due course of law, of the crime of burglary in the first degree shall suffer death, and any one so convicted of burglary in the second degree shall suffer imprisonment in the state's prison for life, or for a term of years, in the discretion of the court.

Rev., s. 3330; Code, s. 994; 1889, c. 434, s. 2; 1870-1, c. 222.

62. Breaking out of dwelling-house burglary. 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 such dwelling-house in the night time, such person shall be guilty of burglary.

Rev., s. 3332; Code, s. 995; R. C., c. 34, s. 8; 12 Anne, c. 7, s. 3. See 7 and 8 Geo. IV, c. 29, s. 11; 24 and 25 Vict., c. 96, s. 51.

63. Breaking into or entering houses otherwise than burglariously. If any person, with intent to commit a felony or other infamous crime therein, shall break or enter either the dwelling-house of another otherwise than by a burglarious breaking; or any storehouse, shop, warehouse banking-house, counting-house or other building where any merchandise, chattel, money, valuable security or other personal property shall be; or any uninhabited house he shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years.

Rev., s. 3333; Code, s. 996; 1874-5, c. 166; 1879, c. 323.

64. Preparation to commit burglary or other house-breakings. If any person shall be found 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 having in his possession, without lawful excuse, any pick-lock, key, bit or other implement of house-breaking; or shall be found in any such building, with intent to commit a felony or other infamous crime therein, such person shall be guilty of a felony and punished by fine or imprisonment in the state's prison, or both, in the discretion of the court.

Rev., s. 3334; Code, s. 997; 1907, c. 822. See 24 and 25 Vict., c. 96, s. 58.

65. Breaking into or entering railroad cars. If any person shall, with intent to commit larceny or other felony, break any seal upon a railroad car containing any goods, wares, freight or other thing of value, or shall unlawfully and willfully break or enter into any railroad car containing any goods, wares, freight or other thing of value, such person shall upon conviction be punished by confinement in the penitentiary in the discretion of the court for a term not exceeding five years. Any person found unlawfully in such car shall be presumed to have entered in violation of this section.

1907, c. 468.

ART. 15. ARSON AND OTHER BURNINGS

66. Punishment for arson. Any person convicted according to due course of law of the crime of arson shall suffer death.

Rev., s. 3335; Code, s. 985; R. C., c. 34, s. 2; 1870-1, c. 222.

67. Burning of certain public and other corporate buildings. If any person shall willfully and maliciously burn the statehouse, or any of the public offices of the state, or any courthouse, jail, arsenal, clerk's office, register's office, or any house belonging to any county or incorporated town in the state, or to any incorporated company whatever, in which are kept the archives, documents, or public

papers of such county, town or corporation, he shall, on conviction, be imprisoned in the state's prison for not less than five nor more than ten years.

Rev., s. 3344; Code, s. 985, subsec. 3; R. C., c. 34, s. 7; 1830, c. 41, s. 1; 1868-9, c. 167, s. 5.

68. Setting fire to schoolhouse. If any person shall willfully set fire to any schoolhouse, or procure the same to be done, he shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the state's prison or the county jail, and may also be fined, in the discretion of the court.

Rev., s. 3345; 1901, c. 4, s. 28.

69. Burning or attempting to burn certain bridges and buildings. If any person, with intent to destroy the same, shall willfully and maliciously set fire to and burn any public bridge, or private toll bridge, or the bridge of any incorporated company, or any fire-engine house, or any house belonging to any county or incorporated town, used for public purposes other than the keeping of archives, documents and public papers, or any house belonging to an incorporated company and used in the business of such company; or if any person shall willfully and maliciously attempt to burn any of such houses or bridges, or any of the houses or buildings mentioned in this article, the person offending shall be guilty of a felony and shall be punished by imprisonment in the state's prison or county jail, for not less than four months nor more than ten years.

Rev., s. 3337; Code, s. 985, subsec. 4; R. C., c. 34, s. 30; 1825, c. 1278.

70. Setting fire to churches and certain other buildings. If any person shall wantonly and willfully set fire to any church, chapel or meeting-house, or to any stable, coach house, outhouse, warehouse, office, shop, mill, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than two nor more than forty years.

Rev., s. 3338; 1885, c. 66; 1903, c. 665, s. 2; 1874-5, c. 228; Code, s. 985, subsec. 6. See 7 and 8 Geo. IV, c. 30, s. 2.

71. Burning of boats and barges. If any person, with the intent to destroy the same, shall willfully and maliciously, or for a fraudulent purpose, set fire to and burn any boat, barge or float, whether he be the owner thereof or not, he shall be guilty of a felony and shall be punished by imprisonment in the state's prison for not less than four months nor more than ten years, or fined in the discretion of the court.

1909, c. 854.

72. Burning of gin-houses, tobacco houses and stables. Every person convicted of the willful burning of any gin-house or tobacco house, or any part thereof, or, in the night time, of any stable containing a horse or a mule, or cattle, shall be imprisoned in the state's prison not less than two nor more than ten years.

Rev., s. 3341; 1863, c. 17; 1868-9, c. 167, s. 5; 1903, c. 665, s. 1; Code, s. 985, subsec. 2.

73. Fraudulently setting fire to dwelling-houses. If any person, being the occupant of any building used as a dwelling-house, whether such person be the

owner thereof or not, or, being the owner of any building designed or intended as a dwelling-house, shall willfully and wantonly or for a fraudulent purpose set fire to such building, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail, and may also be fined, in the discretion of the court.

Rev., s. 3340; Code, s. 985; 1903, c. 665, s. 3; 1909, c. 862.

74. Attempting to burn dwelling-houses and certain other buildings. If any person shall willfully attempt to burn any dwelling-house, uninhabited house, barn, stable or outhouse, or any mill, manufacturing house, cotton gin, tobacco barn, granary or turpentine distillery, the property of another, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail, and may also be fined, in the discretion of the court.

Rev., s. 3336; Code, s. 985, subsec. 7; 1876-7, c. 13.

75. Failure of owner of property to comply with orders of public authorities. If the owner or occupant of any building or premises shall fail to comply with the orders of the chief of the fire department, or of the insurance commissioner, he shall be guilty of a misdemeanor, and shall be fined not less than ten nor more than fifty dollars for each day's neglect.

Rev., s. 3343; 1899, c. 58, s. 4.

76. Failure of officers to investigate incendiary fires. If any town or city officer shall fail, neglect or refuse to comply with any of the requirements of the law in regard to the investigation of incendiary fires, he shall be guilty of a misdemeanor and may be fined not less than twenty-five nor more than two hundred dollars.

Rev., s. 3342; 1899, c. 58, s. 5.

SUBCHAPTER 6. OFFENSES AGAINST PROPERTY

ART. 16. LARCENY

77. Distinction between grand and petit larceny abolished. All distinctions between petit and grand larceny, where the same has had the benefit of clergy, are abolished; and the offense of felonious stealing, where no other punishment shall be specifically prescribed therefor by statute, shall be punished as petit larceny is: Provided, that in cases of much aggravation, or of hardened offenders, the court may, in its discretion, sentence the offender to the state's prison for a period not exceeding ten years.

Rev., s. 3500; Code, s. 1075; R. C., c. 34, s. 26.

78. Receiving stolen goods. If any person shall receive any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing the same to have been feloniously stolen or taken, he shall be guilty of a misdemeanor, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any

such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession, or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny.

Rev., s. 3507; Code, s. 1074; R. C., c. 34, s. 56; 1797, c. 485, s. 2.

79. Larceny of property, or the receiving of stolen goods, not exceeding twenty dollars in value. The larceny of property, or the receiving of stolen goods knowing them to be stolen, of the value of not more than twenty dollars, is hereby declared a misdemeanor, and the punishment therefor shall be in the discretion of the court. If the larceny is from the person, or from the dwelling by breaking and entering, this section shall have no application: Provided, that this section shall not apply to horse stealing. In all cases of doubt the jury shall, in the verdict, fix the value of the property stolen.

Rev., s. 3506; 1895, c. 285; 1913, c. 118, s. 1.

80. Jurisdiction of the superior courts in cases of larceny and receiving stolen goods. The superior courts shall have exclusive jurisdiction of the trial of all cases of the larceny of property, or the receiving of stolen goods knowing them to be stolen, of the value of more than twenty dollars.

1913, c. 118, s. 2.

81. Larceny by servants and other employees. If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be fined or imprisoned in the state prison or county jail not less than four months nor more than ten years, at the discretion of the court: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of sixteen years.

Rev., s. 3490; Code, s. 1065; R. C., c. 34, s. 18; 21 Hen. VIII, c. 7, ss. 1, 2. See 39 Geo. III, c. 85; 7 and 8 Geo. IV, c. 29, s. 47; 24 and 25 Vict., c. 96, s. 68.

82. Larceny of choses in action. If any person shall feloniously steal, take and carry away, or take by robbery, any bank-note, check or other order for the payment of money issued by or drawn on any bank or other society or corporation within this state or within any of the United States, or any treasury warrant, debenture, certificate of stock or other public security, or certificate of stock in any corporation, or any order, bill of exchange, bond, promissory note or other obligation, either for the payment of money or for the delivery of specific

articles, being the property of any other person, or of any corporation (notwithstanding any of the said particulars may be termed in law a chose in action), such felonious stealing, taking and carrying away, or taking by robbery, shall be a felony of the same nature and degree and in the same manner as it would have been if the offender had feloniously stolen, or taken by robbery, money, goods or property of any value, and the offender for every such offense shall suffer the same punishment and be subject to the same pains, penalties and disabilities as he should or might have suffered if he had feloniously stolen or taken by robbery money, goods or other property of value.

Rev., s. 3498; Code, s. 1064; R. C., c. 34, s. 20; 1811, c. 814, s. 1.

NOTE. For the larceny of gas, electricity and steam, see s. 150 of this chapter.

83. Larceny, mutilation, or destruction of public records and papers. If any person shall steal, or for any fraudulent purpose shall take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney or any original document whatsoever, of or belonging to any court of record, or relating to any matter civil or criminal, begun, pending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order or decree or any original document whatsoever, of or belonging to any court or relating to any cause or matter begun, pending or terminated in any such court, every such offender shall be guilty of a misdemeanor; and in any indictment for such offense it shall not be necessary to allege that the article, in respect to which the offense is committed, is the property of any person or that the same is of any value. If any person shall steal or for any fraudulent purpose shall take from the register's office, or from any person having the lawful custody thereof, or shall unlawfully and willfully obliterate, injure or destroy any book wherein deeds or other instruments of writing are registered, or any other book of registration or record required to be kept by the register of deeds, or shall unlawfully destroy, obliterate, deface or remove any records of proceedings of the board of county commissioners, or unlawfully and fraudulently abstract any record, receipt, order or voucher or other paper-writing required to be kept the clerk of the board of commissioners of any county, he shall be guilty of a misdemeanor.

Rev., s. 3508; Code, s. 1071; R. C., c. 34, s. 31; 8 Hen. VI. c. 12, s. 3; 1881, c. 17.

84. Larceny, concealment or destruction of wills. If any person, either during the life of the testator or after his death, shall steal or, for any fraudulent purpose, shall destroy or conceal any will, codicil or other testamentary instrument, he shall be guilty of a misdemeanor.

Rev., s. 3510; Code, s. 1072; R. C., c. 34, s. 32.

85. Larceny of ungathered crops. If any person shall steal or feloniously take and carry away any maize, corn, wheat, rice or other grain, or any cotton, tobacco, potatoes, peanuts, pulse, fruit, vegetable or other product cultivated for food or market, growing, standing or remaining ungathered in any field or ground, he shall be guilty of larceny, and shall be punished accordingly.

Rev., s. 3503; Code, s. 1069; 1811, c. 816; R. C., c. 34, s. 21; 1868-9, c. 251.

86. Larceny of ginseng. If any person shall take and carry away, or shall aid in taking or carrying away, any ginseng growing upon the lands of another

person, with intent to steal the same, he shall be guilty of a felony, and shall be imprisoned not less than two years nor more than five years, in the discretion of the court: Provided, that such ginseng, at the time the same is taken shall be in beds and the land upon which such beds are located shall be surrounded by a lawful fence.

Rev., s. 3502; 1905, c. 211.

NOTE. For digging ginseng, see s. 327 of this chapter.

87. Larceny of wood and other property from land. If any person, not being the present owner or bona fide claimant thereof, shall willfully and unlawfully enter upon the lands of another and carry off or be engaged in carrying off any wood or other kind of property whatsoever, growing or being thereon, the same being the property of the owner of the premises, or under his control, keeping or care, such person shall, if the act be done with felonious intent, be guilty of larceny, and punished as for that offense; and if not done with such intent, he shall be guilty of a misdemeanor.

Rev., s. 3511; Code, s. 1070; 1866, c. 60.

88. Larceny of horses and mules. If any person shall steal any horse, mare, gelding or mule, he shall suffer imprisonment at hard labor for not less than one nor more than twenty years, at the discretion of the court. A count under this section may be joined in a bill of indictment with a count under the section that immediately follows.

Rev., s. 3505; Code, s. 1066; 1868, c. 37, s. 1; 1879, c. 234, s. 2; 1866-7, c. 62; 1917, c. 126, s. 2.

89. Taking horses or mules for temporary purposes. If any person shall unlawfully take and carry away any horse, gelding, mare or mule, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court.

Rev., s. 3509; Code, s. 1067; 1879, c. 234, s. 1; 1913, c. 11.

90. Taking of automobiles and electric vehicles for temporary purpose. If any person shall unlawfully take and carry away any automobile or electrical vehicle of any nature, kind or description whatsoever, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of larceny, and shall be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, in the discretion of the court: Provided, that this section shall not be construed to repeal any other section of this article.

1907, c. 126, s. 1.

91. Larceny of dogs. If any person shall feloniously take, steal and carry away any dog listed for taxation on which there is paid an annual tax of one dollar, he shall be guilty of larceny.

Rev., s. 3501; Code, s. 2502; 1881, c. 302.

92. Pursuing or injuring livestock with intent to steal. If any person shall pursue, kill or wound any horse, mule, ass, jennet, cattle, hog, sheep or goat, the property of another, with the intent unlawfully and feloniously to convert the same to his own use, he shall be guilty of a felony, and shall be punishable, in all respects, as if convicted of larceny, though such animal may not have come into the actual possession of the person so offending.

Rev., s. 3504; Code, s. 1068; 1866, c. 57.

93. Local: Killing unmarked livestock with felonious intent. If any person not being the owner of any unmarked neat cattle, sheep or hogs, shall kill any unmarked neat cattle, sheep or hogs in the range, such person shall, if the act be done with felonious intent, be guilty of larceny and punished as for that offense, and if not done with such intent shall be guilty of a misdemeanor: Provided, that this section shall apply only to the counties of Haywood, Hyde and Tyrrell.

Rev., s. 3316; 1891, c. 258; 1895, c. 8; 1909, c. 597.

ART. 17. TRAIN ROBBERY

94. Train robbery. If any person shall enter upon any locomotive engine or car on any railroad in this state, and by threats, the exhibition of deadly weapons or the discharge of any pistol or gun, in or near any such engine or car, shall induce or compel any person on such engine or car to submit and deliver up, or allow to be taken therefrom, or from him anything of value, he shall be guilty of train robbery, and on conviction thereof, shall be punished by imprisonment in the state's prison for not less than ten years nor more than twenty years.

Rev., s. 3765; 1895, c. 204, s. 2.

95. Attempted train robbery. If any person shall stop, or cause to be stopped, or impede, or cause to be impeded, or conspire with others for that purpose, any locomotive engine or car on any railroad in this state, by intimidation of those in charge thereof or by force, threats or otherwise, for the purpose of taking therefrom or causing to be delivered up to such person so forcing, threatening or intimidating, anything of value, to be appropriated to his own use, he shall be guilty of attempting train robbery, and, on conviction thereof, shall be punished by confinement in the state's prison for not less than two years nor more than twenty years.

Rev., s. 3766; 1895, c. 204, s. 1.

ART. 18. EMBEZZLEMENT

96. Embezzlement of property received by virtue of office or employment. If any person exercising a public trust or holding a public office, or any guardian, administrator or executor, or any officer or agent of a corporation, or any agent, consignee, clerk or servant (except apprentices and other persons under the age of sixteen years) of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make way with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or

other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, which shall have come into his possession or under his care, he shall be guilty of a felony, and shall be punished as in cases of larceny.

Rev., s. 3406; Code, s. 1014; 1889, c. 226; 1891, c. 188; 1897, c. 31; 1871-2, c. 145, s. 2; 21 Hen. VII, c. 7. See 39 Geo. III, c. 85; 7 and 8 Geo. IV, c. 39, s. 47; 24 and 25 Vict., c. 96, s. 68.

97. Embezzlement of state property by public officers and employees. If any officer, agent or employee of the state, or other person having or holding in trust for the same any bonds issued by the state, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons aiding and abetting, or otherwise assisting therein, shall be guilty of a felony, and shall be fined not less than ten thousand dollars, or imprisoned in the state's prison not less than twenty years, or both, at the discretion of the court.

Rev., s. 3407; Code, s. 1015; 1874-5, c. 52.

98. Embezzlement of funds by public officers and trustees. If any officer, agent, or employee or any city, county or incorporated town, or of any penal, charitable, religious or educational institution; or if any person having or holding any moneys or property in trust for any city, county, incorporated town, penal, charitable, religious or educational institution, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be guilty of a felony, and shall be fined and imprisoned in the state's prison in the discretion of the court. If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county or town of the state shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be guilty of a felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The punishment shall be imprisonment in the state's prison or county jail, or fine in the discretion of the court.

Rev., s. 3408; Code, s. 1016; 1891, c. 241; 1876-7, c. 47.

99. Embezzlement by treasurers of charitable and religious organizations. If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, in the discretion of the court.

Rev., s. 3409; Code, s. 1017; 1879, c. 105.

100. Embezzlement by officers of railroad companies. If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer, agent or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same for the use or benefit of himself or any other person, state or corporation, other than the company of which he is president, secretary, treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be imprisoned in the state's prison not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars.

Rev., s. 3403; Code, s. 1018; 1870-1, c. 103, s. 1.

101. Conspiring with officers of railroad companies to embezzle. If any person shall agree, combine, collude or conspire with the president, secretary, treasurer, director, engineer or agent of any railroad company to commit any offense specified in the preceding section, such person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of a county through which the railroad of any company against which such offense may be perpetrated passes, shall be imprisoned in the state's prison for not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars.

Rev., s. 3404; Code, s. 1019; 1870-1, c. 103, s. 2.

102. Embezzlement by insurance agents and brokers. If any insurance agent or broker who acts in negotiating a contract of insurance by an insurance company, association or fraternal order or society, lawfully doing business in this state embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitute for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, he shall be deemed guilty of larceny.

Rev., s. 3489; 1889, c. 54, s. 103; 1911, c. 196, s. 8.

103. Embezzlement by surviving partner. If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be guilty of a felony, and upon conviction shall be punished by fine or imprisonment in the state's prison in the discretion of the court.

Rev., s. 3405; 1901, c. 640, s. 9.

104. Embezzlement by tax officers. If any officer appropriates to his own use the state, county, school, city or town taxes, he shall be guilty of embezzlement, and may be punished by confinement in the state's prison not exceeding five years, at the discretion of the court.

Rev., s. 3410; Code, s. 3705; 1883, c. 136, s. 49.

ART. 19. FALSE PRETENSES AND CHEATS

105. Obtaining property by false tokens and other false pretenses. If any person shall knowingly and designedly, by means of any forged or counterfeited paper, in writing or in print, or by any false token, or other false pretense whatsoever, obtain from any person or corporation within the state any money, goods, property or other thing of value, or any bank-note, check or order for the payment of money, issued by, or drawn on, any bank or other society or corporation within this state or any of the United States, or any treasury warrant, debenture, certificate of stock or public security, or any order, bill of exchange, bond, promissory note or other obligation, either for the payment of money or for the delivery of specific articles, with intent to cheat or defraud any person or corporation of the same, such person shall be guilty of a felony, and shall be imprisoned in the state's prison not less than four months nor more than ten years, or fined, in the discretion of the court: Provided, that if, on the trial of any one indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny, he shall not, by reason thereof, be entitled to be acquitted of the felony; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny upon the same facts: Provided further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security; and, on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.

Rev., s. 3432; Code, s. 1025; R. C., c. 34, s. 67; 1811, c. 814, s. 2; 24 and 25 Vic., c. 96, s. 88; 33 Hen. VIII, c. 1, ss. 1, 2; 30 Geo. II, c. 24, s. 1. See 52 Geo. III, c. 64, s. 1; 7 and 8 Geo. IV, c. 29, s. 53.

106. Obtaining signatures or property by false pretenses. If any person, with intent to defraud or cheat another, shall designedly, by color of any false token or writing, or by any other false pretense, obtain the signature of any person to any written instrument, the false making of which would be punishable as forgery, or obtain from any person any money, goods, wares, merchandise or other property or valuable thing whatsoever, he shall be punishable by fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the state's prison for a term of not less than one year nor more than five years, or both, at the discretion of the court.

Rev., s. 3433; Code, s. 1026; 1871-2, c. 92.

107. Obtaining property by false representation of pedigree of animals. If any person shall, with intent to defraud or cheat, knowingly represent any animal for breeding purposes as being of greater degree of any particular strain of blood than such animal actually possesses, and by such representation obtain from any other person money or other thing of value, he shall be guilty of a misdemeanor, and upon conviction thereof shall for each offense be punished by a fine of not less than sixty dollars nor more than three hundred dollars, or by imprisonment for a term not exceeding six months.

Rev., s. 3307; 1891, c. 94, s. 2.

108. Obtaining certificate of registration of animals by false representation.

If any person shall, by any false representation or pretense, with intent to defraud or cheat, obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a certificate of registration of any animal in the herd register of any such association, society or company, or a transfer of any such registration, upon conviction thereof he shall be punished by imprisonment for a term not exceeding three months or a fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Rev., s. 3308; 1891, c. 94, s. 1.

109. Obtaining advances under promise to work and pay for same.

If any person, with intent to cheat or defraud another, shall obtain any advances in money, provisions, goods, wares or merchandise of any description from any other person or corporation upon and by color of any promise or agreement that the person making the same will begin any work or labor of any description for such person or corporation from whom the advances are obtained, and the person making the promise or agreement shall willfully fail without a lawful excuse, to commence or complete such work according to contract, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Evidence of such promise or agreement to work, the obtaining of such advances thereon and the failure to comply with such promise or agreement shall be presumptive evidence of the intent to cheat and defraud at the time of obtaining the advances and making the promise or agreement, subject to be rebutted by other testimony which may be introduced by the defendant.

Rev., s. 3431; 1889, c. 444; 1891, c. 106; 1905, c. 411.

110. Obtaining advances under written promise to pay therefor out of designated property.

If any person shall obtain any advances in money, provisions, goods, wares or merchandise of any description from any other person or corporation, upon any written representation that the person making the same is the owner of any article of produce, or of any other specific chattel or personal property, which property, or the proceeds of which the owner in such representation thereby agrees to apply to the discharge of the debt so created and the owner shall fail to apply such produce or other property, or the proceeds thereof, in accordance with such agreement, or shall dispose of the same in any other manner than is so agreed upon by the parties to the transaction, the person so offending shall be guilty of a misdemeanor, whether he shall or shall not have been the owner of any such property at the time such representation was made.

Rev., s. 3434; Code, s. 1027; 1879, cc. 185, 186; 1905, c. 104.

111. Obtaining property in return for worthless check, draft or order.

Every person who, with intent to cheat and defraud another, shall obtain money, credit, goods, wares or any other thing of value by means of a check, draft or order of any kind upon any bank, person, firm or corporation, not indebted to the drawer, or where he has not provided for the payment or acceptance of the same, and the same be not paid upon presentation, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the

court. The giving of the aforesaid worthless check, draft, or order shall be *prima facie* evidence of an intent to cheat and defraud.

1907, c. 975; 1909, c. 647.

112. Obtaining entertainment at hotels and boarding-houses without paying therefor. Any person who obtains any lodging, food or accommodation at an inn, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn, boarding-house or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at an inn, boarding-house or lodging-house, absconds and surreptitiously removes his baggage therefrom without paying for his food, accommodation or lodging, shall be guilty of a misdemeanor, and shall upon conviction be fined or imprisoned at the discretion of the court.

1907, c. 816.

113. Obtaining wearing apparel on approval. If any person, with intent to cheat and defraud, shall solicit and obtain from any merchant any article of wearing apparel on approval, and shall thereafter, upon demand, refuse or fail to return the same to such merchant in an unused and undamaged condition, or to pay for the same, such person so offending shall be guilty of a misdemeanor. Evidence that a person has solicited a merchant to deliver to him any article of wearing apparel for examination or approval and has obtained the same upon such solicitation, and thereafter, upon demand, has refused or failed to return the same to such merchant in an unused and undamaged condition, or to pay for the same, shall constitute *prima facie* evidence of the intent of such person to cheat and defraud, within the meaning of this section.

1911, c. 185.

