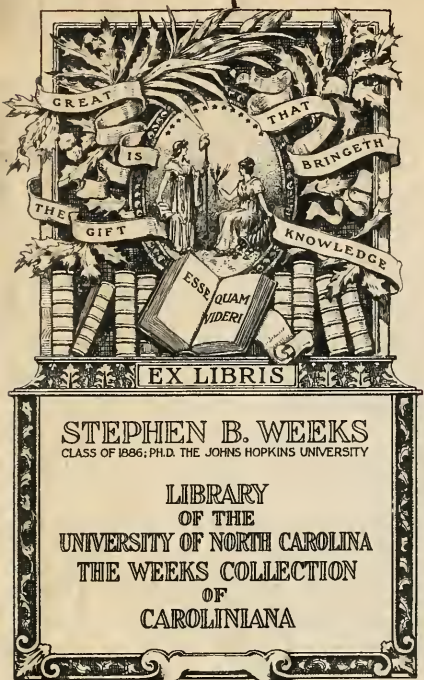


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L A W S

OF THE

State of North Carolina,

PASSED BY THE GENERAL ASSEMBLY,

AT THE

SESSION OF 1836-37.

Published agreeably to an Act of the twenty-third Jan. 1837.

RALEIGH:

THOS. J. LEMAY, PRINTER.

.....

1837.

L A W S

OF THE

STATE OF NORTH CAROLINA,

PASSED BY THE GENERAL ASSEMBLY.

AT THEIR SESSION WHICH COMMENCED ON MONDAY, THE TWENTY FIRST
OF NOVEMBER, ONE THOUSAND EIGHT HUNDRED AND THIRTY-
SIX, AND ENDED ON MONDAY, THE TWENTY THIRD OF
JANUARY, ONE THOUSAND EIGHT HUNDRED AND
THIRTY-SEVEN.

B A N K S.

CHAP. I.

An Act concerning the Bank of Cape Fear.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the act, entitled "an act to recharter the Bank of Cape Fear," passed by the General Assembly in the session of 1833-1834, be, and the same is hereby continued in force until the first day of January, in the year of our Lord, one thousand eight hundred and sixty.

Limitation of
charter.

SEC. 2. *Be it further enacted, That the president and directors shall convene, by public notice, the stock-*

Meeting of stockholders. holders of the bank, at some time between the passage of this act and the first day of April next, for the purpose of ascertaining whether they wish to increase the capital stock of the said bank; and in case they determine to in-

Increase of capital. crease the capital stock, there shall be added seven thousand shares, of one hundred dollars each, so as to make the capital stock of said bank one million five hundred thousand dollars; of which increased capital, the State of North Carolina shall be entitled to subscribe three thousand shares, and individuals and corporations the remaining four thousand shares.

Books of subscription to be opened. SEC. 3. *Be it further enacted*, That if the stockholders shall assent to the increase of the capital stock aforesaid, the president and directors shall, within one month after the acceptance of this charter, open books of subscription, under the directions of two or more commissioners, to be by them designated, at the city of Raleigh, and in the towns of Wilmington, Fayetteville, Newbern, Edenton, Hillsboro', Salem, Salisbury, Charlotte, Elizabeth City, Halifax, Tarboro', Lincolnton, Morganton, Washington, Wadesboro', Wilkesboro', Greensborough, Rutherfordton, and Oxford, and the same to keep open for subscription for ten days; and if it shall happen, when the books shall be opened as aforesaid, that a greater number than four thousand shares shall be subscribed by individuals or bodies corporate, it shall be lawful for the president and directors to reduce such subscriptions, according to a scale by them to be established for that purpose, to the aforesaid number of four thousand shares: *Provided*, that no subscriptions of two shares or under,

Provision for re-opening books. shall be sealed until all larger subscriptions shall be reduced to an equality with them: *Provided also*, that if the four thousand shares be not subscribed within ten days as aforesaid, it shall be lawful for the stockholders, at any future time, to open books of subscription, at the same places, under the same restrictions, for the residue: *Provided*, that nothing herein contained shall compel the president and directors to open books for a subscription of

more than two thousand shares, until after the first day of January, 1838.

SEC. 4. *Be it further enacted*, That when the capital stock shall be increased as aforesaid, the said president, directors and company of the Bank of Cape Fear, are hereby made able and capable in law to have, purchase, receive, possess, enjoy, and retain to themselves, their successors and assigns, lands, rents, tenements, hereditaments, goods, chattels and effects to an amount not exceeding three millions of dollars, exclusive of their capital stock aforesaid, with the same privileges as are prescribed in the act of 1833.

Amount of property which corporation may hold.

SEC. 5. *Be it further enacted*, That when the said seven thousand shares shall be fully paid for, according to the provisions of this act, the representative of the State, whom the Governor, Secretary of State and Comptroller, shall designate, may appoint four directors of said bank, who are stockholders, and the individual stockholders may appoint seven directors. And in all general meetings of the stockholders, the representative of the State appointed as aforesaid, shall be entitled to three votes for every six given by individual stockholders.

The appointment of directors &c.

SEC. 6. *Be it further enacted*, That the said bank, within one year from the payment of the subscriptions by the State aforesaid, shall establish two or more additional branches in this State; neither of which shall be less than one hundred miles distant from the principal bank, and one of which shall be west of the Yadkin.

Additional branches required to be established.

SEC. 7. *Be it further enacted*, That not less than three directors shall constitute a quorum, for the transaction of business at the principal bank; of whom the president shall be one, unless in case of sickness or necessary absence; when he shall appoint, by a written instrument, a director to fill his place. And in case of the death, resignation, or removal from the State, of any director, his place shall be filled by a new appointment for the remainder of the year, by a majority of the directors: *Provided*, that no person shall be eligible as a director, who

Direct's quorum of &c.

is not the owner of ten shares or more of the capital stock of the bank.

SEC. 8. *Be it further enacted*, That the total amount of debt, which the said corporation shall at any time owe, shall not exceed twice the amount of its capital, over and above its capital stock, and the sum then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorised by a law of the State.

Amount of
debt which
the corpora-
tion may owe

SEC. 9. *Be it further enacted*, That the president of said bank shall give notice to the Governor of this State, of the acceptance of this charter, as amended, by the stockholders thereof, at such time as they may prescribe, before the first day of April next.

Notice of ac-
ceptance of
charter to be
given to Gov.

SEC. 10. *Be it further enacted*, That upon such notice being given to the Governor of this State as is herein required, by the president of said bank, it shall and may be lawful for the president and directors of the said bank, and they are hereby required to receive from the Public Treasurer a subscription in behalf of the State, for the whole amount of the said three thousand shares of capital stock, at any time within three months from the passing of this act; payment for which to the said bank shall be made as follows, to wit: one fourth of the whole amount at the time of subscribing, and one other fourth every ninety days thereafter, till full payment be made: *Provided*, that if the Public Treasurer pay the whole of the said subscription at the time of subscribing, or any greater part thereof than is hereby required, before the time limited for the same, the State shall have interest at the rate of six per cent. on all payments made in advance, computing the same from the time when payment is made to the time when required to be made: *And provided also*, that if the Public Treasurer fail to pay the said instalments, or any part of them, at the times appointed for the payment of the same, he shall pay interest, at the same rate, on all instalments or parts thereof not punctually

Subscription
in behalf of
the State.

paid, from the time the same should have been paid, until payment be made.

SEC. 11. *Be it further enacted*, That if, at any time hereafter, the president and directors of said bank shall find that the whole capital of the same cannot be safely and profitably employed, they shall have power, and they are hereby authorised, by the consent of the General Assembly, first to be had and obtained, to reduce the same to an amount not less than one million of dollars, by purchasing the stock of said bank, or receiving the same in payment of debts, bona fide due the bank, at a price not less than the par value thereof; and all shares of stock so purchased by the bank or taken in payment of debts, shall thereafter cease to be a part of the capital stock of said bank.

Capital stock,
how it may
be reduced.

SEC. 12. *Be it further enacted*, That the said bank shall have authority to deal in such public debt as now is, or may hereafter be created by this State.

Bank may
deal in public
debt.

[Ratified 23rd January, 1837.]

CHAP. II.

An Act to confer banking privileges on the Stockholders of the Louisville, Cincinnati and Charleston Rail Road Company, on certain terms and conditions.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Rail Road Company incorporated in the State of South Carolina, North Carolina and Tennessee, by the name of "The Cincinnati and Charleston Rail Road Company;" and in the State of Kentucky, by the name of "The Louisville, Cincinnati and Charles-

Corporation
to form a sep-
arate body for
banking pur-
poses.

ton Rail Road Company," shall be called and known as a body corporate in all the States aforesaid, by the name of "The Louisville, Cincinnati and Charleston Rail Road Company;" and that the corporators in the said Rail Road Company shall form a separate body corporate, in deed and in law, for banking purposes, in such of the States of South Carolina, North Carolina, Tennessee and Kentucky, as shall assent thereto, and be called and known by the name of the "South Western Rail Road Bank:" *Provided*, that the assent of not less than three of the said States shall be given hereto, before the bank shall have corporate existence.

Banking
company,
now formed,
see.

SEC. 2. *Be it further enacted*, That the said Banking Company shall be formed in the following manner, and be vested with the following powers, and be subject to the following restrictions: that is to say: 1st. Each of the present stockholders, and every person who may hereafter become a stockholder in the said Rail Road Company, until the capital thereof shall be increased by regular subscriptions to twelve millions of dollars, shall be entitled, for every share in the said Rail Road Company of one hundred dollars, to take one share in the bank of fifty dollars, so that the capital of the said bank may, in the first instance, amount to the sum of six millions of dollars. 2d. The directors of the said company shall cause books to be opened to the community at large, in all the States of South Carolina, North Carolina, Tennessee and Kentucky, at all places where books were opened for the first subscriptions of stock in said Rail Road Company, and such other places as the said directors may designate, by such commissioners as the said directors may appoint, from ten o'clock in the morning to two o'clock in the afternoon of each day, for a period not less than thirty days, except Sundays, for the purpose of increasing the stock of the said rail road company to twelve millions of dollars; and if, on closing the books, on the last day of December, eighteen hundred and thirty seven, the Rail Road capital shall have been increased by regu-

lar subscriptions to eight millions of dollars, or more, the bank shall be regarded as formed; and thereupon, the stockholders therein shall be a body corporate in all the States assenting thereto, by the name of "The South Western Rail Road Bank:" *Provided*, at least three of the said States shall assent thereto. 3rd. If, on closing the books, the subscriptions shall have increased the capital of the Rail Road Company beyond twelve millions of dollars, the same shall be reduced to that sum, by reducing the subscriptions made after the first day of December, eighteen hundred and thirty-six, in the manner prescribed by the seventh section of the Rail Road charter.

SEC. 3. As soon as the said bank has become a body corporate as aforesaid, the directors of the said Rail Road Company, by publication, in two or more newspapers in each of the said States, shall call on all the stockholders in the Rail Road Company, to pay the first instalment of twelve dollars and fifty cents on each share towards forming the capital of the bank, which sum shall be paid into some specie paying bank in the State where the payment is made, to the credit of the "South Western Rail Road Bank;" and each stockholder in the Rail Road Company, who shall, within one month after the day fixed for the said payment, pay, on the whole, or any part of the stock he owns, in specie, or the notes of specie paying banks in the said States, the instalment so called for, shall be regarded and taken as a stockholder in the said bank, for the number of shares on which such payment shall be made. And as soon as the said bank has become a body corporate as aforesaid, the directors of the Rail Road Company shall appoint a time and place for the stockholders in the bank to meet by themselves, or proxies, and give notice thereof, by publications in two or more newspapers in each of the said States, at least one calendar month before such meeting. In all meetings of the stockholders of the bank, votes may be given in person or by proxy, on the same terms, and according to the same

Payment of
first instal-
ment.

Meeting of
stockholders,
and their
votes.

seale as is prescribed for voting in person, or by proxy, in meetings of the Rail Road Company; except that no person shall act as a proxy in the bank, unless he be a stockholder therein.

Election of
directors.

SEC. 4. At the first meeting of the stockholders, and annually thereafter, on such day as shall be fixed by the bank corporation, there shall be an election of thirteen directors of the bank; and those who are elected by a plurality of votes shall be capable of serving as such only for one year; but shall be re-eligible. In case of death, resignation, or removal from office by the stockholders, of a director, his place may be filled by the other directors for the remainder of the year.

Bank not dis-
solved by a
failure to e-
lect.

SEC. 5. But should the day of annual election pass, without any election of directors, the bank shall not be thereby dissolved; but it shall be lawful on any other day to hold and make such election in such manner as may be prescribed by a bye-law of the bank corporation.

The residence
of directors,
appointment
of President
&c.

SEC. 6. The directors of the bank shall be resident citizens of some of the said States, and stockholders of the bank; and, at the first meeting after their election, they shall appoint one of their number to be President of the said bank; they shall appoint all the officers of the bank, and the president, directors and cashier of its branches, all of whom they may remove at pleasure, and may also at pleasure remove all the officers of the branches, which shall have been appointed by the president and directors of such branches: no director, or partner of a director of another bank, shall be a director in this bank, or in any of its branches; nor shall any person act as a director, who may be under protest in the said bank, as drawer or endorser of any note or bill of exchange, held by the said bank, either for discount or collection, unless he shall prove to the satisfaction of a majority of the directors, that he has just and sufficient cause for refusing payment of the demand on which such protest may be founded.

SEC. 7. The president and directors of the bank may

call for a second instalment of twelve dollars and fifty cents, upon the capital of the bank, as soon after their elections as they may deem proper, upon giving one month's notice thereof, by publication, in at least two newspapers in each of the States assenting thereto: the subsequent instalments they may call for in such sums as they may deem necessary; provided, that similar notice be given, and the payment be at least sixty days apart; and, provided also, that no call for any instalments subsequent to the two first shall be made, until an amount equal to such call shall have been previously called in by the Rail Road Company, and shall have been actually expended in constructing the rail road, or shall be necessary to meet contracts actually made on account of the same. When the instalments paid in for the capital of the said bank shall amount to six millions of dollars, the capital shall not be further increased, until six millions of dollars shall have been actually called in and expended on the rail road; after which, the capital of the bank shall be increased only by calling for instalments equal in amount to those which may be called for by the Rail Road Company, until the said capital shall reach the limit of twelve millions: *Provided*, the capital of the bank shall not exceed six millions, until the rail road shall have been extended to the State of Tennessee; and that it shall not exceed nine millions, until the road shall be extended to the southern boundary of Kentucky; and that it shall not be increased to twelve millions, until it shall be extended to Lexington in Kentucky: *Provided also*, that any share in the bank, on which any instalment shall not be paid, when called for, shall, with all the payments made thereon, be forfeited to the bank; but such defaults shall not induce a forfeiture of the corresponding rail road shares.

SEC. 8. The board of directors of the rail road and of the bank, shall be distinct and separate bodies; and the capital of the rail road and of the bank shall also be kept distinct and separate: the bank shall never be liable for

Of the call for instalments and gradual increase of capital.

Capital and officers of bank and rail road to be separate, &c.

the debts of the Rail Road Company; but the Rail Road Company shall be liable for the debts of the bank, in case of failure: Except, that shares in the rail road, which have no corresponding shares in the bank, shall not be liable to the debts of the bank.

SEC. 9. The president and directors of the bank shall make up, annually, a full statement of the affairs thereof, as they may stand on the first day of October; and also of the affairs of each of the branches on that day, as rendered to them by the president and directors of such branch; and shall send one copy thereof, certified by the president and cashier, to each of the Governors of the said States, to be laid before their respective legislatures.

SEC. 10. The mother, or principal bank, shall be located at Charleston; and the said bank may establish branches, or have agencies thereof, in any State, with the consent of the legislature thereof. And it is hereby declared, that the said bank shall not have corporate existence, unless two of the states of North Carolina, Tennessee and Kentucky shall consent to the establishment of branches therein.

SEC. 11. The bank shall never issue any note, or draw a check which is payable to order, or bearer, of a less denomination than five dollars, until the road is completed, nor less than ten dollars after the completion of said road. Nor shall it ever put in circulation notes payable to order or bearer, to an amount exceeding double its capital; and in case it shall not redeem its notes in current coin of the United States, when demanded, at the bank or branch where such notes are payable, such notes shall thenceforth bear interest at the rate of twelve per cent. per annum.

SEC. 12. Neither the bank nor its branches shall lend money on the pledge of its own, or the stock of the rail road, until three fourths of the capital of the Rail Road Company shall have been paid in; and then only to one half of the said stock; and the bank shall never permit the Rail Road company to overdraw

SEC. 13. Each branch of the said bank shall be an office of discount and deposit. It shall have a board, to consist of a president, and not less than six directors, with a cashier, and such other officers as the business of the branch may require; the board shall conform to all orders it may receive from the president and directors of the bank, and shall possess such powers as the said president and directors may confer on them, consistently with this charter.

Officers &c.
of branches.

SEC. 14. And the said bank corporation, by its said name and style, shall be, and is hereby made capable in law, to have, purchase, receive, possess, enjoy and retain, to it and its successors, lands, rents, tenements, hereditaments, goods, chattels, promissory notes, bills of exchange, and all other choses in action, monies, and effects of what kind, nature or quality soever, to an amount not exceeding, in the whole, three times the amount of the capital stock of the said corporation; and the same to sell, alien or dispose of; and also to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in the courts of any of the said States, or of any other place whatsoever; and also to make, have and use a common seal, and the same to break, alter and renew at pleasure; and also to discount promissory notes, at a rate of interest not exceeding one per cent. for sixty days; and also to ordain, establish and put in execution such bye-laws, ordinances, and regulations as shall seem necessary and convenient, for the government of the said corporation, not being contrary to the laws of the said States, or of the United States, or to the constitution thereof; and generally to do and execute, all and singular, such acts, matters and things, as may be deemed necessary and proper for the good government and management of said corporation; subject, nevertheless, to such regulations, restrictions, limitations and provisions as are herein prescribed and declared.

Corporate
powers of the
bank.

SEC. 15. That the total amount of debts which the said corporation shall at any time owe, shall not exceed

Amount of debt which the corporation may owe. three times the amount of its capital stock, exclusive of the amount of money then actually deposited in the bank for safe keeping; and in case of excess, the directors, under whose administration such excess shall happen, shall be liable for the same in their private and individual capacities; and an action may, in such case, be brought against them, or any of them, their or any of their heirs, executors or administrators, in any court having competent jurisdiction, by any creditor or creditors of the said corporation; and may be prosecuted to judgment and execution, any condition, covenant or agreement to the contrary notwithstanding; but this shall not be construed to exempt the said rail road company, or the said bank, or the lands, tenements, goods or chattels of the same from being also liable for said excess; and such of the said directors as may have been absent when such excess was contracted or enacted, or such as may have dissented from the resolution or act whereby the same was contracted or enacted, may respectively exonerate themselves from being thus liable, by forthwith giving notice of the fact, and of their absence or dissent, to the stockholders, at a general meeting to be called for that purpose.

SEC. 16. That dividends shall be made at least twice in every year, by the said corporation, of so much of the profits of the said bank as shall appear to the directors advisable; and once in every year, the directors shall lay before the stockholders, at a general meeting, for their information, the amount of surplus profits, if any, after deducting losses and dividends.

SEC. 17. That no officer of said bank other than a director, not being president, shall be permitted, either directly or indirectly, to carry on the business or trade of merchandize, factorage, brokerage, vendue, or the exchange of money or bills for profit; and every such officer so trading, shall be removed from office by the directors, and shall not be re-eligible to any office in said bank or its branches. That no director or other officer of the said bank shall, directly or indirectly, receive any com-

Officers of bank restricted in trade, &c.

compensation for any agency, for negotiating any business with the bank or its branches, in procuring discounts, renewing notes, or receiving moneys for individuals or notes discounted; and any such director or other officer thus receiving compensation, shall be removed from office, and disqualified from thereafter holding any office in said bank or its branches.

SEC. 18. That a meeting of the stockholders may be called at any time by the president and directors, or a majority of them, or by any director who may protest against the proceedings of the board, and who may wish the propriety of his dissent to be considered by the stockholders, or whenever the holders of ten thousand shares or upwards, shall require the same; provided, that no such meeting of the stockholders shall be competent to transact business, unless one month's notice thereof be given in at least two public Gazettes, in each of the said States, and unless a majority of the stock in the said bank be represented. That the lands, tenements and hereditaments which it shall be lawful for the said corporation to hold, shall be only such as may be requisite for its immediate accommodation, for the transaction of business, such as shall have been bona fide mortgaged or assigned to it by way of security or payment for debts previously contracted in the course of its dealings, and such as shall have been purchased at sales upon judgments previously obtained.

When a meeting of the stockholders may be called.

What property bank may hold.

SEC. 19. Each share in the bank shall be inseparably connected with a share in the rail road company, and shall never be transferred without it; and the forfeiture of a share in the rail road company, for the non-payment of any instalment called for thereon, shall induce a forfeiture to the bank corporation of the corresponding bank share. The stock of said bank, and the corresponding rail road stock shall be assignable and transferable, according to such regulations, and upon such terms, as may be prescribed and fixed by the bank corporation, or the directors thereof.

Shares of rail road and bank connected.

SEC. 20. The bills or notes which may be issued by order of the said bank corporation, signed by the president, and countersigned by the principal cashier or treasurer thereof, promising the payment of money to any person or persons, his, her or their order, or to the bearer, though not under the seal of the said corporation, shall be binding and obligatory on the said corporation, in like manner, and with the like force and effect, as upon any private person or persons, if issued by him, her or them, in his, her or their private capacity; and shall be assignable and negotiable in like manner, as if they were so issued by such private person or persons; that is to say, those which shall be payable to any person or persons, his, her or their order, shall be assigned by endorsement in like manner, and with like effect, as foreign bills of exchange now are; and those which are payable to any person or persons, or bearer, shall be negotiable or assignable by delivery only.

SEC. 21. Notes of twenty dollars and under, may be signed by the president and cashier of the branch where they are payable, and shall have the same effect as they would have, if signed by the president and cashier of the principal bank.

SEC. 22. That no less than five directors in the principal bank, or four in a branch, shall constitute a board for the transaction of business, of whom the president shall always be one, except in the case of sickness or necessary absence, when his place may be supplied by any other director, whom he, by writing, shall nominate for the purpose; and in default of such nomination by the president, or in case of sickness or necessary absence of the person so nominated, the board of directors may, by ballot, appoint a temporary president.

SEC. 23. The directors for the time being, shall have power to appoint such officers, clerks and servants under them, as shall be necessary for executing the business of said corporation, in such manner, and upon such terms as they shall deem necessary and proper; and shall also

have power to remove such officers from time to time, at their will and pleasure; and shall be capable of exercising such other powers and authorities, for the well government and ordering of the affairs of the said corporation, as shall be prescribed, fixed and determined by the laws and regulations thereof.

SEC. 24. That the president, cashier, and clerks employed in keeping the books of the said bank, shall be, and they are hereby declared to be exempted from the performance of ordinary militia duty, and from serving as jurors.

Officers exempt from public duties.

SEC. 25. The capital of the said bank, and all the funds thereof, the shares of the stockholders therein, and the dividends thereon, shall be free and exempt from taxation of every kind, in each of the States granting the charter, until the said rail road shall be finished, and the stockholders in the company shall have derived an interest of six per centum per annum, for each year, upon their investments; after which, the State of North Carolina shall have the right to lay a tax, not exceeding one fourth per centum, upon so much of the capital of the bank as is employed by the branch in that aforesaid State; except that its real estate, and its goods pledged for money lent, and its goods, the produce of its lands, may be taxed at the same rate as similar real estate and goods are taxed, in the States where the same may be situated.

Bank exempt from tax, until &c.

SEC. 26. That any real estates, bills, notes, monies, profits or other property whatever, which may, on the dissolution of the said bank corporation, be owned or possessed by it, shall be held by the directors of the said bank, for the use and benefit of all persons holding shares in said corporation at the time of its dissolution, and their legal assignees and representatives, in average and proportion to the number or amount of said shares.

Property, on dissolution of bank, to be held for benefit of stockholders.

SEC. 27. In case the Rail Road Company shall finish the road with a double track from Charleston, or the rail road of the South Carolina Canal and Rail Road Company to the Ohio river, or shall unite it in the State of Ken-

How long bank may have corporate existence

tucky with some other rail road, which may connect it with the Ohio river within ten years from the first day of January, eighteen hundred and thirty-seven; or in case, within the same period, the Louisville, Cincinnati and Charleston Rail Road Company shall finish the Road with a double track from Charleston, or from the rail road of the South Carolina Canal and Rail Road Company, to the southern boundary of Kentucky; or in case the said Louisville, Cincinnati and Charleston Rail Road Company shall, within the same period, actually expend on the said road the sum of twelve millions of dollars, then the said bank shall have corporate existence for twenty one years after the expiration of the said ten years; otherwise it shall cease to have corporate existence after the expiration of the said ten years.

Exemption
from obliga-
tion to con-
struct road in
Kentucky &c

SEC. 28. If the legislature of the State of Kentucky shall not, within one year from the first day of March, eighteen hundred and thirty seven, discharge the Rail Road Company from the obligation to make branches to the main road in that State; and the company shall, within ten years from the first day of January, eighteen hundred and thirty seven, construct a rail road with a double track from Charleston, or from the rail road of the South Carolina Canal and Rail Road Company, to the southern boundary of the State of Kentucky, or to the Cumberland river, then the said Rail Road Company shall continue to exist as a body corporate, in the States of South Carolina, North Carolina, and Tennessee, with all the rights and privileges, appertaining to it in those States, discharged from all obligation to construct any rail road in the State of Kentucky, or to have any directors residing in that State; and the bank hereby chartered, shall have corporate existence in such of the States as shall assent hereto, with all the rights and privileges, and subject in all respects to the conditions herein contained; discharged from all obligations to establish or construct any road in the State of Kentucky.

SEC. 29. It is hereby declared, that in case the Rail Road Company shall not within five years from the first day of January, eighteen hundred and thirty-seven, have called in

and expended or made contracts to the amount of three millions of dollars for the construction of the road, the grant of banking privileges hereby conferred shall cease and be revoked. In case the construction of the road shall be suspended after the bank goes into operation for one year, before the final completion of the road, then this charter shall be taken and deemed as null and void. But the bank shall, in this contingency, be allowed two years for winding up their concerns, without the privilege of doing new business.

Cases in which charter shall be revoked.

SEC. 30. The said bank may establish a branch in this State for the transaction of business, pursuant to the provisions herein before contained.

Branch in this State.

SEC. 31. *Be it further enacted*, That it shall not be lawful for the said bank to establish any branch bank or agency in the State of North Carolina, to the eastward of the Catawba river, nor to employ in this State a larger amount of capital than one million of dollars, without the consent of the legislature first had and obtained.

Restrictions as to location and capital.

SEC. 32. That if any person shall falsely forge or counterfeit, or willingly aid or assist in falsely making, forging or counterfeiting, any bill or note, check or draft, purporting to be, or in imitation of any bill, note check or draft, issued by order of said corporation, with intent to defraud; every such person so offending shall be deemed and judged guilty of felony; and being convicted thereof, before any court of record in this State, shall be punished as the law directs in cases of forgery.

Counterfeiting and forgery, felony.

SEC. 33. *Be it further enacted*, That it shall be lawful for the General Assembly, whenever it shall have reason to believe that the charter hereby granted has been violated, to order a scire facias to be sued out from the Superior Court of the county in which the branch bank hereby authorised shall be established, in the name of the State of North Carolina, which shall be executed upon the president, any two of the directors, or upon the cashier of the said branch bank for the time being, at least ten days before the commencement of the term of said court, calling on said corporation to shew cause wherefore the charter hereby granted shall not be de-

Legislature to order a *sci fa.* to issue.

clared void; and it shall be lawful for the said court, upon the return of said scire facias, (unless good cause be offered for a continuance) to examine into the truth of the alledged violation, and if such violation shall be made to appear, then to pronounce and adjudge that the said charter is forfeited and annulled: *Provided, however*, every issue of fact which may be joined between the State of North Carolina and the corporation aforesaid, shall be tried by jury. And it shall be lawful for the court aforesaid to require the production of such of the books of the corporation as it may deem necessary for the ascertainment of the controverted facts; and it may be lawful for such person as may appear for the State, or for the corporation, being dissatisfied with such final judgment as may be had in said court, to appeal to the Supreme Court of the State: *Provided, however*, that in all cases wherein the charter of said bank shall be adjudged to be forfeited, and the corporation dissolved, such dissolution or forfeiture being declared, shall not extinguish the debts due to or from said corporation; but the court rendering such final judgment, shall proceed to appoint a receiver or receivers, who shall have full power to collect, in his or their own names, all the debts due to said corporation; to take possession of all its property; to sell, and dispose, and distribute the same in order to pay off the creditors of said corporation, and afterwards to re-imburse the stockholders thereof, under such rules, regulations, provisions, and restrictions as the court rendering such final judgment shall direct.

Decree of
court not to af-
fect the rights
of claimants.

SEC. 34. *Be it further enacted*, That no judgment, sentence or decree, which may be pronounced, declaring the said charter forfeited and annulled, shall be so construed, to exempt the said corporation or any of its effects from the redemption of all debts, dues, and demands which may be against it at the time of pronouncing such final judgment, sentence, or decree, or from distribution among the stockholders, after the payment of debts.

Citizens only
shall vote.

SEC. 35. *Be it further enacted*, That none but citizens of the United States shall have the right of voting at the meeting of the stockholders.

SEC. 36. *Be it further enacted*, That no bank corporation shall subscribe or hold shares in this bank, directly or indirectly: *Provided* there should be, at any stage of the charter, an amount of subscription more than is authorised by the charter, that the subscriptions of non-residents of those States which have or may hereafter sanction this charter, shall be stricken off, before any reduction shall be made in the subscription of the citizens of those States, whose sanction is required by this charter.

No bank corporation shall hold shares.

[Ratified 20th January, 1837.]

BOUNDARIES OF COUNTIES.

CHAP. III.

An Act authorising County Courts to settle disputed boundaries between counties.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That whenever there shall be any dispute concerning the dividing line between counties, it shall be lawful for the county courts of each county interested in the adjustment of said line, a majority of the Justices consenting thereto, to appoint one or more Commissioners on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the Justices of each county, shall be conclusive of the location of the true line, and shall be recorded in the Register's office of each county, and in the office of the Secretary of State.

Court to appoint commissioners.

Oath and
compensation

SEC. 2. The Commissioners, before entering on the duties assigned them, shall be sworn before a Justice of the Peace, and shall be allowed a reasonable compensation for their labours.

[Ratified 10th January, 1837.]

CHAP. IV.

An Act to lay off and establish a county by the name of Davie.

Boundaries
and name of
county.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That a county shall be, and the same is laid off and established, in the territory now comprehended in the limits of Rowan county, north of the South Yadkin river, beginning at the junction of the North and South Yadkin rivers; thence, up the South Yadkin river, to the Iredell county line; and all that part of the present county of Rowan, lying and being north of said river, shall hereafter constitute a separate and distinct county, to be called and known by the name of Davie, in honor of the revolutionary patriot, William R. Davie; and it shall be, and is hereby, invested with all the rights, privileges and immunities of the other counties in this State, except as is hereafter provided.

Official pow-
ers of certain
officers con-
tinued.

SEC. 2. *Be it further enacted,* That all justices of the peace and officers of the militia, who reside within the limits of the county of Davie, shall continue to hold and exercise all the official powers and authorities, in and for the said county, that they have hitherto held and exercised in and for the county of Rowan.

SEC. 3. *Be it further enacted,* That a Court of Pleas

and Quarter Sessions shall be, and the same is hereby, established in and for said county of Davie, to be held by the justices last aforesaid and such others as may be hereafter appointed in and for said county, on the fourth Monday of February, May, August and November, in each and every year; the first session of which shall be held on the fourth Monday in February next, in the town of Mocksville; when the court aforesaid, a majority of the justices of said county being present, shall appoint a clerk of said court, a sheriff, a coroner or coroners, constables and other officers for said county, who shall enter into bond as required by law, and shall hold and continue in said offices until successors to them are duly chosen and qualified according to the acts of the General Assembly in such cases provided. And the said court, at its first session aforesaid, may appoint the place of its future sessions, until a court-house shall be erected for said county.

County
Courts estab-
lished.

Appointment
of clerk and
other officers,
&c.

SEC. 4. *Be it further enacted,* That the County Court of Davie, a majority of the justices being present, shall appoint five commissioners to select and determine upon a scite for a permanent seat of justice in said county, and shall purchase or may receive by donation, for the use of said county, a tract of land consisting of not less than twenty-five acres, to be conveyed to the chairman of the County Court and his successors in office, upon which they shall lay off a town, the name of which shall be determined by themselves, in which the public court house and jail of said county shall be erected; and after the completion of the same, the courts of said county shall be held, and the clerks' and register's offices shall be kept in said town.

Court shall
appoint com-
missioners to
select a place
for C. H. to
lay off a
town, &c.

SEC. 5. *Be it further enacted,* That the commissioners so appointed as aforesaid, after laying off the lots of the town aforesaid, and designating such as shall be retained for public uses, shall expose the residue to sale at public auction, upon a credit of one and two years, and shall take bonds with security for the purchase money, payable to the chairman of the County Court, and his successors in office; and the said chairman shall execute titles therefor, upon the payment of

Sale of lots.

Court may
levy tax.

the purchase money, which shall go into the County Treasury; and the said Court of Pleas and Quarter Sessions may levy taxes for all public uses, under the same rules, regulations and restrictions as the like courts in other counties.

SEC. 6. *Be it further enacted,* 'That all persons who may be liable to imprisonment under any process, either civil or criminal, in said county, before the completion of the public jail therein, may be committed to the jail of any adjoining county, in like manner as when a jail has been destroyed by accident.