ART. 20. FRAUDS

114. Fraudulent disposal of mortgaged property. If any person, after executing a chattel mortgage, deed of trust or other lien for a lawful purpose, shall make any disposition of any personal property embraced in such mortgage, deed of 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 shall be punished by fine or imprisonment, or both, in the discretion of the court. In all indictments for violations of the provisions of this section, it shall not be necessary to allege or prove the person to whom any sale or disposition of the property was made, but proof of the possession of the property embraced in such chattel mortgage, deed of trust or lien, by the grantor thereof, after the execution of said chattel mortgage, deed of trust, or lien, and while it is in force, and further proof of the fact that the sheriff or other officer charged with the execution of process cannot after due diligence find such property under process directed to him for its seizure, for the satisfaction of such chattel mortgage, deed of trust or lien, or that the mortgagee demanded the possession thereof of the mortgagor for the purpose of sale to

foreclose said mortgage, deed of trust or lien, after the right to such foreclosure had accrued, and that the mortgagor failed to produce, deliver or surrender the same to the mortgagee for that purpose, shall be prima facie proof of the fact of a disposition or sale of such property, by the grantor, with the intent to hinder, delay or defeat the rights of the person to whom said chattel mortgage, deed of trust or lien was made.

Rev., s. 3435; Code, s. 1089; 1887, c. 14; 1873-4, c. 31; 1874-5, c. 215; 1883, c. 61.

115. Secreting property to hinder enforcement of lien. Any person removing, exchanging or secreting any personal property on which a lien exists, with intent to prevent or hinder the enforcement of the lien, shall be guilty of a misdemeanor.

Rev., s. 3436; 1887, c. 14.

116. Fraudulent entry of horses at fairs. If any person shall knowingly enter or cause to be entered in competition for any purse, prize, premium, stake or sweepstake offered or given by any agricultural or other society, association or person in this state, any horse, mare, gelding, colt or filly under an assumed name or out of its proper class, he shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the state's prison for not less than one nor more than five years, or by both fine and imprisonment, at the discretion of the court.

Rev., s. 3429; 1893, c. 387.

117. Fraudulent and deceptive advertising. It shall be unlawful for any person, firm, corporation or association, with intent to sell or in anywise to dispose of merchandise, securities, service or any other thing offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, to make public, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or any other thing so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading: Provided that such advertising shall be done willfully and with intent to mislead. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

1915, c. 218.

118. Blackmailing. If any person shall knowingly send or deliver any letter or writing demanding of any other person, with menaces and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or by imprisonment in the state's prison,

with the intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of a misdemeanor.

Rev., s. 3428; Code, s. 989; R. C., c. 34, s. 110.

ART. 21. FORGERY

119. Forgery of bank-notes, checks and other securities. If any person shall falsely make, forge or counterfeit, or cause or procure the same to be done, or willingly aid or assist therein, any bill or note in imitation of, or purporting to be, a bill or note of any incorporated bank in this state, or in any of the United States, or in any of the territories of the United States; or any order or check on any such bank or corporation, or on the cashier thereof; or any of the securities purporting to be issued by or on behalf of the state, or by or on behalf of any corporation, with intent to injure or defraud any person, bank or corporation, or the state, the person so offending shall be guilty of a felony and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years, or by a fine in the discretion of the court.

Rev., s. 3419; Code, s. 1030; R. C., c. 34, s. 60; 1819, c. 994, s. 1.

120. Uttering forged paper. If any person, directly or indirectly, whether for the sake of gain or with intent to defraud or injure any other person, shall utter or publish any such false, forged or counterfeited bill, note, order, check or security, as is mentioned in the preceding section; or shall pass or deliver, or attempt to pass or deliver, any of them to another person (knowing the same to be falsely forged or counterfeited), the person so offending shall be punished by imprisonment in the county jail or state's prison, not less than four months nor more than ten years.

Rev., s. 3427; Code, s. 1031; R. C., c. 34, s. 61; 1819, c. 994, s. 2; 1909, c. 666.

NOTE. For the presentation of a false certificate of exemption from the poll tax or a false tax receipt, see s. 16, subsec. 5, of this chapter.

121. Selling of certain forged securities. If any person shall sell, by delivery, indorsement or otherwise, to any other person, any judgment for the recovery of money purporting to have been rendered by a justice of the peace, or any bond, promissory note, bill of exchange, order, draft or liquidated account purporting to be signed by the debtor (knowing the same to be forged), the person so offending shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years.

Rev., s. 3425; Code, s. 1033; R. C., c. 34, s. 63.

122. Forgery of deeds, wills and certain other instruments. If any person, of his own head and imagination, or by false conspiracy or fraud with orders, shall wittingly and falsely forge and make, or shall cause or wittingly assent to the forging or making of, or shall show forth in evidence, knowing the same to be forged, any deed, lease or will, or any bond, writing obligatory, bill of exchange, promissory note, endorsement or assignment thereof; or any acquittance or receipt for money or goods; or any receipt or release for any bond, note, bill or any other security for the payment of money; or any order for the payment of money or delivery of goods, with intent, in any of said instances, to defraud any person or corporation, and thereof shall be duly convicted, the per-

son so offending shall be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, or fined in the discretion of the court.

Rev., s. 3424; Code, s. 1029; R. C., c. 34, s. 59; 1801, c. 572; 5 Eliz., c. 14, ss. 2, 3; 21 James I, c. 26.

123. Forging names to petitions and uttering forged petitions. If any person shall willfully sign, or cause to be signed, or willfully assent to the signing of the name of any person without his consent, or of any deceased or fictitious person, to any petition or recommendation with the intent of procuring any commutation of sentence, pardon or reprieve of any person convicted of any crime or offense, or for the purpose of procuring such pardon, reprieve or commutation to be refused or delayed by any public officer, or with the intent of procuring from any person whatsoever, either for himself or another, any appointment to office, or to any position of honor or trust, or with the intent to influence the official action of any public officer in the management, conduct or decision of any matter affecting the public, he shall be guilty of a felony, and shall be fined not exceeding one thousand dollars, or imprisoned in the county jail or state's prison not exceeding five years, or both, at the discretion of the court; and if any person shall willfully use any such paper for any of the purposes or intents above recited, knowing that any part of the signatures to such petition or recommendation has been signed thereto without the consent of the alleged signers, or that names of any dead or fictitious persons are signed thereto, he shall be guilty of a felony, and shall be punished in like manner.

Rev., s. 3426; Code, s. 1034; 1883, c. 275.

124. Forging certificate of corporate stock and uttering forged certificates. If any officer or agent of a corporation shall, falsely and with a fraudulent purpose, make, with the intent that the same shall be issued and delivered to any other person by name or as holder or bearer thereof, any certificate or other writing, whereby it is certified or declared that such person, holder or bearer is entitled to or has an interest in the stock of such corporation, when in fact such person, holder or bearer is not so entitled, or is not entitled to the amount of stock in such certificate or writing specified; or if any officer or agent of such corporation, or other person, knowing such certificate or other writing to be false or untrue, shall transfer, assign or deliver the same to another person, for the sake of gain, or with the intent to defraud the corporation, or any member thereof, or such person to whom the same shall be transferred, assigned or delivered, the person so offending shall be imprisoned in the county jail or state's prison not less than four months nor more than ten years.

Rev., s. 3421; Code, s. 1032; R. C., c. 34, s. 62.

125. Forgery of bank-notes and other instruments by connecting genuine parts. If any person shall fraudulently connect together different parts of two or more bank-notes, or other genuine instruments, in such a manner as to produce another note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, and the instrument so produced a forged note, or forged instrument, in like manner as if each of them had been falsely made or forged.

Rev., s. 3420; Code, s. 1037; R. C., c. 34, s. 66.

SUBCHAPTER 7. CRIMINAL TRESPASS

ART. 22. TRESPASSES TO LAND AND FIXTURES

126. Forcible entry and detainer. No one shall make entry into any lands and tenements, or term for years, but in case where entry is given by law; and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; and if any man do the contrary, he shall be guilty of a misdemeanor.

Rev., s. 3670; Code, s. 1028; R. C., c. 49, s. 1; 5 Ric. II, c. 8.

127. Malicious injury to real property. If any person shall maliciously commit any damage, injury or spoil upon any real property whatsoever, either of a public or private nature, for which no punishment is provided by any existing law, every person so offending shall be guilty of a misdemeanor: Provided, that nothing herein shall extend to any case where the party trespassing or doing the injury acted under a fair and reasonable belief that he had a right to do the act complained of, nor to any trespass, not being willful and malicious, committed in hunting, fishing or the pursuit of game. When the owner, or one of the owners, of an estate in possession shall complain of the injury before a justice of the peace of the county in which the offense is charged to have been committed before the regular term of the superior court next after the commission of the offense, and shall fail to state in his complaint that the damage exceeds ten dollars, the punishment, upon conviction of the offense, shall not exceed a fine of fifty dollars or imprisonment for thirty days.

Rev., s. 3677; Code, s. 1081; R. C., c. 34, s. 111; 1873-4, c. 176, s. 5.

128. Trespass on public lands. If any person shall erect a building on any public lands before the same shall have been sold or granted by the state, or on any lands belonging to the state board of education before the same shall have been sold and conveyed by them, or cultivate or remove timber from any of such lands, he shall be guilty of a misdemeanor. Moreover, the state board of education can recover from any person cutting timber on its land three times the value of the timber which is cut. When any person shall be in possession of any part of such land, it shall be the duty of the sheriff of the county in which the land is situated, and he is hereby required, to give notice in writing to such person, commanding him to depart therefrom forthwith; and if the person in possession, upon being so notified, shall not, within two weeks after the time of notice, remove therefrom, the sheriff is required to remove him immediately, and if necessary, he shall summon the power of the county to assist him in so doing.

Rev., s. 3746; Code, s. 1121; R. C., c. 34, s. 42; 1823, c. 1190; 1842, c. 36, s. 4; 1909, c. 891.

129. Disorderly conduct in and injuries to public buildings. If any person shall make any rude or riotous noise or be guilty of any disorderly conduct in or near any of the public buildings of the state, or of any county or municipality, or shall write or scribble on, mark, deface, besmear, or injure the walls of any of the public buildings of the state or of any county or municipality, or any statue or monument, or shall do or commit any nuisance in or near any public building of the state or of any county or municipality, he shall be guilty of a misdemeanor.

The keeper of the capitol or any person in charge of any of such public buildings, shall have authority to arrest summarily and without warrant for a violation of this section. The words "public building," as used in this section, shall include the grounds around such buildings.

Rev., s. 3742; Code, s. 2308; R. C., c. 103, ss. 7, 8; 1829, c. 29, ss. 1, 2; 1842, c. 47; 1915, c. 269.

130. Local: Erecting artificial islands and lumps in public waters. If any person shall erect artificial islands or lumps in any of the waters of the state east of the Wilmington and Weldon railroad and the Petersburg and Weldon railroad, he shall be guilty of a misdemeanor.

Rev., s. 3543; Code, s. 986; 1883, c. 109.

131. Trespass on land after being forbidden; license to look for estrays. If any person, after being forbidden to do so, shall go or enter upon the lands of another, without a license therefor, he shall be guilty of a misdemeanor, and on conviction, shall be fined not exceeding fifty dollars, or imprisoned not more than thirty days: Provided, that if any person shall make a written affidavit before a justice of the peace of the county that any of his cattle or other livestock (which shall be specially described in such affidavit) have strayed away, and that he has good reason to believe that they are on the lands of a certain other person, then the justice may, in his discretion, allow the affiant to enter on the premises of such person with one or more servants, without firearms, in the daytime (Sunday excepted), between the hours of sunrise and sunset, and make search for his estrays for such limited time as to the justice shall appear reasonable. The only effect of such license shall be to protect the persons entering from indictment therefor, and the license shall have this effect only where it is made bona fide and the entry is effected without any damage except such as may be necessary to conduct the search.

Rev., s. 3688; Code, s. 1120; 1866, c. 60.

132. Cutting, injuring, or removing another's timber. If any person, not being the bona fide owner thereof, shall knowingly and willfully cut down, injure or remove any standing, growing or fallen tree or log, the property of another, he shall be guilty of a misdemeanor, and shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than thirty days.

Rev., s. 3687; 1889, c. 168.

133. Local: Cutting, felling or removing another's timber. If any person, or his agent or employee, shall cut, fell or remove any timber tree, for the purpose of sale or gain, knowing the same to be upon the land of another, without the consent of the owner thereof, the person so cutting, felling or removing, or causing the same to be done, shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court, and shall also be liable to such owner for an amount equal to double the value of the timber so cut, felled or removed, to be recovered in a civil action to be brought therefor. The prosecution for any offense committed under this section shall be commenced within one year after its commission. This section shall apply only to Caldwell, Wilkes, Watauga, Burke, McDowell, Yadkin, Cherokee and Mitchell counties.

1907, c. 320, ss. 1, 2, 5.

134. Local: Purchasing timber unlawfully removed from another's land. If any person or corporation shall purchase or receive any timber tree, knowing the same to have been cut or removed from the lands of another without the consent of the owner thereof, or shall purchase or receive any logs, planks, boards, staves, shingles or other lumber made from such timber tree, knowing the same to have been cut or removed as aforesaid, the person so offending shall be guilty of a misdemeanor, and shall be fined or imprisoned, in the discretion of the court, and shall be liable to double the amount of the actual damages to the owner of such timber, to be recovered in a civil action brought therefor. This section shall apply only to Caldwell, Wilkes, Watauga, Burke, McDowell, Yadkin, Cherokee and Mitchell counties.

1907, c. 320, ss. 3, 5.

135. Cutting timber near watersheds. Any person, firm or corporation owning lands or the standing timber on lands, within four hundred feet of any watershed held or owned by any city or town for the purpose of furnishing a city or town water supply, upon cutting or removing the timber, or any part thereof, or permitting the same to be cut or removed, from the lands so situated within four hundred feet of such watershed, shall, within three months after cutting, or earlier upon written notice by the said city or town, remove or cause to be burned under proper supervising all treetops, boughs, laps and other portions of timber not desired to be taken for commercial or other purposes, within four hundred feet of the boundary line of such part of the watershed as is held or owned by such town or city, so as to leave the space of four hundred feet immediately adjoining the boundary lines of such watershed so held or owned free and clear of all such treetops, laps, boughs and other inflammable material caused by or left from cutting such standing timber, and thereby prevent the spread of fire from the cut-over area and the consequent damage to the watershed. Any such person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor.

1913, c. 56.

136. Setting fire to grass and brush lands and woodlands. If any person shall intentionally set fire to any grass land, brush land or woodland, except it be his own property, or in that case without first giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and without also taking care to watch such fire while burning and to extinguish it before it shall reach any lands near to or adjoining the lands so fired, he shall for every such offense be guilty of a misdemeanor and shall be fined not less than ten dollars, nor more than fifty dollars, or imprisoned not exceeding thirty days. This section shall not prevent an action for the damages sustained by the owner of any property from such fires. For the purposes of this section, the term "woodland" is to be taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated.

Rev., s. 3346; Code, ss. 52, 53; R. C., c. 16, ss. 1, 2; 1777, c. 123, ss. 1, 2; 1915, c. 243, ss. 8, 11.

137. Local: Willfully or negligently setting fire to woods and fields. If any person shall willfully or negligently set on fire, or cause to be set on fire, any woods, lands or fields whatsoever, every such offender, upon conviction, shall be

fined in the discretion of the court, one-half of the fine to go to the informer, if there be one, and the residue to the school fund of the county wherein such offense was committed, or he shall be imprisoned, in the discretion of the court. This section shall apply only to Caldwell, Wilkes, Watauga, Burke, McDowell, Yadkin, Cherokee and Mitchell counties.

1907, c. 320, ss. 4, 5.

138. Setting fire to woodlands and grass lands with campfires. Any wagoner, hunter, camper or other person who shall kindle a campfire or shall authorize another to kindle such fire, unless all combustible material for the space of ten feet surrounding the place where such fire is kindled has been removed, or shall leave a campfire without fully extinguishing it, or who shall accidentally or negligently by the use of any torch, gun, match or other instrumentality, or in any manner whatever, start any fire upon any grass land, brush land or woodland without fully extinguishing the same, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars, nor more than fifty dollars, or by imprisonment not exceeding thirty days. For the purposes of this section the term "woodland" is to be taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated.

Rev., s. 3347; Code, s. 54; 1885, c. 126; 1913, c. 8; 1915, c. 243, ss. 9, 11.

139. Certain fires to be guarded by watchman. All persons, firms or corporations who shall burn any tar kiln or pit of charcoal, or set fire to or burn any brush, grass or other material, whereby any property may be endangered or destroyed, shall keep and maintain a careful and competent watchman in charge of such kiln, pit, brush or other material while burning. Any person, firm or corporation violating the provisions of this section shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment for not exceeding thirty days. Fire escaping from such kiln, pit, brush or other material while burning shall be prima facie evidence of neglect of these provisions.

1915, c. 243, s. 10.

140. Burning or otherwise destroying crops in the field. If any person shall willfully burn or destroy any other person's corn, cotton, wheat, barley, rye, oats, buckwheat, rice, tobacco, hay, straw, fodder, shucks or other provender in a stack, hill, rick or pen, or secured in any other way out of doors, or grass or sedge standing on the land, he shall be guilty of a felony, and shall be punished by imprisonment in the county jail or state's prison for not less than four months nor more than five years.

Rev., s. 3339; 1885, c. 42; 1874-5, c. 133; Code, s. 985, subsec. 2.

141. Local: Removing dog-tongue and certain other products from another's land. If any person shall enter upon and remove from the lands of any other person, without first obtaining permission from the landowner, any dog-tongue (or vanilla), whortleberries or other fruits, or any other marketable product of the soil, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five dollars nor more than fifty dollars for each offense, or imprisoned not more than thirty days: Provided, that this section shall apply to the counties of Sampson and Duplin only.

Rev., s. 3683; 1889, c. 77.

142. Injuries to dams and water channels of mills and factories. If any person shall cut away, destroy or otherwise injure any dam, or part thereof, or shall obstruct or damage any race, canal or other water channel erected, opened, used or constructed for the purpose of furnishing water for the operation of any mill, factory or machine works, or for the escape of water therefrom, he shall, upon conviction, be fined or imprisoned, or both, at the discretion of the court.

Rev., s. 3678; Code, s. 1087; 1866, c. 48.

143. Taking unlawful possession of another's house. If any person shall enter upon the lands of another and take possession of any house or other building thereon, without permission of the owner or his agent and without a bona fide claim of right or title so to enter and take possession, and shall fail or refuse to vacate such premises within ten days after being notified personally in writing to do so, he shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court.

Rev., s. 3685; 1893, c. 347.

144. Injuring houses, churches, fences and walls. If any person shall, by any other means than burning or attempting to burn, unlawfully and willfully demolish, destroy, deface, injure or damage any of the houses or other buildings mentioned in this chapter in the article entitled Arson and Other Burnings; or shall unlawfully and willfully burn, demolish, pull down, destroy, deface, damage or injure any church, uninhabited house, outhouse or other house or building not mentioned in such article; or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other inclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used, every person so offending shall be guilty of a misdemeanor.

Rev., s. 3673; Code, s. 1062; R. C., c. 34, s. 103.

145. Injuring bridges. If any person shall unlawfully and willfully demolish, destroy, break, tear down, injure or damage any bridge across any of the creeks or rivers or other streams in the state, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court.

Rev., s. 3771; Code, s. 993; 1883, c. 271.

146. Removing, altering or defacing landmarks. If any person, firm or corporation shall knowingly remove, alter or deface any landmark in anywise whatsoever, or shall knowingly cause such removal, alteration or defacement to be done, such person, firm or corporation shall be guilty of a misdemeanor. This section shall not apply to landmarks, such as creeks and other small streams, which the interest of agriculture may require to be altered or turned from their channels, nor to such persons, firms or corporations as own the fee simple in the lands on both sides of the lines designated by the landmarks removed, altered or defaced. Nor shall this section apply to those adjoining landowners who may by agreement remove, alter or deface landmarks in which they alone are interested.

Rev., s. 3674; Code, s. 1063; 1858-9, c. 17; 1915, c. 248.

147. Removing or defacing monuments and tombstones. 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 and on purpose break or deface such monument, or alter the letters, marks or inscription thereof, he shall be guilty of a misdemeanor.

Rev., s. 3680; Code, s. 1088; R. C., c. 34, s. 102; 1840, c. 6.

148. Removing enclosures of graveyards. If any person shall unlawfully take away any stone, brick, iron or other material that enclose private graveyards he shall be guilty of a misdemeanor, and on conviction, shall be fined not more than ten dollars or imprisoned not more than thirty days.

Rev., s. 3681; 1889, c. 130.

149. Disturbing graves. If any person shall, without due process of law, or the consent of the surviving husband or wife or the next of kin of the deceased, and of the person having the control of such grave, open any grave for the purpose of taking therefrom any dead body, or any part thereof buried therein, or anything interred therewith, he shall be guilty of a felony, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.

Rev., s. 3672; 1885, c. 90.

150. Interfering with gas, electric and steam appliances. If any person shall willfully, with intent to injure or defraud, commit any of the acts set forth in the following subsections, he shall be guilty of a misdemeanor:

1. Connect a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or other instrument provided for registering the quantity consumed; or,

2. Obstruct, alter, injure or prevent the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas or electricity consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or other person other than an employee of the company owing any gas or electric meter, who willfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any meter so detached or disconnected; or,

3. In any manner whatever change, extend or alter any service or other pipe, wire or attachment of any kind, connecting with or through which natural or artificial gas or electricity is furnished from the gas mains or pipes of any person, without first procuring from said person written permission to make such change, extension or alterations; or,

4. Make any connection or reconnection with the gas mains, service pipes or wires of any person, furnishing to consumers natural or artificial gas or electricity, or turn on or off or in any manner interfere with any valve or stop-cock or other appliance belonging to such person, and connected with his service or other pipes or wires, or enlarge the orifice of mixers, or use natural gas for

heating purposes except through mixers, or electricity for any purpose without first procuring from such person a written permit to turn on or off such stop-cock or valve, or to make such connection or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stop-cocks, wires or other appliances of such, as the case may be; or

5. Retain possession of or refuse to deliver any mixer, meter, lamp or other appliance which may be leased or rented by any person, for the purpose of furnishing gas, electricity or power through the same, or sell, lend or in any other manner dispose of the same to any person other than such person entitled to the possession of the same; or,

6. Set on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person in conveying gas to consumers, or interfere in any manner with the wells, pipes, mains, gate-boxes, valves, stop-cocks, wires, cables, conduits or any other appliances, machinery or property of any person engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such person; or,

7. Open or cause to be opened, or reconnect, or cause to be reconnected any valve lawfully closed or disconnected by a district steam corporation; or,

8. Turn on steam or cause it to be turned on or to reenter any premises when the same has been lawfully stopped from entering such premises.

Rev., s. 3666; 1901, c. 735.

151. Injuring fixtures and other property of gas companies; civil liability. If any person shall willfully, wantonly or maliciously remove, obstruct, injure or destroy any part of the plant, machinery, fixtures, structures or buildings, or anything appertaining to the works of any gas company, or shall use, tamper or interfere with the same, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days for such offense. Such person shall also forfeit and pay to the company so injured, to be sued for and recovered in a civil action, double the amount of the damages sustained by any such injury.

Rev., s. 3671; 1889 (Pr.), c. 35, s. 3.

152. Tampering with engines and boilers. If any person shall willfully turn out water from any boiler or turn the bolts of any engine or boiler, or meddle or tamper with such boiler or engine, or any other machinery in connection with any boiler or engine, causing loss, damage, danger or delay to the owner in the prosecution of his work, he shall be guilty of a misdemeanor.

Rev., s. 3667; 1901, c. 733.

153. Injuring wires and other fixtures of telephone, telegraph and electric-power companies. If any person shall willfully injure, destroy or pull down any telegraph, telephone or electric-power-transmission pole, wire, insulator or any other fixture or apparatus attached to a telegraph, telephone or electric-power-transmission line, he shall be guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court.

Rev., s. 3847; Code, s. 1118; 1881, c. 4; 1883, c. 103; 1907, c. 827, s. 1.

154. Making unauthorized connections with telephone and telegraph wires. It shall be unlawful for any person to tap or make any connection with any wire or apparatus of any telephone or telegraph company operating in this state, except such connection as may be authorized by the person or corporation operating such wire or apparatus. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days for each offense. Each day's continuance of such unlawful connection shall be a separate offense.

1911, c. 113.

155. Injuring fixtures and other property of electric-power companies. It shall be unlawful for any person willfully and wantonly, and without the consent of the owner, to take down, remove, injure, obstruct, displace or destroy any line erected or constructed for the transmission of electrical current, or any poles, towers, wires, conduits, cables, insulators or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith, or to sever any wire or cable thereof, or in any manner to interrupt the transmission of electrical current over and along any such line, or to take down, remove, injure or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current, or to wantonly or willfully cause injury to any of the property mentioned in this section by means of fire. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned not longer than one year, or both fined and imprisoned, in the discretion of the court.

1907, c. 919.

156. Felling trees on telephone and electric-power wires. If any person shall negligently and carelessly cut or fell any tree, or any limb or branch therefrom, in such a manner as to cause the same to fall upon and across any telephone, electric light or electric-power-transmission wire, from which any injury to such wire shall be occasioned, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of fifty dollars for each and every offense.

Rev., s. 3849; 1903, c. 616; 1907, c. 827, s. 2.

157. Interfering with telephone lines. If any person shall unnecessarily disconnect the wire or in any other way render any telephone line, or any part of such line, unfit for use in transmitting messages, or shall unnecessarily cut, tear down, destroy or in any way render unfit for the transmission of messages any part of the wire of a telephone line, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned for a term not exceeding two years, in the discretion of the court.