SEC. 7. *Be it further enacted,* 'That the Court of Pleas and Quarter Sessions established by this act, and the Superior Courts of Law and Equity which may be hereafter provided for said county, shall have the like powers, authorities and jurisdictions, as the same courts possess and exercise in other counties; and all suits now depending in any of the courts of Rowan county, wherein the citizens of Davie are both plaintiffs and defendants, and all indictments against them or any of them, shall be transferred to the court having jurisdiction thereof in the county of Davie, in the manner now provided for transferring suits from one county to another.

SEC. 8. *Be it further enacted,* That all criminal offences which may be committed in the county of Davie, which are cognizable only in the Superior Court of law, shall be and continue under the jurisdiction of the Superior Court of law of the county of Rowan, until a Superior Court of law shall be created for the county of Davie.

SEC. 9. *Be it further enacted,* That nothing in this act contained shall be so construed, as to prohibit the sheriff of Rowan county from collecting such sum or sums of money as are due or may become due on any judgment before the first Court of Pleas and Quarter Sessions for said county of Davie.

SEC. 10. *Be it further enacted,* That the counties of Rowan and Davie shall continue to be represented in the General Assembly as one county, and in the name of the county of Rowan, until a future Legislature shall otherwise

provide and direct: an election shall be held, for members of both Houses of the General Assembly and of Congress, by the sheriff or other returning officers of Rowan county, in all the territory heretofore comprehended in the limits of said county, at the times and places, and under the same rules; regulations and restrictions as have been appointed or may hereafter be appointed by law; and the certificate of said sheriff or other returning officer, to the result of said election or elections, shall be as valid and effectual to all intents and purposes as if this act had never been passed.

SEC. 11. *Be it further enacted*, That provided nothing in this act shall be so construed, as to prevent the sheriff of Rowan county from collecting arrears of taxes in the same manner as he could have done previous to the division of the county: *Provided nevertheless*, that the sheriff of Rowan shall not collect any taxes in the county of Davie, or of the citizens of said county, imposed by the County Court of Rowan, and which are collectable in the year one thousand eight hundred and thirty-seven; but that the same may be collected by the sheriff of Davie county to the use of said county.

Sheriff of
Rowan to col-
lect arrears of
tax.

SEC. 12. *Be it further enacted*, That all the paupers now in the poor house originally from Davie, shall be transferred to the wardens of said Davie county.

SEC. 13. *Be it further enacted*, That this act shall be in force from and after the ratification.

[Ratified 20th December, 1836.]

CHAP V.

An Act supplemental to an act, passed at the present General Assembly, entitled "an act to lay off the county of Davie."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That there shall be a Superior Court of law and Court of Equity opened and held at the town of Mocksville, until a court house shall be built, as provided for in said act, then at said town and court house in the county of Davie, on the eighth Monday after the third Monday in February next, and on the eighth Monday after the third Monday in August, and on the same days in each and every year hereafter; which courts shall have the same jurisdiction that the present Superior Courts of Law and Courts of Equity, in the several counties in this State now have and exercise.

Superior and
court of equi-
ty to be hold-
den.

Attached to
6th circuit.

SEC. 2. *Be it further enacted,* That the county of Davie shall hereafter constitute a part of the sixth circuit; and the Judge and Solicitor who shall attend the Superior Courts in said county, shall be respectively entitled to the same pay for attending said courts, that they now by law are entitled to receive for attending other Superior Courts in said circuit.

Appointment
of clerks &c.

SEC. 3. *And be it further enacted,* That a clerk and clerk and master in equity, both men of skill and probity, and residents in the county of Davie, shall be appointed for the same, by the Judge attending the first term of said court. They shall give bond and security, as directed by law for such officers, and take the oath prescribed for their qualification. The clerk so appointed shall hold his office until the regular election and qualification of his successor. The County Court of Davie shall appoint thirty jurors, to attend

the said court, in the same manner as jurors are appointed to attend other Superior Courts in this State.

SEC. 4. *Be it further enacted*, That all civil causes depending in the Superior Court of Law and Equity for Rowan, the plaintiffs in which causes reside in Davie county, and also all actions of ejectment and trespass, quere clausum fregit, for or concerning lands in Davie county, shall be transferred, with all process and proceedings therein, to the Superior Court of law hereby established for the county of Davie; and the provisions of the act passed in the year eighteen hundred and six, entitled "an act amendatory and supplementary to an act, entitled an 'act for the more convenient administration of justice,'" and all other acts supplemental thereto, for the appointment, summoning and attendance of jurors; for the transmission and receipt of the records, proceedings and papers; for docketing and bringing the causes forward for trial; for summoning witnesses; for issuing original and mesne process, prior to the first term of Davie Superior Court; and generally for all other purposes relative to the preparation for trial and determination of the business of said court, be, and the same are hereby extended to the Superior Court of Davie county. The neglects and failures of the several officers of the Superior Courts of Rowan and of the County Courts of Davie, shall be subject to the same penalties and forfeitures as are prescribed for similar neglects and failures by the said act; and the said officers shall be entitled to the same fees for their services as are established by the said act for like services.

Transfer of
causes &c.

SEC. 5. *Be it further enacted*, That the constables now residing in the county of Davie, shall continue to hold their respective offices, and perform all the duties appertaining thereto, subject to the same rules, regulations and penalties as constables in the other counties in this State, until the first County Court to be held for said county.

Constables to
continue in
office.

SEC. 6. *Be it further enacted*, That it shall be competent for a majority of the commissioners, who shall be appointed by the County Court of Davie, to select a scite for a

Majority of
commission-
ers to act &c.

seat of justice and for other purposes, to do all things belonging or appertaining to their commission, as fully and effectually as the whole of said commissioners might do; and that the said commissioners, or a majority of them, may let out, to the lowest bidder, or contract for the building of a court house and jail, upon whatever plan or form they may deem advisable; and that the permanent seat of justice shall be in Mocksville, or within two miles of the same; and they may receive any quantity of land for that purpose, not less than fifteen acres; any thing to the contrary notwithstanding.

Tax. SEC. 7. *Be it further enacted*, That the County Court of Davie, a majority of the justices being present, may lay a tax not exceeding one dollar on the poll, and thirty cents on every hundred dollars valuation of real estate, for the purpose of building the court house and jail.

SEC. 8. *Be it further enacted*, That this act shall be in force from and after its ratification.

[Ratified 9th January, 1837.]

CHAP. VI.

An Act concerning the county of Davie.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That at the holding of the first Court of Pleas and Quarter Sessions of the county of Davie, it shall be lawful for any justice of the peace of the county of Rowan, to administer to the justices of the peace of the said county of Davie, such oaths as may be necessary to qualify them for the du-

Any justice
of Rowan
may adminis-
ter oath at
first court.

ties of justices of the peace for said county; and that this act shall be in force from and after its ratification.

[Ratified 13th January, 1837.]

CHEROKEE LANDS.

CHAP. VII.

An Act to amend an act, entitled "an act authorising the entering of the unsurveyed lands acquired by treaty from the Cherokee Indians, A. D. 1817 and 1819, in the counties of Haywood and Macon."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That nothing in the aforesaid act contained shall be so construed as to authorize or allow the entry of any portion of the said lands, which were reserved or allotted to any Indian or Indians under said treaties, which the State has since acquired by purchase; and that the Secretary of State be, and he is hereby directed to issue no grant for any portion of the lands of the latter description, until the General Assembly shall otherwise order and direct.

Indian reservations not to be entered.

[Ratified 10th January, 1837.]

CHAP. VIII.

An Act to prevent frauds on Cherokee Indians, residing in this State.

Contracts
null and void.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That all contracts and agreements of every description, made after the eighteenth day of May one thousand eight hundred and thirty eight, with any Cherokee Indian, or any person of Cherokee Indian blood, within the second degree, for an amount equal to ten dollars or more, shall be null and void, unless some note or memorandum thereof be made in writing and signed by such Indian or person of Indian blood, or some other person by him authorised, in the presence of two creditable witnesses, who shall also subscribe the same.

[Ratified 21st January, 1837.]

CHAP. IX.

An Act prescribing the mode of surveying and selling the lands of this State, lately acquired by treaty with the Cherokee Indians.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That as soon as may be convenient after the pas-

sage of this act, it shall be the duty of the Governor to appoint two commissioners, whose duty it shall be to superintend and direct the manner in which the said lands shall be surveyed and laid off; and it shall be the further duty of the Governor to appoint one principal surveyor, of skill and integrity, with full power and authority to appoint as many deputy surveyors, chain carriers and markers, and to employ as many pack horses, as may be necessary to complete the said surveying in the most speedy and effectual manner; and the said principal surveyor shall be responsible for the conduct of his said deputy surveyors in their official duty.

Governor shall appoint commissioners and surveyor.

SEC. 2. *And be it further enacted*, That the said commissioners, before entering on the duty by this act required, shall give bond and security, payable to the State of North Carolina, in the sum of ten thousand dollars, conditioned for the faithful discharge of their several duties as commissioners; and the said principal surveyor shall also, before entering on the duties by this act required, give bond, with sufficient security, as heretofore required of the commissioners, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duty as principal surveyor.

Bonds required of commissioners & surveyor.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said commissioners and principal surveyor to ascertain and fix upon some central and eligible scite for the erection of the public buildings, which may hereafter become necessary when that portion of the State may be erected into a separate and distinct county; and to lay off four hundred acres of land immediately surrounding the said scite, and to be reserved for the future disposition of the legislature, (except as herein provided.) It is hereby the duty of the said commissioners and principal surveyor to lay out, within the said four hundred acres of land, one acre for the public square; and shall lay off two streets, crossing each other at right angles, which streets shall be one hundred feet in width; and to lay off twenty four lots, of one half acre each, so that each lot may be one hundred and five feet fronting the street; and three fair plats of which shall be made by the surveyor, and by him returned to the commissioners, and by them de-

Scite for public buildings to be fixed upon &c.

posited as herein after provided for the returns of the maps of survey.

Lands to be
laid off into
districts and
tracts.

SEC. 4. *And be it further enacted,* That it shall be the duty of the said principal surveyor, under the directions of the commissioners aforesaid, to cause all the lands of this State, lately acquired by treaty from the Cherokee Indians, to be laid off into suitable districts for the convenience of surveying, and number the said districts progressively; and to lay off and survey each district, or so much thereof as they may deem practicable, into tracts, containing from fifty to four hundred acres, and to be so laid out, where the same can be done, as that each tract may include a suitable and necessary portion of the timbered, mountainous or broken land, as will be sufficient for building fences, fuel and other necessary purposes: And the principal surveyor shall cause to be plainly marked on the beginning corner of each tract, and fronting said tract, the number of the district and tract, as the case may be; and shall cause all other corners to be plainly marked in the usual manner; and shall cause all lines by him run to be measured and plainly marked, where the same may be practicable; and shall lay down in his field book a fair plat of each and every tract by him surveyed, together with the district and number of the tract, as well as the quantity and quality: being first, second, third, fourth and fifth, as also a descriptive account of the lines and corners of each tract by him surveyed. And the said principal surveyor, under the directions of the commissioners, shall cause to be surveyed so much of the said Cherokee lands as, in their opinion, will command the sum of twenty cents per acre; and the residue of said land shall remain subject to the disposition of a future Legislature; and shall not be liable to be entered in the entry taker's office of the county of Macon; and when hereafter exposed to public sale, lands of the first quality shall not be sold for a less sum than four dollars per acre; and lands of second quality, not less than two dollars per acre; and lands of the third quality, not less than one dollar per acre; and lands of the fourth quality, not less than fifty cents per acre; and lands of the fifth quality, not less than twenty cents per acre.

Qualities and
prices of land,
&c.

SEC. 5. *And be it further enacted,* That the surveyor shall note, in his field book, the true situation of all mines which may come to his knowledge, as also all mineral springs, mill seats and principal water courses, over which the line he runs may pass, and those contiguous thereto; and the said field books shall be delivered to the principal surveyor, whose duty it shall be therefrom to cause to be made three correct maps of the whole lands by him surveyed; and shall insert the quality of each tract so laid down in his map; and the said maps, when so completed, shall be delivered to the commissioners, together with the field book of all such survey, on or before the first day of November, one thousand eight hundred and thirty seven, and shall be, by the commissioners, deposited in the following manner, to wit: one map in the office of the County Court clerk for the county of Macon; one other in the office of his excellency the Governor; and the remaining one in the office of the Secretary, together with the field books of all the surveys, made in pursuance of this act; and the said commissioners aforesaid, upon the receipt of the maps and field books, shall, within two months therefrom, file the same in the different offices as by this act directed.

What surveyor shall note.

Maps required to be made.

SEC. 6. *And be it further enacted,* That it shall be the duty of the Governor, upon the return of the maps and field books as heretofore directed, to issue his Proclamation, which he shall cause to be published in all the newspapers in the city of Raleigh, as also such other papers in the adjoining States of South Carolina, Georgia, Virginia and Tennessee, as he may deem necessary, of the time and place of sale of the said land; which notice shall be given at least four months previous to said sale; and the said sale shall be appointed and held in the town of Franklin, in the county of Macon, commencing on the first monday of September, in the year of our Lord one thousand eight hundred and thirty eight; and to continue from day to day, for the space of three weeks, and no longer.

Governor to issue proclamation of sale, &c.

Governor
shall appoint
commission-
ers of sale,
who, upon
giving bond,
shall proceed
to sell, &c.

SEC. 7. And it shall be the further duty of the Governor to appoint two other commissioners, to superintend the said sales, who shall, before entering on the duties by this act required, give bond, with sufficient security, in the sum of fifty thousand dollars each, payable to the State of North Carolina, conditioned for the faithful discharge of their duty as commissioners of sale; and the said commissioners so appointed, and having given bond as heretofore required, shall proceed, at the time and place by this act directed, to expose to public sale to the highest bidder, commencing with the first district and first tract, and so on progressively, until the whole shall be so offered for sale according to the provisions of this act; and it shall be the duty of the said commissioners to sell by tracts; and having once offered for sale any tract, and the same cannot be sold for the minimum price, to postpone the sale: *Provided always*, that if, after any tract shall have been so postponed, any individual or individuals shall make known to the said commissioners, in writing, that he or they are willing to give the minimum price of any tract so postponed; then in that case, it shall be the duty of the commissioners to offer the same to public sale to the highest bidder a second time, just giving notice by the public crier by them employed for the land sales, at least one day previous thereto, setting forth the particular tract or tracts so intended to be offered, as also the day on which the same shall be so offered; and shall be conducted under the same rules and regulations as other sales by this act directed.

Payments re-
quired of pur-
chaser.

SEC. 8. *And be it further enacted*, That the said commissioners shall require of each and every purchaser to pay down, at the time of said purchase, one eighth part of the purchase money; and shall take bond and security for the payment of the balance of the purchase money in the following manner, to wit: the balance of one fourth at the expiration of one year from the date of the sale, and one other fourth at the expiration of two years, and one other fourth at the expiration of three

years, and the remaining fourth at the end of four years; and in no instance shall a grant or grants issue to the purchaser until the whole of the purchase money shall be paid in full; and in case of failure to pay the whole, when due, and the money cannot be obtained by a judgment on their bonds, the lands so purchased shall revert to the State, and shall again be liable to be sold to any other person, for the use and benefit of the State.

SEC. 9. *And be it further enacted,* That the commissioners shall give to each purchaser a certificate, describing the land by him or them purchased, with a plot of the lot and number of tract, conformable to the plan returned to the Secretary's office; upon the production of which, and proof of the payment of the purchase money, made to the Secretary, by the Treasurer's receipt, it shall be the duty of said Secretary to issue a grant to the purchaser, for the said lot or tract of land, in the usual and common form.

Certificate
and grant,
how given.

SEC. 10. *And be it further enacted,* That the before mentioned commissioners of sale, shall faithfully account for, upon oath, and pay over to the Treasurer, all moneys by them received, in pursuance of the sale of said lands as heretofore provided.

Commission-
ers to pay o-
ver moneys.

SEC. 11. *And be it further enacted,* That the bonds taken by the commissioners, for securing the balance of the purchase money, shall be by them lodged with the Treasurer of the State; and they shall take from him duplicate receipts, one of which shall be filed with the Comptroller, who shall thereupon raise an account with the obligors, and shall render an account, on oath, to the Comptroller, of all money's by them received and paid over to the Treasurer; which duties they shall perform at as early a day as may be after said sale.

Commission-
ers shall de-
posite bonds
with Treasu-
rer, &c.

SEC. 12. *And be it further enacted,* That if any purchaser shall be disposed to pay the whole of the purchase money, or any part thereof, in advance, the commissioners are hereby authorised to receive the same, and to de-

Advance pay-
ments.

duct at the rate of six per centum per annum on such advancement.

Compensation of commissioners, surveyors &c

SEC. 13. *Be it further enacted*, That each of the commissioners appointed by this act, shall be entitled, for their services, the sum of five dollars per each and every day they shall be necessarily employed in performing the duties by this act required; and the principal surveyor, the sum of five dollars; and each of his deputy surveyors, the sum of four dollars; each chain carrier and marker, the sum of two dollars; and each pack horseman, with his own horse, the sum of two dollars and fifty cents, per each day they may be actually employed in performing the duty by this act required, each of them bearing their own expenses.