Rev., s. 3845; 1901, c. 318.

ART. 23. TRESPASSES TO PERSONAL PROPERTY

158. Malicious injury to personal property. If any person shall wantonly and willfully injure the personal property of another, he shall be guilty of a misdemeanor, whether the property be destroyed or not, and shall be punished by fine or imprisonment, or both, in the discretion of the court.

Rev., s. 3676; Code, s. 1082; 1885, c. 53; 1876-7, c. 18.

159. Malicious removal of packing from railway coaches and other rolling stock. If any person shall willfully and maliciously take or remove the waste or packing from the journal box of any locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon any railroad, whether the same be operated by steam or electricity, he shall upon conviction thereof, be fined or imprisoned in the jail or state's prison, in the discretion of the court.

Rev., s. 3759; 1905, c. 335.

160. Removing boats or their fixtures and appliances. If any person shall take away from any landing or other place where the same shall be, or shall loose, unmoor, or turn adrift from the same, any boat, canoe, pettiangua, oars, paddles, sails or tackle belonging to or in the lawful custody of any person; or if any person shall direct the same to be done without the consent of the owner, or the person having the custody or possession of such property, he shall forfeit and pay to such owner, or person having the custody and possession as aforesaid, the sum of two dollars, and shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court. The owner may also have his action for such injury. The penalties aforesaid shall not extend to any person who shall press any such property by public authority.

Rev., s. 3544; Code, s. 2288; 1889, c. 378; R. C., c. 14, ss. 1, 3.

161. Injuring livestock not inclosed by lawful fence. If any person shall willfully and unlawfully kill or abuse any horse, mule, hog, sheep or other cattle, the property of another, in any inclosure not surrounded by a lawful fence, such person shall be guilty of a misdemeanor, and fined or imprisoned, at the discretion of the court.

Rev., s. 3313; Code, s. 1003; 1868-9, c. 253.

162. Taking away or injuring exhibits at fairs. If any person, without the license of the owner, or any agricultural or other society, shall unlawfully carry away, remove, destroy, mar, deface or injure anything, animate or inanimate, while on exhibition on the grounds of any such society, or going to or returning from the same, he shall be guilty of a misdemeanor. It shall be sufficient in any indictment for any such offense, or for the larceny of any such thing, animate or inanimate as aforesaid, to charge that the thing so carried away, destroyed, marred, injured or feloniously stolen is the property of the society to which the said thing shall be forwarded for exhibition.

Rev., s. 3668; Code, s. 2796; 1870-1, c. 184, s. 4.

SUBCHAPTER 8. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY

ART. 24. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY

163. Crime against nature. If any person shall commit the abominable and detestable crime against nature, with mankind or beast, he shall be imprisoned in the state's prison not less than five nor more than sixty years.

Rev., s. 3349; Code, s. 1010; R. C., c. 34, s. 6; 1868-9, c. 167, s. 6; 5 Eliz., c. 17; 25 Hen. VIII, c. 6.

164. Incest between certain near relatives. In all cases of carnal intercourse between grandparent and grandchild, parent and child, and brother and sister of the half or whole blood, the parties shall be guilty of a felony, and shall be punished for every such offense by imprisonment in the state's prison for a term not exceeding fifteen years, in the discretion of the court.

Rev., s. 3351; Code, s. 1060; 1879, c. 16, s. 1; 1911, c. 16.

165. Incest between uncle and niece and nephew and aunt. In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, in the discretion of the court.

Rev., s. 3352; Code, s. 1061; 1879, c. 16, s. 2.

166. Seduction. If any man shall seduce an innocent and virtuous woman under promise of marriage, he shall be guilty of a felony, and upon conviction shall be fined or imprisoned at the discretion of the court, and may be imprisoned in the state prison not exceeding the term of five years: Provided, the unsupported testimony of the woman shall not be sufficient to convict: Provided further, that marriage between the parties shall be a bar to further prosecution hereunder. But when such marriage is relied upon by the defendant, it shall operate as to the costs of the case as a plea of *nolo contendere*, and the defendant shall be required to pay all the costs of the action or be liable to imprisonment for nonpayment of the same.

Rev., s. 3354; 1885, c. 248; 1917, c. 39.

167. Miscegenation. All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive, are forever prohibited, and shall be void. Any person violating this section shall be guilty of an infamous crime, and shall be punished by imprisonment in the county jail or state's prison for not less than four months nor more than ten years, and may also be fined, in the discretion of the court.

Rev., s. 3369; Code, s. 1084; Const., Art. XIV, s. 8; R. C., c. 68, s. 7; 1834, c. 24; 1838-9, c. 24.

168. Issuing license for marriage between white person and negro; performing marriage ceremony. If any register of deeds shall knowingly issue any license for marriage between any person of color and a white person; or if any clergyman, minister of the gospel or justice of the peace shall knowingly marry any such person of color to a white person, the person so offending shall be guilty of a misdemeanor.

Rev., s. 3370; Code, s. 1085; R. C., c. 34, s. 80; 1830, c. 4, s. 2.

169. Bigamy. If any person, being married, shall marry any other person during the life of the former husband or wife, every such offender, and every person counseling, aiding or abetting such offender, shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail for any term not less than four months nor more than ten years. Any such offense may be dealt with, tried, determined and punished in the county where the offender shall be apprehended, or be in custody, as if the offense had been actually committed in that county. If any person, being married, shall contract a marriage with any other

person outside of this state, which marriage would be punishable as bigamous if contracted within this state, and shall thereafter cohabit with such person in this state, he shall be guilty of a felony and shall be punished as in cases of bigamy. Nothing contained in this section shall extend to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to have been living within that time; nor to any person who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage; nor to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

Rev., s. 3361; Code, s. 988; R. C., c. 34, s. 15; 1790, c. 323; 1809, c. 783; 1829, c. 9; 1913, c. 26. See 9 Geo. IV, c. 31, s. 22.

170. Fornication and adultery. If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together they shall be guilty of a misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other.

Rev., s. 3350; Code, s. 1041; R. C., c. 34, s. 45; 1805, c. 684.

171. Inducing female persons to enter hotels or boarding-houses for immoral purposes. Any person who shall knowingly persuade, induce or entice, or cause to be persuaded, induced or enticed, any woman or girl to enter a hotel, public inn or boarding-house for the purpose of prostitution or debauchery or for any other immoral purpose, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in the discretion of the court.

1917, c. 158, s. 1.

172. Opposite sexes occupying same bedroom at hotel for immoral purposes; falsely registering as husband and wife. Any man and woman found occupying the same bedroom in any hotel, public inn or boarding-house for any immoral purpose, or any man and woman falsely registering as, or otherwise representing themselves to be, husband and wife in any hotel, public inn or boarding-house, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in the discretion of the court.

1917, c. 158, s. 2.

173. Inducing female persons to become inmates of houses of prostitution. Any person who shall procure a female inmate for a house of prostitution, or who, by promises, threats, violence, or by any other device or scheme, shall cause, induce, persuade or encourage a female person to become an inmate of a house of prostitution, or who shall procure a place as inmate in a house of prostitution for a female person; or any person who shall, by promises, threats, violence, or by any other device or scheme, cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any female person to become an inmate of a house of ill-fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution, or who shall procure any female person who has not previously practiced prostitution to become an inmate of a

house of ill-fame within this state, or to come into this state or leave this state for the purpose of prostitution, or who shall receive or give or agree to receive or give any money or other thing of value for procuring or attempting to procure any female person to become an inmate of a house of ill-fame within this state, or to come into this state or leave this state for the purpose of prostitution, shall be guilty of a misdemeanor, and upon a first conviction for an offense under this section shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than three hundred dollars nor more than one thousand dollars.

1911, c. 189.

174. Certain evidence relative to keeping disorderly houses admissible; keepers of such houses defined. On a prosecution in any court for keeping a disorderly house or bawdy-house, or permitting a house to be used as a bawdy-house, or used in such a way as to make it disorderly, or a common nuisance, evidence of the general reputation or character of the house shall be admissible and competent; and evidence of the lewd, dissolute and boisterous conversation of the inmates and frequenters, while in and around such house, shall be prima facie evidence of the bad character of the inmates and frequenters, and of the disorderly character of the house. The manager or person having the care, superintendency or government of a disorderly house or bawdy-house is the "keeper" thereof, and one who employs another to manage and conduct a disorderly house or bawdy-house is also "keeper" thereof.

1907, c. 779.

175. Obscene literature, indecent exposure and lewd dances. If any person shall exhibit for the purpose of gain, lend for hire or otherwise publish or sell for the purpose of gain, or exhibit in any school, college or other institution of learning, or have in his possession for the purpose of sale or distribution, any obscene book, paper, writing, print, drawing or other representation; or if any person shall post any indecent placards, writings, pictures or drawings on walls, fences, bill-boards or other places; or if any person shall make any public exposure of the person or other indecent exhibition, or take part in any immoral show, exhibition or performance, where indecent, immoral or lewd dances or plays are conducted, in any booth, tent, room or other place to which the public is invited; or if any one shall permit such exhibitions or immoral performances to be conducted in any tent, booth, or other place owned or controlled by him, he shall be guilty of a misdemeanor.

Rev., s. 3731; 1885, c. 125; 1907, c. 502.

176. Cutting or painting obscene words or pictures near public places. It shall be unlawful for any person to write, cut or carve any indecent word, or to paint, cut or carve any obscene or lewd picture or representation, on any tree or other object near the public highways or other public places. Any person guilty of violating this section shall be fined not more than fifty dollars, or imprisoned not more than thirty days.

1907, c. 344.

177. Using profane or indecent language on passenger trains. It shall be unlawful for any person to curse or use profane or indecent language on any

passenger train. Any person so offending shall upon conviction be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 470, ss. 1, 2.

178. Using profane or indecent language to female telephone operators. It shall be unlawful for any person to use any lewd or profane words, or any words of vulgarity, or to use indecent language to any female telephone operator operating any telephone, switchboard, circuit or line. Any person violating this section shall upon conviction be guilty of a misdemeanor.

1913, c. 35; 1915, c. 41.

179. Local: Using profane or indecent language on public highways. If any person shall, on any public road or highway and in the hearing of two or more persons, in a loud and boisterous manner, use indecent or profane language, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. The following counties shall be exempted from the provisions of this section: Dare, Tyrrell, Washington, Beaufort, Martin, Pitt, Watauga, Cleveland, Brunswick, Stanly, Perquimans, Pasquotank, Camden, Swain, Gates, Davie, Orange, Jones, Transylvania, Macon and Craven.

1913, c. 40.

NOTE. Any person who shall use vulgar or obscene language on the premises of the Kannapolis Cotton Mills shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five dollars nor more than ten dollars, or be imprisoned not more than ten days. See 1909, c. 46, s. 3.

180. Lewd women within three miles of colleges and boarding-schools. If any loose woman or woman of ill-fame shall commit any act of lewdness with or in the presence of any student, who is under twenty-one years old, of any boarding-school or college, within three miles of such school or college, she shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Upon the trial of any such case students may be competent but not compellable to give evidence. No prosecution shall be had under this section after the lapse of six months.

Rev., s. 3353; 1889, c. 523.

181. Obstructing way to places of public worship. If any person shall maliciously stop up or obstruct the way leading to any place of public worship, or to any spring or well commonly used by the congregation, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3776; Code, s. 3669; R. C., c. 97, s. 5; 1785, c. 241.

182. Disturbing religious assembly by certain exhibitions. If any person shall bring within half a mile of any place where the people are assembled for divine worship, and stop for exhibition any stallion or jack, or shall bring within that distance any natural or artificial curiosities and there exhibit them, he shall forfeit and pay to any one who will sue therefor the sum of twenty dollars and shall also be guilty of a misdemeanor: Provided, that nothing herein shall be construed to prohibit such exhibitions at any time, if made within the limits of any incorporated town, or without such limits, if made before the hour of

ten o'clock in the forenoon, or after three o'clock in the afternoon. This section shall not apply to Hatteras Township in Dare County.

Rev., s. 3705; Code, s. 3670; R. C., c. 97, s. 6; 1809, c. 779, s. 1; 1907, c. 412.

183. Permitting stone-horses and stone-mules to run at large. If any person shall let any stone-horse or stone-mule of two years old or upwards run at large, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to Hatteras Township in Dare County.

Rev., s. 3323; Code, s. 2325; R. C., c. 17, s. 6; 1907, c. 412.

SUBCHAPTER 9. OFFENSES AGAINST PUBLIC JUSTICE

ART. 25. PERJURY

184. Punishment for perjury. If any person shall willfully and corruptly commit perjury, on his oath or affirmation, in any suit, controversy, matter or cause, depending in any of the courts of the state, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, every person so offending shall be guilty of a felony and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail or state's prison not less than four months nor more than ten years.

Rev., s. 3615; Code, s. 1092; R. C., c. 34, s. 49; 1791, c. 338, s. 1.

185. Subornation of perjury. If any person shall, by any means, procure another person to commit such willful and corrupt perjury as is mentioned in the preceding section, the person so offending shall be punished in like manner as the person committing the perjury.

Rev., s. 3616; Code, s. 1093; R. C., c. 34, s. 50; 1791, c. 338, s. 2.

186. Perjury before legislative committees. If any person shall willfully and corruptly swear falsely to any fact material to the investigation of any matter before any committee of either house of the general assembly, he shall be subject to all the pains and penalties of willful and corrupt perjury, and, on conviction in the superior court of Wake County, shall be confined in the state's prison for the time prescribed by law for perjury.

Rev., s. 3611; Code, s. 2857; 1869-70, c. 5, s. 4.

187. Perjury in court-martial proceedings. If any person shall willfully and corruptly swear falsely before any court-martial, touching and concerning any matter or thing cognizable before such court-martial, he shall be liable to the pains and penalties of perjury.

Rev., s. 3612; Code, s. 3235; R. C., c. 70, s. 73; 1812, c. 828, s. 3.

188. False oath to insurance statement. Any person who shall make oath to a willfully false statement in the annual report or other statement required by law from an insurance company shall be guilty of perjury.

Rev., s. 3493; 1899, c. 54, s. 97.

189. False oath to procure benefit of insurance policy or certificate. Any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a policy or certificate holder in any insurance corporation or fraternal benefit society, for the purpose of procuring payment of a benefit named in the certificate of such holder, shall be guilty of perjury.

Rev., s. 3487; 1899, c. 54, s. 60; 1913, c. 89, s. 28.

190. False oath to statement required of fraternal benefit societies. Any person who shall willfully make any false statement in any verified report or declaration under oath, required or authorized by law from fraternal benefit societies, shall be guilty of perjury.

1913, c. 89, s. 28.

NOTE. See chapter on Insurance, Art. 26, s. 270.

191. False oath to certificate of mutual fire insurance company. Any person taking a false oath in respect to the certificate required by law before issuing policies in a mutual fire insurance company, that every subscription for insurance is genuine and made with an agreement that every subscriber will take the policies subscribed for by him within thirty days after granting a license to such company, shall be guilty of perjury.

Rev., ss. 4738, 4834; 1899, c. 54, s. 32; 1901, c. 391, ss. 3, 4; 1903, c. 438, s. 4.

NOTE. See chapter on Insurance, Art. 8, s. 86.

ART. 26. BRIBERY

192. Bribery of officials. If any person holding office under the laws of this state who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison for a term not exceeding five years, or fined not exceeding five thousand dollars, or both, in the discretion of the court.

Rev., s. 3568; Code, s. 991; 1868-9, c. 176, s. 2.

193. Offering bribes. If any person shall offer a bribe, whether it be accepted or not, he shall be guilty of felony, and shall be punished by imprisonment for a term not less than one year nor more than five years in the state's prison or county jail, in the discretion of the court.

Rev., s. 3569; Code, s. 992; 1870-1, c. 232.

194. Bribery of legislators. If any person shall directly or indirectly promise, offer or give, or cause or procure to be promised, offered or given, any money, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right of action, bribe, present or reward, or any other valuable thing whatever, to any member of the senate or house of representatives of this state after his election as such member, and either before or after he shall have qualified and taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding

which may then be pending before the general assembly, or which may come before him for action in his capacity as a member of the general assembly, such person so offering, promising or giving, or causing or procuring to be promised, offered or given any such money, goods, bribe, present or reward, or any bond, contract, undertaking, obligation or security for the payment or delivery of any money, goods, bribe, present or reward, or other valuable thing whatever, and the member-elect who shall in anywise accept or receive the same or any part thereof shall be guilty of a felony, and shall be fined not exceeding double the amount so offered, promised or given, and imprisoned in the state's prison not exceeding five years, and the person convicted of so accepting or receiving the same, or any part thereof, shall forfeit his seat in the general assembly and shall be forever disqualified to hold any office of honor, trust or profit under this state.

Rev., s. 3570; Code, s. 2852; 1868-9, c. 176, s. 5.

195. Bribery of jurors. If any juror, either directly or indirectly, shall take anything from the plaintiff or defendant in a civil suit, or from any defendant in a state prosecution, or from any other person, to give his verdict, every such juror, and the person who shall give such juror any fee or reward to influence his verdict, or induce or procure him to make any gain or profit by his verdict, shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years.

Rev., s. 3697; Code, s. 990; R. C., c. 34, s. 34; 5 Edw. III, c. 10; 34 Edw. III, c. 8; 38 Edw. III, c. 12.

ART. 27. OBSTRUCTING JUSTICE

196. Breaking or entering jails with intent to injure prisoners. If any person shall conspire to break or enter any jail or other place of confinement of prisoners charged with crime or under sentence, for the purpose of killing or otherwise injuring any prisoner confined therein; or if any person shall engage in breaking or entering any such jail or other place of confinement of such prisoners with intent to kill or injure any prisoner, he shall be guilty of a felony, and upon conviction, or upon a plea of guilty, shall be fined not less than five hundred dollars, and imprisoned in the state's prison or the county jail not less than two nor more than fifteen years.

Rev., s. 3698; 1893, c. 461, s. 1.

197. Refusal of witness to appear or to testify in investigations of lynchings. If any person summoned as a witness in the investigation of a charge of lynching shall willfully fail to attend as a witness in obedience to the process served on him, or if, after being sworn, he shall refuse to answer questions pertinent to the matter being investigated before any tribunal, he shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

Rev., s. 3699; 1893, c. 461, s. 3.

198. Resisting officers. If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a misdemeanor.

Rev., s. 3700; 1889, c. 51, s. 1.

199. Failing to aid police officers. If any person, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, he shall be guilty of a misdemeanor.

Rev., s. 3701 : 1889, c. 51, s. 2.

200. Intimidating or interfering with jurors and witnesses. If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a juror or witness in any of the courts of this state, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such juror or witness from attendance upon such court, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.

Rev., s. 3696 : 1891, c. 87.

201. Failing to attend as witness before legislative committees. If any person shall willfully fail or refuse to attend or produce papers, on summons of any committee of investigation of either house of the general assembly, either select or committee of the whole, he shall be guilty of a misdemeanor, and on conviction in the superior court of the county in which such witness may reside or be found, he shall be fined not less than five hundred dollars nor more than one thousand dollars, and shall be subject to imprisonment at the discretion of the court.

Rev., s. 3692 : Code, s. 2854 : 1869-70, c. 5, s. 2.

ART. 28. MISCONDUCT IN PUBLIC OFFICE

202. Buying and selling offices. If any person shall bargain away or sell an office or deputation of an office, or any part or parcel thereof, or shall take money, reward or other profit, directly or indirectly, or shall take any promise, covenant, bond or assurance for money, reward or other profit, for an office or the deputation of an office, or any part thereof, which office or any part thereof shall touch or concern the administration or execution of justice, or the receipt, collection, control or disbursement of the public revenue, or shall concern or touch any clerkship in any court of record wherein justice is administered; or if any person shall give or pay money, reward or other profit, or shall make any promise, agreement, bond or assurance for any of such offices, or for the deputation of any of them, or for any part of them, the person so offending in any of the cases aforesaid shall be guilty of a misdemeanor, and on conviction thereof shall forfeit all his right, interest and estate in such office, and every part and parcel thereof, and shall be imprisoned and fined at the discretion of the court.

Rev., s. 3571 : Code, s. 998 : R. C., c. 34, s. 33 : 5, 6 Edw. VI, c. 16, ss. 1, 5.

203. Acting as officer before qualifying as such. If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a misdemeanor and shall be ejected from his office.

Rev., s. 3565 : Code, s. 79.

204. Willfully failing to discharge duties. If any clerk of any court of record, sheriff, justice of the peace, county commissioner, county surveyor, coroner, treasurer, constable or official of any of the state institutions, or of any county, city or town, shall willfully 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, he shall be guilty of a misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense, and shall also be fined or imprisoned in the discretion of the court.

Rev., s. 3592; 1901, c. 270, s. 2.

205. Failing to make reports and discharge other duties. If any state or county officer shall fail, neglect or refuse to make, file or publish any report, statement or other paper, or to deliver to his successor all books and other property belonging to his office, or to pay over or deliver to the proper person all moneys which come into his hands by virtue or color of his office, or to discharge any duty devolving upon him by virtue of his office and required of him by law, he shall be guilty of a misdemeanor.

Rev., s. 3576.

206. Swearing falsely to official reports. If any clerk, sheriff, register of deeds, county commissioner, county treasurer, justice of the peace, constable or other county officer shall willfully swear falsely to any report or statement required by law to be made or filed, concerning or touching the county, state or school revenue, he shall be guilty of a misdemeanor.

Rev., s. 3605; Code, s. 731; 1874-5, c. 151, s. 4; 1876-7, c. 276, s. 4.

207. Making of false report by bank examiners; accepting bribes. If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank which shall have been examined by him, with the intent to aid or abet the officers, owners or agents of such bank in continuing to operate an insolvent bank; or if any such examiner shall receive or accept any bribe or gratuity, given for the purpose of inducing him not to file any report of an examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state's prison for not less than four months nor more than ten years.

Rev., s. 3324; 1903, c. 275, s. 24.

208. Director of public trust contracting for his own benefit. If any person, appointed or elected a commissioner or director to discharge any trust wherein the state or any county, city or town may be in any manner interested, shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor.

Rev., s. 3572; Code, s. 1011; R. C., c. 34, s. 38; 1825, c. 1269; 1826, c. 29.

209. Speculating in claims against towns, cities and the state. If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or state officer shall engage in the purchasing of any county, city, town or state claim at a less price than its full and true value, or at any rate of discount thereon, or be interested in any speculation in any such claim, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, and also shall be liable to removal from office at the discretion of the court.

Rev., s. 3575; Code, s. 1009; 1868-9, c. 260.

210. Acting as agent for those furnishing supplies for schools and other state institutions. If any member of any board of directors, board of managers, board of trustees of any of the educational, charitable, eleemosynary or penal institution of the state, or any member of any board of education, or any county or district superintendent or examiner of teachers, or any trustee of any school or other institution supported in whole or in part from any of the public funds of the state, or any officer, agent, manager, teacher or employee of such boards shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in supplying any goods, wares or merchandise of any nature or kind whatsoever for any of said institutions or schools; or if any of such officers, agents, managers, teachers or employees of such institution or school or state or county officer shall act as agent for any manufacturer, merchant, dealer, publisher or author for any article of merchandise to be used by any of said institutions or schools; or shall receive, directly or indirectly, any gift, emolument, reward or promise of reward for his influence in recommending or procuring the use of any manufactured article, goods, wares or merchandise of any nature or kind whatsoever by any of such institutions or schools, he shall be forthwith removed from his position in the public service, and shall upon conviction be deemed guilty of a misdemeanor and fined not less than fifty dollars nor more than five hundred dollars and be imprisoned, in the discretion of the court.

Rev., s. 3833; 1899, c. 732, s. 73; 1897, c. 543.

211. Buying school supplies from interested officer. If any county board of education or school committee shall buy school supplies in which any member has a pecuniary interest, or if any school officers or teachers shall receive any gift, emolument, reward or promise of reward for influence in recommending or procuring the use of any school supplies for the schools with which they are connected, such person shall be removed from his position in the public service and shall, upon conviction, be deemed guilty of a misdemeanor.

Rev., s. 3835; 1901, c. 4, s. 69.

212. Selling bonds without giving proper notice. It shall be unlawful for any board of county commissioners, board of road commissioners, school board or school committee, or any drainage commissioner or board of drainage commissioners of any county, city, town, road, school, or drainage district to sell bonds for any purpose, either at public or private sale, without giving notice of the time and place of sale in some newspaper published in such county, city or town at least thirty days prior to the date of sale: Provided, that where there is no newspaper published in the county, such notice shall be posted at the courthouse door in such county at least thirty days prior to the sale.

Any violation of this section by any person or corporation whose duty it shall be to issue and sell such bonds shall constitute a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court.

1917, cc. 147, 174.

213. Allowing prisoners to escape; burden of proof. If any person charged with a crime or sentenced by the court upon conviction of any offense, shall be legally committed to any sheriff, constable or jailer, or shall be arrested by any sheriff, deputy sheriff or coroner acting as sheriff, by virtue of any *capias* issuing on a bill of indictment, information or other criminal proceeding, and such sheriff, deputy sheriff, coroner, constable or jailer, willfully or negligently, shall suffer such person, so charged or sentenced and committed, to escape out of his custody, the sheriff, deputy sheriff, coroner, constable or jailer so offending, being thereof convicted, shall be removed from office, and shall be fined or imprisoned, or both, at the discretion of the court before whom the trial may be had; and in all such cases it shall be sufficient, in support of the indictment against such sheriff or other officer, to prove that the person so charged or sentenced was committed to his custody, and it shall lie upon the defendant to show that such escape was not by his consent or negligence, but that he had used all legal means to prevent the same, and acted with proper care and diligence: Provided, that such removal of a sheriff shall not affect his duty or power as a collector of the public revenue, but he shall proceed on such duty and be accountable, as if such conviction and removal had not been had.

Rev., s. 3577; Code, s. 1022; R. C., c. 34, s. 35; 1791, c. 343, s. 1; 1905, c. 350.

214. Solicitor to prosecute officer for escape. It shall be the duty of solicitors, when they shall be informed or have knowledge of any felon, or person otherwise charged with any crime or offense against the state, having within their respective districts escaped out of the custody of any sheriff, deputy sheriff, coroner, constable or jailer, to take the necessary measures to prosecute such sheriff or other officer so offending.

Rev., s. 2822; Code, s. 1023; R. C., c. 34, s. 36; 1791, c. 343, s. 2.

215. Disposing of public documents or refusing to deliver them over to successor. It shall be the duty of the clerk of the superior court of each county, and every other person to whom the acts of the general assembly, supreme court reports or other public documents are transmitted or deposited for the use of the county or the state, to keep the same safely in their respective offices; and if any such person having the custody of such books and documents, for the uses aforesaid, shall negligently and willfully dispose of the same, by sale or otherwise, or refuse to deliver over the same to his successor in office, he shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court.

Rev., s. 3598; Code, s. 1073; 1881, c. 151.

216. Failing to return process or making false return. If any sheriff, constable or other officer, whether state or municipal, or any person who shall presume to act as any such officer, not being by law authorized so to do, refuse or neglect to return any precept, notice or process, to him tendered or delivered, which it is his duty to execute, or make a false return thereon, he shall forfeit

and pay to any one who will sue for the same one hundred dollars, and shall moreover be guilty of a misdemeanor.

Rev., s. 3604; Code. s. 1112; R. C., c. 34. s. 118; 1818, c. 980, s. 3; 1827, c. 20, s. 4.

217. Failing to surrender tax-list for inspection and correction. If any sheriff or tax collector shall refuse or fail to surrender his tax-list for inspection or correction upon demand by the authorities imposing the tax, or their successors in office, he shall be guilty of a misdemeanor, and shall be imprisoned not more than five years, and fined not exceeding one thousand dollars, at the discretion of the court.

Rev., s. 3788; Code. s. 3823; 1870-1, c. 177, s. 2.

NOTE. See Municipal Corporations, Art. 5. s. 58.

218. Failing to file report of fines. If any officer who is by law required to file any report or statement of fines or penalties with the county board of education, shall fail so to do at or before the time fixed by law for the filing of such report, he shall be guilty of a misdemeanor.

Rev., s. 3579; 1901, c. 4, s. 62.

219. Failure of ex-justice of the peace to turn over books and papers. If any justice of the peace, on expiration of his term of office, or if any personal representative of a deceased justice of the peace, shall, after demand upon him by the clerk of the superior court, willfully fail and refuse to deliver to the clerk of the superior court all dockets, all law and other books, and all official papers which came into his hands by virtue or color of his office, he shall be guilty of a misdemeanor.

Rev., s. 3578; Code, ss. 828, 829; 1885, c. 402.

ART. 29. MISCONDUCT IN PRIVATE OFFICE

220. Failure of certain railroad officers to account with successors. If the president and directors of any railroad company, and any person acting under them, shall, upon demand, fail or refuse to account with the president and directors elected or appointed to succeed them, and to transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company, they shall be guilty of a felony, and shall be punished by imprisonment in the state's prison for not less than one nor more than five years, and be fined at the discretion of the court. All persons conspiring with any such president, directors or their agents to defeat, delay or hinder the execution of this section shall be guilty of a misdemeanor, and shall be punished in like manner. The governor is hereby authorized, at the request of the president, directors and other officers of any railroad company, to make requisition upon the governor of any other state for the apprehension of any such president failing to comply with this section.

Rev., s. 3760; Code, ss. 2001, 2002; 1870-1, c. 72, ss. 1-3.

221. Malfeasance of bank officers and agents. If any president, director, cashier, teller, clerk or agent of any bank or other corporation shall embezzle, abstract or willfully misapply any of the moneys, funds or credits of the bank, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any

note, bond, draft, bill of exchange, mortgage, judgment or decree, or make any false entry in any book, report or statement of the bank with the intent in either case to injure or defraud or to deceive any officer of the bank, or if any person shall aid and abet in the doing of any of these things, he shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison for not less than four months nor more than fifteen years, and likewise fined, at the discretion of the court.

Rev., s. 3325; 1903, c. 275, s. 15.

222. Making false entries in banking accounts; misrepresenting assets and liabilities of banks. If any person shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any corporation, partnership, firm or individual transacting a banking business, or shall knowingly subscribe to or exhibit false papers, with the intent to deceive any person authorized to examine into the affairs of such corporation, partnership, firm or individual, or shall willfully and knowingly make, state or publish any false statement of the amount of the assets or liabilities of any such corporation, partnership, firm or individual, he shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state's prison not less than four months nor more than ten years.

Rev. s. 3326; 1903, c. 275, s. 27.

ART. 30. PRISON BREACH AND PRISONERS

223. Escape of hired prisoners from custody. If any prisoner, who shall be removed from the prison of the respective counties, cities and towns under the law providing for the hiring of prisoners, shall escape from the person or company having him in custody, he shall be guilty of a misdemeanor, and shall be imprisoned at hard labor not more than thirty days, or fined not more than fifty dollars.

Rev., s. 3658; Code, s. 3455; 1876-7, c. 196, s. 4.

224. Prison breach and escape. If any person shall break prison, being lawfully confined therein, or shall escape from the custody of any superintendent, guard or officer, he shall be guilty of a misdemeanor.

Rev., s. 3657; Code, s. 1021; R. C., c. 34, s. 19; 1 Edw. II, st. 2d; 1909, c. 872.

225. Permitting escape of or maltreating hired convicts. If any person charged in any way with the control or management of convicts, hired for service outside of the state's prison, shall negligently permit them to escape, or shall maltreat them, he shall be guilty of a misdemeanor; but this provision shall not be held to relieve any person from any criminal liability.

Rev., s. 3659; Code, s. 3450; 1881, c. 127, s. 2.

226. Conveying messages and weapons to convicts and other prisoners. If any person shall convey to or from any convict any letters or oral messages, or shall convey to any convict or person imprisoned, charged with crime and awaiting trial any weapon or instrument by which to effect an escape, or that will aid him in an assault or insurrection, or shall trade with a convict for his clothing or stolen goods, or shall sell to him any article forbidden him by prison rules, he

shall be guilty of a misdemeanor: Provided, that when a murder, an assault or an escape is effected with the means furnished, the person convicted of furnishing the means shall be sentenced to not less than four years hard labor in the state's prison.

Rev., s. 3662; Code, s. 3441; 1873-4, c. 158, s. 12; 1911, c. 11.

227. Injury to prisoner by jailer. If the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured, but shall be guilty of a misdemeanor.

Rev., s. 3661; Code, s. 3463; R. C., c. 87, s. 8; 1795, c. 433, s. 6.

228. Confining prisoners in improper apartments. If the sheriff or jailer shall wantonly or unnecessarily confine those committed to his custody in any apartment, other than that provided and designated by law for persons of the description of the prisoner, he shall be guilty of a misdemeanor.

Rev., s. 3660; Code, s. 3471; R. C., c. 87, s. 16; 1795, c. 433, s. 4.

229. Requiring female prisoners to work in chain-gang. If any officer, either judicial, executive or ministerial, shall order or require the working of any female on the streets or roads in any group or chain-gang in this state, he shall be deemed guilty of a misdemeanor.

Rev., s. 3596; 1897, c. 270.

SUBCHAPTER 10. OFFENSES AGAINST THE PUBLIC PEACE

ART. 31. OFFENSES AGAINST THE PUBLIC PEACE

230. Carrying concealed weapons. If any one, except when on his own premises, shall carry concealed about his person any bowie-knife, dirk, dagger, slung-shot, loaded cane, brass, iron or metallic knuckles or razor or other deadly weapon of like kind, he shall be guilty of a misdemeanor, and shall be fined or imprisoned at the discretion of the court. If any one, except on his own premises, shall carry concealed about his person any pistol or gun, he shall be guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned not less than thirty days, nor more than two years, at the discretion of the court. 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.

Rev., s. 3708; Code, s. 1005; 1917, c. 76.

231. Sending, accepting or bearing challenges to fight duels. If any person shall send, accept or bear a challenge to fight a duel, though no death ensue, he, and all such as counsel, aid and abet him, shall be guilty of a misdemeanor,

and shall, moreover, be ineligible to any office of trust, honor or profit in the state, any pardon or reprieve notwithstanding.

Rev., s. 3628; Code, s. 1012; R. C., c. 34, s. 48; 1802, c. 608, s. 1.

NOTE. For the offense of fighting a duel when death ensues as a result thereof, see s. 32 of this chapter.

232. Engaging in and betting on prize fights. If any two or more persons engage in a prize fight, sparring match or glove or fist contest for money or other valuable prize or stake; or if any person bet or lay a wager on the result thereof or advise, aid or abet in any way whatever in promoting the same, he shall be fined not less than five hundred dollars, or imprisoned in the state's prison or jail for not less than one year nor more than five years, or both, in the discretion of the court.

Rev., s. 3707; 1895, c. 28, ss. 1-4.

NOTE. The governor is empowered to prevent prize fights. See State Officers, s. 7.

233. Disturbing picnics, entertainments and other meetings. If any person shall willfully interrupt or disturb any picnic, excursion party, school entertainment, political meeting, or any meeting or other organization whatsoever lawfully and peaceably held, either at, within or without the place where such picnic, excursion party, school entertainment, political meeting or other meeting or organization is held, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, in the discretion of the court.

Rev., s. 3704; 1897, c. 213.

234. Disturbing schools and scientific and temperance meetings; injuring property of schools and temperance societies. If any person shall willfully interrupt or disturb any public or private school or temperance society or organization or any meeting lawfully and peacefully held for the purpose of literary and scientific improvement, or for the discussion of temperance or question of moral reform, either within or without the place where such meeting or school is held, or injure any school building, or deface any school furniture, apparatus or other school property, or property of any temperance society or organization, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not more than thirty days.

Rev., s. 3838; Code, s. 2592; 1885, c. 140; 1901, c. 4, s. 28.

235. Disturbing religious congregations. If any person shall be intoxicated or shall be guilty of any rude and disorderly conduct at any place where people are accustomed to meet for divine worship, and while the people are there assembled for such worship, whether such worship should have begun or not, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned in the discretion of the court.

Rev., s. 3706; 1901, c. 738.

236. Detectives going armed in a body. If any body of men composed of more than three persons, calling themselves detectives or claiming to be in the employ of any detective agency or known and designated as detectives, shall go armed, they shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.

Rev., s. 3703; 1893, c. 191.

SUBCHAPTER 11. OFFENSES AGAINST THE PUBLIC SAFETY

ART. 32. OFFENSES AGAINST THE PUBLIC SAFETY

237. Malicious injury of property of railroads and other carriers; causing death or other physical injury thereby. If any person shall willfully and maliciously put or place any matter or thing upon, over or near any railroad track; or shall willfully and maliciously destroy, injure or remove the road-bed, or any part thereof, or any rail, sill or other part of the fixture appurtenant to, or constituting or supporting any portion of the track of such railroad; or shall willfully and maliciously do any other thing with intent to obstruct, stop, hinder, delay or displace the cars traveling on such road, or to stop, hinder or delay the passengers or others passing over the same; or shall willfully and maliciously injure the road-bed or the fixtures aforesaid, or any part thereof, with any other intent whatsoever, such person so offending shall be guilty of a felony and shall be fined not exceeding one thousand dollars nor less than two hundred dollars, and be imprisoned in the state's prison or county jail not less than four months nor more than ten years, and shall be committed to jail till he find surety for his good behavior, for a space of time of not less than three nor more than seven years. If it shall happen that by reason of the commission of the offenses aforesaid, or any of them, any engine or car shall be displaced from the track, or shall be stopped, hindered or delayed, so that any one thereby be instantly killed, or so wounded or hurt as to die therefrom in twelve calendar months thereafter, or shall thereby be maimed or be disabled in the use of any limb or member, then, and in every such case, the party so offending, his counselors, aiders and abettors, on conviction, shall suffer death, if the person is killed, and shall be imprisoned in the state's prison not less than five nor more than sixty years, if the person is maimed or disabled. If any person shall maliciously destroy or injure any plank-road, turnpike or canal, or any appurtenance or fixture belonging thereto, or used therewith, or shall maliciously destroy or injure any lock, dam or sluice, the same being a part of any work erected or made for the purpose of navigation, or improving the navigation of any water, the person so offending shall be guilty of a misdemeanor, and shall suffer the like punishment as in this section is provided for maliciously injuring a railroad.

Rev., s. 3754; Code, s. 1098; R. C., c. 34, ss. 99, 100; 1838, c. 38; 1879, c. 255, s. 2; 1911, c. 200.

238. Injuring without malice property of railroads and other carriers; causing death or other physical injury thereby. If any person, unlawfully, and on purpose, but without malice, shall commit any of the offenses mentioned in the preceding section, he shall be guilty of a misdemeanor. If it shall happen that by reason of the commission of any such offense any person shall be instantly killed, or so wounded or hurt as to die therefrom in twelve calendar months thereafter, or shall thereby be maimed or disabled in the use of any limb or member, then, and in every such case, the party so offending, his counselors, aiders and abettors, shall be imprisoned not less than twelve months, and fined at the discretion of the court.

Rev., s. 3755; Code, s. 1099; R. C., c. 34, s. 101.

239. Shooting or throwing at trains or passengers. If any person shall willfully and unlawfully cast, throw or shoot any stone, rock, bullet, shot, pellet or other missile at, against, or into any railroad car, locomotive or train, or any person thereon, while such car or locomotive shall be in progress from one station to another, or while such car, locomotive or train shall be stopped for any purpose, the person so offending shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment in the county jail or state's prison, at the discretion of the court.

Rev., s. 3763; Code, s. 1100; 1887, c. 19; 1876-7, c. 4; 1911, c. 179.

240. Operating trains and street cars while intoxicated. Any train dispatcher, telegraph operator, engineer, fireman, flagman, brakeman, switchman, conductor, motorman, or other employee of any steam, street, suburban or inter-urban railway company, who shall be intoxicated while engaged in running or operating, or assisting in running or operating, any railway train, shifting-engine, or street or other electric car, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court.

Rev., s. 3758; Code, s. 1972; 1891, c. 114; 1871-2, c. 138, s. 38; 1907, c. 330.

241. Displaying false lights on seashore. If any person shall make or display, or cause to be made or displayed, any false light or beacon on or near the seacoast, for the purpose of deceiving and misleading masters of vessels, and thereby putting them in danger of shipwreck, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than four months nor more than ten years.

Rev., s. 3430; Code, s. 1024; R. C., c. 34, s. 58; 1831, c. 42.

242. Local: Building unguarded barbed-wire fences along public highways. If any person shall erect or maintain a barbed-wire fence along any public road or highway, and within ten yards thereof, without putting a railing, smooth wire, board or plank on the top of such fence not less than three inches in width, he shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court. This section shall apply to the counties of Rowan, Swain, Catawba, Greene, Richmond, Stokes, Rutherford, Forsyth, Yadkin, Brunswick, Durham, Wilkes, Stanly, Cumberland, Iredell, Macon and Mitchell: Provided, that in Rutherford County only a railing or plank shall be used at the top of such fence.

Rev., s. 3769; 1895, c. 65; 1899, c. 43; 1899, c. 225; 1905, c. 220; 1909, cc. 318, 604, 629, 810.

243. Exploding dynamite cartridges and bombs. If any person shall fire off or explode, or cause to be fired off or exploded, except for mechanical purposes in a legitimate business, any dynamite cartridge, bomb or other explosive of a like nature, he shall be guilty of a misdemeanor.

Rev., s. 3794; 1887, c. 364, s. 53.

244. Storing explosives near causeway on Eagle's Island. It shall be unlawful for any person, firm or corporation to erect or keep any magazine or other building for the storage of gunpowder, dynamite or other explosives within one hundred yards of the road or causeway on Eagle's Island between the Cape Fear and Brunswick rivers: Provided, however, that this section shall not apply to

warehouses for the storage of spirits of turpentine, rosin and tar. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than fifty nor more than two hundred dollars, or be imprisoned thirty days, or both, in the discretion of the court. 1907, c. 768.

245. Keeping for sale or selling explosives without a license. If any dealer or other person shall sell or keep for sale any dynamite cartridges, bombs or other combustibles of a like kind, without first having obtained from the board of commissioners of the county where such person or dealer resides a license for that purpose, he shall be guilty of a misdemeanor.

Rev., s. 3817; 1887, c. 364, ss. 1, 4.

246. Failing to enclose marl beds. If any person shall open any marl bed without surrounding it with a lawful fence, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this shall not apply to any person whose marl bed is situated inside his own enclosure.

Rev., s. 3796; 1887, cc. 235, 268.

SUBCHAPTER 12. GENERAL POLICE REGULATIONS

ART. 33. LOTTERIES AND GAMING

247. Advertising lotteries. If any one, by writing or printing or by circular or letter or in any other way, advertise or publish an account of a lottery, whether within or without this state, stating how, when or where the same is to be or has been drawn or what are the prizes therein or any of them or the price of a ticket or any share or interest therein or where or how it may be obtained, he shall be guilty of a misdemeanor.

Rev., s. 3725; 1887, c. 211.

248. Dealing in lotteries. 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, real estate, goods, chattels, cash, written evidence of debt, certificates of claims or any other thing of value whatsoever, every person so offending shall be guilty of a misdemeanor, and shall be fined not exceeding two thousand dollars or imprisoned not exceeding six months, or both, in the discretion of the court. Any person who engages in disposing of any species of property whatsoever, including money and evidences of debt, or in any manner distributes gifts or prizes upon tickets or certificates sold for that purpose, shall be held liable to prosecution under this section.

Rev., s. 3726; Code, s. 1047; R. C., c. 34, s. 69; 1834, c. 19, s. 1; 1874-5, c. 96.

249. Selling lottery tickets and acting as agent for lotteries. If any person shall sell, barter or otherwise dispose of any lottery ticket or order for any number or shares in any lottery, or shall in anywise be concerned in such lottery, by acting as agent in the state for or on behalf of any such lottery, to be drawn or

paid either out of or within the state, such person shall be guilty of a misdemeanor, and shall be punished as provided for in the preceding section.

Rev., s. 3727; Code, s. 1048; R. C., c. 34, s. 70; 1834, c. 19, s. 2.

250. Gambling. If any person play at any game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, both those who play and those who bet thereon shall be guilty of a misdemeanor.

Rev., s. 3715; 1891, c. 29.

251. Allowing gambling in houses of public entertainment; duty of police officers; penalty. If any keeper of an ordinary or other house of entertainment, or of a house wherein liquors are retailed, shall knowingly suffer any game, at which money or property, or anything of value, is bet, whether the same be in stake or not, to be played in any such house, or in any part of the premises occupied therewith; or shall furnish persons so playing or betting either on said premises or elsewhere with drink or other thing for their comfort or subsistence during the time of play, he shall be guilty of a misdemeanor, and shall be fined not less than five hundred dollars and be imprisoned not less than six months. Any person who shall be convicted under this section shall, upon such conviction, forfeit his license to do any of the businesses mentioned in this section, and shall be forever debarred from doing any of such businesses in this state. The court shall embody in its judgment that such person has forfeited his license, and no board of county commissioners, board of town commissioners or board of aldermen shall thereafter have power or authority to grant to such convicted person or his agent a license to do any of the businesses mentioned herein. It shall be the duty of every police officer of the cities, towns and villages of this state to make diligent inquiry and to exercise constant watchfulness to discover whether any of the offenses enumerated in this section are being committed, and to report once a week under oath to the mayor or other chief officer of his city, town or village, whether such offenses are being committed, and all the facts within his knowledge, or of which he has information relating thereto. If any such police officer shall know or have information that such offenses are being committed and shall fail or neglect to report the same to such mayor or other chief officer, together with all the information known to him, as to the person or persons committing the same, the time and place of the commission and the names of the witnesses thereto, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court, and shall forfeit his office. It shall be the duty of such mayor or other chief officer to require the report herein provided for, and to require that the same shall be verified by the oath of such policeman, and if it appear upon such report that any of the said offenses have been committed, it shall be the duty of such mayor or other chief officer to issue his warrant for the arrest of the offender. Any such mayor or other chief officer of any city, town or village who shall fail or neglect to require the reports herein mentioned, or shall fail or neglect to require of such police officer to verify the same upon oath, or who shall refuse or neglect, upon its appearing from such reports that there is probable cause to believe that any of the said offenses have been committed, to issue his warrant for the arrest of the offender, shall be guilty of a misdemeanor. Any person committing any of the

offenses mentioned in this section shall be liable to a penalty of five hundred dollars, to be recovered by suit in the superior court in the county in which such offense may have been committed, one-half thereof to the use of the person bringing such suit, and one-half to the school fund for the county.

Rev., s. 3716; Code, s. 1043; 1901, c. 753; R. C., c. 34, s. 76; 1799, c. 526; 1801, c. 581; 1831, c. 26.

252. Gambling with faro-banks and tables. If any person shall open, establish, use or keep a faro-bank, or a faro-table, with the intent that games of chance may be played thereat, or shall play or bet thereat any money, property or other thing of value, whether the same be in stake or not, he shall be guilty of a misdemeanor, and shall be fined at least two hundred dollars and imprisoned not less than three months.

Rev., s. 3717; Code, s. 1044; R. C., s. 71; 1848, c. 34; 1856-7, c. 25.

253. Keeping gaming tables or betting thereat. 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 shall be imprisoned not less than thirty days; and every person who shall play thereat or thereat bet any money, property or other thing of value, whether the same be in stake or not, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars.

Rev., s. 3718; Code, s. 1045; R. C., c. 34, s. 72; 1791, c. 336; 1798, c. 502, s. 2.

254. Allowing gaming tables on premises. If any person shall knowingly suffer to be opened, kept or used in his house or on any part of the premises occupied therewith, any of the gaming tables by this article 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 fined and imprisoned.

Rev., s. 3719; Code, s. 1046; R. C., c. 34, s. 73; 1798, c. 502, s. 3; 1800, c. 5, s. 2.

255. Gaming tables to be destroyed by justices and police officers. All justices of the peace, sheriffs, constables and officers of police are hereby authorized and directed, on information made to them on oath that any gaming table prohibited to be used by this article is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction.

Rev., s. 3720; Code, s. 1049; R. C., c. 34, s. 74; 1791, c. 336; 1798, c. 502, s. 2.

256. Persons suspected of knowing of gambling places to be summoned as witnesses; immunity of witnesses from prosecution. If any justice of the peace, intendent or magistrate of police, mayor of a town, or judge of the supreme or superior courts shall have good reason to believe that any person within his jurisdiction has knowledge of the existence and establishment of any faro-bank, faro-table or other gaming table prohibited by this article, or of any place where intoxicating liquors are sold contrary to law, in any town or county within his jurisdiction, such person not being minded to make voluntary information thereof on oath, then it shall be lawful for such justice of the peace, intendent, magistrate, mayor or judge to issue to the sheriff of the county, or to any constable of the town or township in which such faro-bank, faro-table, gaming table or

place where intoxicating liquors are sold contrary to law is supposed to be, a subpœna, capias ad testificandum or other summons in writing, commanding such person to appear immediately before such justice of the peace, intendent, magistrate, mayor or judge and give evidence on oath as to what he may know touching the existence, establishment and whereabouts of such faro-bank, faro-table or other gaming table, or place where intoxicating liquors are sold contrary to law, and the name and personal description of the keeper thereof. Such evidence when obtained shall be considered and held in law as an information on oath, and the justice, intendent, magistrate, mayor or judge may thereupon proceed to seize and arrest such keeper and destroy such table, or issue process therefor, in like manner as may be done by authority of the preceding section. All the provisions of the section immediately following shall be applicable likewise to this section. The immunity of witnesses from prosecution therein provided for shall apply to any person examined under oath under this section, whether before the issuance of any process or upon the trial of any action in which he may be called to testify.

Rev., s. 3721; Code, s. 1050; 1858-9, c. 34, s. 1; 1889, c. 355; 1913, c. 141.

257. Evidence of witnesses not to be used against them. No person shall be excused, on any prosecution, from testifying touching any unlawful gaming done by himself or others; but no discovery, made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offenses so done or participated in by him.

Rev., s. 1637; Code, s. 1215; R. C., c. 35, s. 50.

NOTE. See further, Gaming Contracts and Futures, s. 2.

258. Property exhibited by gamblers to be seized; disposition of same. All moneys or other property or thing of value exhibited for the purpose of alluring persons to bet on any game, shall be liable to be seized by any justice of the peace, or by any person acting under his warrant. Of the moneys or other property or thing which shall be so seized one-half shall belong to the person seizing them, and the other half shall go to the use of the poor.