Governor to advance money to commissioners.

SEC. 14. *And be it further enacted*, That the Governor be, and he is hereby, authorised to draw on the Treasurer for the sum of four thousand dollars, to be paid to the commissioners of survey, to enable them to commence and carry on the said surveying, and by them to be applied towards paying charges and expenses incident to the performance of the duties enjoined by this act; and the said commissioners shall render the same in the final settlement of their accounts.

Purchaser may institute action of ejectment.

SEC. 15. *And be it further enacted*, That each and every purchaser of any tract or tracts of said land, having obtained a certificate from the commissioners as heretofore provided in this act, his heirs and assigns shall have full power and authority to institute an action of ejectment, in the name of the State of North Carolina, against any person or persons who may be in possession of such tract or tracts of land, and shall, on application, refuse to deliver up peaceable and quiet possession thereof; and the certificate of the commissioners to such person shall be evidence of title and right to sustain said action, unless it shall appear to the court before whom such action is tried, that said purchaser has forfeited his right under said purchase, as in this act provided; and further provided, that the said purchaser shall give bond and securi-

ty for the payment of all costs accruing in said action, in case of his failure to recover.

SEC. 16. *And be it further enacted*, That until the said section of country is laid off into a separate and distinct county, it shall be and remain subject to the jurisdiction of the county of Macon, and form a part thereof.

Section subject to jurisdiction of Macon.

SEC. 17. *Be it further enacted*, That no purchaser of lands, under this act, shall be at liberty to transfer their interest in said purchase, only subject to the lien of the security or securities for such part as they may be compelled to pay on their bonds as security; and said lien shall be good and valid in law as an indemnity to said security as aforesaid.

No transfer allowed.

SEC. 18. *And be it further enacted*, That if any person or persons, cutting or removing timber from, or cultivating any portion of the four hundred acres of lands heretofore reserved by this act, for the future disposition of the Legislature, it shall be, and they are hereby made indictable offences in the inferior and Superior Courts of said county, and punishable by fine, at the discretion of the court before which the conviction takes place: *Provided*, nevertheless, that all settlers on any other portion of public land and waiting for the sale thereof, shall be entitled to such crop as they may have growing at the time of the sale provided for by this act.

Cutting timber indictable.

SEC. 19. *And be it further enacted*, That the commissioners of sale heretofore appointed, shall expose to public sale, to the highest bidder, eight lots heretofore provided to be laid out within the four hundred acres, in the following order: two lots adjoining the public square, and the other six lots in such order as that no two lots so sold shall be adjoining to each other; and the said sales shall be under the same rules and regulations, and the said commissioners shall make return and account for as heretofore provided.

Eight lots to be sold by commissioners.

SEC. 20. *Be it further enacted*, That it shall be the duty of the commissioners to be appointed by virtue of this act, to cause to be surveyed, and offered for sale, all

Sale of reservations in Macon.

the reservations remaining undisposed of in the county of Macon, under the same rules and regulations that are provided for the surveying and selling the lands lately acquired by treaty from the Cherokee Indians.

SEC. 21. *Be it further enacted,* That it shall be the duty of the said commissioners of sale, to expose again to sale, all the lands already surveyed, and now remaining unsold, in the county of Macon aforesaid.

Sale of lands
already sur-
veyed.

Name of
county scite.

SEC. 22. *Be it further enacted,* That the county scite hereby directed to be laid out by the commissioners aforesaid, shall be known by the name of Murphy..

[Ratified 20th January, 1837.]

CORPORATIONS.

CHAP. X.

An Act concerning bodies corporate in this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That no body corporate, hereafter to be established in this State, shall exist for a longer term than thirty years, unless otherwise provided in the act creating the same.

How long to
exist.

SEC. 2. *Be it further enacted,* That when any act shall have passed, creating a body politic and corporate, and the corporators shall, for the period of two years, neglect or fail to organize the company and carry into effect the intent of the act, or when organised, if they at

Disuse of pri-
vileges to for-
feit charter.

any time, for two years together, shall cease to act as a body corporate, then such disuse of their corporate privileges and powers shall be considered and taken as a forfeiture of the charter.

[Ratified 10th December, 1836.]

CHAP. XI.

An Act declaring that the shares of stock in incorporated companies shall be deemed and taken as personal estate.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the shares of stock in all incorporated joint stock companies in this State, be, and they are hereby declared to be personal estate; and as such may be held by aliens, and may be transferable, under such rules and regulations as the corporation to which the stock pertains may from time to time establish, the same not being incompatible with the constitution and laws of this State.

[Ratified 14th December, 1836.]

CHAP. XII.

An Act to encourage the culture and manufacture of silk and sugar in this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That whenever any six or more citizens of any congressional district in this State, shall associate themselves together, as a joint stock company, for the growth or manufacture of silk or sugar, or both, and shall subscribe for one hundred shares, of twenty dollars each, of the capital stock of such company; and organize themselves as such, by appointing their President, Secretary, Treasurer and at least three Directors; and notify the Governor thereof, such subscribers and their subsequent associates, successors and assigns, shall be, and they are hereby declared to be incorporated into a joint stock company, by whatever name or style they may think proper to assume; which name they shall also make known to the Governor; and by such name may sue and be sued, plead and be impleaded, before any court or justice of the peace; and shall have succession, and continue their corporate existence for the space of ninety-nine years from and after the date of their organization, unless they voluntarily surrender their charter within that period; and shall be able and capable in law to have, purchase, receive, enjoy, and retain to them, and their successors, lands, rents, tenements, goods, chattels, and effects, of whatsoever nature, kind or quality; and the same to sell, grant, devise, alien, or dispose of; and shall possess and exercise all the rights and privileges of a corporation or body politic in law; and may make and use a common seal, and make all such bye laws, rules and regulations

When and how corporation may be formed.

Corporate privileges.

as may be necessary for the well ordering and management of the affairs of such company, not inconsistent with the constitution or laws of the State: *Provided, however,* that the provisions of this act shall be extended only to such companies as shall be formed within twenty-five years from the ratification thereof; *and provided further,* that no company formed under this act, shall employ their capital in banking operations.

SEC. 2. *Be it further enacted,* That the Governor, on being notified as aforesaid, of the organization of any such company, shall thereupon issue his proclamation, making known the fact that such company is duly incorporated under this act, together with the name or style of such company, and the names of the officers thereof; a copy of which proclamation, and of this act, under the great seal of the State, shall be held and deemed conclusive evidence of the corporate existence of such company, until the termination of their charter.

Organization
of companies
to be made
known by
proclamation
of the Gover-
nor.

SEC. 3. *Be it further enacted,* That every such company may, from time to time, as they may deem expedient, enlarge their capital stock, by additional subscriptions, in shares as aforesaid, until they severally reach the sum of fifty thousand dollars; but no one of them shall extend their capital beyond that sum, without an express permit to do so from the General Assembly. And the stock subscribed in such companies shall be paid in in the following manner, that is to say: ten dollars upon each share shall be paid, in sums of two dollars and fifty cents each, every three months from and after the date of the organization of such companies; and the balance in such sums and at such times as the President and Directors thereof may order and direct; and in case of delinquency of payments, the President and directors of such corporation may enforce payment, by the sale of the stock of such delinquent, or by recourse at law against such stockholder.

Limitation •
capital.

Payment of
Stock.

SEC. 4. *Be it further enacted,* That there shall be a general meeting of the stockholders of every such com-

General meetings, and election of officers.

pany, in person or by proxy, annually; and, a majority of the stock being represented, shall then and there elect their President, Secretary, Treasurer, and three, five or seven Directors, for one year, or until their successors shall be chosen; and may do all other acts and things authorised by this act; and in such general meetings each stockholder shall be entitled to give one vote for every share held by him, her or them in such company, up to five; and one vote for every five shares after the first five; and the shares of stock in every such company shall be deemed personal property, and as such shall pass into the hands of administrators or executors, and be assets in their hands.

Companies may make contracts, &c.

SEC. 5. *Be it further enacted*, That every such corporation may make contracts, or become bound by instruments, in writing, signed by their President, and countersigned by their Secretary; but the legal estate in the hands of such companies shall not be aliened, except by deed under the corporate seal of such company. Legal process against any such corporation may be served on the President thereof; or, if he cannot be found by the officer, then on any Director. And all the corporate property of every such company, of whatever kind or nature, shall be liable for the payments of the debts of such corporation.

Corporations to keep a record of their proceedings.

SEC. 6. *Be it further enacted*, That it shall be the duty of every such corporation to keep a full and fair record of all their proceedings, and of their accounts and transactions, in a well bound book, and shall produce said records in any court, when required so to do by such court, as evidence in any matter therein depending for trial. And the secretary of every such corporation, shall enter into bond, with sufficient security, to be judged of by the President and Directors thereof, in the sum of one thousand dollars, payable to the State of North Carolina, for the use of said corporation, for faithfully recording all the proceedings, orders and settlements of the President and Directors, and for the faithful preservation of such records, and the papers of such corporation. And the Trea-

Secretary and Treasurer to give bonds.

suror of every such corporation shall, in like manner, before entering upon the duties of his office, enter into bond, with security, to be approved of as aforesaid, in such sum as the President and Directors may judge requisite, for the safety of the funds of such company, committed to his care. And every officer appointed by the President and Directors of any such corporation may, by them, be removed at pleasure, and appoint others in their stead.

Officers may
be removed.

Ratified 20th January, 1837.

COURTS OF JUSTICE.

CHAP. XIII.

An Act to amend an act, entitled "an act for the more uniform and convenient administration of justice within this State," passed in the year of our Lord one thousand eight hundred and six.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in addition to the circuits for holding the Superior Courts of Law and Equity, provided for in the aforesaid act, one other shall be, and is hereby established, denominated the seventh judicial circuit.

7th circuit es-
tablished.

SEC. 2. *Be it further enacted, That the said seventh circuit shall be composed of the counties of Macon, Haywood, Yancy, Buncombe, Rutherford and Burke.*

Counties
composing
7th circuit.

SEC. 3. *Be it further enacted, That the Superior Courts of Law and Equity in the counties composing said circuit, shall be held on the following times, to wit: Macon, to begin on the fourth Monday of March and Sep-*

Times of
holding
courts, in 7th
circuit.

tember; Haywood, on the first Monday after the fourth Monday of March and September; Yancey, on the second Monday after the fourth Monday of March and and September; Buncombe, on the third Monday after the fourth Monday in March and September; Rutherford, on the fifth Monday after the fourth Monday of March and September; and Burke, on the seventh Monday after the fourth Monday of March and September, in each and every year hereafter.

Counties
composing
6th circuit.

SEC. 4. *Be it further enacted*, That the sixth judicial district shall be composed of the counties of Cabarrus, Mecklenburg, Lincoln, Iredell, Rowan, Surry, Wilkes, and Ashe.

Times of
holding
courts in the
6th circuit.

SEC. 5. *Be it further enacted*, That the Superior Courts of Law and Equity, in the counties composing the sixth judicial circuit, shall be held on the following times, viz: Cabarrus, on the second Monday in February and August, in each and every year; Mecklenburgh, on the third Monday in February and August, in each and every year; Lincoln on the second Monday after the third Monday in February and August, in each and every year; Iredell, on the third Monday after the third Monday in February and August, in each and every year; Rowan, on the fourth Monday after the third Monday in February and August, in each and every year; Surry, on the fifth Monday after the third Monday in February and August, in each and every year; Ashe, on the sixth Monday after the third Monday in February and August, in each and every year; Wilkes, on the seventh Monday after the third Monday in February and August, in each and every year, according to the same rules and regulations now prescribed by law.

Terms for
holding
courts.

SEC. 6. *And be it further enacted*, That the terms for holding said courts shall be continued and held for the same number of days, and in the same manner, as heretofore required by law: *Provided nevertheless, and it is hereby enacted*, that the terms of holding the said several courts of Buncombe, Rutherford, Burke and Mecklenburg shall be two weeks at each term.

SEC. 7. *And be it further enacted*, That there shall be appointed, by the General Assembly, one Judge in addition to those who are now Judges of the Superior Courts of Law and Equity of this State, who shall have and exercise the same powers and authorities as the Judges of the present Superior Courts of Law and Equity have hitherto had and exercised. One additional Judge to be appointed.

SEC. 8. *And be it further enacted*, That there shall be appointed, by the General Assembly, one Solicitor for the seventh circuit, whose duty it shall be to attend the said several courts therein, and prosecute in behalf of the State; and who shall perform the like duties of the Solicitors already appointed by law, and have the same amount of salary and fees as by law are allowed to the other Solicitors of Superior Court Circuits within this State. Appointment of Solicitor.

SEC. 9. *Be it further enacted*, That all and every of the proceedings now pending in the courts composing the said sixth and seventh circuits, and all processes returnable thereto, including all matters of which the said courts have entertained jurisdiction before the passing of this act, whether criminal or civil, at law or in Equity, shall be continued and stand over to the terms of the said several courts as prescribed by this act, and have the same binding effect that appertained to them or any of them at and before the passing thereof. Proceedings in courts to be continued, &c

SEC. 10. *Be it further enacted*, That any and every kind of process, legally issuing from either of said courts, returnable to the first terms thereof, now prescribed by law, shall be good and available in the said courts, held under the provisions of this act. Process good and available.

SEC. 11. *Be it further enacted*, That the Judges of the Superior Courts of Law and Equity shall each have an annual salary of one thousand nine hundred and fifty dollars, in full compensation for all judicial duties which are now, or may hereafter be assigned to them by the General Assembly, payable semi-annually: *Provided nevertheless*, that if any of the Judges aforesaid shall fail to produce to the Treasurer the certificate or certificates of any of the clerks Salary of Judges.

of the several Superior Courts of the districts assigned them, it shall be the duty of the Treasurer, for any certificate they shall so fail to produce, to deduct one hundred dollars.

Repealing
clause. SEC. 12. *Be it further enacted*, That all laws and clauses of laws, that come within the purview and meaning of this act, be, and the same are hereby repealed and made void.

When to take
effect. SEC. 13. *And be it further enacted*, That this act shall be, and the same is hereby declared to be, in force from and after the passage thereof.

Ratified 3rd January, 1837.

CHAP. XIV.

An Act restricting the term of Cumberland Superior Court to one week.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That hereafter the Superior Courts of Law and Equity for the county of Cumberland, shall be held on the sixth Monday after the fourth Monday of March, and on the seventh Monday after the fourth Monday in September, in each and every year; and shall continue for one week, and no longer; any law to the contrary notwithstanding.

Ratified 14th December, 1836.

CHAP. XV.

An Act empowering Courts of Record to change names.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That whenever any person shall be desirous to change his or her name, it shall be lawful for him or her to file a petition in any Superior Court, praying that the same may be done; and thereupon the court, at the same term of filing the petition, may decree for the petitioner according to his prayer; and the person whose name is thus changed, may sue and be sued in his or her new name.

Applicant to
file petition in
Superior
Court.

SEC. 2. *And be it further enacted, That all laws and clauses of laws, coming within the meaning and purview of this act, be, and the same are hereby repealed.*

Repealing
clause.

Ratified 3rd January, 1837.

CHAP. XVI.

An Act concerning the Superior Courts of Law and Equity in and for the counties of Moore, Montgomery and Anson.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the provisions of the act, passed in the year one thousand eight hundred and thirty, chapter forty-seven, concerning the Superior Courts of Law and Equity in the counties aforesaid, and the provisions of an act, passed in the year one thousand eight hundred and

Provisions of
acts of 1830
and 1831, ex-
tended.

thirty-one, chapter ninety, supplemental to the former, and upon the same subject matter, be, and the same are hereby extended for the space of three years from and after the ratification of this act; any thing contained in the said acts to the contrary notwithstanding.

Ratified 2nd January, 1837.

CHAP. XVII.

An Act to alter the time of holding the Superior Courts of Law and Equity for the counties of Stokes and Guilford.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Superior Courts of Law and Equity for the county of Stokes, shall be held in the town of Germanton, on the second Monday after the fourth Monday in March and September; and for the county of Guilford, in the town of Greensborough, on the third Monday after the fourth Monday in March and September; and that the term of said court for the county of Guilford shall continue for two weeks successively, whenever the business of said court requires it.

SEC. 2. Be it further enacted, That all process which has been, or hereafter shall or may be issued from the Superior Courts of Law and Equity aforesaid, shall be returnable at the times of holding said courts respectively as herein prescribed.

SEC. 3. And be it further enacted, That this act shall be in force from and after its passage.

Ratified 21st January, 1837.

CHAP XVIII.

An Act to repeal an act, entitled "an act for the better administration of justice in the county of Haywood, passed in the year one thousand eight hundred and thirty three, chapter forty one, and for other purposes.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the before recited act be, and the same is hereby repealed.

Repealing
clause.

SEC. 2. *Be it further enacted, That the Justices of the Court of Pleas and Quarter Sessions, for the county of Haywood (a majority being present) may, and they are hereby authorised, at any court which may happen after the first day of March next, and annually thereafter, to elect, from their own body, three suitable persons to hold the said Court of Pleas and Quarter Sessions for the county aforesaid, for the term of one year: Provided nevertheless, that nothing herein contained shall preclude the other acting justices from attending and holding the said courts as usual.*

Courts to elect three justices to hold the same.