Rev., s. 3722; Code, s. 1051; R. C., c. 34, s. 77; 1798, c. 502, s. 3.

259. Opposing destruction of gaming tables and seizure of property. 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.

Rev., s. 3723; Code, s. 1052; R. C., c. 34, s. 78; 1798, c. 502, s. 4.

ART. 34. PROTECTION OF MINORS

260. Selling cigarettes to minors. If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years; or if any person shall aid, assist or abet any other person in selling such

articles to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court.

Rev., s. 3804; 1891, c. 276.

261. Aiding minors in procuring cigarettes; duty of police officers. If any person shall aid or assist any minor child under seventeen years old in obtaining the possession of cigarettes, or tobacco in any form used as a substitute therefor, by whatsoever name it may be called, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

It shall be the duty of every police officer, upon knowledge or information that any minor under the age of seventeen years is or has been smoking any cigarette, to inquire of any such minor the name of the person who sold or gave him such cigarette, or the substance from which it was made, or who aided and abetted in effecting such gift or sale. Upon receiving this information from any such minor, the officer shall forthwith cause a warrant to be issued for the person giving or selling, or aiding and abetting in the giving or selling of such cigarette or the substance out of which it was made, and have such person dealt with as the law directs. Any such minor who shall fail or refuse to give to any officer, upon inquiry, the name of the person selling or giving him such cigarette, or the substance out of which it was made, shall be guilty of a misdemeanor.

Rev., s. 3805; 1891, c. 276, s. 2; 1913, c. 185.

262. Selling or giving weapons to minors. If any person shall knowingly sell, offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie-knife, dirk, loaded cane or sling-shot, he shall be guilty of a misdemeanor.

Rev., s. 3832; 1893, c. 514.

263. Permitting young children to use dangerous firearms. Any person, being the parent or guardian of, or standing in loco parentis to, any child under the age of twelve years, who shall knowingly permit such child to have the possession or custody of, or use in any manner whatever, any gun, pistol or other dangerous firearm, whether such firearm be loaded or unloaded, or any other person who shall knowingly furnish such child any such firearm, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

1913, c. 32.

264. Permitting minors to enter barrooms, billiard rooms and bowling alleys. If the keeper or owner of any barroom, billiard room or bowling alley shall allow any minor to enter or remain in such barroom, billiard room or bowling alley, where before such minor enters or remains in such barroom, billiard room or bowling alley, the owner or keeper thereof has been notified by the parents or guardian of such minor not to allow him to enter or remain in such barroom, billiard room or bowling alley, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3729; 1897, c. 278.

265. Exposing children to fire. If any person shall leave any child of the age of seven years or less locked or otherwise confined in any dwelling, building

or enclosure, and go away from such dwelling, building or enclosure without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire, the person so offending shall be guilty of a misdemeanor, and shall be punished at the discretion of the court.

Rev., s. 3795; 1893, c. 12.

266. Marrying females under fourteen years old. If any person shall marry a female under the age of fourteen years, he shall be guilty of a misdemeanor.

Rev., s. 3368; Code, s. 1083; R. C., c. 34, s. 46; 1820, c. 1041, ss. 1, 2.

267. Separating child under six months old from mother. It shall be unlawful for any person to separate or aid in separating any child under six months old from its mother for the purpose of placing such child in a foster home or institution, or with the intent to remove it from the state for such purpose, unless the consent in writing for such separation shall have been obtained from the clerk of the superior court and the county health officer of the county in which the mother resides; and it shall be unlawful for any mother to surrender her child for such purpose without first having obtained such consent. Any person violating this section shall, upon conviction, be fined not exceeding five hundred dollars or imprisoned for one year, or both, in the discretion of the court.

1917, c. 59.

268. Failing to pay minors for doing certain work. Whenever any person, having a contract with any corporation, company or person for the manufacture or change of any raw material by the piece or pound, shall employ any minor to assist in the work upon the faith of and by color of such contract, with intent to cheat and defraud such minor, and, having secured the contract price, shall willfully fail to pay the minor when he shall have performed his part of the contract work, whether done by the day or by the job, the person so offending shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3428a; 1893, c. 309.

ART. 35. PROTECTION OF THE FAMILY

269. Abandonment of family by husband. If any husband shall willfully 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.

Rev., s. 3355; Code, s. 970; 1868-9, c. 209, s. 1; 1873-4, c. 176, s. 10; 1879, c. 92.

270. Evidence that abandonment was willful. If the fact of abandonment of and failure to provide adequate support for the 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, and 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 willful.

Rev., s. 3356; Code, s. 971; 1868-9, c. 209, s. 3.

271. Order of support from husband's property or earnings. Upon any conviction for abandonment, any judge or any recorder having jurisdiction thereof may, in his discretion, make such order as in his judgment will best provide for the support, as far as may be necessary, of the deserted wife or children, or both, from the property or labor of the defendant.

1917, c. 259.

272. Failure of husband to provide adequate support for family. If any husband, while living with his wife, shall willfully neglect to provide adequate support for such wife or the children which he has begotten upon her, he shall be guilty of a misdemeanor.

Rev., s. 3357; Code, s. 972; 1869-9, c. 209, s. 2; 1873-4, c. 176, s. 11; 1879, c. 92.

ART. 36. INTOXICATING LIQUORS

273. Adulteration of liquors. If any person shall adulterate any spirituous, alcoholic, vinous or malt liquors by mixing the same with any substance of whatever kind, except as provided in the following section, or if any person shall sell or offer to sell any spirituous, alcoholic, vinous or malt liquors, knowing the same to be thus adulterated, or shall import into this state any spirituous or intoxicating liquors, and sell or offer to sell such liquor, knowing the same to be adulterated, he shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the discretion of the court.

Rev., s. 3512; Code, s. 982; 1858-9, c. 57, ss. 1, 4.

274. Selling recipe for adulterating liquors. If any person shall sell or offer to sell any recipe or formula whatever for adulterating any spirituous or alcoholic liquors, by mixing the same with any substance of whatever kind, except as is herein provided, he shall be guilty of a felony, and shall be fined or imprisoned as is provided in the preceding section: Provided, that this section and the two sections that immediately precede and follow it respectively shall not be so construed as to prevent druggists, physicians and persons engaged in the mechanical arts from adulterating liquors for medical and mechanical purposes.

Rev., s. 3513; Code, s. 984; 1858-9, c. 57, ss. 2, 3.

275. Manufacturing or selling poisonous liquors. If any person shall manufacture, sell, or in any way deal out spirituous liquors, of any name or kind, to be used as a drink or beverage, and the same shall be found to contain any foreign properties or ingredients poisonous to the human system, he shall be guilty of a felony and shall be imprisoned in the state's prison not less than five years, and may be fined in the discretion of the court. It shall be competent for any citizen, after making purchase of any spirituous liquor, to cause the same to be analyzed by some known competent chemist, and if upon such analysis it shall be found to contain any foreign poisonous matter, it shall be prima facie evidence against the party making such a sale.

Rev., s. 3522; Code, s. 983; 1873-4, c. 180, ss. 1, 2.

276. Selling or giving away liquor near political speaking. If any person shall sell or give away, either directly or indirectly, any spirituous liquors, wine or bitters containing alcohol, within two miles of any place at which political

public speaking shall be advertised to take place, and does take place, during the day on which such speaking shall take place, he shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than twenty dollars, or imprisoned not exceeding twenty days.

Rev., s. 3528; Code, s. 1079; 1879, c. 212.

277. Giving intoxicants to unmarried minors under seventeen years old. If any person shall give intoxicating drinks or liquors to any unmarried minor under the age of seventeen years; or if any person shall aid, assist or abet any other person in giving such drinks or liquors to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court; but nothing in this section shall prevent any parent or other person standing in loco parentis from giving or administering any such drinks or liquors to his minor child for medicinal purposes, nor any physician from giving or administering such drinks or liquors to any minor patient under his care; nor shall this section apply to the giving or using of wine in the administration of the sacrament.

1915, c. 82.

278. Selling or giving intoxicants to unmarried minors by dealers; liability for exemplary damages. If any dealer in intoxicating drinks or liquors sell, or in any manner part with for a compensation therefor, either directly or indirectly, or give away such drinks or liquors, to any unmarried person under the age of twenty-one years, knowing such person to be under the age of twenty-one years, he shall be guilty of a misdemeanor; and such sale or giving away shall be prima facie evidence of such knowledge. Any person who keeps on hand intoxicating drinks or liquors for the purpose of sale or profit shall be considered a dealer within the meaning of this section.

The father, or if he be dead, the mother, guardian or employer of any minor to whom a sale or gift shall be made in violation of this section, shall have a right of action in a civil suit against the person so offending by such sale or gift, and upon proof of such illicit sale or gift shall recover from the party so offending such exemplary damages as a jury may assess: Provided, that such assessment shall not be less than twenty-five dollars.

Rev., ss. 3524, 3525; Code, ss. 1077, 1078; 1873-4, c. 68; 1881, c. 242.

ART. 37. PUBLIC DRUNKENNESS

279. Public drinking on railway passenger cars; copy of section to be posted. Any person who shall publicly engage in the drinking of intoxicating liquors in the presence of passengers on any passenger car shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned not to exceed thirty days. This section shall not apply to any smoking compartment or to any closet, dining or buffet car. It shall be the duty of all railway companies to have posted a copy of this section in all passenger coaches used for transporting passengers within the state.

1907, c. 455.

280. Local: Public drunkenness. If any person shall be found drunk or intoxicated on the public highway, or at any public place or meeting, in any

county, township, city, town, village or other place herein named, he shall be guilty of a misdemeanor, and upon conviction shall be punished as is provided in this section :

1. By a fine of not more than fifty dollars, or by imprisonment for not more than thirty days, in the counties of Ashe, Catawba, Cleveland, Dare, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, Mecklenburg, Moore, Richmond, Rutherford, Scotland, Stanly, Swain and Warren, in the townships of Fruitville and Poplar Branch in Currituck County and at Pungo in Beaufort County.

1907, cc. 305, 785, 900 ; 1908, c. 113 ; 1909, c. 815.

2. By a fine of not less than three dollars nor more than fifty dollars, or by imprisonment for not more than thirty days, in Yancey County.

1909, c. 256.

3. By a fine of not less than two dollars and fifty cents nor more than fifty dollars, or by imprisonment for not more than thirty days, in Buncombe County.

1909, c. 271.

4. By a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment for not more than ten days, in Cherokee and Yadkin counties.

1907, c. 976.

5. By a fine of not less than three dollars nor more than five dollars in Clay County, all such fines to go to the public-school fund of that county.

1907, c. 309.

6. By a fine of not less than five dollars nor more than ten dollars in Wake County, all such fines to go to the general road fund of that county.

1907, c. 908.

7. By a fine of not more than fifty dollars, or by imprisonment for not more than thirty days, in Mitchell County : Provided, that this subsection shall not apply to incorporated towns in that county.

1909, c. 111.

8. By a fine of not less than five dollars nor more than fifty dollars, or by imprisonment for not more than ten days, in the village of Kannapolis, or on the premises or within one mile of the Kannapolis Cotton Mills.

Rev., s. 3733 ; 1897, c. 57 ; 1899, cc. 87, 208, 608, 638 ; 1901, c. 445 ; 1903, cc. 116, 124, 523, 758 ; 1909, c. 46, s. 2.

ART. 38. VAGRANTS AND TRAMPS

281. Persons classed as vagrants. If any person shall come within any of the following classes, he shall be deemed a vagrant, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days : Provided, however, that this limitation of punishment shall not be binding except in cases of a first offense, and in all other cases such person may be fined or imprisoned, or both, in the discretion of the court :

1. Persons wandering or strolling about in idleness who are able to work and have no property to support them.

2. Persons leading an idle, immoral or profligate life who have no property to support them and who are able to work and do not work.

3. All persons able to work having no property to support them and who have not some visible and known means of a fair, honest and reputable livelihood.

4. Persons having a fixed abode who have no visible property to support them and who live by stealing or by trading in, bartering for or buying stolen property.

5. Professional gamblers living in idleness.

6. All able-bodied men having no other visible means of support who shall live in idleness upon the wages or earnings of their mother, wife or minor children, except of male children over eighteen years old.

7. Keepers and inmates of bawdy-houses, assignation houses, lewd and disorderly houses, and other places where illegal sexual intercourse is habitually carried on: Provided, that nothing here is intended or shall be construed as abolishing the crime of keeping a bawdy-house, or lessening the punishment by law for such crime.

Rev., s. 3740; 1905, c. 391; 1907, c. 1012, s. 1; 1913, c. 75; 1915, c. 1.

282. Police officers to furnish list of disorderly houses; inmates competent and compellable to testify. It shall be the duty of the chief of police, marshal, constable or other chief ministerial officer of each city and town in this state to furnish every thirty days to the police justice, recorder, mayor or other trial officer of such city or town a list of the bawdy, assignation, lewd and disorderly houses and other places where illegal sexual intercourse is carried on, together with the names of the keepers and inmates of such houses and places, in such city or town; and it shall be the duty of such police justice, recorder, mayor or other trial officer, upon the filing of such list, to issue his warrant for the persons declared in subsection seven of the preceding section to be vagrants, and to punish in accordance with the provisions of that section such of them as may be found guilty. In all trials under said subsection seven of the preceding section any keeper or inmate of any of the houses or places named, or his employees, shall be competent and compellable to give evidence of the character and nature of such house or place and of the character and acts of the keepers and inmates thereof; but the person so testifying shall not be prosecuted or punished for the commission of any crime about which he shall have been required to testify.

If any chief of police, marshal, constable or other chief ministerial officer of any city or town shall fail to furnish the list of houses and places provided for in this section, or shall suppress the name of any person whom he is required herein to report, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court.

1907, c. 1012, ss. 2, 3.

283. Tramp defined and punishment provided; certain persons excepted. If any person shall go about from place to place begging or subsisting on charity, he shall be denominated a tramp, and shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days: Provided, that any person who shall furnish satisfactory evidence of good character shall be discharged without cost. Any act of begging or vagrancy by any person, unless a well-known object of charity, shall be evidence that the person committing the

same is a tramp. This section shall not apply to any woman, to any minor under the age of fourteen years, or to any blind person.

Rev., s. 3735; Code, ss. 3828, 3829, 3831, 3833; 1897, c. 268; 1879, c. 198, ss. 1, 4, 6.

284. Trespassing and the carrying of dangerous weapons by tramps. If any tramp shall enter any dwelling-house or kindle any fire on the land of another without the consent of the owner or occupant thereof, or shall kindle a fire on any highway, or shall be found carrying any firearm or other dangerous weapon, or shall threaten to do any injury to the person, or to the real or personal estate, of another, he shall be punished by imprisonment at the discretion of the court, not to exceed twelve months.

Rev., s. 3736; Code, s. 3829; 1879, c. 198, s. 2.

285. Malicious injuries by tramps to persons and property. If any tramp shall willfully and maliciously do any injury to the person, or to the real or personal estate, of another, he shall be punished by imprisonment, at the discretion of the court, not to exceed three years.

Rev., s. 3737; Code, s. 3830; 1879, c. 198, s. 3.

286. Arrest of tramps by persons who are not officers. Any person, upon a view of any offense described in the three preceding sections shall cause the offender to be arrested upon a warrant and taken before some justice of the peace, or he may apprehend the offender and take him before a justice of the peace, for examination, and, on his conviction, he shall be entitled to the same fee as a sheriff.

Rev., s. 3738; Code, s. 3832; 1879, c. 198, s. 5.

ART. 39. REGULATION OF SALES

287. Selling or offering to sell meat of diseased animals. If any person shall knowingly and willfully slaughter any diseased animal and sell or offer for sale any of the meat of such diseased animal for human consumption; or if any person knows that the meat offered for sale or sold for human consumption by him is that of a diseased animal, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court.

Rev., s. 3442; 1905, c. 303.

288. Unauthorized dealing in railroad tickets. If any person shall sell or deal in tickets issued by any railroad company, unless he is a duly authorized agent of the railroad company, or shall refuse upon demand to exhibit his authority to sell or deal in such tickets he shall be guilty of a misdemeanor.

Rev., s. 3764; 1895, c. 83, s. 1.

289. Sale of cotton at night under certain conditions. 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. On conviction, in Mecklenburg and Nash counties, the offender shall be imprisoned not less than three

months nor more than twelve months, and shall also be liable to a penalty of two hundred dollars, one-half of which shall go to the party suing for same and one-half to the public schools of the county.

Rev., s. 3813; Code, s. 1006; 1873-4, c. 62; 1874-5, c. 70; 1905, c. 417.

290. Local: Sale of corn at night in less than five-bushel lots. If any person shall buy, sell, deliver or receive for a price or for any reward whatever, any corn in the ear or shelled of a less amount than five bushels, between the hours of sunset and sunrise, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall be necessary for the state only to allege and prove that the defendant bought or received the corn as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with: Provided, this section shall apply only to the counties of Beaufort, Hyde, Martin, Tyrrell, Washington, Pamlico, Halifax and Edgecombe.

Rev., s. 3809; 1889, c. 90; 1891, c. 6; 1891, c. 8.

ART. 40. REGULATION OF RELATION OF EMPLOYER AND EMPLOYEE

291. Enticing servant to leave master. If any person shall entice, persuade and procure any servant by indenture, or any servant who shall have contracted in writing or orally to serve his employer, to leave unlawfully the service of his master or employer; or if any person shall knowingly and unlawfully harbor and detain, in his own service and from the service of his master or employer, any servant who shall unlawfully leave the service of such master or employer, then, in either case, such person and servant shall be guilty of a misdemeanor and shall be fined not exceeding one hundred dollars or imprisoned not exceeding six months.

Rev., s. 3365; Code, ss. 3119, 3120; 1866, c. 58; 1866-7, c. 124; 1881, c. 303.

292. Local: Hiring servant who has unlawfully left employee. If any person shall knowingly hire, employ, harbor or detain in his own service any servant, employee, or wage hand of any other person, who shall have contracted in writing, or orally, for a fixed period of time to serve his employer, and who shall have left the service of his employer in violation of his contract, he shall be guilty of a misdemeanor, and shall be civilly liable in damages to the party so aggrieved. This section shall apply to the following counties: Beaufort, Edgecombe, Person, Pitt, Washington, Warren, Vance, Pender, Halifax, Guilford, Granville, Hertford, Richmond, Wake, Wayne and Caswell.

Rev., s. 3374; 1901, c. 682; 1903, c. 365; 1907, c. 238, s. 2; 1907, c. 402.

293. Enticing seamen from vessel. If any person shall induce any seaman, in the employment of any domestic or foreign vessel, in any of the ports of North Carolina, to leave any such vessel before his term of service shall have expired, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

Rev., s. 3555; Code, s. 1108; 1879, c. 219, s. 1; 1881, c. 256, s. 1.

294. Secreting or harboring deserting seamen. If any person shall secrete or harbor any seaman who has deserted from any domestic or foreign vessel,

knowing that such seaman has deserted, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days; and if such seaman be found concealed or secreted by any person on his premises, such concealment and secretion shall be deemed *prima facie* evidence that such person knew that such seaman was a deserter.

Rev., s. 3556; Code, s. 1109; 1879, c. 219, s. 2; 1881, c. 256, s. 2.

295. Search warrants for deserting seamen. If any credible witness shall complain, 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 seaman, 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 the 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.

Rev., s. 3557; Code, s. 1110; 1881, c. 256, s. 3.

296. Appeal in cases of deserting seamen regulated. 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 proceed immediately to reduce to writing the testimony of any witness whose testimony is material (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 the 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 allowed for taking depositions.

Rev., s. 3558; Code, s. 1111; 1881, c. 256, ss. 4, 5.

297. Influencing agents and servants in violating duties owed employers. Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever with intent to influence his action in relation to his principal's, employer's or master's business; any agent, employee or servant who requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business; any agent, employee or servant who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent,

employee or servant such commission, discount or bonus shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

1913, c. 190, s. 1.

298. Witness required to give self-criminating evidence; no suit or prosecution to be founded thereon. No person shall be excused from attending, testifying or producing books, papers, contracts, agreements and other documents before any court, or in obedience to the subpoena of any court, having jurisdiction of the crime denounced in the preceding section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or to subject him to a penalty or to a forfeiture; but no person shall be liable to any suit or prosecution, civil or criminal, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before such court or in obedience to its subpoena or in any such case or proceeding: Provided, that no person so testifying or producing any such books, papers, contracts, agreements or other documents shall be exempted from prosecution and punishment for perjury committed in so testifying.

1913, c. 190, s. 2.

299. Blacklisting employees. If any person, agent, company or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent or corporation shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars; and such person, agent, company or corporation shall be liable in penal damages to such discharged person, to be recovered by civil action. This section shall not be construed as prohibiting any person or agent of any company or corporation from furnishing in writing, upon request, any other person, company or corporation to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

1909, c. 858, s. 1.

300. Conspiring to blacklist employees. It shall be unlawful for two or more persons to agree together to blacklist any discharged employee or to attempt, by words or writing or any other means whatever, to prevent such discharged employee, or any employee who may have voluntarily left the service of his employer, from obtaining employment with any other person or company. Persons violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the discretion of the court.

1909, c. 858, s. 2.

301. Issuing nontransferable script to laborers. If any person who employs laborers by the day, week or month shall issue in payment for the services of such laborers any ticket, certificate or other script bearing upon its face the word "nontransferable," or shall issue such ticket, certificate or other script in any form that would render it void by transfer from the person to whom issued; or shall refuse to pay to the person holding the same its face value, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than

ten dollars nor more than fifty dollars for each offense, or imprisoned not more than thirty days.

Rev., s. 3730; 1889, c. 280; 1891, c. 78; 1891, c. 456; 1891, c. 46; 1891, cc. 167, 370; 1895, c. 127; 1891, cc. 167, 456.

ART. 41. REGULATION OF RELATION OF LANDLORD AND TENANT

302. Local: Violation of certain contracts between landlord and tenant. If any tenant or cropper shall procure advances from his landlord to enable him to make a crop on the land rented by him, and then willfully abandon the same without good cause and before paying for such advances; or if any landlord shall contract with a tenant or cropper to furnish him advances to enable him to make a crop, and shall willfully fail or refuse without good cause, to furnish such advances according to his agreement, he shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Any person employing a tenant or cropper who has violated the provisions of this section, with knowledge of such violation, shall be liable to the landlord furnishing such advances for the amount thereof, and shall also be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall apply to the following counties only: Wayne, Lenoir, Greene, Johnston, Jones, Onslow, Craven, Cleveland, Sampson, Pitt, Duplin, Gates, Cumberland, Perquimans, Chowan, Robeson, Bladen, Nash, Harnett, Edgecombe, Hertford, Wilson, Rockingham, Pender, Currituck, Gaston, Northampton, Beaufort, Chatham, Tyrrell, Mecklenburg, Halifax, Caswell, Camden, Cabarrns, Columbus, Martin, Washington, Wake, Alexander, Montgomery, Pamlico, Rowan, Rutherford, Bertie, Warren and Lincoln.

Rev., s. 3366; 1905, cc. 297, 383, 445, 820; 1907, c. 84, s. 1; 1907, c. 595, s. 1; 1907, cc. 8, 639, 719, 869.

303. Local: Tenant neglecting crop; landlord failing to make advances; harboring or employing delinquent tenant. If any tenant or cropper shall procure advances from his landlord to enable him to make a crop on the land rented by him and then willfully refuse to cultivate such crops or negligently or willfully abandon the same without good cause and before paying for such advances; or if any landlord who induces another to become tenant or cropper by agreeing to furnish him advances to enable him to make a crop, shall willfully fail or refuse without good cause to furnish such advances according to his agreement; or if any person shall entice, persuade or procure any tenant, lessee or cropper, who has made a contract agreeing to cultivate the land of another, to abandon or to refuse or fail to cultivate such land, or after notice shall harbor or detain on his own premises, or on the premises of another, any such tenant, lessee or cropper, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not more than thirty days. Any person who employs a tenant or cropper who has violated the provisions of this section, with knowledge of such violation, shall be liable to the landlord furnishing such advances for the amount thereof. This section shall apply only to the following counties: Wake, Hyde, Anson, Hertford, Sampson, Franklin, Union, Richmond, Moore, Lincoln, Rowan, Rutherford and Halifax.

Rev., s. 3367; 1905, c. 299, ss. 1-7; 1907, c. 84, s. 2; 1907, c. 238, s. 1; 1907, c. 595, s. 2; 1907, cc. 543, 810.

304. Local: Tenant violating contract not to rent land from others. When- ever land shall be rented for agricultural purposes and the tenant renting the same shall, at the time thereof or at any subsequent time during the term of such renting, enter into a contract in writing with his lessor, from whom he so rented, that he, the tenant, will not thereafter, without the lessor's consent, rent any land for agricultural purposes from any other person than such lessor during the same term of renting, nor become a cropper on the land of any other person than the lessor during such term, any tenant who shall willfully violate the written contract so entered into by him, without just cause and lawful excuse therefor, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars or by imprisonment for not more than thirty days. This section shall apply only to Greene County.

1907, c. 981.