SEC. 3. *Be it further enacted, That the three justices elected, shall be governed by the same rules, regulations, and restrictions that govern other County Courts in this State; and the said justices so elected shall be entitled to receive each the sum of one dollar per day for their services, during the time they are engaged in holding said court, to be paid by the county trustee, under the same rules and regulations that govern other county claims, upon the certificate of the clerk of said county, showing how many days such justice or justices so elected shall have holden said court.*

Compensation of said justices.

Vacancy how filled. SEC. 4. *Be it further enacted,* That if, any time after the election of the said three justices, any vacancy may happen, either by death, resignation or otherwise, the Court of Pleas and Quarter Sessions next after such vacancy shall happen (seven justices being present,) shall be authorised to fill such vacancy.

Authority of justices. SEC. 5. *Be it further enacted,* That the said three justices so appointed, shall have full power and authority to act in all matters where seven justices are now required by law to be present.

Courts when to be holden. SEC. 6. *And be it further enacted,* That the Courts of Pleas and Quarter Sessions, which are now holden for the county of Haywood on the last Monday of December and June, shall hereafter be holden on the last Monday of January, and the Monday before the last Monday of June, in each and every year; any law to the contrary notwithstanding.

Non Jury Court. SEC. 7. *Be it further enacted,* That the non jury courts, which are now holden on the third Monday after the fourth Monday of March and September, shall, in future, be holden on the first Monday after the fourth Monday of March and September, in each and every year.

SEC. 8. *Be it further enacted,* That all laws and clauses of laws, coming within the meaning and purview of this act, be, and the same are hereby repealed.

[Ratified 10th January, 1837.]

[Revised Statute.]

No. XC.

An Act concerning Courts of Justice, Practice, Pleas and Process.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Justices of the Peace within this State shall be Justices to be Judges of the Courts of Pleas and Quarter Sessions of the sever- judges of al counties for which they are appointed, and have all the pow- county cr'ts. ers incident to such a jurisdiction. Said Courts of Pleas and Quarter Sessions shall be held for their respective counties on the days following, to wit :

Anson county, on the second Monday in January, April, July and October.

Ashe, fourth Monday in February, May, August and November. At what time county courts to be held.

Beaufort, first Monday in March, June, September and December.

Bertie, second Monday in February, May, August and November.

Bladen, first Monday in February, May, August and November.

Brunswick, first Monday in March, June, September and December.

Buncombe, second Monday in February, first Monday in July, and the third Monday after the fourth in March and September.

Burke, fourth Monday in January, April, July and October.

Cabarrus, third Monday in January, April, July and October.

Camden, first Monday in February and August, and seventh Monday after the fourth Monday of March and September.

Carteret, third Monday in March, June, September and December.

- Caswell, second Monday after the fourth Monday of March, June, September and December.
- Chatham, second Monday in February, May, August and November.
- Chowan, first Monday in February, May, August and November.
- Columbus, second Monday in February, May, August and November.
- Craven, second Monday in February, May, August and November.
- Cumberland, first Monday in March, June, September and December.
- Currituck, the last Monday in February, May, August and November.
- Duplin, third Monday in January, April, July and October.
- Davidson, second Monday in February, May, August and November.
- Davie, the fourth Monday in February, May, August and November.
- Edgecomb, fourth Monday in February, May, August and November.
- Franklin, second Monday in March, June, September and December.
- Gates, third Monday in February, May, August and November.
- Granville, first Monday in February, May, August and November.
- Greene, second Monday in February, May, August and November.
- Guilford, third Monday in February, May, August and November.
- Halifax, third Monday in February, May, August and November.
- Haywood, last Monday in January, the first Monday after the fourth Monday in March and September, and the Monday next before the last Monday in June.
- Hertford, fourth Monday in February, May, August and November.
- Hyde, last Monday in February, May, August and November.
- Iredell, third Monday in February and August, and on the

- fifth Monday after the fourth in March and September.
- Johnston, fourth Monday in February, May, August and November.
- Jones, second Monday in March, June, September and December.
- Lenoir, first Monday in January, April, July and October.
- Lincoln, third Monday in January and July, and the second Monday after the third Monday in February and August.
- Martin, second Monday in January, April, July and October.
- Mecklenburg, fourth Monday in January, April, July and October.
- Montgomery, first Monday in April, July and October and January.
- Moore, third Monday in February and August, May and November.
- Macon, on the fourth Monday of March and September, and on the Monday before the last Monday of January, and the second Monday before the last Monday of June.
- Nash, second Monday in February, May, August and November.
- New Hanover, second Monday in March, June, September and December.
- Northampton, first Monday in March, June, September and December.
- Onslow, first Monday in February, May, August and November.
- Orange, fourth Monday in February, May, August and November.
- Pasquotank, first Monday in March, June, September and December.
- Perquimons, second Monday in February, May, August and November.
- Person, second Monday in March, June, September and December.
- Pitt, first Monday in February, May, August and November.
- Randolph, first Monday in February, May, August and November.
- Richmond, third Monday in January, April, July and October.
- Rowan, third Monday in February, May, August and November.

Robeson, fourth Monday in February, May, August and November.

Rockingham, fourth Monday in February, May, August and November.

Rutherford, on the second Monday in January and July, and the fifth Monday after the fourth Monday in March and September.

Sampson, third Monday in February and August, May and November.

Stokes, second Monday in March, June, September and December.

Surry, second Monday in February, May, August and November.

Tyrrell, fourth Monday of January, April, July and October.

Wake, third Monday in February, May, August and November.

Warren, fourth do in do do do do

Washington, third do in do do do do

Wayne, third do in do do do do

Wilkes, first Monday after the fourth Monday of June and July, and the second Monday in March and September.

Yancy, first Monday in February, last Monday in June, and second Monday after the fourth Monday in March and September.

Court may sit six days, if business require it. SEC. 2. If the business of any of the said Courts cannot be determined on the first day of the term, the justices may adjourn from day to day, not exceeding six days; at the end of which time the causes and matters which may be depending before them, and not then finally determined, shall be continued to the next succeeding term.

One justice may adjourn the court. SEC. 3. If, by reason of indisposition or other inability, bad weather or other accidents, it shall so happen that a sufficient number of justices shall not meet for holding the said Courts, or any of them, on the days by this act appointed, in such case it shall and may be lawful for any one justice to adjourn the court whereof he shall be a member from day to day, not exceeding three days, until a sufficient number of justices can attend to hold the court.

SEC. 4. None of the said county courts, nor any process in any of them depending, shall be discontinued for or by reason

of the justices failing to hold court upon the day by law appointed, or of any alteration of any of the days appointed for holding the said courts; but in every such case, all such process, matters and things depending shall stand continued; and all appearances upon returns of process shall be made to the next succeeding term in course, in the same manner as if such succeeding term had been the same term to which such process had stood continued, or such returns or appearances had been made; and all recognizances, bonds and obligations for appearances, and all returns shall be of the same force and validity, for the appearance of any person or persons at such succeeding term, and all summonses for witnesses, as effectual as if the next succeeding term had been expressly mentioned therein.

Justices failing to hold court, not to discontinue the court or business.

SEC. 5. The justices of the said county courts, or any three of them, shall be competent to hold the terms thereof, and shall and may take cognizance and have full power and authority and jurisdiction to hear, try and determine all causes of a civil nature whatever, at the common law, within their respective counties, where the original jurisdiction is not, by an act of the General Assembly, confined to a single magistrate, or to the Supreme or Superior Courts; of all penalties, to the amount of sixty dollars and upwards, incurred by a violation of the penal statutes of this State, or of the laws passed by the Congress of the United States, where, by such law, jurisdiction is given to the courts of the several States; of suits for dower, partition, filial portions, legacies and distributive shares of intestates' estate, and all other matters relating thereto; to try, hear and determine all matters and things relating to orphans, idiots and lunatics, and the management of their estates, in like manner as courts of chancery exercise jurisdiction in such cases; to try, hear and determine all petit larcenies, assaults and batteries, all trespasses and breaches of the peace and other misdemeanors of whatever kind soever, of an inferior nature; and of all other criminal cases where the judgment, upon conviction, shall not extend to life, limb or member; and in all other cases where jurisdiction and power to act is given by any act of the General Assembly.

No. of justices competent to hold court &c.

SEC. 6. The justices of said courts shall have power and authority to purchase such books as they shall deem necessary to be kept by their clerk, in his office, for the use of said courts;

Court to purchase books.

Justices may
appoint five to
hold court.

and the said justices, a majority of them being present, at the first term of said courts which may happen after the first day of January, in each and every year, may, in their discretion, appoint five of their number to hold said courts for one year; any three of whom shall have full power and authority to act; and they shall be entitled to receive, as a compensation for their services, a sum not exceeding three dollars, nor less than one dollar per day for each and every day they shall hold said court; which sum shall be fixed by the said court, a majority of the justices being present, and shall be paid out of the funds of said county, upon the certificate of the clerk of said court, showing the number of days each justice has attended.

Penalty on
clerk for abu-
sing books.

SEC. 7. If any county court clerk shall abuse or destroy, or suffer to be abused or destroyed, any of the books so committed to his care, he shall be fined, at the discretion of the court, for such his neglect.

To lay a tax
to purchase.

SEC. 8. Said court shall have full power to lay such an additional tax on their respective counties, as shall be sufficient to purchase and provide the books aforesaid.

Sup'r. courts.

SEC. 9. A Superior Court shall be held by a Judge thereof, at the court-house in each county in the State, twice in every year.

The State di-
vided into 7
circuits.

SEC. 10 The State shall be divided into seven circuits: the first circuit to be composed of the counties of Currituck, Camden, Pasquotank, Perquimons, Chowan, Gates, Hertford, Bertie, Washington and Tyrrell. The second circuit to be composed of the counties of Jones, Carteret, Onslow, Duplin, Wayne, Greene, Lenoir, Craven, Beaufort and Hyde. The third circuit to be composed of the counties of Pitt, Edgecomb, Nash, Johnston, Wake, Franklin, Warren, Halifax, Northampton and Martin. The fourth circuit to be composed of the counties of Chatham, Randolph, Davidson, Stokes, Rockingham, Guilford, Caswell, Person, Granville and Orange. The fifth circuit to be composed of the counties of Montgomery, Anson, Richmond, Moore, Robeson, Cumberland, Bladen, Columbus, Brunswick, New Hanover and Sampson. The sixth circuit to be composed of the counties of Surry, Wilkes, Ashe, Lincoln, Iredell, Cabarrus, Mecklenburg, Davie and Rowan. And the seventh circuit to be composed of the counties of Macon, Haywood, Yancy, Buncombe, Rutherford and Burke.

SEC. 11. The Superior Courts of Law and Equity, in the first judicial circuit, in the several counties thereof, shall be opened and held at the times hereinafter expressed; and each respective court shall continue in session one week, unless the business of the court shall be sooner determined, viz: In the county of Tyrrell, the said courts shall be held on the first Monday in March and September; in the county of Washington, on the second Monday in March and September; in the county of Bertie, on the third Monday of March and September; in the county of Hertford, on the fourth Monday of March and September; in the county of Gates, on the first Monday after the fourth Monday of March and September; in the county of Chowan, on the second Monday after the fourth Monday of March and September; in the county of Perquimons, on the third Monday after the fourth Monday of March and September; in the county of Pasquotank, on the fourth Monday after the fourth Monday of March and September; in the county of Camden, on the fifth Monday after the fourth Monday of March and September; in the county of Currituck, on the sixth Monday after the fourth Monday of March and September.

The courts in the first circuit to be holden—when.

SEC. 12. The courts in the counties composing the second circuit, shall be held on the following times, to wit: In the county of Onslow, on the first Monday of March and September; in the county of Jones, on the Wednesday next after the second Monday of March and September; in the county of Lenoir, on the third Monday of March and September; in the county of Duplin, on the fourth Monday of March and September; in the county of Wayne, on the first Monday after the fourth Monday of March and September; in the county of Greene, on the second Monday after the fourth Monday of March and September; in the county of Carteret, on the third Monday after the fourth Monday in March and September; in the county of Craven, on the fourth Monday after the fourth Monday of March and September; in the county of Beaufort, on the fifth Monday after the fourth Monday of March and September; in the county of Hyde, on the sixth Monday after the fourth Monday of March and September.

The courts in the second circuit to be holden—when.

SEC. 13. The courts in the counties composing the third circuit, shall be held on the following times, to wit: In the county of Martin, on the Monday before the first Monday in March and

Courts in
third circuit
holden—
when.

September; in the county of Pitt, on the first Monday in March and September; Edgecombe, the second Monday in March and September; Nash, the third Monday in March and September; Johnston, the fourth Monday in March and September; Wake, the first Monday after the fourth Monday in March and September; Franklin, the second Monday after the fourth Monday in March and September; Warren, the third Monday after the fourth Monday in March and September; Halifax, the fourth Monday after the fourth Monday of March and September; Northampton, the fifth Monday after the fourth Monday of March and September.

Courts in
fourth circuit
holden—
when.

SEC. 14. The courts in the counties composing the fourth circuit, shall be held on the following times, to wit: In the county of Granville, on the first Monday in March and September; Orange, the second Monday in March and September; Chatham, the third Monday in March and September; Randolph, the fourth Monday in March and September; Davidson, the first Monday after the fourth Monday of March and September; Stokes, the second Monday after the fourth Monday of March and September; Guilford, the third and fourth Mondays after the fourth Monday of March and September; Rockingham, the fifth Monday after the fourth Monday of March and September; Caswell the sixth Monday after the fourth Monday of March and September; Person, the seventh Monday after the fourth Monday of March and September.

Courts in
fifth circuit
holden—
when.

SEC. 15. The courts in the counties composing the fifth circuit, shall be held on the following times, to wit: In the county of Moore, on the last Monday of February and on the last Monday of August; Montgomery, on the first Monday in March and the first Monday of September; Anson, on the second Monday of March and the second Monday of September; Richmond, on the third Monday of March and the fourth Monday of September; Robeson, on the fourth Monday of March and the first Monday after the fourth Monday of September; Bladen, on the first Monday after the fourth Monday of March, and the second Monday after the fourth Monday in September; Columbus, on the second Monday after the fourth Monday in March, and on the third Monday after the fourth Monday in September; Brunswick, on the third Monday after the fourth Monday in March, and on the fourth Monday after the fourth

Monday of September; New Hanover, on the fourth Monday after the fourth Monday of March, and on the fifth Monday after the fourth Monday of September; Sampson, on the fifth Monday after the fourth Monday of March, and on the sixth Monday after the fourth Monday of September; Cumberland, on the sixth Monday after the fourth Monday of March, and on the seventh Monday after the fourth Monday of September, in each and every year.

SEC. 16. The term of Anson Superior Court of Law and Equity, shall continue two weeks successively, at the fall term thereof, whenever the business of the said court requires it.

Anson
c.t to be hold-
den 2 weeks.

SEC. 17. The courts in the counties composing the sixth circuit, shall be held on the following times, to wit: Cabarrus, on the second Monday in February and August; Mecklenburg, on the third Monday in February and August; Lincoln, on the second Monday after the third Monday of February and August; Iredell, on the third Monday after the third Monday in February and August; Rowan, on the fourth Monday after the third Monday in February and August; Surry, on the fifth Monday after the third Monday in February and August; Ashe, on the sixth Monday after the third Monday of February and August; Wilkes, on the seventh Monday after the third Monday of February and August; Davie, on the eighth Monday after the third Monday of February and August.

Courts in 5th
circuit to be
holden—
when.

SEC. 18. The courts in the counties composing the seventh circuit: Macon, to begin on the fourth Monday of March and September; Haywood, on the first Monday after the fourth Monday of March and September; Yancy, on the second Monday after the fourth Monday of March and September; Buncombe, on the third Monday after the fourth Monday in March and September; Rutherford, on the fifth Monday after the fourth Monday of March and September; and Burke, on the seventh Monday after the fourth Monday of March and September, in each and every year hereafter.

Courts in 7th
circuit when
holden.

SEC. 19. Nothing contained in this act fixing the duration of, or assigning a period to the close of the term of any Superior Court, shall prevent the Judge holding the same, from keeping it open a longer period when the trial of a capital case shall have been commenced, and the jury not have returned their verdict; but in any such case the Judge holding the court is

Court may be
kept open
longer than
one week.

hereby authorised to continue said court or adjourn the same from day to day, for the purpose of finishing the trial and the reception of the verdict and rendering the judgment of the law thereon, in any capital case, the trial whereof may have previously commenced.

Power of
judges and
their jurisdic-
tion.

SEC. 20. The said courts shall be holden by judges, being men of abilities, integrity and learned in the law, who shall have cognizance and legal jurisdiction of all pleas, real, personal and mixed, and also all suits and demands relative to legacies, filial portions and estates of intestates—all pleas of the State and criminal matters, of what nature, degree or denomination soever—whether brought before them by original or mesne process, or by certiorari, writ of error, appeal from any inferior court, or by any other way or means whatsoever; and they are hereby declared to have full power and authority to give judgment and to award execution and all necessary process thereon; and shall have, use, exercise and enjoy the same powers and authorities, rights, privileges and pre-eminences as were had, used, exercised and enjoyed by any former judges of the Superior Courts in this State, except where it is or may be otherwise directed by this or any other act of the Legislature.