ART. 42. CRUELTY TO ANIMALS

305. Cruelty to animals; construction of section. If any person shall will- fully overdrive, overload, wound, injure, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill or cause or procure to be overdriven, overloaded, wounded, injured, tortured, tormented, deprived of necessary sustenance, cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or animal, every such offender shall for every such offense be guilty of a misdemeanor. In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjusti- fiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit lawful shooting of birds, deer and other game for human food.

Rev., s. 3299; Code, ss. 2482, 2490; 1891, c. 65; 1881, c. 34, s. 1; 1881, c. 368, ss. 1, 15; 1907, c. 42.

306. Instigating or promoting cruelty to animals. If any person shall will- fully set on foot, or instigate, or move to, carry on, or promote, or engage in, or do any act towards the furtherance of any act of cruelty to any animal, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3300; Code, s. 2487; 1891, c. 65; 1881, c. 368, s. 6.

307. Bear-baiting, cock-fighting and similar amusements. If any person shall keep, or use, or in any way be connected with, or interested in the manage- ment of, or shall receive money for the admission of any person to, any place kept or used for the purpose of fighting, or baiting any bull, bear, dog, cock, or other animal; or if any person shall encourage, aid or assist therein, or shall permit or suffer any place to be so kept or used, he shall be guilty of a misde- meanor, and upon conviction shall be fined not more than fifty dollars or impris- oned not more than thirty days.

Rev., s. 3301; Code, s. 2483; 1891, c. 65; 1881, c. 368, s. 2.

308. Conveying animals in a cruel manner. If any person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a

cruel or inhuman manner, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. Whenever an offender shall be taken into custody therefor by any officer, the officer may take charge of such vehicle or other conveyance and its contents, and deposit the same in some safe place of custody. The necessary expenses which may be incurred for taking charge of and keeping and sustaining the vehicle or other conveyance shall be a lien thereon, to be paid before the same can be lawfully reclaimed; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of such animal in an action therefor.

Rev., s. 3302; Code, s. 2486; 1891, c. 65; 1881, c. 368, s. 5.

ART. 43. PROTECTION OF ANIMALS AGAINST CONTAGIOUS DISEASES

309. Selling, using or exposing diseased animals. If any person shall sell, offer for sale, use or expose, or cause or procure to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or any other contagious or infectious disease known by such person to be dangerous to life, or which shall be diseased past recovery, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3295; Code, s. 2488; 1891, c. 65; 1881, c. 368, s. 7.

310. Animals affected with glanders to be killed. If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3296; Code, s. 2489; 1891, c. 65; 1881, c. 368, s. 8.

311. Hogs affected with cholera to be segregated and confined. If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them, so that they shall not have access to any ditch, canal, branch, creek, river or other water-course which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3297; 1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1903, c. 106; 1899, c. 47; 1913, c. 120.

312. Shipping hogs from cholera-infected territory. It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor.

1917, c. 203.

313. Distributing, selling or using hog-cholera virus without permission. It shall be unlawful for any person, firm or corporation to distribute, sell or use virulent blood from cholera-infected hogs, or "virus," unless and until written permission has been obtained from the state veterinarian for such distribution, sale or use. Any person, firm or corporation guilty of violating the provisions of this section, or failing or refusing to comply with the requirements hereof, shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than one hundred dollars for each offense, and may be imprisoned, in the discretion of the court, not less than ten nor more than thirty days. The offender shall also be liable to any person injured on account of such violation to the full amount of all damages and costs.

1915, c. 88.

ART. 44. PROTECTION OF LIVESTOCK RUNNING AT LARGE

314. Failing to show hide and ears of livestock killed while running at large. If any person shall kill any neat cattle, sheep or hogs in the woods or range, and shall for two days fail to show the hide and ears to the nearest justice or to two freeholders, he shall be guilty of a misdemeanor. In Tyrrell County this section extends to the killing of neat cattle in enclosures.

Rev., s. 3315; Code, s. 2318; R. C., c. 17, s. 2; 1901, c. 546; 1907, c. 821.

315. Molesting or injuring livestock. If any person shall unlawfully and on purpose drive any livestock, lawfully running at large in the range, from said range, or shall kill, maim or injure any livestock, lawfully running at large in the range or in the field or pasture of the owner, whether done with the actual intent to injure the owner, or to drive the stock from the range, or with any other unlawful intent, every such person, his counselors, aiders, and abettors, shall be guilty of a misdemeanor. In the counties of Graham, Swain, Haywood, Jackson and Transylvania he shall be guilty of a felony and shall be punished as if convicted of larceny: Provided, that nothing herein contained shall prohibit any person from driving out of the range any stock unlawfully brought from other states or places. In any indictment under this section it shall not be necessary to name in the bill or prove on the trial the owner of the stock molested, maimed, killed or injured.

Rev., s. 3314; Code, s. 1002; 1885, c. 383; 1887, c. 368; 1895, c. 190; R. C., c. 34, s. 104; 1850, c. 94, ss. 1, 2.

316. Altering the brands of and misbranding another's livestock. If any person shall knowingly alter or deface the mark or brand of any other person's horse, mule, ass, neat cattle, sheep, goat, or hog, or shall knowingly mismark or brand any such beast that may be unbranded or unmarked, not properly his own, with intent to defraud any other person, the person so offending shall be guilty of a felony, and shall be punished as if convicted of larceny.

Rev., s. 3317; Code, s. 1001; R. C., c. 34, s. 57; 1797, c. 485, s. 2.

317. Placing poisonous shrubs and vegetables in public places. If any person shall throw into or leave exposed in any public square, street, lane, alley or open lot in any city, town or village, or in any public road, any mockorange or other poisonous shrub, plant, tree or vegetable, he shall be liable in damages

to any person injured thereby and shall also be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court.

Rev., s. 3318; 1887, c. 338.

ART. 45. PROTECTION OF LETTERS, TELEGRAMS AND TELEPHONE MESSAGES

318. Wrongfully obtaining or divulging knowledge of telephonic messages. If any person wrongfully obtain, or attempt to obtain, any knowledge of a telephonic message by connivance with a clerk, operator, messenger or other employee of a telephone company, or being such clerk, operator, messenger or employee, willfully divulge to any but the person for whom it was intended, the contents of a telephonic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court.

Rev., s. 3848; 1903, c. 599.

319. Violating privacy of telegraphic messages; failure to transmit and deliver same promptly. If any person wrongfully obtain, or attempt to obtain any knowledge of a telegraphic message by connivance with a clerk, operator, messenger, or other employee of a telegraph company; or, being such clerk, operator, messenger, or other employee, willfully divulge to any but the person for whom it was intended, the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or willfully refuse or neglect duly to transmit or deliver the same, he shall be guilty of a misdemeanor.

Rev., s. 3846; 1889, c. 41, s. 1.

320. Unauthorized opening, reading or publishing of sealed letters and telegrams. If any person shall willfully, and without authority, open or read, or cause to be opened or read, a sealed letter or telegram, or shall publish the whole or any portion of such letter or telegram, knowing it to have been opened or read without authority, he shall be guilty of a misdemeanor.

Rev., s. 3728; 1889, c. 41, s. 2.

ART. 46. MISCELLANEOUS POLICE REGULATIONS

321 Desecration of state and national flag. Any person who in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag, standard, color or ensign of the United States or state flag or ensign of this state, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any word, figure, mark, picture, design or drawing or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose, any article or substance of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance upon which it is so placed, or who shall publicly mutilate,

deface, defile, or defy, trample upon or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars or by imprisonment for not more than thirty days. Any person violating this section shall also forfeit a penalty of fifty dollars for each offense, to be recovered with costs in a civil action or suit in any court having jurisdiction. Such action or suit may be brought by and in the name of any citizen of this state, and such penalty, when collected, less the costs and expenses of the action or suit, shall be paid one-half to the person suing and one-half to the school fund of the county in which suit was brought; and two or more penalties may be sued for and recovered in the same action or suit.

The words, flag, standard, color or ensign, as used in this section, shall include any flag, standard, color, ensign, or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be a flag, standard, color or ensign of the United States of America, or a picture or a representation of any of them, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe it to represent the flag, colors, standard or ensign of the United States of America.

The possession by any person other than a public officer, as such, of a flag, standard, color ensign, article, substance, or thing, on which there is anything made unlawful by this section, shall be presumptive evidence that the same is in violation of this section.

1917, c. 271.

322. Injuring notices and advertisements. If any person shall wantonly or maliciously mutilate, deface, pull or tear down, destroy or otherwise damage any notice, sign or advertisement, unless immoral or obscene, whether put up by an officer of the law in performance of the duties of his office or by some other person for a lawful purpose, before the object for which such notice, sign or advertisement was posted shall have been accomplished, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding twenty-five dollars or imprisoned not exceeding thirty days at the discretion of the court. Nothing herein contained shall apply to any person mutilating, defacing, pulling or tearing down, destroying or otherwise damaging notices, signs or advertisements put upon his own land or lands of which he may have charge or control, unless consent of such person to put up such notice, sign or advertisement shall have first been obtained, except those put up by an officer of the law in the performance of the duties of his office.

Rev., s. 3709; 1885, c. 302.

323. Defacing or destroying public notices and advertisements. If any person shall willfully and unlawfully deface, tear down, remove or destroy any legal notice or advertisement authorized by law to be posted by any officer or other person, the same being actually posted at the time of such defacement, tearing down, removal or destruction, during the time for which such legal notice or advertisement shall be authorized by law to be posted, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

Rev., s. 3710; Code, s. 981: 1876-7, c. 215.

324. Erecting signals and notices in imitation of those of railroads. No person, firm or corporation other than a railroad or street railway company shall, for advertisement or other purposes, erect and maintain on or near any highway, any cross-arm post or other post or standard containing the words "Stop! Look! Listen!" or other such words or combinations of words in imitation of railroad signals or notices. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, in the discretion of the court.

1917, c. 230.

325. Furnishing intoxicants, poisons or firearms to inmates of charitable and penal institutions. If any person shall sell or give to any inmate of any charitable or penal institution any intoxicating drink or any narcotic, poison or poisonous substance, except upon the prescription of a physician, or shall give or sell to any such inmate any deadly weapon, or any cartridge or ammunition for firearms of any kind, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned at the discretion of the court; and if he be an officer or employee of any institution of the state, he shall be dismissed from his office.

Rev., s. 3517; 1899, c. 1, s. 52.

326. Usurious loans on household and kitchen furniture. Any person, firm or corporation who shall lend money in any manner whatsoever by note, chattel mortgage, conditional sale or otherwise, upon any article of household or kitchen furniture, and shall take, receive, reserve or charge a greater rate of interest than six per cent, either before or after the interest may accrue, or who shall refuse to give receipts for payments on interest or principal of such loan, or who shall fail and refuse to surrender the note and security when the same is paid off or a new note and mortgage is given in renewal, unless such new mortgage shall state the amount still due by the old note or mortgage and that the new one is given as additional security, shall be guilty of a misdemeanor, and in addition thereto shall forfeit double the interest which has been theretofore paid.

1907, c. 110.

327. Digging ginseng on another's land during certain months. All persons shall be allowed to dig ginseng at any time of the year for the purpose of replanting the same. If any person dig ginseng, except on his own premises, or for the purpose of replanting the same, between the first day of April and the first day of September, he shall forfeit and pay the sum of ten dollars for each day's or part of a day's digging, and shall also be guilty of a misdemeanor.

Rev., ss. 3502, 3714; Code, s. 1053; 1866-7, c. 60; 1905, c. 211.

NOTE. For larceny of ginseng, see s. 86 of this chapter.

328. Shooting rifles across Currituck Sound and waters of Dare County. If any person shall shoot a rifle across or over the waters of Currituck Sound, or the waters of Dare County, except in East Lake Township, he shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned not less than ten days nor more than thirty days.

Rev., s. 3734; 1889, c. 21, ss. 1, 2; 1903, c. 617.

CHAPTER 82

CRIMINAL PROCEDURE

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147. Warden or deputy to execute sentence.
148. Certificate filed with clerk.
149. Notice of reprieve or new trial.
150. Judgment sustained on appeal, governor fixes date for execution.
151. New trial granted, prisoner taken to place of trial.
152. Disposition of body.

ART. 1. GENERAL PROVISIONS

1. Statute of limitations for misdemeanors. All misdemeanors, and petit larceny where the value of the property does not exceed five dollars, except the offenses of perjury, forgery, malicious mischief, and other malicious misdemeanors, deceit, and the offense 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, that in case any of the 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: 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 offense, within one year after the first shall have been abandoned by the state.

Rev., s. 3147; Code, s. 1177; R. C., c. 35, s. 8; 1826, c. 11; 1907, c. 408.

2. Issue and return of criminal process. 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.

Rev., s. 3148; Code, s. 1178; R. C., c. 35, s. 9; 1777, c. 115, s. 15.

3. Date of receipt and service indorsed on process. Every sheriff or other officer 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 or other officer 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.

Rev., s. 3149; Code, s. 1179; R. C., c. 35, s. 10; 1850-1, c. 57.

4. Accused entitled to counsel. Every person, accused of any crime whatsoever, shall be entitled to counsel in all matters which may be necessary for his defense.

Rev., s. 3150; Code, s. 1182; R. C., c. 35, s. 13; 1777, c. 115, s. 85.

5. Fees allowed counsel assigned to defend in capital case. Whenever an attorney is appointed by the judge to defend a person charged with a capital crime, he shall receive such fee for performing this service as the judge may allow, not to exceed twenty-five dollars; but the judge shall not allow any fee until he is satisfied that the defendant charged with the capital crime is not able to employ counsel. The fees so allowed by the judge shall be paid by the county in which the indictment was found.

1917, c. 247.

6. Imprisonment to be in county jail. No person shall be imprisoned by any judge, court, justice of the peace, or other peace officer except in the common jail of the county, unless otherwise provided by law: Provided, that whenever

the sheriff of any county shall be imprisoned, he may be imprisoned in the jail of any adjoining county.

Rev., s. 3151; Code, s. 1174; R. C., c. 35, s. 6; 1797, c. 474, s. 3; 1879, c. 12.

7. Post-mortem examinations directed. In all cases of homicide, any officer prosecuting for the state may, at any time, direct a post-mortem examination of the deceased to be made by one or more physicians to be summoned for the purpose; and the physicians shall be paid a reasonable compensation for such examination, the amount to be determined by the court and taxed in the costs, and if not collected out of the defendant the same shall be paid by the county.

Rev., s. 3152; Code, s. 1214; R. C., c. 35, s. 49.

8. Stolen property returned to owner. Upon the conviction of any felon for robbing or stealing any money, goods, chattels, or other estate of any description whatever, the person from whom such goods, money, chattels or other estate were robbed or stolen, shall be entitled to restitution thereof; and the court may award restitution of the articles so robbed or stolen, and make all such orders and issue such writs of restitution or otherwise, as may be necessary for that purpose.

Rev., s. 3153; Code, s. 1201; R. C., c. 35, s. 34; 21 Hen. VIII, c. 11.

9. Magistrate may associate another with him. Any magistrate, to whom any complaint may be made, or before whom any prisoner may be brought, as by law provided, may associate with himself any other magistrate of the same county; and the powers and duties herein mentioned may be executed by the two magistrates so associated.

Rev., s. 3154; Code, s. 1159; 1868-9, c. 178, subc. 3, s. 28.

10. Speedy trial or discharge on commitment for felony. When any person who has been committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer in open court to be brought to his trial, shall not be indicted some time in the next term of the superior or criminal court ensuing such commitment, the judge of the court, upon notice in open court on the last day of the term, shall set at liberty such prisoner upon bail, unless it appear upon oath that the witnesses for the state could not be produced at the same term; and if such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment: Provided, the judge presiding may, in his discretion refuse to discharge such person if the time between the first and second terms of the court be less than four months.

Rev., s. 3155; Code, s. 1658; 1868-9, c. 116, s. 33; 1913, c. 2.

NOTE. Pleadings incompetent in criminal proceedings, see Civil Procedure, s. 140.

ART. 2. WARRANTS

11. Who may issue warrant. The following persons respectively have power to issue process for the apprehension of persons charged with any offense, and to execute the powers and duties conferred in this chapter, namely: The chief justice and the associate justices of the supreme court, the judges of the superior court, judges of criminal courts, presiding officers of inferior courts, justices of the peace, mayors of cities, or other chief officers of incorporated towns.

Rev., s. 3156; Code, s. 1132; 1868-9, c. 178, subc. 3, s. 1.

12. Complainant examined on oath. Whenever complaint is made to any such magistrate that a criminal offense has been committed within this state, or without this state and within the United States, and that a person charged therewith is in this state, it shall be the duty of such magistrate to examine on oath the complainant and any witnesses who may be produced by him.

Rev., s. 3157; Code, s. 1133; 1868-9, c. 178, subc. 3, s. 2.

13. Warrant issued; contents. If it shall appear from such examination that any criminal offense has been committed, the magistrate shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it is directed forthwith to take the person accused of having committed the offense, and bring him before a magistrate, to be dealt with according to law. A justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county.

Rev., s. 3158; Code, s. 1134; 1901, c. 668; 1868-9, c. 178, subc. 3, s. 3.

NOTE. Special provisions as to justice's warrant in Pender County. P. L. 1917, c. 333.

14. Where warrant may be executed. Warrants issued by any justice of the supreme court, or by any judge of the superior court, or of a criminal court, may be executed in any part of this state; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town, may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless indorsed as prescribed in the section following.

Rev., s. 3159; Code, s. 1135; 1868-9, c. 178, subc. 3, s. 4.

15. Warrant indorsed and served in another county. If the person against whom any warrant is issued by a justice of the peace or chief officer of a city or town shall escape, or be in any other county out of the jurisdiction of such justice or chief officer, it shall be the duty of any justice of the peace, or any other magistrate within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting of the magistrate or chief officer issuing the warrant, to indorse his name on the same, and thereupon the person, or officer to whom the warrant was directed, may arrest the offender in that county: Provided, that an officer to whom a warrant charging the commission of a felony is directed, who is in the actual pursuit of a person known to him to be the one charged with the felony, may continue the pursuit without such indorsement. The justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county, and such warrant when so indorsed as herein prescribed shall authorize and compel the sheriff or other officer of any county in the state, in which such indorsement is made, to execute the same.

Rev., s. 3160; Code, s. 1136; 1917, c. 30; 1901, c. 668; 1868-9, c. 178, subc. 3, s. 5.

16. Magistrate not liable for indorsing warrant. No magistrate shall be liable to any indictment, action for trespass or other action for having indorsed any warrant pursuant to the provisions of the last section, although it should afterward appear that such warrant was illegally or improperly issued.

Rev., s. 3161; Code, s. 1137; 1868-9, c. 178, subc. 3, s. 6.

17. Before what magistrate a warrant returned. Persons arrested under any warrant issued for any offense, 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.

Rev., s. 3162; Code, s. 1143; 1868-9, c. 178, subc. 3, s. 12.

ART. 3. SEARCH WARRANTS

18. In what cases issued, and where executed. If any credible witness shall prove, upon oath, before any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, that there is a reasonable cause to suspect that any person has in his possession, or on his premises, any property stolen, or any false or counterfeit coin resembling, or apparently intended to resemble, or pass for, any current coin of the United States, or of any other state, province or country, or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of any such coin; or any false and counterfeit notes, bills or bonds of the United States, or of the state of North Carolina, or of any other state or country, or of any county, city or incorporated town; or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of such note, bill or bond, it shall be lawful for such justice, mayor or chief magistrate of any incorporated town, to grant a warrant, to be executed within the limits of his county or of the county in which such city or incorporated town is situated, to any proper officer, authorizing him to search for such property, and to seize the same, and to arrest the person having in possession, or on whose premises may be found such stolen property, counterfeit coin, counterfeit notes, bills or bonds, or the instruments, tools or engines for making the same, and to bring them before any magistrate of competent jurisdiction, to be dealt with according to law.

Rev., s. 3163; Code, s. 1171; 1868-9, c. 178, subc. 3, s. 38.

19. Nature of warrant and procedure thereon. Such search warrant shall describe the article to be searched for with reasonable certainty, and by whom the complaint is made, and in whose possession the article to be searched for is supposed to be; it shall be made returnable as other criminal process is by law required to be, and the proceedings thereupon shall be as required in other cases of criminal complaint.

Rev., s. 3164; Code, s. 1172; 1868-9, c. 178, subc. 3, s. 39.

NOTE. For search warrant for seamen, see Crimes, s. 295.

ART. 4. PEACE WARRANTS

20. Officers authorized to issue peace warrants. The following magistrates have power to cause to be kept all the laws made for the preservation of the public peace, and in execution of that power to require persons to give security to keep the peace, in the manner provided in this chapter, namely: The chief justice and associate justices of the supreme court, the judges of the superior

courts, and of any special courts which may hereafter be created, the justices of the peace, the mayors or other chief officers of all cities and towns.

Rev., s. 3165; Code, s. 1216; 1868-9, c. 178, subc. 2, s. 1.

21. Complaint and examination. Whenever complaint is made in writing, and upon oath, to any such magistrate that any person has threatened to commit any offense against the person or property of another, it shall be the duty of such magistrate to examine such complainant and any witnesses who may be produced on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined.

Rev., s. 3166; Code, s. 1217; 1868-9, c. 178, subc. 2, s. 2.

22. Warrant issued. If it shall appear from such examination that there is just reason to fear the commission of any such offense by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without a seal, reciting the complaint, and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such magistrate or some other magistrate authorized to issue such warrant.

Rev., s. 3167; Code, s. 1218; 1868-9, c. 178, subc. 2, s. 3.

23. To whom warrant directed. The warrant shall be directed to the sheriff, coroner or any constable, each of whom shall have power to execute the same within his county; and if no sheriff, coroner or constable can conveniently be found, the warrant may be directed to any person whatever, who shall have power to execute the same within the county in which it is issued. No justice of the peace, or mayor, or other chief officer of any city or town shall direct his warrant to any officer outside the county of said justice or chief officer.

Rev., s. 3169; Code, s. 1219; 1868-9, c. 178, subc. 2, s. 4.

24. Defendant recognized to keep the peace. Whenever any person complained of on a peace warrant is brought before a justice of the peace, such person may be required to enter into a recognizance, payable to the state of North Carolina, in such sum, not exceeding one thousand dollars, as such justice shall direct, with one or more sufficient sureties, to appear before some justice of the peace within a period not exceeding six months, and not depart the court without leave, and in the meanwhile to keep the peace and be of good behavior towards all the people of the state, and particularly towards the person requiring such security.

Rev., s. 3170; Code, ss. 894, 1220; 1879, c. 92, s. 9.

25. Defendant discharged, or new recognizance required. If the complainant does not appear, the party recognized shall be discharged, unless good cause be shown to the contrary. If the respective parties appear, the court shall hear their allegations and proofs, and may either discharge the recognizance taken, or they may require a new recognizance, as the circumstances of the case may require, for such time as may appear necessary, not exceeding one year.

Rev., s. 3171; Code, s. 1226; 1868-9, c. 178, subc. 2, s. 12.

26. Defendant imprisoned for want of security. If such recognizance is given, the party complained of shall be discharged; if such person fails to find such security, it shall be the duty of the magistrate to commit him to prison until

he shall find the same, specifying in the mittimus the cause of commitment and the sum in which such security was required.

Rev., s. 3172; Code, s. 1221; 1868-9, c. 178, subc. 2, s. 6.

27. How discharged from imprisonment. Any person committed for not finding sureties of the peace as above provided, may be discharged by any magistrate upon giving such security as was originally required of such person, or by a justice of the supreme court, or judge of the superior or criminal court, by giving such other security as may seem sufficient.

Rev., s. 3174; Code, s. 1222; 1868-9, c. 178, subc. 2, s. 7.

28. Defendant may appeal. In all proceedings on peace warrants the defendant may appeal from the decision of the justice of the peace to the superior court by giving the bond required by the justice of the peace to keep the peace, in addition to the appeal bond, when the case shall be heard by the judge holding the court in the county.

Rev., s. 3173; 1901, c. 66.

29. Breach of peace in presence of court. Every person who, in the presence of any magistrate specified in the first section of this article, or in the presence of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offense against his person or property; and all persons who, in the presence of such magistrate or court, shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified, and in case of failure so to do, may be committed as above provided.

Rev., s. 3168; Code, s. 1224; 1868-9, c. 178, subc. 2, s. 9.

30. Recognizance returned to superior court. Every recognizance taken pursuant to the provisions of this article shall be transmitted by the magistrate taking the same to the next term of the superior court for the county in which the offense is charged to have been committed.

Rev., s. 3175; Code, s. 1223; 1868-9, c. 178, subc. 2, s. 8.

ART. 5. ARREST

31. Persons present may arrest for breach of peace. Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and, if necessary for that purpose, shall arrest the offenders.

Rev., s. 3176; Code, s. 1124; 1868-9, c. 178, subc. 1, s. 1.

32. Arrest for felony, without warrant. Every person in whose presence a felony has been committed may arrest the person whom he knows or has reasonable ground to believe to be guilty of such offense, and it shall be the duty of every sheriff, coroner, constable or officer of police, upon information, to assist in such arrest.

Rev., s. 3177; Code, s. 1129; 1868-9, c. 178, subc. 1, s. 6.

33. When officer may arrest without warrant. Every sheriff, coroner, constable, officer of police, or other officer, entrusted with the care and preservation

of the public peace, who shall know or have reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, and shall have reasonable ground to believe that any particular person is guilty, and shall apprehend that such person may escape if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest.