Oaths of
judges.

SEC. 21. The said judges, before they act as such, shall, in open court, or before the Governor for the time being, or before one of the Judges of the Superior Courts, or before some justice of the peace, take the oath appointed for the qualification of public officers, and also an oath of office.

Oaths to be
subscribed &
returned to
Secretary.

SEC. 22. It shall be the duty of the officers or court before whom such judge or judges shall qualify, to cause such judge or judges to subscribe the oaths by him or them taken; and, having certified the same, shall return said oaths to the Secretary of State, who shall carefully preserve the same; and if any judge shall act in his office before he shall have taken the oaths hereby directed, he shall forfeit and pay two thousand dollars, to be recovered by action of debt in any of the Superior Courts, one half to the use of the State, and the other half to the person who shall sue for the same.

Allotment
of circuits.

SEC. 23. The judges of the Superior Courts, or a majority of them, shall allot the circuits among themselves; and it shall be their duty to cause a notification of such allotment to be published in the State Gazette by the first day of February and the first

day of August preceding each and every circuit for which such allotment shall be made; provided that no judge shall be allotted the same circuit twice in succession.

SEC. 24. The said judges may exchange with each other for any court or courts in their circuits. Judges may exchange.

SEC. 25. If some one of the said judges shall not attend and hold each of the Superior Courts, on the day by law prescribed for holding such courts, the sheriff of the county or his lawful deputy shall open and adjourn such court from day to day until one of the said judges shall attend and hold the same, or until the third day appointed for the holding thereof, on which said third day the sheriff or his lawful deputy shall adjourn the same until the next court; to which time all actions, pleas, process and other matters pending in the said court shall be continued and have day as if the said court had been duly held. If no judge attend the first day, &c.

SEC. 26. The Courts of Pleas and Quarter Sessions, at the first term which shall be holden after the first day of January next, and once at least in every two years thereafter, shall cause their clerk to lay before them the tax returns of the preceding year for their county; from which they shall select the names of such persons only as are freeholders and as are well qualified to act as jurors, a list of which names shall be drawn out by their clerk and constitute the jury list; and if said tax returns shall not contain the names of all the inhabitants of their said county, who, in their opinion, are well qualified to act as such jurors, they shall cause the names of all such persons to be inserted on their said jury list, provided all such persons so selected shall by law be qualified to act as jurors; which jury list so made up shall continue for two years in its operation; at the end of which time it shall be the duty of the said court, and they are hereby required, to examine carefully the jury lists already made out, and diligently enquire if any persons qualified to be jurors as above mentioned are omitted, and whether any persons not qualified to be jurors as above mentioned have been inserted; and if they find that any have been omitted, they shall add them to the jury list to be drawn as above directed; and if they find that any have been inserted not possessing the requisite qualifications, they shall direct the name of such person to be stricken out from the jury list; and to obtain full information on this subject, the said courts may examine on oath or affirmation any person they may think proper. County court to form a jury list from list of taxables.

Jury list to continue for two years, then to be examined.

Jurors how
drawn for
sup'r court
and No.

SEC. 27. The said courts shall cause the names so contained on their jury list to be written on small scrolls of paper of equal size, and put into a box to be procured for that purpose, which shall have two divisions, marked No. 1 and 2, and two locks, the key of one to be safely kept by the sheriff of the county, the other by the chairman of the county court, and the box by the clerk of said court; and the said justices, at each and every session of their said court which shall happen next preceding the sitting of the Superior Court of the said county, shall cause to be drawn from the said jury box, out of the partition marked No. 1, by a child not more than ten years of age, not more than thirty six nor less than thirty scrolls; and the persons whose names shall be inscribed on said scrolls shall serve as jurors at the next succeeding Superior Court to be held for said county: *Provided always*, that whensoever the county court of such county shall be held within fifteen days of the sitting of the Superior Court of the same, that then the court preceding such County Court shall draw the jury as aforesaid; and said Court of Pleas and Quarter Sessions, at each term thereof, shall in like manner draw the like number of names of persons, who shall serve as jurors at the next term of said court; and should any of the jurors so drawn have a suit pending and at issue in the Superior or County Court, or should the name of any justice of the peace be drawn to serve as a juror in the County Court, the several scrolls with his or their names shall be returned into the partition No. 1 of the jury box; or if any of said persons so drawn be dead or removed out of the county, the said scrolls with his or their names shall be destroyed, and in all such cases other jurors shall be drawn in his or their stead; and the scrolls drawn as aforesaid shall be put into the partition marked No. 2: *Provided*, that if before the expiration of two years the names of the jurors in the partition No. 1 shall be drawn out, then the whole names shall be put into the partition marked No. 1, and drawn out again as herein first directed. And there shall also be put into the said partition marked No. 1, at the court following the first day of January in each year, the names of such persons as shall appear by the tax list immediately preceding to have become qualified to serve as jurors since the making out the jury list, and whom said court shall deem fit persons to be jurors.

Jurors for co.
court, how
drawn and
number.

SEC. 28. If any County Court shall fail or neglect to draw jurors to attend the Superior Court of the county or the succeeding term of said County Court, it shall be the duty of the sheriff and the clerk of said County Court, and they are hereby required, in the presence of and assisted by three of the justices of the peace of the county, to draw from the jury box the same number of jurors, and in the same manner, and under the same rules, regulations and restrictions as prescribed in the preceding sections.

On failure of
co. c't. to
draw jurors,
the sh'ff and
cl'k to do so.

SEC. 29. Whenever it shall appear to any Court of Pleas and Quarter Sessions that the business thereof does not require the attendance of a jury at every term, it shall be in their power, a majority of the acting justices being present, to pass an order dispensing with the attendance of a jury at more than two terms; which order when so made shall not be recinded but by a court constituted of a majority of the acting justices.

Co. c't may
dispense with
a jury.

SEC. 30. The clerk of said court shall deliver the list of such jurors, both of the county and Superior Courts, to the sheriff of the county, whose duty it shall be to summon the persons therein named to attend as jurors at such court respectively; which summons shall be served personally or by leaving a copy thereof at the house of the juror to be summoned, at least ten days before the sitting of the court, when the summons is to attend a Superior Court, and at least five days before the sitting of the County Court to which he may be summoned; at which courts respectively said jurors shall appear and give their attendance until duly discharged. And that there may not be a defect of jurors, the sheriff may and shall, by order of said court, summon from day to day of the bystanders other jurors, being freeholders within the county where the court is held, to serve on the petit jury; and on any day the court may discharge those who have served the preceding day.

Cl'k to deli-
ver list of ju-
rors to sh'ff,
who shall
summon th'm

SEC. 31. Every person on the original venire, summoned to appear as a juror at any of said courts, who shall fail to appear and give his attendance until duly discharged, shall forfeit and pay a sum not exceeding ten dollars nor under four, when summoned to attend a County Court, and twenty dollars when summoned to attend a Superior Court, to be assessed by the court to which such person shall be returned as a juror, to be applied towards defraying the county charges: *Provided,*

Penalty on
jurors for no t
attending.

Penalty on
tales jurors.

that each delinquent juryman shall have until the next succeeding term to make his excuse for his non-attendance; and if he shall render an excuse deemed sufficient by said court, he shall be discharged without costs; and every person so summoned of the bystanders, who shall not appear and serve during the day as a juror, shall be fined in the sum of two dollars, unless he can show sufficient cause, to be approved by the court; and the court shall order the clerk forthwith to issue an execution against the body and goods of the delinquent tales juror for such amercement and costs.

jurors exempt
from service
of civil pro-
cess.

SEC. 32. No sheriff or other officer shall serve or execute any writ or other civil process on the body of any juror, during his attendance or going to and returning from any court of record; any such service shall be void, and the defendant, on motion, shall be discharged.

Persons ex-
empt as jurors

SEC. 33. All regular ministers of the Gospel of every denomination, and all regular bred physicians or practitioners of physic and surgery, shall be exempt from serving as jurors, either in the county or Superior Courts.

Grand jury
how drawn.

SEC. 34. The Judges of the Superior Courts, and the justices of the County Courts shall direct the names of all the persons returned to serve as jurors at the terms of their respective courts, to be written on scrolls of paper, which scrolls shall be put into a box or hat and drawn out by a child under ten years of age; and the first eighteen drawn shall be a grand jury for said court, and the residue of the names in the box or hat shall be the names of those who are to serve as petit jurors for said court.

Quakers com-
petent to
serve as
jurors.

SEC. 35. The people called Quakers shall be competent to serve as grand and petit jurors in the trial of all criminal cases, and be entitled to be sworn in the terms of their own religion, as heretofore prescribed by law, and observed in the trial of civil cases.

Oaths to be
taken.

SEC. 36. The clerks of said courts shall, at the beginning of the courts, swear or affirm such of the petit jury as are of the original pannel, well and truly to try all civil causes that shall come before them during the term according to the evidence given thereon; and if there should not be enough of the original pannel, the talesmen shall take the same oath or affirmation to try all such causes as shall come before them during the day;

and in the trial of all pleas and prosecutions for offences not capital, unless in cases where the court shall otherwise direct, petit jurors of the original pannel, as well as talesmen, shall be sworn or affirmed, as the case may be, well and truly to try all issues of traverse that shall come before them during the day: *Provided*, nothing herein contained shall be so construed as to prevent the usual challenges in law to the whole jury so sworn or to any of them; and if by reason of such challenge any juror shall be withdrawn, his place on such jury shall be supplied by any of the original venire, or of the bystanders by law qualified to serve as a juror.

Jury may be challenged.

SEC. 37. The clerks of the several Superior and County Courts, before a jury shall be empannelled to try the issue or issues in any civil suit, shall read over the names of the jury upon the pannel in the presence and hearing of the parties or their counsel; and it shall be competent for the said parties, or their counsel for them, to challenge peremptorily four jurors upon the said pannel without showing any cause therefor, which challenge shall be allowed by the court.

Names of jurors to be called over, &c.

SEC. 38. When any constable shall be appointed or summoned to attend any of the Superior or County Courts (except such as may be appointed to attend the grand jury) it shall be the duty of the clerk, at the time of the first going out of a jury on the trial of any civil cause, to administer an oath to the constable, faithfully to attend the several juries that shall or may be put under his care during that term, that shall be charged in the trial of any civil cause; and after the said constable shall be once sworn, as herein mentioned, he shall be considered to all intents and purposes as acting on oath upon the attendance of every jury that he may be called upon to attend during that term.

Constable to be sworn to attend jury.

PRACTICE, PLEAS AND PROCESS.

SEC. 39. All real actions of ejectment, trespass quare clausum fregit, suits on penal statutes, and pleas of the State, shall be commenced in the court of the county wherein the cause of action shall arise or the offence be committed, and not elsewhere; and all actions of debt, other than on penal statutes, all actions of detinue and replevin, actions of account

Actions where bro't.

rendered, assault and battery, and for the unlawful taking of goods, all actions upon the case, and suits for legacies, and for distributive shares of intestates' estates, shall be brought to the court of the county where both parties reside; and where the parties live in different counties, shall be brought to the court of either county at the option of the plaintiff; and where the plaintiff shall reside beyond seas or in a different State or government, shall be brought to the court of the county where the defendant resides; and where any action or suit shall be brought otherwise than is herein directed, such action or suit may be abated on the plea of the defendant.

SEC. 40. No suit shall be originally commenced in any of the said courts for any debt or demand of less value than sixty dollars, for an unliquidated balance due on any contract or agreement, or for goods, wares and merchandize sold and delivered, or for work and labor done, or for specific articles, whether due by obligation, note or assumset, or for any judgment which may have been granted over twelve months, by a single magistrate and no execution have issued thereon, or for any forfeiture or penalty incurred by virtue of any act of the Congress of the United States or the General Assembly of this State; nor for any sum of less value than one hundred dollars, due by bond, promissory note or liquidated account, signed by the party to be charged thereby.

SEC. 41. If any suit shall be commenced in any of the said county courts for any sum of less value than sixty dollars, contrary to the provisions of the preceding sections, the same shall be abated on the plea of the defendant; and if any suit shall be commenced in any of said courts for any sum of less value than one hundred dollars, due by bond, promissory note, liquidated account, signed by the party to be charged thereby, the same shall be dismissed by the court.

SEC. 42. If any suit shall be commenced in any of the said Superior Courts, contrary to the provisions of the 39th section of this act, the same shall be dismissed by the court; and if any suit shall be commenced in any of said Superior Courts, contrary to the true intent and meaning thereof, or if any person shall demand a greater sum than is due, on purpose to evade the operation of this act or otherwise, and by the verdict of a jury it shall be ascertained that a less sum is due to

Amount of
debt on which
suit may be
brought.

If commenced
for a sum un-
der \$60, &c.

If commenced
in sup'r cor't
to be dismiss-
ed.

him in principal and interest than by the provisions of the said 39th section said Superior Court has jurisdiction of, that then and in that case it shall be the duty of the court to non-suit the plaintiff, and he shall pay all costs: *Provided*, that if the plaintiff or any other person for him will make an affidavit, to be filed in the case, that the sum for which his suit is brought is really due, but that for want of proof, or that the time limited for the recovery of any article bars a recovery, then and in that case such plaintiff shall have a verdict and judgment for what appears legally proved; any thing to the contrary notwithstanding: *Provided also*, that nothing herein contained shall extend or be construed to extend to suits on bonds, penal bills, or other actions of debt, grounded on a penalty, when the balance due on such bond or penal bill, or other action of debt, is not of less value than the sums in the said section mentioned to be limited for bringing suits in said courts: *And provided further*, that no original writ for debt shall be issued by any clerk of the said Superior Court against any person residing out of the county of said clerk, for any sum under one hundred dollars.

Not to extend
to suits on penal
bonds.

SEC. 43. The clerk or attorney issuing process, shall mark thereon the day on which the same shall be issued; and the sheriff or other officer receiving the same in order to execute, shall in like manner mark on each process the day on which he shall have received it; and every clerk, attorney, sheriff or other officer, neglecting so to do, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, by any person who shall sue for the same, with costs.

Clerk and
sheriff to
mark process.

SEC. 44. No writ or other leading process, returnable to any of the courts of record within this State, shall be granted or issued by the clerk or his assistant in office, but under the following regulations and restrictions, to wit: that the clerk, either by himself or his deputy, before issuing any writ or other leading process, take sufficient security of the person so applying, conditioned that they will prosecute such suit or suits they may so commence; and in case of failure of such prosecution, pay to the defendant all such costs and damages as may be awarded against him by the court having cognizance thereof: *Provided*, nothing in this section contained shall prevent persons from

Clerk to take
bond before
issuing writ
or leading
process.

suing in forma pauperis, as hereinafter provided; and when any person applying for a writ or other leading process, shall produce to the clerk an order, signed by a judge of the Superior Court, allowing said applicant to sue in forma pauperis, it shall be the duty of said clerk to issue such writ or leading process without requiring bond and security; and if any writ or leading process shall be issued without such security being given, or such order made, the same shall be dismissed by the court on motion of the defendant.

SEC. 45. When any clerk, either by himself or his deputy in office, shall issue any writ or other process, or any declaration of ejectment shall be returned into his office, and security thereon given as hereinafter directed, he shall enter the same in a book to be kept by him for that purpose, together with the name of the plaintiff and defendant and the place of their abode, the name of the security or securities for obtaining such writ, and the place where they live, and have the same before the court where he may so officiate as clerk, subject to the examination of such court.

SEC. 46. If any clerk, either by himself or his assistant in office, shall issue any writ or other leading process, otherwise than by this act directed, he shall pay to the defendant the sum of two hundred dollars, to be recovered by action of debt in the court where such offence shall have been so committed; and also shall forfeit and pay the sum of one hundred dollars for every offence so committed by such clerk or his assistant in office, recoverable in any court of record having cognizance thereof, one half to the use of the person suing for the same, the other half to the use of the poor of the county.

SEC. 47. Every poor person or persons, which have or hereafter shall have cause of action or actions against any other person or persons, either in law or equity, shall have, at the discretion of any one of the judges of the Supreme or Superior Courts, a writ or writs of law, or writ of subpoena in equity, according to the nature of their causes, paying no costs on the same, nor giving any security therefor; and the courts to which the said writs may be returnable shall assign to the said poor person or persons learned counsel or attorneys to attend to their cases, which counsel or attorneys shall attend without fee or reward; and no costs shall be charged to such poor person or

persons by any officer of the court in which such suit shall be brought.

SEC. 48. It shall and may be lawful in all cases where there may be two or more defendants, for the plaintiff in any suits in the Superior Courts, or in the County Courts, where one of the defendants reside in the county, to issue writs directed to the sheriff or coroner of each of the counties where the defendants are most likely to be found, noting on each process that they are issued in the same suit; and when the same are returned they shall be docketed in the same manner as if only one had issued; and in case any defendant or defendants should not be served with such process, the same proceedings shall be had as in cases of other similar process which has not been executed.