Rev., s. 3178; Code, s. 1126; 1868-9, c. 178, subc. 1, s. 3.

NOTE. Power of officer to arrest in Kannapolis, in Cabarrus and Rowan Counties. 1909, c. 46.

34. House broken open to prevent felony. All persons are authorized to break open and enter a house to prevent a felony about to be committed therein.

Rev., s. 3179; Code, s. 1127; 1868-9, c. 178, subc. 1, s. 4.

35. When officer may break and enter houses. If a felony or other infamous crime has been committed, or a dangerous wound has been given and there is reasonable ground to believe that the guilty person is concealed in a house, it shall be lawful for any sheriff, coroner, constable, or police officer, admittance having been demanded and denied, to break open the door and enter the house and arrest the person against whom there shall be such ground of belief.

Rev., s. 3180; Code, s. 1128; 1868-9, c. 178, subc. 1, s. 5.

36. Persons summoned to assist in arrest. Every person summoned by a judge, justice, mayor, intendant, chief officer of any incorporated town, sheriff, coroner or constable, to aid in suppressing any riot, rout, unlawful assembly, affray or other breach of the peace, or to arrest the persons engaged in the commission of such offenses, or to prevent the commission of any felony or larceny which may be threatened or begun, shall do so.

Rev., s. 3181; Code, s. 1125; 1868-9, c. 178, subc. 1, s. 2.

37. Procedure on arrest without warrant. Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law.

Rev., s. 3182; Code, s. 1130; 1868-9, c. 178, subc. 1, s. 7.

NOTE. For punishment for failure to aid officer in making arrest, see Crimes, s. 199.

ART. 6. FUGITIVES FROM JUSTICE

38. Outlawry for felony. In all cases where any two justices of the peace, or any judge of the supreme, superior, or criminal courts shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of the law, the judge, or the two justices, being justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any judge, empowering and requiring the sheriff of any county in the state in which such fugitive shall be, and when issued by two justices, empowering and requiring

the sheriff of the county of the justices, to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the courthouse of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the judge or justices shall direct; and if any person against whom proclamation has been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the state may capture, arrest and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime.

Rev., s. 3183; Code, s. 1131; 1868-9, c. 178, sube. 1, s. 8; 1866, c. 62.

39. Fugitives from another state arrested. 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 or other person in the state has committed, out of the state and within the United States, any offense which, by law of the state in which the offense was committed, is punishable either capitally or by imprisonment for one year or upwards in any state prison, has full power and authority, and is hereby required to issue a warrant for such fugitive or other person 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 offense 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 fugitive or other person shall be liberated, unless sufficient cause be shown to the contrary.

Rev., s. 3184; Code, s. 1165; 1895, c. 103; 1868-9, c. 178, sube. 3, s. 34.

40. Record kept, and copy sent to 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.

Rev., s. 3185; Code, s. 1166; 1868-9, c. 178, sube. 3, s. 35.

41. Duty of governor. The governor shall immediately inform the governor of the state or territory in which the crime is alleged to have been committed, or the president of the United States, if it be alleged to have been committed within the District of Columbia, of the proceedings had in such case.

Rev., s. 3186; Code, s. 1167; 1868-9, c. 178, sube. 3, s. 36.

42. Person surrendered on order of governor. Every sheriff or jailer, in whose custody any person so committed shall be, upon the order of the governor, shall surrender him to the person named in such order.

Rev., s. 3187; Code, s. 1168; 1868-9, c. 178, sube. 3, s. 37.

43. Governor may employ agents, and offer rewards. The governor, on information made to him of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the state, and of having fled out of the jurisdiction thereof, or who conceals himself within the state to avoid arrest, or who, having been convicted, has

escaped and cannot otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place as in the proclamation shall be directed; and he may from time to time issue his warrants on the state treasurer for sufficient sums of money for such purpose.

Rev., s. 3188; Code, s. 1169; 1891, c. 421; R. C., c. 35, s. 4; 1800, c. 561; 1866, c. 28; 1868-9, c. 52; 1870-1, c. 15; 1871-2, c. 29.

44. Officer entitled to reward. Any sheriff or other officer who shall make an arrest of any person charged with crime for whose apprehension a reward has been offered, is entitled to such reward, and may sue for and recover the same in any court in this state having jurisdiction: Provided, that no reward shall be paid to any sheriff or other officer for any arrest made for a crime committed within the county of such sheriff or officer making such arrest: Provided further, that the foregoing proviso shall not apply to Wake County; and that in Wake County, upon conviction of convict of an escape, the reward paid to the sheriff or other officer for the apprehension of such escaped convict shall be taxed against such convict in the bill of costs.

1913, c. 132; 1917, c. 8.

45. Expenses paid, in bringing fugitive from another state. In all cases where the governor of the state has made a requisition on the governor of another state for any fugitive from justice and has sent an agent to receive such fugitive, it shall be lawful for the governor to issue a warrant on the state treasurer for the amount of money necessary to pay the expenses of the agent and other costs in the arresting of the fugitive from justice, to be paid by the treasurer of the state.

Rev., s. 3189; Code, s. 1170; 1870-1, c. 82.

ART. 7. PRELIMINARY EXAMINATION

46. Waiver of examination. If any person arrested desires to waive examination, and give bail, it is the duty of the officer making the arrest to take him before any magistrate of the county in which the offense is charged to have been committed, or before any judge of the supreme or superior court.

Rev., s. 3190; Code, ss. 1138, 1139; 1868-9, c. 178, subc. 3, ss. 7, 8.

NOTE. For bail, see this chapter, s. 66.

47. Procedure, when justice has not final jurisdiction. In all cases where a justice of the peace has not final jurisdiction of the offense, he shall desist from any final determination of the action or complaint, and proceed as hereinafter provided.

Rev., s. 3191; Code, s. 896; 1868-9, c. 178, subc. 4, s. 7; 1879, c. 302, s. 2.

48. Duty of 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 offense charged, and in regard to

any other matters connected with such charge, which such magistrate may deem pertinent. The defendant shall be allowed a reasonable time before the hearing begins in which to send for and advise with counsel.

Rev., s. 3192; Code, ss. 1144, 1145; 1868-9, c. 178, subc. 3, s. 13.

49. Testimony reduced to writing; right to counsel. The evidence given by the several witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively. If desired by the person arrested, his counsel shall be present during the examination of the complainant and the witnesses on the part of the prosecution, and during the examination of the prisoner; and the prisoner or his counsel shall be allowed to cross-examine the complainant and the witnesses for the prosecution.

Rev., s. 3193; Code, ss. 1146, 1150; 1868-9, c. 178, subc. 3, ss. 14, 19.

50. Prisoner examined; advised of rights. The magistrate shall then proceed to examine the prisoner in relation to the offense charged. Such examination shall not be on oath; and before it is commenced, the prisoner shall be informed by the magistrate of the charge made against him, and that he is at liberty to refuse to answer any question that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings.

Rev., s. 3194; Code, ss. 1145, 1146; 1868-9, c. 178, subc. 3, ss. 14, 15.

51. Exclusion of witnesses at examination. The witnesses produced on the part either of the prisoner or of the prosecution shall not be present at the examination of the prisoner; and while any witness is under examination the magistrate may exclude from the place in which such examination is had all witnesses who have not been examined, and may cause the witnesses to be kept separate and prevented from conversing with each other until they shall have been examined.

Rev., s. 3195; Code, s. 1149; 1868-9, c. 178, subc. 3, s. 18.

NOTE. For exclusion of bystanders in trials for rape, see this chapter, s. 124.

52. Answers in writing, read to prisoner, signed by magistrate. The answer of the prisoner to the several interrogatories shall be reduced to writing by the magistrate, or under his direction. They shall be read to the prisoner, who may correct or add to them; and when made conformable to what he declares is the truth, shall be certified and signed by the magistrate.

Rev., s. 3196; Code, s. 1147; 1868-9, c. 178, subc. 3, s. 16.

53. Witnesses for defendant examined. After the examination of the prisoner is complete, his witnesses, if he have any, shall be sworn and examined, and he may have the assistance of counsel in such examination.

Rev., s. 3197; Code, s. 1148; 1868-9, c. 178, subc. 3, s. 17.

54. Examination of prisoner not required in misdemeanors. Nothing contained in the preceding sections shall be construed to require any magistrate, before whom a prisoner charged with a misdemeanor shall be brought, to take the examination of such prisoner, except where such magistrate shall deem it material so to do, or where such examination shall be required by the prisoner.

Rev., s. 3198; Code, s. 1153; 1868-9, c. 178, subc. 3, s. 22.

55. When prisoner discharged. If, upon examination of the whole matter, it shall appear to the magistrate either that no offense has been committed by any person or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner.

Rev., s. 3199; Code, s. 1151; 1868-9, c. 178, subc. 3, s. 20.

56. When prisoner held to answer charge. If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner to be guilty thereof, if the offense be bailable, and the prisoner offer sufficient bail, such bail shall be taken and the prisoner discharged; if no bail be offered, or the offense be not bailable, the prisoner shall be committed to prison.

Rev., s. 3202; Code, ss. 1152, 1156; 1868-9, c. 178, subc. 3, ss. 21, 25.

57. Witnesses against prisoner recognized. The magistrate shall bind by recognizances the prosecutor and all the material witnesses against such prisoner to appear and testify at the next term of the court having jurisdiction for the county in which the offense is alleged to have been committed.

Rev., s. 3203; Code, s. 1152; 1868-9, c. 178, subc. 3, s. 21.

58. Witnesses required to give security for appearance. Whenever the magistrate is satisfied by the proof that there is good reason to believe that any such witness will not fulfill the conditions of the recognizance unless security be required, he may order the witness to enter into a recognizance with such sureties as he shall deem meet for his appearance at such court.

Rev., s. 3204; Code, s. 1154; 1868-9, c. 178, subc. 3, s. 23.

59. Investigation in case of lynching. Whenever the solicitor of any judicial district ascertains that the crime of lynching has been committed in any county in his judicial district, it is his duty to go to such county at the earliest possible moment, and at once institute proceedings for the investigation of the crime before the coroner of the county, some judge of the superior court, or justice of the peace, and for the apprehension of the offender. In the performance of this duty he shall cause to be issued subpoenas or other process to compel the attendance of witnesses and examine such witnesses on oath as to their knowledge or information touching the crime being investigated. In all cases where, upon preliminary investigation, it appears probable that any person is guilty of the crime charged, it shall be the duty of the coroner, judge or justice before whom the case is heard to bind such person, with good security, for his appearance at the next ensuing term of the superior or criminal court of some county adjoining the county in which the crime was committed for trial, and in default of bail to commit him to the jail of such adjoining county for safe-keeping, and all necessary witnesses shall be recognized to appear at such term as witnesses for the state.

Rev., s. 3200; 1893, c. 461, s. 2.

60. Witnesses in lynching not privileged. In all investigations before a justice of the peace, coroner, judge, grand jury, or courts and jury, on the trial of the cause, as authorized by the preceding section or under existing law, no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, upon the ground that his answer

might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself, but no discovery made by such witness upon any such examination shall be used against him in any court or in any penal or criminal prosecution, and he shall, when so examined as a witness for the state, be altogether pardoned of any and all participation in any crime arising under the provisions of the preceding section, or under existing law, concerning which he is required to testify.

Rev., ss. 1638, 3201; 1893, c. 461, s. 5.

61. Proceedings certified to court; used as evidence. All examinations and recognizances taken pursuant to the provisions of this chapter shall be certified by the magistrate taking the same to the court at which the witnesses are bound to appear, within twenty days after the taking of such examinations and recognizances: Provided, that any criminal case tried within twenty days before the sitting of criminal court shall be returned on Saturday before the court convenes. The examinations taken and subscribed as herein prescribed may be used as evidence before the grand jury, and on the trial of the accused, provided he was present at the taking thereof and had an opportunity to hear the same and to cross-examine the deposing witness, if such witness be dead or so ill as not to be able to travel, or by procurement or connivance of the defendant has removed from the state, or is of unsound mind.

Rev., s. 3205; Code, s. 1157; 1913, c. 24; 1868-9, c. 178, subc. 3, s. 26.

62. Penalty for failing to return. If any magistrate shall refuse or neglect to return to the proper court any such examination or recognizance by him taken, he may be compelled by rule of court forthwith to return the same, and in case of disobedience of such rule, may be proceeded against by attachment as for contempt of court as provided by law.

Rev., s. 3206; Code, s. 1158; 1868-9, c. 178, subc. 3, s. 27.

NOTE. For right of prisoner to testify in his own behalf, see Evidence, ss. 50, 52.

ART. 8. BAIL

63. Officers authorized to take bail, before imprisonment. Officers before whom persons charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to take bail as follows:

1. Any justice of the supreme court, or a judge of a superior court, in all cases.

2. Any justice of the peace or chief magistrate of any incorporated city or town, in all cases of misdemeanor, and in all cases of felony not capital.

Rev., s. 3209; Code, s. 1160; 1868-9, c. 178, subc. 3, s. 29; 1871-2, c. 37.

64. Officers authorized to take bail, after imprisonment. Any justice of the supreme court or any judge of a superior court has power to bail persons committed to prison charged with crime in all cases; any justice of the peace or chief magistrate of any incorporated city or town has the same power, in all cases where the punishment is not capital.

Rev., s. 3210; Code, s. 1161; 1868-9, c. 178, subc. 3, s. 30.

65. Recognizance filed with clerk. Whenever any prisoner is bailed by any officer under the preceding section, such officer shall immediately cause the recog-

nizance taken by him to be filed with the clerk of the superior court of the county to which the prisoner is recognized.

Rev., s. 3211; Code, s. 1162; 1868-9, c. 178, subc. 3, s. 31.

66. Bail allowed on preliminary examination. If the offense charged in the warrant be not punishable with death, the magistrate may take from the person so arrested a recognizance with sufficient sureties for his appearance at the next term of the court having jurisdiction, to be held in the county where the offense is alleged to have been committed.

Rev., s. 3207; Code, s. 1139; 1868-9, c. 178, subc. 3, s. 8; 1871-2, c. 37, s. 1.

67. Duty of magistrate granting bail. Any magistrate taking bail 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 the prisoner has been recognized to appear.

Rev., s. 3212; Code, s. 1140; 1868-9, c. 178, subc. 3, s. 9.

68. Sheriff or deputy may take bail. When any sheriff or his deputy arrests 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 sheriff or deputy, if the crime is bailable, shall recognize the offender, and take sufficient bail in the nature of a recognizance for his appearing at the next succeeding court of the county where he ought to answer, which recognizance shall be returned with the *capias*; and the sheriff shall in no case become bail himself.

Rev., s. 3208; Code, s. 1180; R. C., c. 35, s. 11; 1797, c. 474, s. 4.

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

Rev., s. 3228; Code, s. 1232; R. C., c. 11, s. 8.

70. Bail on continuance before a justice. Upon the continuance of any criminal action returned before any justice of the peace for trial, in which the justice is authorized to take bail on a finding of probable cause or in which he has final jurisdiction, it is the duty of the justice of the peace to take bond for his appearance, payable to the state, on the same being tendered by the accused, with such surety as in his opinion will be sufficient to insure the appearance of the accused for trial at a time and place mentioned in the bond.

Rev., s. 3213; 1889, c. 133.

ART. 9. FORFEITURE OF BAIL

71. In recognizance to keep the peace. Every person who shall have entered into a recognizance to keep the peace shall appear according to the obligation thereof; and if he fail to appear the court shall forfeit his recognizance and

order it to be prosecuted, in the manner provided by law, unless reasonable excuse for his default be given.

Rev., s. 3214; Code, s. 1225; 1868-9, c. 178, subc. 2, s. 10.

72. When recognizance deemed broken. No recognizance taken under this chapter shall be deemed to be broken except in the failure of the principal in such recognizance to appear and answer according to the obligation thereof, unless such principal be convicted of some offense amounting in judgment of law to a breach of such recognizance.

Rev., s. 3215; Code, s. 1227; 1868-9, c. 178, subc. 2, s. 12.

73. Recognizance prosecuted. Whenever evidence of such conviction shall be produced in the court in which the recognizance is filed, it shall be the duty of such court to order the recognizance to be prosecuted, and the solicitor shall cause the proper proceedings to be thereupon taken.

Rev., s. 3216; Code, s. 1228; 1868-9, c. 178, subc. 2, s. 13.

74. Notice of judgment nisi before execution. No execution shall issue upon a forfeited recognizance, or to collect a fine imposed nisi, until a notice has issued against the person who has forfeited his recognizance or upon whom the fine has been imposed, and his sureties.

Rev., s. 3217; Code, s. 1208; R. C., c. 35, s. 43; 1777, c. 115, s. 48.

75. What notice must contain. When any recognizance, acknowledged by a principal and sureties, shall be forfeited by two or more of the recognizers, the notice issued thereon shall be jointly against them all, designating which of them are principals and which sureties, and when they are bound in different sums, stating the amount forfeited by each one, and the clerk shall have no greater fee on such notice than is due when it is issued against one defendant.

Rev., s. 3218; Code, s. 1209; R. C., c. 35, s. 44; 1812, c. 836, s. 1.

76. Service of notice. All notices issuing upon forfeited recognizances shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And in case he cannot be found, and has no known place of abode, and the matter be returned, then a notice shall issue, and on the like return the same shall be deemed duly served.

Rev., s. 3219; Code, s. 1210; R. C., c. 35, s. 45; 1812, c. 836, s. 2.

77. Judges may remit forfeited recognizances. The judges of the superior courts may hear and determine the petition of all persons, who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit, the same, and do all and anything therein as they shall deem just and right and consistent with the welfare of the state and the persons praying such relief, as well before as after final judgment entered and execution awarded.

Rev., s. 3220; Code, s. 1205; R. C., c. 35, s. 38; 1788, c. 292, s. 1.

78. Money refunded by clerk. The clerk of the superior court, on the remission of any forfeited recognizance which has been paid into his office, shall refund the same, or so much thereof as shall be remitted.

Rev., s. 3221; Code, s. 1206; R. C., c. 35, s. 39; 1795, c. 442, s. 1.

79. Money refunded by treasurer. 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 has been remitted or lessened, signed with his own proper name, with the seal of the court affixed thereto.

Rev., s. 3222; Code, s. 1207; R. C., c. 35, s. 40; 1795, c. 442, s. 2.

80. Forfeiture of bond before justice. On the failure of the accused to appear at the time and place mentioned in any bond taken by any justice of the peace for a continuance of any cause pending before him, and answer the charge, or, having appeared, shall depart the court without leave thereof first had and obtained, it shall be the duty of the justice of the peace then presiding to enter judgment nisi against the principal and his sureties in the bond for the amount mentioned therein, if the sum does not exceed the sum of two hundred dollars; and immediately issue notice to the principal and the sureties in the bond, giving ten days time, specifying time and place, to appear and show cause, if any they have, why the judgment nisi shall not be made final.

Rev., s. 3223; 1889, c. 133, s. 2.

81. Judgment final, rendered and enforced. If the defendant shall fail to appear and show satisfactory reasons for not complying with the provisions of the bond, it shall then be the duty of the justice of the peace to render a final judgment thereon for the amount of the same, and immediately make and transmit to the clerk of the superior court a transcript thereof, which shall be entered upon the judgment docket of the court, and the clerk shall issue execution on the final judgment against the principal and his sureties for the collection of the amount thereof as in other judgments in behalf of the state.

Rev., s. 3224; 1889, c. 133, s. 3.

82. Forfeiture over two hundred dollars before justice. If the bond shall exceed the sum of two hundred dollars, and the accused shall fail to appear as therein provided to answer the charge, or, having appeared, shall depart the court without leave first had and obtained, it shall be the duty of the justice to have the accused called, and enter upon the bond that the defendant was called and failed to answer, and immediately return the original papers in the case, together with the bond, to the clerk of the court having jurisdiction to try such action, who shall immediately enter the case upon the criminal docket of his court and enter judgment nisi for the amount of the bond, and issue notice to the accused and his sureties to appear at the next term of the court to show cause why the judgment should not be made final and proceeded in as other cases of forfeited bonds in behalf of the state in such court. The entry on the bond by the justice of the peace shall be prima facie evidence that the principal therein had been called and failed to answer. Nothing in this section shall be so construed as to prevent justices of the peace from remitting the penalty of the bond or the right of appeal from the justice of the peace to the superior court by the defendant or his surety.

Rev., s. 3225; 1889, c. 133, s. 4.

83. Right of bail to surrender principal. The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which

the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such execution awarded, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given: Provided, that in criminal proceedings, the surrender by the bail, after the recognizance forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for.

Rev., s. 3226; Code, s. 1230; R. C., c. 11, s. 5; 1777, c. 115, s. 20; 1848, c. 7.

84. New bail given upon surrender; liability of sheriff. Any person surrendered in the manner specified in the preceding section shall have liberty, at any time, before final judgment against him, to give bail; and in case of such surrender, the sheriff shall take the bail bond or recognizance to the succeeding court; and in case the sheriff shall release such person without bail, or the bail returned be held insufficient, on exception taken the same term to which such bail bond shall be returned, and allowed by the court, the sheriff, having due notice thereof in criminal cases, shall forfeit to the state the sum of one hundred dollars, to be recovered on motion in like manner as forfeitures for not returning process, and be subject to be indicted for misdemeanor in office; and it shall be the duty of the prosecuting officer to collect the forfeiture; and, in case of a release, the sheriff shall be liable for an escape, and may be prosecuted and punished as provided for in the chapter entitled Crimes.

Rev., s. 3227; Code, s. 1231; R. C., c. 11, s. 6; 1827, c. 40.

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

Rev., s. 3229; Code, s. 1233; R. C., c. 11, s. 9.

ART. 10. COMMITMENT TO PRISON

86. Order of commitment. Every commitment to prison of a person charged with crime shall state:

1. The name of the person charged.
2. The character of the offense with which he is charged.
3. The name and office of the magistrate committing him.
4. The manner in which he may be discharged; if upon giving recognizance or bail, the amount of the recognizance, the condition on the performance of which it shall be discharged, and the persons or magistrate before whom the bail may justify.
5. The court before which the prisoner shall be sent for trial.

Rev., s. 3230; Code, s. 1163; 1868-9, c. 178, subc. 3, s. 32.

87. Commitment to county jail. 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 offense 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.

Rev., s. 3231; Code, s. 1164; 1868-9, c. 178, subc. 2, s. 33.

88. Commitment of witnesses. If any witness required to enter into a recognizance, either with or without sureties, shall refuse to comply with such order, it shall be the duty of such magistrate to commit him to prison until he shall comply with such order, or be otherwise discharged according to law.

Rev., s. 3232; Code, s. 1155; 1868-9, c. 178, subc. 3, s. 24.

ART. 11. VENUE

89. In case of lynching. The superior court of any county which adjoins the county in which the crime of lynching shall be committed shall have full and complete jurisdiction over the crime and the offender to the same extent as if the crime had been committed in the bounds of such adjoining county; and whenever the solicitor of the district has information of the commission of such a crime, it shall be his duty to furnish such information to the grand juries of all adjoining counties to the one in which the crime was committed from time to time until the offenders are brought to justice.

Rev., s. 3233; 1893, c. 461, s. 4.

90. In offenses on waters dividing counties. When any offense is committed on any water, or water-course, whether at high or low water, which water or water-course, or the sides or shores thereof, divides counties, such offense may be dealt with, inquired of, tried and determined, and punished at the discretion of the court, in either of the two counties which may be nearest to the place where the offense was committed.

Rev., s. 3234; Code, s. 1193; R. C., c. 35, s. 24.

91. Assault in one county, death in another. In all cases of felonious homicide when the assault has been made in one county within the state, and the person assaulted dies in any other county thereof, the offender shall be indicted and punished for the crime in the county wherein the assault was made.

Rev., s. 3235; Code, s. 1196; R. C., c. 35, s. 27; 1831, c. 22, s. 1.

92. Assault in this state, death in another. In all cases of felonious homicide, when the assault has been made within this state, and the person assaulted dies without the limits thereof, the offender shall be indicted and punished for the crime in the county where the assault was made, in the same manner, to all intents and purposes, as if the person assaulted had died within the limits of this state.

Rev., s. 3236; Code, s. 1197; R. C., c. 35, s. 28; 1831, c. 22, s. 2.

93. Person in this state injuring one in another. If any person, being in this state, unlawfully and willfully puts in motion a force, from the effect of which any person is injured while in another state, the person so setting such

force in motion shall be guilty of the same offense in this state, as he would be if the effect had taken place within this state.

Rev., s. 3237; 1895, c. 169.

94. In county where death occurs. If a mortal wound is given or other violence or injury inflicted or poison is administered on the high seas or land, either within or without the limits of this state, by means whereof death ensues in any county thereof, the offense may be prosecuted and punished in the county where the death happens.

Rev., s. 3238; 1891, c. 68.