When writs may issue to different counties returnable to sup'r and co. courts.

SEC. 49. Upon the return of any writ of ejectment, to any court having cognizance thereof, the real plaintiff in said writ, his agent or attorney, at the return court of said writ, shall enter into bond with the clerk of the court to which said writ shall be returned, with good and sufficient security, to prosecute the same with effect, or otherwise to pay all such costs and damages as shall be awarded on failure thereof.

Plaintiff to give a prosecution bond.

SEC. 50. In all actions of ejectment, the person or persons who shall make themselves defendants in said suit, shall, on doing the same, either by themselves, their agent or attorney, enter into bond with good and sufficient security to answer such writ or writs of ejectment in the court or courts to which they may be made returnable, and abide by the determination of the same; which defendant or defendants shall be under the same rules and regulations, and liable to the same judicial proceedings, as to all costs and damages that may be awarded against him or them, as principal and bail are subjected to in other civil actions of law in said court.

Persons desiring to be made def't in an action of ejectment to give bail bn'd

SEC. 51. If the lessor of the plaintiff in any action of ejectment, his agent or attorney, or if any one of the several lessors or the agent or attorney of any one lessor shall at the return term of the declaration in ejectment file his or her affidavit, that the tenant in possession of the premises sued for, and to whom the notice of the said suit is directed in the process issued, entered into said premises as his or her tenants, or as tenant of the person as whose agent or attorney said affiant deposes, that

Def't not to plead until he give bond for cost and damages.

said tenant's term therein has expired, and that said tenant refuses to surrender the possession of said premises to said lessors, or any one of them, said person in possession, or any other person made defendant, shall not be entitled to plead to said suit; and the lessors of the plaintiff shall be entitled to judgment final against the casual ejector at the said return term, unless the said person in possession or other person applying to be made defendant shall enter into bond in such sum as the court shall direct, with surety to be approved by said court, with condition that said defendant or defendants shall pay the said lessor or lessors all such costs and damages as shall be recovered in said suit. And it shall be the duty of the jury in such cases where issue may be joined to find in their verdict whether the defendant entered into possession of the premises as the tenant of the lessors or of which of them, and whether he refused to surrender the premises after his term therein had expired; and if such finding shall be in favor of the lessors of the plaintiff, such jury shall assess the damages to which the lessors of the plaintiff shall be entitled, including the value of the occupation of the premises sued for, from the expiration of said tenant's term to the rendition of the verdict, and damages for waste and trespass during the time of said holding over; and the court shall render judgment against the defendant and his securities upon their said bond, to be discharged by the payment of the damages assessed as aforesaid, and the payment of all costs; judgment upon which verdict shall bar the action for the mesne profits, or for the trespass by any of the lessors in said action: *Provided nevertheless*, that it shall be competent for the defendant or tenant in possession, to rebut, by his or her affidavit, the facts set forth in the affidavit offered on the part of the lessor of the plaintiff; and the court in such cases shall decide thereon, and may, in its discretion, allow the affidavits on either side to be corroborated by other affidavits, or evidence.

SEC. 52. Whenever any plaintiff in ejectment shall fail to give his bond for prosecuting his suit as before directed, the court shall on motion dismiss the suit; and whenever any person or persons may be desirous of becoming defendant or defendants in any suit in ejectment, they shall give bond as before directed, or be in custody of the sheriff before they or their attorney shall be permitted to plead.

What facts in such case the jury is to find.

Def't may rebut pl't's affidavit by his own, &c.

If pl't in ejectment does not give security suit to be dismissed.

SEC. 53. All writs and other civil process, except subpoenas returnable immediately, shall be returned the first day of the term to which the same shall be returnable, and shall be executed at least ten days before the beginning of the term, when returnable to a Superior Court; and at least five days before the beginning of the term, when returnable to the county court; and if any original or mesne process shall be taken out within the time above specified, before the beginning of any of the terms of said courts from which they respectively issued, such process shall be made returnable to the term next succeeding that which shall commence within the times above specified after taking out such process, and not otherwise. And all process made returnable at any other term, or executed at any other time, or in any other manner, than is by this act directed, shall be adjudged void upon the plea of the defendant.

Writs when
to be return-
ed, executed,
&c.

SEC. 54. When any sheriff shall return that he hath taken the body of any defendant and committed him to the prison of his county, which is hereby declared to be the proper place for such commitment, the plaintiff may enter the defendant's appearance, and he shall be at liberty to plead as if such appearance had been entered by himself, and the plaintiff may proceed as in other cases as in this act directed; nevertheless the defendant shall not be discharged out of custody but by putting in bail or by rule of court.

When sh'ff
returns def't
in jail, &c.

SEC. 55. No female whatever shall be taken or imprisoned for debt.

Females not
to be impris-
oned for debt.

SEC. 56. When the sheriff shall make return in any civil action that the defendant is not to be found in his county, the plaintiff may at his election sue out an attachment against the estate of such defendant, or an *alias* or *pluries capias* until he be arrested; returnable in the same manner as original process; and if the sheriff shall return any goods by him attached, the plaintiff shall file his declaration according to the rules of the court; and if the defendant shall fail to appear and plead within the time herein directed, the plaintiff shall be entitled, if in an action of debt, to final judgment, and if in an action on the case, to an interlocutory judgment; and in consequence thereof, may execute a writ of enquiry the next succeeding term; and the goods so attached, if not replevied or sold according to the rules prescribed for goods taken on original attachments, shall

How pl'tff to
proceed when
sheriff re-
turns def't not
to be found.

remain in the custody of the sheriff until final judgment, and then be disposed of in the same manner as goods taken in execution on a writ of fieri facias; and if the judgment shall not be satisfied by the goods attached, the plaintiff may have execution for the residue.

When defendant resides in another county, an alias shall issue. SEC. 57. And when any defendant in a writ sued out of a Superior Court, or out of a County Court, where there is more than one defendant, and one of the defendants resides in such county, shall be a known inhabitant of any other county than that of the sheriff to whom such process shall be directed, the sheriff shall return the truth of the case, and thereupon an alias shall issue, directed to the sheriff of the county where such defendant resides; and variance of the addition of the place of abode of the defendant shall not be deemed error or matter of abatement.

Times at which sh'ff shall not execute civil process. SEC. 58. It shall not be lawful for any sheriff or other officer to execute any writ or other process upon a Sunday, or upon any person attending his duty at a muster of the militia, or at any election of members of the General Assembly or of members of Congress, or electors of President and Vice President, or of any officer of this State, or any person summoned to attend as witness or juror; and all such services of process are hereby declared illegal and void, unless the same be issued against any person or persons for treason, felony, riot, rescous breach of the peace, or upon escape out of prison or custody; and such process shall and may be executed at any time or place.

When Judge may direct the sh'ff of an adjoining co'ty to execute process. SEC. 59. If at any time there should be no proper officer in any county in this State to which any process original, mesne, or final, of any court of record, shall or ought to be directed, who can lawfully serve or execute the said process; or if there be such officer who shall refuse or neglect to execute the same, any Judge of the Superior Courts of Law and Equity, or any Judge of the Supreme Court, the same being made to appear to him, shall authorise and command the sheriff of any county adjoining the one to which the said process shall or ought to be directed, to serve and execute said process, who shall have the same powers and be subject to the same rules, and receive the same fees, as the sheriff of the county should or might have and receive.

SEC. 60. Whenever any process shall be directed to any sheriff of an adjoining county, to be served out of the county in which said sheriff shall reside, such sheriff shall for such service have and receive not only the fees allowed him by law, but as a farther compensation shall be allowed five cents for every mile he may be compelled to travel in going to and returning from serving the said process: *Provided nevertheless*, that whenever any writ of fieri facias, amounting to five hundred dollars or upwards shall be directed to any sheriff of an adjoining county, under the provisions of this act, then and in that case such sheriff shall not be allowed mileage, but the commissions to which such sheriff shall be entitled shall be deemed a sufficient compensation for serving said fieri facias.

Additional compensation to sheriff for serving process out of his county.

SEC. 61. Every sheriff or coroner who shall fail duly to execute and return all process to him directed, shall be subject to a penalty of one hundred dollars for each neglect, to be paid to the party grieved, by order of the court, upon motion and proof that the process was delivered to him twenty days before the sitting of the court to which the same is returnable, unless such sheriff or coroner can show sufficient cause to the court for his failure, at the court next succeeding such order; and said sheriff or coroner, for every such neglect duly to execute and return process delivered to him as aforesaid, shall be further subject to indictment in any court of record; and on conviction shall be fined or imprisoned, at the discretion of the court.

Penalty for failing to execute process.

RULES OF COURT.

SEC. 62. The following rules and methods shall be observed in said courts, to wit: The plaintiff shall by himself or his attorney file his declaration in the clerk's office, on or before the third day of the term to which his suit shall be brought, otherwise the suit shall be dismissed by the court at the costs of the plaintiff.

Rules of cor't

The defendant shall appear and plead or demur at the same term to which the writ shall be returnable, otherwise the plaintiff may have judgment by default, which in actions of debt shall be final, unless where damages are suggested on the roll; and in that case, and in all others not specially provided for, where the recovery shall be in damages, a writ of enquiry shall

Def't to appear, plead or demur, &c.

be executed at the next succeeding term: *Provided*, that where the nature of the action requires special pleading, the time for pleading may be enlarged: *And provided further*, that where a plaintiff shall obtain judgment final at the first term to which the process shall be returned, in action of debt, it shall be lawful for him to execute his enquiry the same term, as to the value of any foreign currency or money for which the suit may be brought.

The pl'tff to reply or demur same term, &c. Where the defendant pleads specially, the plaintiff shall reply or demur at the same term at which the plea or demurrer is filed, or a non pros. may be entered by the defendant; and if the plaintiff replies, and in his replication tenders an issue, the defendant shall join issue or demur at the same term, otherwise the plaintiff may have judgment; and where the defendant rejoins to the plaintiff's replication he shall file his rejoinder at the same term, or judgment shall go against him, unless the time for pleading shall be enlarged as aforesaid.

Time allowed to argue. When a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, time may be allowed, upon motion of either party, to the next term to argue the same.

Parties may enter their own pleas. In any matter or suit depending in any of said courts, either plaintiff or defendant may enter his own pleas and defend his own cause; and no instrument of writing which contains the substance shall be lost or destroyed for want of form.

Clerk to enter proceedings. For the better preservation of the records of the courts when any cause is finally determined, the clerk of each court shall enter all the proceedings therein in a book well bound, and an entire and perfect record made thereof.

Jury cases. All jury causes shall be first tried.

Motions in arrest of judgment argued when. All motions in arrest of judgment shall be argued within the three last days of the term in which the issue shall be tried, the defendant's attorney first serving the plaintiff's attorney with a copy of the reasons in arrest of judgment, unless upon sufficient cause shown and approved of by the court further time shall be allowed.

Argument causes--when argued. Arguments on writs of error, special verdicts, cases agreed, demurrers, petitions for legacies and distributions of intestates' estates, shall be heard upon the four last days of the term.

No plea in abatement shall be received in any of the said

courts, unless the party offering the same shall, by affidavit or otherwise, prove the truth of such plea. Plea in abatement.

Where a plea in abatement shall be pleaded, and upon argument the same shall be adjudged insufficient, the plaintiff shall recover against the defendant full costs to the time of overruling such plea, including the costs of court; and the plaintiff in replevin or defendant in any other action may plead as many several matters as may be necessary for his defence, so that he may not be permitted to plead and demur to the whole. When plea in abatement overruled, &c.

The entering a plea since the last continuance of a suit at law, shall in no case whatever be construed a relinquishment of any plea previously entered, but the same shall retain the like force, and operation which it would have had, if such plea since the last continuance, had not been entered. The entering a plea.

All issues whether general or special, shall be heard and tried the next succeeding term after the issue shall be made up, unless by consent of parties, or on sufficient cause shown to the court by affidavit filed, such cause should be continued; nor shall any cause be continued at any term, but by consent or on affidavit showing sufficient cause. Trial of issues and continuance of causes.

Whenever it shall be the opinion of the court, that the party praying a continuance, shall not obtain it without payment of costs, the whole of these costs shall be paid before the continuance is granted, and the party paying such costs shall not be entitled to recover them, although the judgment of the court shall finally be in his favor. Cost paid of

It shall not be lawful for either plaintiff or defendant to employ in any matter or suit more than one attorney to speak in such matter or suit in court, and the courts in this State are hereby directed, not to suffer more than one attorney as aforesaid, in any matters whatever to plead for either plaintiff or defendant to any suit, under penalty of a violation of this act. Attorneys number of, &c.

Every attorney in any of the courts of law and equity in this State, who shall claim to enter an appearance for any person or persons in any of said courts, shall upon being required so to do, produce and file in the clerk's office of the court in which he shall so claim to enter an appearance, a power or authority to that effect, signed by the person or persons, or some one of them, for whom he is about to enter an appearance, or by some person duly authorised in that behalf. *Provided, That*

when any attorney in any of said courts shall claim to enter an appearance by virtue of a letter to him directed, whether such letter purport a general or particular employment, and it shall be necessary for said attorney to retain said letters in his own possession, he shall on the production of said letters, setting forth such employment, be allowed to enter his appearance; and it shall be the duty of the clerk to note to that effect upon the docket.

Appearance of attorney. No attorney shall be permitted to enter an appearance for his client or clients, without producing to the court when required, such power or letters; and upon his failure to do so, the same proceedings shall be had thereon, as in cases where no appearance is entered.

In all actions upon penal bonds, &c. Plaintiff may assign as many breaches as he thinks fit &c. SEC. 63. In all actions brought in any of said courts, on any bond or bonds, or on any penal sum for the non-performance of any covenants or agreements, in any indenture, deed or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit; and the jury on the trial of such action or actions shall and may assess not only such damages and costs as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession or *nihil dicit*, the plaintiff upon the record, may suggest as many breaches of the covenants and agreements as he may think fit; upon which a jury shall be empannelled to enquire of the truth of any one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby; which enquiry by the jury shall be made as in other cases of judgment by default; and in case the defendant or defendants after such judgment entered, and before execution executed, shall pay into the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of said judgment shall be entered on record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their exec-

utors or administrators shall be fully paid or satisfied, all such damages so to be assessed, with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands or goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon the record; but notwithstanding in each case such judgment shall remain, continue, and be as a further security to answer to the plaintiff or plaintiffs, and his or their executors and administrators, such damages as shall or may be sustained for further breach of any covenants in the same indenture, deed or writing contained; upon which the plaintiff or plaintiffs may have a scire facias upon the said judgment against the defendant, or against his heirs or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively, to shew cause why execution shall not be had or awarded upon the said judgment; upon which there shall be the like proceedings as were in the action of debt upon the said bond or obligation for assessing of damages, upon trial of issues joined upon such breaches or enquiry thereof, upon a writ to be awarded in manner as aforesaid; and upon payment or satisfaction in manner as aforesaid of such future damages, costs and charges as aforesaid, all further proceedings on the said judgment are again to be stayed, and so toties quoties, and the defendant, his body, lands and goods shall be discharged out of execution as aforesaid.

SEC. 64. In taking the testimony of witnesses in all causes which may be depending in the Superior or county courts, the following rules shall be observed and put in practice, to wit :

Rules for taking testimony.

In all suits where witnesses are to appear at any of the said courts, the clerk, at the request of the party, shall issue a subpoena directed to the sheriff, or other officer of the county, where such witness or witnesses are said to reside, mentioning the time and place for his, her or their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance such witness or witnesses is or are summoned.

Subpoena to issue when.

Every subpoena made returnable immediately shall be issued only in term time, and shall be personally served on the witness or witnesses therein named.

When to issue.

A copy of every subpoena issued by the clerks in the vaca-

When witness not to be found, &c.

tion, in case the witness or witnesses therein named is or are not to be found, may be left at their usual place of residence; and such copy, certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons; and the person or persons therein named shall be bound to appear in the same manner as if personally summoned.

Witness to attend from term to term until discharged.

SEC. 65. Every witness being summoned to appear in any of the said courts, in manner as herein before directed, either in a civil suit or in a criminal prosecution or plea of the State, shall appear accordingly and continue to attend, from term to term, until discharged; when summoned in a civil suit by the court, or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea of the State, until discharged by the court, the prosecuting officer, or the party at whose instance he was summoned; and in default thereof, shall forfeit and pay to the party at whose instance the subpoena issued, the sum of forty dollars, and shall be further liable to the action of said party for the full damages which may be sustained for the want of such witnesses' testimony, who shall recover the same by scire facias, with costs; or if summoned in a criminal prosecution or plea of the State, shall forfeit and pay the sum of eighty dollars, for the use of the State, unless upon notice issued and made known, sufficient cause be shewn at the next court for such failure; in which case his forfeiture shall be remitted, and he shall be discharged from all costs.

Penalty for non-attendance.

If civil suit compromised in vacation, witnesses to be notified.