95. Improper venue met by plea in abatement; procedure. Because the boundaries of many counties are either undetermined, or unknown, by reason whereof high offenses go unpunished; therefore, for the more effectual prosecution of offenses committed on land near the boundaries of counties, in the prosecution of all offenses it shall be deemed and taken as true that the offense was committed in the county in which by the indictment it is alleged to have taken place, unless the defendant shall deny the same by plea in abatement, the truth whereof shall be duly verified on oath or otherwise both as to substance and fact, wherein shall be set forth the proper county in which the supposed offense, if any, was committed; whereupon the court may, on motion of the state, commit the defendant, who may enter into recognizance, as in other cases, to answer the offense in the county averred by his plea to be the proper county; and, on his prosecution in that county, it shall be deemed, conclusively, to be the proper county. But if the state, upon the plea aforesaid, will join issue, and the matter be found for the defendant, he shall be required to enter into recognizance as in other cases to answer the offense in the county averred by his plea to be the proper county, provided the offense be bailable; and, if not bailable, he shall be committed for trial in the county; and, if it be found for the state, the court in all offenses or misdemeanors shall proceed to pronounce judgment against the defendant, as upon conviction; and, in all cases of felony, the defendant shall be at liberty to plead to the indictment, and be tried on his plea of not guilty.

Rev., s. 3239; Code, s. 1194; R. C., c. 35, s. 25.

ART. 12. PRESENTMENT

96. No arrest nor trial on presentment. No person shall be arrested on a presentment of the grand jury, or put on trial before any court, but on indictment found by the grand jury, unless otherwise provided by law.

Rev., s. 3240; Code, s. 1175; R. C., c. 35, s. 6; 1797, c. 474, s. 3; 1879, c. 12.

NOTE. See Const., Art. I, ss. 11, 13, 17.

97. Names of witnesses indorsed on presentment. When a presentment shall be made of any offense 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.

Rev., s. 3241; Code, s. 1176; R. C., c. 35, s. 7; 1797, c. 474, s. 2.

98. Subpœna for witnesses on presentment. In issuing subpœnas for witnesses whose names are indorsed on presentments made by the grand jury, the clerk of the court shall name therein the first Tuesday of the term of court as the

time for such witnesses to appear and give evidence. And no clerk shall issue a subpoena for any such witness to appear on Monday, except upon written order of the solicitor of the district.

1913, c. 168.

ART. 13. INDICTMENT

99. Waiver of bill of indictment. No waiver of the finding and return into court of a bill of indictment in any criminal action shall be allowed in the superior courts of this state except in cases wherein the offense charged is a misdemeanor which does not include or contain the element of fraud, deceit or malice; nor shall such waiver be made in any such action except upon a plea of guilty, or a submission, or a plea of *nolo contendere* by the defendant in the same. No such waiver of a bill of indictment shall be allowed by the court unless by the consent of the defendant's counsel in such action, who shall be one either employed by the defendant to defend him in the action or one appointed by the court to examine into the defendant's case and report as to the same to the court; which service by an attorney so appointed by the court shall be rendered without fee or reward.

1907, c. 71.

100. Bills returned by foreman except in capital cases. Grand juries shall return all bills of indictment in open court through their acting foreman, except in capital felonies, when it shall be necessary for the entire grand jury, or a majority of them, to return their bills of indictment in open court in a body.

Rev., s. 3242; 1889, c. 29.

101. Substance of judicial proceedings set forth. In every indictment, information, or impeachment in which, by the common law, it may be necessary to set forth at length the judicial proceedings had in any case then or formerly pending in any court, civil or military, or before any justice of the peace, it is sufficient to set forth the substance only of the proceedings, or the substance of such part thereof as makes, or helps to make, the offense prosecuted.

Rev., s. 3243; Code, s. 1184; R. C., c. 35, s. 15.

102. Bill of particulars. In all indictments when further information not required to be set out therein is desirable for the better defense of the accused, the court, upon motion, may, in its discretion, require the solicitor to furnish a bill of particulars of such matters.

Rev., s. 3244.

103. Essentials of bill for homicide. In indictments for murder and manslaughter, it is not necessary to allege matter not required to be proved on the trial; but in the body of the indictment, after naming the person accused, and the county of his residence, the date of the offense, the averment "with force and arms," and the county of the alleged commission of the offense, as is now usual, it is sufficient in describing murder to allege that the accused person feloniously, willfully, and of his malice aforethought, did kill and murder (naming the person killed), and concluding as is now required by law; and it is sufficient in describing manslaughter to allege that the accused feloniously and willfully, did kill and slay (naming the person killed), and concluding as aforesaid; and

any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for murder or manslaughter, as the case may be.

Rev., s. 3245; 1887, c. 58.

104. Form of bill for perjury. In every indictment for willful and corrupt perjury, it is sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom, the oath was taken (averring such court or person to have competent authority to administer the same), together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than aforesaid, and without setting forth the commission or authority of the court or person before whom the perjury was committed. In indictments for perjury the following form shall be sufficient, to wit:

The jurors for the state, on their oath, present, that A. B., of ----- County, did unlawfully commit perjury upon the trial of an action in ----- court, in ----- County, wherein ----- was plaintiff and ----- was defendant, by falsely asserting, on oath (or solemn affirmation) (here set out the statement or statements alleged to be false), knowing the said statement, or statements, to be false, or being ignorant whether or not said statement was true.

Rev., ss. 3246, 3247; Code, s. 1185; R. C., c. 35, s. 16; 1842, c. 49, s. 1; 1889, c. 83.

105. Bill for subornation of perjury. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit willful and corrupt perjury, it is sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration or any part of any record or proceedings, and without setting forth the commission or authority of the court or person before whom the perjury was committed or was agreed or promised to be committed.

Rev., s. 3248; Code, s. 1186; R. C., c. 35, s. 17; 1842, c. 49, s. 2.

106. Former conviction alleged in bill for second offense. In any indictment for an offense which, on the second conviction thereof, is punished with other or greater punishment than on the first conviction, it is sufficient to state that the offender was, at a certain time and place, convicted thereof, without otherwise describing the previous offense; and a transcript of the record of the first conviction, duly certified, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction.

Rev., s. 3249; Code, s. 1187; R. C., c. 35, s. 18.

107. Manner of alleging joint ownership of property. In any indictment wherein it is necessary to state the ownership of any property whatsoever, whether real or personal, which belongs to, or is in the possession of, more than one person, whether such persons be partners in trade, joint tenants or tenants in common, it is sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others, as the case may be; and whenever, in any such indictment, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants or tenants in common, it is sufficient to describe them in the manner aforesaid; and this provision shall extend to all joint stock companies and trustees.

Rev., s. 3250; Code, s. 1188; R. C., c. 35, s. 19.

108. Description in bill for larceny of money. In every indictment in which it is necessary to make any averment as to the larceny of any money, or United States treasury note, or any note of any bank whatsoever, it is sufficient to describe such money, or treasury note, or bank note, simply as money, without specifying any particular coin, or treasury note, or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or treasury note, or bank note, although the particular species of coin, of which such amount was composed, or the particular nature of the treasury note, or bank note, shall not be proven.

Rev., s. 3251; Code, s. 1190; 1876-7, c. 68.

109. Description in bill for embezzlement. In indictments for embezzlement, except when the offense relates to a chattel, it is sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved.

Rev., s. 3252; Code, s. 1020; 1871-2, c. 145, s. 2.

110. Intent to defraud; larceny and receiving. In any case where an intent to defraud is required to constitute the offense of forgery, or any other offense whatever, it is sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city, town, or parish, or body corporate, or any public officer, in his official capacity, or any copartnership or member thereof, or any particular person. The defendant may be charged in the same indictment in several counts with the separate offenses of receiving stolen goods, knowing them to be stolen, and larceny.

Rev., s. 3253; Code, s. 1191; R. C., c. 35, ss. 21, 23; 1852, c. 87, s. 2; 1874-5, c. 62.

111. Separate counts; consolidation. When there are several charges against any person for the same act or transaction or for two or more acts or transactions connected together, or for two or more transactions of the same class of crimes or offenses, which may be properly joined, instead of several indictments, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court will order them to be consolidated: Provided, that in such consolidating cases the defendant shall be taxed the solicitor's full fee for the first count, and half fees for each subsequent count upon which conviction is had: Provided, this act shall not be construed to reduce the punishment or penalty for such offense or offenses.

1917, c. 168.

112. Bill or warrant not quashed for informality. Every criminal proceeding by warrant, indictment, information, or impeachment, is sufficient in form for all intents and purposes, if it express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in

the bill or proceeding, sufficient matter appears to enable the court to proceed to judgment.

Rev., s. 3254; Code, s. 1183; R. C., c. 35, s. 14; 37 Hen. VIII, c. 8; 1784, c. 210, s. 2; 1811, c. 809.

113. Defects which do not vitiate. No judgment upon any indictment for felony or misdemeanor, whether after verdict, or by confession, or otherwise, shall be stayed, or reversed for the want of the averment of any matter unnecessary to be proved, nor for omission of the words "as appears by the record," or of the words "with force and arms," nor for the insertion of the words "against the form of the statutes" instead of the words "against the form of the statute," or vice versa; nor for omission of the words "against the form of the statute" or "against the form of the statutes," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened; nor for want of a proper and perfect venue, when the court shall appear by the indictment to have had jurisdiction of the offense.

Rev., s. 3255; Code, s. 1189; R. C., c. 35, s. 20; 7 Hen. VIII, c. 8.

ART. 14. TRIAL BEFORE JUSTICE

114. In cases of final jurisdiction. When the justice is satisfied that he has jurisdiction, if no jury is asked for, he shall proceed to determine the case, and shall either acquit the accused or find him guilty, and sentence him to such punishment as the case may require, not to exceed in any case a fine of fifty dollars, or imprisonment in the county jail for thirty days.

Rev., s. 3256; Code, s. 897; 1868-9, c. 178, sube. 4, s. 8.

115. Trial by jury, if demanded. If either the complainant or the accused shall ask for it, the justice shall allow a trial by jury, as is provided in civil actions before justices of the peace.

Rev., s. 3257; Code, s. 898; 1868-9, c. 178, sube. 4, s. 9.

116. What submitted to jury. In case a trial by jury is had, the justice shall submit to the jury in each case simply the question of the guilt or innocence of the accused of the offense charged, and shall enter the verdict on his docket, and adjudge accordingly.

Rev., s. 3258; Code, s. 899; 1868-9, c. 178, sube. 4, s. 10.

117. Commitment after judgment. The commitment to the county prison shall set forth—

1. The name of the guilty person.
2. The nature of the offense 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.

Rev., s. 3259; Code, s. 1238; 1868-9, c. 178, subc. 4, s. 17.

118. Parties entitled to copy of papers; bar to indictment. The justice 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. Such finding and sentence may be pleaded in bar of any indictment subsequently found for the same offense.

Rev., s. 3260; Code, ss. 902, 903; 1868-9, c. 178, subc. 4, ss. 13, 14.

119. Justice to make return of cases to superior court. It is the duty of each justice of the peace on or before Monday of every term of the superior court of his county, to furnish the clerk of the court with a list of the names and offenses of all parties tried and finally disposed of by such justice of the peace, together with the papers in each case, in all criminal actions, since the last term of the superior court. The clerk of the court shall hand a copy of such list to the solicitor and to the grand jury at each term of court; and no indictment shall be found against any party whose case has been so finally disposed of by any justice of the peace: Provided, that this section shall not be deemed to extend or enlarge or otherwise affect the jurisdiction of justices of the peace, except as provided by law.

Rev., s. 3261; Code, s. 906; 1869-70, c. 110.

ART. 15. TRIAL IN SUPERIOR COURT

120. Prisoner standing mute, plea "not guilty" entered. If any person, being arraigned upon or charged in any indictment for any crime, shall stand mute of malice or will not answer directly to the indictment, the court shall order the plea of "not guilty" to be entered on behalf of such person; and the plea so entered shall have the same force and effect as if such person had pleaded the same.

Rev., s. 3262; Code, s. 1198; R. C., c. 35, s. 29; R. S., c. 35, s. 16.

121. Peremptory challenges of jurors by defendant. Every person on joint or several trial for his life may make a peremptory challenge of twelve jurors and no more; and in all joint or several trials for crimes and misdemeanors, other than capital, every person on trial shall have the right of challenging peremptorily and without showing cause, four jurors and no more. And to enable defendants to exercise this right, the clerk in all such trials shall read over the names of the jurors on the panel, in the presence and hearing of the defendants and their counsel before the jury shall be empaneled to try the issue; and the judge or other presiding officer of the court shall decide all questions as to the competency of jurors.

Rev., s. 3263; Code, s. 1199; 1913, c. 31, s. 3; 1887, c. 53; R. C., c. 35, s. 32; 1871-2, c. 39; 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, s. 6.

122. Peremptory challenges by the state. In all capital cases the prosecuting officer on behalf of the state shall have the right to challenge peremptorily four jurors for each defendant, but shall not have the right to stand any jurors at the foot of the panel. The challenge must be made before the juror is tendered to

the prisoner, and if he will challenge more than four jurors he shall assign for his challenge a cause certain; and in all other cases of a criminal nature, a challenge of two jurors shall be allowed in behalf of the state for each defendant, and challenge also for a cause certain, and in all cases of challenge for cause certain the same shall be inquired of according to the custom of the court.

Rev., s. 3264; Code, s. 1200; 1913, c. 31, s. 4; 1907, c. 415; 1887, c. 53; R. C., c. 35, s. 33; 1827, c. 10; 33 Edw. I, c. 4.

123. Challenge to special venire same as to tales jurors. In the trial of all criminal cases, where a special venire shall be ordered, the same causes of challenge to the jurors summoned on the special venire shall be allowed as exist to tales jurors.

Rev., s. 3265; 1887, c. 53.

NOTE. For causes of challenge, see chapter entitled Jurors.

124. Exclusion of bystanders in trials for rape. In the trial of cases for rape and of assault with the intent to commit rape, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the court-room all persons except the officers of the court, the defendant and those engaged in the trial of the case; and upon the preliminary hearing before a justice of the peace of the offenses above named, that officer may adopt a like course.

1907, c. 21.

125. Term expiring during trial extended. In case the term of a court shall expire while a trial for felony shall be in progress, and before judgment shall be given therein, the judge shall continue the term as long as in his opinion it shall be necessary for the purposes of the case; and he may in his discretion exercise the same power in the trial of any other cause under the same circumstances, except civil actions begun after Thursday of the last week.

Rev., s. 3266; Code, s. 1229; 1893, c. 226; C. C. P., s. 397; R. C., c. 31, s. 16; 1830, c. 22.

126. Justification as defense to libel. Every defendant who is charged by indictment with the publication of a libel may prove on the trial for the same the truth of the facts alleged in the indictment; and if it shall appear to the satisfaction of the jury that the facts are true, the defendant shall be acquitted of the charge.

Rev., s. 3267; Code, s. 1195; R. C., c. 35, s. 26.

127. Conviction of assault, when included in charge. On the trial of any person for rape, or any felony whatsoever, when the crime charged includes an assault against the person, it is lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding; and when such verdict is found the court shall have power to imprison the person so found guilty of an assault, for any term now allowed by law in cases of conviction when the indictment was originally for the assault of a like character.

Rev., s. 3268; 1885, c. 68.

128. Conviction for a less degree or an attempt. Upon the trial of any indictment the prisoner may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime.

Rev., s. 3269; 1891, c. 205, s. 2.

129. Burglary in first degree charged, verdict for second degree. When the crime charged in the bill of indictment is burglary in the first degree, the jury may render a verdict of guilty of burglary in the second degree if they deem it proper so to do.

Rev., s. 3270; 1889, c. 434, s. 3.

130. Verdict for murder in first or second degree. Nothing contained in the statute law dividing murder into degrees shall be construed to require any alteration or modification of the existing form of indictment for murder, but the jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree.

Rev., s. 3271; 1893, c. 85, s. 3.

131. Demurrer to the evidence. When on the trial of any criminal action in the superior court, or in any criminal court, the state has produced its evidence and rested its case, the defendant may move to dismiss the action or for judgment of nonsuit. If the motion is allowed, judgment shall be entered accordingly; and such judgment shall have the force and effect of a verdict of "not guilty" as to such defendant. If the motion is refused, the defendant may except; and if the defendant introduces no evidence, the case shall be submitted to the jury as in other cases, and the defendant shall have the benefit of his exception on appeal to the supreme court.

Nothing in this act shall prevent the defendant from introducing evidence after his motion for nonsuit has been overruled; and he may again move for judgment of nonsuit after all of the evidence in the case is concluded. If the motion is then refused, upon consideration of all of the evidence, the defendant may except; and, after the jury has rendered its verdict, he shall have the benefit of such latter exception on appeal to the supreme court. If defendant's motion for judgment of nonsuit be granted, or be sustained on appeal to the supreme court, it shall in all cases have the force and effect of a verdict of "not guilty."

1913, c. 73; Ex. Sess. 1913, c. 32.

132. New trial to defendant. The courts may grant new trials in criminal cases when the defendant is found guilty, under the same rules and regulations as in civil cases.

Rev., s. 3272; Code, s. 1202; R. C., c. 35, s. 35; 1815, c. 895.

133. Nol. pros. after two terms; when *capias* and *subpœnas* to issue. A *nolle prosequi* "with leave" shall be entered in all criminal actions in which the indictment has been pending for two terms of court and the defendant has not been apprehended and in which a *nolle prosequi* has not been entered, unless the judge for good cause shown shall order otherwise. The clerk of the superior court shall issue a *capias* for the arrest of any defendant named in any criminal action in which a *nolle prosequi* has been entered when he has reasonable ground for believing that such defendant may be arrested or upon the application of the solicitor of the district. When any defendant shall be arrested it shall be the duty of the clerk to issue a *subpœna* for the witnesses for the state indorsed on the indictment.

Rev., s. 3273; 1905, c. 360, ss. 1, 3, 4.

NOTE. For clerk's *nol. pros.* docket, see Clerk of Superior Court, s. 23.

133a. Prisoner not to be tried in prison uniform. It shall be unlawful for any sheriff, jailer or other officer to require any person imprisoned in jail to appear in any court for trial, dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with shaven or clipped head. And no person charged with a criminal offense shall be tried in any court while dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with head shaven or clipped by or under the direction and requirement of any sheriff, jailer or other officer, unless the head was shaven or clipped while such person was serving a term of imprisonment for the commission of a crime.

Any sheriff, jailer or other officer who violates the provisions of this section shall be guilty of a misdemeanor.

1915, c. 124.

ART. 16. APPEAL

134. Appeal from justice, trial de novo. The accused 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.

Rev., s. 3274; Code, s. 900; 1868-9, c. 178, subc. 4, s. 11; 1879, c. 92, s. 10.

135. Justice to return papers and findings to superior court. In every case in which an appeal shall be prayed 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 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.

Rev., s. 3276; Code, s. 901; 1868-9, c. 178, subc. 4, s. 12.

136. When state may appeal. 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.

Rev., s. 3276; Code, s. 1237.

137. Appeal by defendant to supreme court. In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the supreme court; and the appeal shall be perfected and the case for the supreme court settled, as provided in civil actions.

Rev., s. 3277; Code, s. 1234; R. C., c. 4, s. 21; 1818, c. 962, s. 4.

138. Defendant may appeal without security for costs. In all cases of conviction in the superior courts, the defendant shall have the right to appeal with-

out 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.

Rev., s. 3278; Code, s. 1235; 1869-70. c. 196, s. 1.

139. Appeal granted; bail for 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 offense shall require the defendant to enter into recognizance in a reasonable sum to make his appearance at the first term of the superior court to be held in the county and to further answer the charge preferred.

Rev., s. 3279; Code, s. 1236; 1869-70, c. 196, s. 2.

140. Bail pending appeal. When any person convicted of a misdemeanor and sentenced by the court, shall appeal, the court shall allow such person to give bail pending appeal.

Rev., s. 3280; Code, s. 1181; R. C., c. 35, s. 12; 1850-1, c. 2.

141. Appeal not to vacate judgment; stay of execution. In criminal cases an appeal to the supreme court shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or in forma pauperis, there shall be a stay of execution during the pendency of the appeal.

Rev., s. 3281; 1887, c. 191, s. 1; 1887, c. 192, s. 4.

142. Judgment for fines docketed; lien and execution. When the sentence in whole or in part directs the payment of a fine, the judgment shall be docketed by the clerk and be a lien on the real estate of the defendant in the same manner as judgments in civil actions, and executions thereon shall only be stayed, upon an appeal taken, by security being given in like manner as is required in civil cases. Should the judgment be affirmed, upon appeal to the supreme court, the clerk of the superior court, on receipt of the certificate from the supreme court, shall issue execution on such judgment.

Rev., s. 3282; 1887, c. 191, s. 3.

143. Procedure upon receipt of certificate of supreme court. The clerk of the superior court, in all cases where the judgment has been affirmed (except where the conviction is a capital felony), shall forthwith on receipt of the certificate of the opinion of the supreme court notify the sheriff, who shall proceed to execute the sentence which was appealed from. In criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing term of the court after the receipt of such certificate.

Rev., s. 3283; 1887, c. 192, s. 3.

ART. 17. EXECUTION

144. Death by electrocution. Death by hanging under sentence of law in North Carolina is hereby abolished and electrocution or death by electricity substituted therefor.

1909, c. 443, s. 1.

145. Manner and place of execution. The mode of executing a death sentence must in every case be by causing to pass through the body of the convict or felon a current of electricity of sufficient intensity to cause death, and the application of such current must be continued until such convict or felon is dead; and the warden of the penitentiary of North Carolina or, in case of his death, inability or absence, a deputy warden shall be the executioner; and when any person, convict or felon shall be sentenced by any court of the state having competent jurisdiction to be so executed, such punishment shall only be inflicted within a permanent death chamber which the superintendent of the state penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the state penitentiary shall also cause to be provided, in conformity with this article and approved by the governor and council of state, the necessary appliances for the infliction of the punishment of death in accordance with the requirements of this article.

1909, c. 443, s. 2.

146. Sentence of death; prisoner taken to penitentiary. Upon the sentence of death being pronounced against any person in the state of North Carolina convicted of a crime punishable by death it shall be the duty of the judge pronouncing such death sentence to make the same in writing, which shall be filed in the papers in the case against such convicted person, and a certified copy thereof shall be transmitted by the clerk of the superior court in which such sentence is pronounced to the warden of the state penitentiary at Raleigh, North Carolina, not more than twenty nor less than ten days before the time fixed in the judgment of the court for the execution of the sentence; and in all cases where there is no appeal from the sentence of death and in all cases where the sentence is pronounced against a prisoner convicted of the crime of rape it shall be the duty of the sheriff, together with at least one deputy, to convey to the penitentiary at Raleigh such condemned felon or convict forthwith upon the adjournment of the court in which the felon was tried, and deliver the convict or felon to the warden of the penitentiary: Provided, that in all cases where an appeal is taken from the death sentence by any person convicted of a crime punishable by death, except the crime of rape, such convicted felon or convict shall not be taken or conveyed to the penitentiary unless, in the judgment of the sheriff of the county in which the felon was tried and the solicitor prosecuting the felon, it shall be deemed necessary for the safety and safe-keeping of the convicted person or felon during the pendency of the appeal.

1909, c. 443, s. 3.

147. Warden or deputy to execute sentence. The warden or deputy warden (in case of the disability, death or absence of the warden), unless a suspension of execution be ordered, shall cause the person, convict or felon against whom the death sentence has been so pronounced to be electrocuted as provided by this article. At such execution there shall be present the warden or deputy warden, the surgeon or physician of the penitentiary and twelve respectable citizens. The counsel and any relatives of such person, convict or felon and a minister or ministers of the gospel may be present if they so desire.

1909, c. 443, s. 4.

148. Certificate filed with clerk. The warden, together with the surgeon or physician of the penitentiary, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof.

1909, c. 443, s. 5.

149. Notice of reprieve or new trial. Should the condemned person, convict or felon be granted a reprieve by the governor or obtain a writ of error, or a new trial be granted by the supreme court of the state of North Carolina, or should the execution of the sentence be stayed by any competent judicial tribunal or proceeding, notice of such reprieve, new trial, appeal, writ of error or stay of execution shall be served upon the warden or deputy warden of the penitentiary by the sheriff of Wake County, in case such condemned person is confined in the penitentiary, or upon any sheriff having the custody of any such condemned person, also upon the condemned person himself.

1909, c. 443, s. 6.

150. Judgment sustained on appeal, governor fixes day for execution. In case of an appeal, should the supreme court find no error in the trial or should the execution of the sentence be stayed by any competent judicial tribunal or proceeding, such condemned person, convict or felon shall be executed as heretofore provided in this article, the governor of North Carolina setting the day for such execution; and it is made the duty of the governor to set the date for such execution and notify the warden of the penitentiary thereof.

1909, c. 443, s. 6.

151. New trial granted, prisoner taken to place of trial. Should a new trial be granted the condemned person, convict or felon against whom sentence of death has been pronounced, after he has been conveyed to the penitentiary, then he shall be conveyed back to the place of trial by such guard or guards as the warden of the penitentiary shall direct, their expenses to be paid as is now provided by law for the conveyance of convicts to the penitentiary.

1909, c. 443, s. 7.

152. Disposition of body. Upon application, written or verbal, of any relative as near as the degree of fourth cousin of the person executed, made at any time prior to the execution or on the morning thereof, the body, after execution, shall be prepared for burial under the supervision of the warden or deputy warden and shall be returned to the nearest railroad station of the relative or relatives asking for such body. The cost of preparing the body for burial, including transportation, shall in no case exceed the sum of fifty dollars, and shall be paid by the state of North Carolina upon a warrant of the auditor of the state. In the event that no relative asks for the body of such executed person, convict or felon, the same shall be disposed of as other bodies of convicts dying in the penitentiary.

1909, c. 443, s. 9.

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