SEC. 66. *Provided always*, That if it shall so happen that the civil suit depending, shall in the vacation be accommodated and settled between the parties, and the party at whose instance such witness was summoned, should neglect or omit to discharge him or her from further attendance, and he or she, for want of such discharge, should attend at the next term, then and in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk, in the same manner as other witnesses, and shall recover from the party at whose instance he was summoned, the same allowance which by this act is given to witnesses for their attendance at said court, with costs. *Provided also*, That if any witness shall swear falsely in order to obtain a ticket, he shall upon conviction be adjudged guilty of perjury, and suffer as in cases of corrupt and wilful perjury.

Perjury of witnesses.

SEC. 67. *And provided further,* That if at the next succeeding term of said court, sufficient cause be shown by the person so summoned, and failing to appear of his or her incapacity to attend at the time and place mentioned in the subpoena, then no forfeiture or penalty shall be incurred by such failure ; and said witness, so exonerated, shall not be subject to any costs which may have accrued ; but if on notice given by the court, sufficient cause be not shown at the next succeeding term after such failure, it shall and may be lawful for such court, on motion, to grant judgment and award execution for the forfeiture before mentioned against the person so summoned, and failing to appear as aforesaid.

Excuse of witnesses.

SEC. 68. When any person who may be a witness in any civil cause in any of the said courts, shall reside out of the state, or shall by reason of age, bodily infirmity or other cause be incapable of attending to give his testimony in court, or shall be in a dangerous state of health, or about to leave the state, oath thereof being made, or the truth of the matter otherwise appearing, or when either party to a civil suit shall require the testimony of the Governor, the Secretary of State, the Treasurer, Comptroller, or any Judge of the Superior or Supreme Courts, or of the Attorney General, or any of the Solicitors of the State in the trial of said suit, the court wherein such suit is depending, shall and may, by commission, empower such and so many persons as may be thought necessary to take and receive the deposition of such witness ; which being duly taken and returned as herein after is directed, shall be received as legal testimony. And in all cases where depositions are taken in a court of law, it shall be lawful for the court to direct the clerk to pass upon such depositions, under the same rules, regulations and restrictions as are observed by clerks and masters in chancery, in passing on depositions to be read in chancery.

Deposition of witnesses may be tak'n.

In what cases Clerk to pass upon all depositions.

SEC. 69. *Provided always,* that the party praying such commission, shall give such notice to the adverse party of the time and place, when and where such commission is to be executed, as the court shall think proper ; and the adverse party shall have power to cross examine any witness whose deposition shall be so taken ; and all depositions otherwise taken than as herein is directed, unless by consent of parties, shall be void to all intents and purposes.

Notice to be given to the adverse party

SEC. 70. If any person who may be a witness in any cause depending in any of the said courts, shall be under the necessity of leaving the state before such cause is to be tried, or even before such cause shall be at issue, or be in a dangerous state of health, upon oath thereof made, before any of the justices of the said courts, such justice is hereby empowered to order the clerk of the court where such cause is depending, to issue a commission to one or more persons to take the deposition of such witness, notice being first given to the adverse party of the time and place, when and where such deposition is to be taken, as follows, to wit: Where the party to be notified does not reside, or is not more than ten miles from the place where the deposition is to be taken, three days previous notice of the time and place; in all other cases one day more for every additional ten miles; which deposition, when returned, taken in manner aforesaid, shall be received as legal evidence.

SEC. 71. If any person who shall be summoned as a witness in any of the said courts, or before any persons appointed to take depositions as aforesaid, shall refuse to give testimony on oath, such person so refusing shall by the court or by the commissioners before whom he shall be summoned, be committed to the common prison, there to remain without bail or mainprize, until he shall be willing to give testimony in such manner as the law doth or may direct.

SEC. 72. During the attendance of any person summoned as a witness to any court whatsoever, and during the time that such person is going to and returning from the place of such attendance, allowing one day for every twenty-five miles such witness has to travel to and from his place of residence, no sheriff or other officer shall serve or execute on such persons so attending, going to or returning from said court, any writ or other civil process, warrant, order, judgment or decree in any cause, (summons for witnesses excepted;) and if any such shall be executed, the same shall be, and is hereby declared null and void.

SEC. 73. Each person who shall attend any Superior or County Court, as a witness in any cause therein depending, shall be allowed for each and every day's attendance, and for every thirty miles he may travel going to and returning from said court, sixty cents, provided said witness lives within the

county; or the sum of one dollar if the said witness lives without the county. *Provided*, that in counties where witnesses are by law allowed a greater sum than above stated, per day, for attending County Courts, they shall continue to be paid as heretofore.

SEC. 74. When any cause shall be removed from the Superior Court of any county to another, after the order of removal, depositions may be taken in the case, and subpoenas for the attendance of witnesses, and commissions to take depositions, may issue from either of said courts, under the same rules as if the case had been originally commenced in the court from which the subpoenas or commissions issued.

SEC. 75. Every person being lawfully summoned, who shall attend any of the Superior or County Courts of this state as a witness in any suit, (those wherein the state is a party excepted,) shall at each court, before the clerk thereof or his lawful deputy, ascertain by his or her oath or affirmation, the sum due for travelling to and from court, attendance and ferriage, which shall be certified by the clerk or his lawful deputy; and on failure of the party at whose instance such witness was summoned, to pay off and discharge the same previous to the departure of the witness from the court, it shall be lawful for such witness to sue for and recover the same from the party summoning him or her, at such time as he or she may see proper, before any jurisdiction having cognizance thereof; and the certificate of the clerk or his lawful deputy shall be sufficient evidence of the debt: *Provided always*, that in any case where recovery may be had before a justice of the peace, on a witness ticket or certificate, it shall and may be lawful for such justice, having previously defaced such ticket by writing the word judgment, in large letters in the face thereof, to deliver the same to the person against whom recovery is had thereon.

SEC. 76. At the court at which any cause shall be finally determined, the party in whose favor judgment shall be given, shall file or cause to be filed, the certificates of the attendance of witnesses in the clerk's office; the amount whereof shall be taxed in the bill of costs, to be levied and recovered for the benefit of said party; any thing to the contrary notwithstanding: *Provided* the party cast, shall not be obliged to pay for more than two witnesses to prove any single fact.

Publicatiⁿ & Postage of letters. SEC. 77. The clerks of the several superior courts of law and equity, and clerks of the county courts, shall tax the party bound to pay the costs of the suit, with the costs of publication in the newspapers which have been ordered by the court, and with the postage of all letters which cover the transfer of original or mesne process from one county to another.

Clerk to issue subpoenas for witnesses to attend commissioners, &c. SEC. 78. In all cases where witnesses are required to attend any commissioners, referees, order of survey, or jury of view, a summon shall be issued by the clerk of the court at the request of either party or their agent, expressing the day and place where they are to appear, the names of the parties to the suit, and in whose behalf summoned; and all witnesses summoned in pursuance of this section, shall be entitled to the same privileges, and receive the same pay for their attendance, and be subject to the same pains and penalties for non-attendance, as witnesses summoned to attend the courts.

The party entitled to full costs. SEC. 79. In all actions whatsoever, the party in whose favor judgment shall be given; or in case of a non-suit, dismissal or discontinuance, the defendant shall be entitled to full costs, unless when it is or may be otherwise directed by statute.

Def't may plead set off, &c. SEC. 80. In all cases where there are or shall be mutual debts subsisting between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts subsisting between the testator or intestate and either party, one debt may be set against the other, either by being pleaded in bar or given in evidence on the general issue, on notice given of the particular sum intended to be set off, and on what account the same is due, notwithstanding such debts shall or may be deemed in law to be of different nature; but if either debt arose by reason of a penalty, the sum intended to be set off shall be pleaded in bar, setting forth what is justly due on either side.

Testimony of persons of color, &c. SEC. 81. In all civil cases whatsoever, the evidence of all negroes, Indians, mulattoes, and of all persons of mixed blood, descended from negro or Indian ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether the person or persons whose evidence is offered be bond or free, shall be inadmissible, and the witnesses incompetent, except against each other.

SEC. 82. In all actions upon the case for slanderous words, and in all actions of assault and battery, if the jury upon the trial of the issue in such action, or the jury that shall enquire of the damages, do find or assess the damages under four dollars, then the plaintiff or plaintiffs in such action or actions shall have and recover only so much costs as the damages so given or assessed shall amount unto, without further increase of the same.

In damages assessed be under \$4, &c.

SEC. 83. In all actions of trespass *quare clausum fregit*, wherein the defendant or defendants shall disclaim, in his or their plea, to make any title or claims to the lands in which the trespass is, by the declaration, supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be permitted to plead a disclaimer and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass brought, whereupon or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue, and the said issue be found for the defendants, or the plaintiffs shall be non-suited, the plaintiff shall be clearly barred from the said action and all other suits concerning the same.

In trespass quare clausum fregit, def't may disclaim and plead tender, &c.

SEC. 84. When several persons are made defendants to any action of trespass, assault and battery, false imprisonment or ejectment, any one or more of them shall upon the trial thereof be acquitted by verdict, every person or persons so acquitted shall have and recover his costs of suit in like manner as if a verdict had been given against the plaintiff or plaintiffs and acquitted all the defendants, unless the Judge before whom such cause shall be tried shall immediately after the trial thereof, in open court, certify upon the record, under his hand, that there was a reasonable cause for the making such person or persons a defendant or defendants to such action or plaint.

When several persons are made defendants &c.

SEC. 85. In all causes depending in any of said courts, in which the production of an original paper, lodged in any of the public offices of the State, or in any office of a county, Superior or Supreme Court, shall become necessary, the said court shall have power to issue the process of subpoena *duces tecum*, requiring such persons as hold said offices respectively to attend the court from whence said process issued, with such original pa-

Subpœna duces tecum may issue on motion.

per, in like manner and under the same penalties as witnesses are required to attend in cases of subpoenas to testify.

Court may order the production of books or papers. SEC. 86. The said courts shall have full power in the trial of actions before them, on motion, and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue in cases, and under circumstances where they might be compelled to produce the same by the ordinary rules of proceedings in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, or shall not satisfactorily account for such failure, it shall be lawful for the said courts respectively, on motion, to give the like judgment for the defendant, as in cases of non-suit. And if a defendant shall fail to comply with such order to produce books or writings, or shall not satisfactorily account for such failure, it shall be lawful for the said courts respectively, on motion as aforesaid, to give judgment against him or her by default.

In all petitions for dower, costs, &c. SEC. 87. In all petitions for dower and partition, the court before whom the same may be tried, may at their discretion decree by whom and in what manner the costs accrued thereon shall be paid.

When note negotiable, action against whom bro't. SEC. 88. It shall and may be lawful for any person or persons, bodies politic or corporate, having a right to demand any sum of money due upon any endorsed promissory note, single bill, bond or other writing obligatory, which is, shall or may be negotiable by the laws of this State, to commence and prosecute, at the option of the person or persons, bodies politic or corporate having such right, an action or actions for such sum or sums of money so due as aforesaid, against the maker or makers of such promissory note, obligor or obligors, in such bill, bond or other writing obligatory, and the endorser or endorsers thereof, jointly, or against any one or more of such makers or obligors and endorsers; and judgment shall and may be given accordingly.

On joint obligations, &c. of copartners, &c. SEC. 89. In all cases of joint obligations or assumptions of copartners in trade or others, suits may be brought and prosecuted on the same against the whole or any one or more of such persons, making such obligations, assumptions or agreements.

SEC. 90. In case of the death of one or more joint obligor or obligors, the joint debt or contract, shall and may survive

against the heirs, executors and administrators of the deceased obligor or obligors, as well as against the survivor or survivors; and when all the obligors shall die, the debt or contract shall survive against the heirs, executors and administrators of all the said joint obligors.

Joint obligation shall survive against heirs, executors, &c.

SEC. 91. In all cases where an executor or administrator shall be sued with a surviving obligor, and it may be necessary that judgment should be rendered against such executor or administrator, such process and judgment may be awarded against the same, as if such executor or administrator had been sued severally; and judgment may be awarded and entered up against the surviving obligor or obligors, as is usual in other cases.

How judgment to be awarded and entered.

SEC. 92. Where there are more obligors or endorsers than one on any promissory note or other negotiable instrument, and the plaintiff shall institute more suits than one upon such promissory note or negotiable instrument, against the obligors or endorsers, the suits so brought, on the return of the writs to the courts from whence they issued, shall be consolidated, so that but one set of costs shall be incurred thereon, except as to the sheriff's and clerk's fees for serving and issuing said writs, which shall be the same as in other cases.

When court may consolidate.

SEC. 93. All judgment bonds, notes and other writings, with power to any person whatever to confess judgment thereon, shall be and are hereby declared utterly void as to such power; but the same proceedings shall be had thereon, as on common bonds and penal notes.

Judgment bonds, &c.

SEC. 94. Where any judgment or decree shall be obtained in any County Court of Pleas and Quarter Sessions, for any debt, damages, portion, legacy, or distributive share of an intestate's estate, and the person against whom such judgment or decree shall be obtained, shall remove him or herself and effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where such judgment shall be given or decree made, at the request of the plaintiff, to issue execution to any county of this State, where the defendant or his goods may be found; and the sheriff or other officer to whom the same may be directed, is hereby empowered and required to execute the same, and make return thereof in the same manner as is directed for the returns of process issuing from the Superior Courts.

When a defendant removes himself or property, clerk may issue execution to any county.

SEC. 95. In all actions brought to recover money due by contract, except on penal bonds, it shall be the duty of the jury to distinguish by their verdict the sum due as principal from the sum allowed for interest; and the principal sum due on all such contracts shall carry interest from the time of rendering judgment thereon until the same shall be paid and satisfied; and the judgments in such actions shall be rendered according to the provisions of this act.

SEC. 96. Whenever a suit shall be instituted on a single bond, a covenant for the payment of money, a bill of exchange, a promissory note, or a signed account, and the defendant shall not plead to issue thereon, it shall and may be lawful, upon judgment without a writ of enquiry, for the clerk of the court to ascertain the interest due by law, and the amount shall be included in the final judgment of the court as damages; which judgment is to be rendered therein in the same manner prescribed by the preceding section.

SEC. 97. All petitions to the County or Superior Courts may be filed during term or in vacation; and it shall be the duty of the clerks of the courts in whose offices such petitions may be filed, to endorse thereon the time of filing, and to issue copies and subpoenas to be served as heretofore. But in case the petitioner or petitioners shall specify the amount of his, her or their debt or demand, (as nearly as may be,) and shall make oath or affirmation to the same in open court, or before the clerk of the court in whose office his, her or their petition is filed, it shall be the duty of said clerk to issue copies of said petition to, and a *capias ad respondendum* against the defendant or defendants in the said petition, whom the petitioner or petitioners, by his, her, or their affidavit shall charge to be his, her or their debtor or debtors, for the amount so charged; and the sheriff is hereby required to execute said *capias ad respondendum*, as is now required by law in cases of *capias ad respondendum*, and to take bail in like manner; and the bail, when so taken, shall be liable and proceeded against as bail are now liable and proceeded against at law.

SEC. 98. In all cases of suits by petition, in which a copy of the petition and a subpoena or *capias* shall have been served on one of the defendants, and it shall be shewn to the court by affidavit, that the other defendant or defendants, is or are not

inhabitants of this State, or on diligent enquiry cannot be found, the court shall make an order, directing such defendant or defendants to appear to the said suit, and make his, her or their defence to the same, at the next or some after term, or sessions of the said court, or that the petition will be taken pro confesso against him, her or them, and heard accordingly; and if it shall at the term or session so appointed, be proved to the court that the said order was published five weeks successively in the paper nominated by the court, within fifty days after the said order was made, the court may proceed to the trial of the cause, and to pass judgment, or to decree thereon; which judgment and decree shall bind and conclude such defendant or defendants to the same extent, and under the same rules and regulations as defendants are now bound by like proceedings in the courts of equity.

When petition served upon one of several de'fts of others out of the State, order of publication to be made.

SEC. 99. When any matter of account shall be involved in a suit by petition, the court may order their clerk to audit and settle the accounts involved in the cause, and to report the balance due thereon in the same manner, and under the same rules and regulations as references are made by the court of equity to the clerks and masters thereof; and the clerk shall be entitled to the same compensation for such services, as the clerks and masters are now allowed by law.

Court may order clerk to audit ac'ts.

SEC. 100. Any two justices of the peace may take depositions, to be read as evidence in the trial of suits by petition, in the same manner, and under the same rules and regulations as depositions are taken to be read in the trial of suits in equity.

Any two justices may take depositions.

SEC. 101. The clerk shall take and receive the same fees for the copies and process in suits by petition, as the clerks and masters are now entitled to for like services.

Clerks fees.

SEC. 102. All persons within age, may sue by their next friend.

Persons who may sue.

SEC. 103. Whenever a person, plaintiff or defendant, in any suit in any of said Superior Courts, shall except to the opinion of the court trying the cause, and the same shall not be allowed, the party making the exception shall commit the same to writing, and require the same to be signed and sealed by the court before whom the said exception is taken, and the judge presiding shall sign and seal the same; and if the presiding judge will not sign and seal the said bill of exceptions, it shall

Either party to a suit may tender a bill of exceptions.

be signed and sealed by some other person present at the time of the exception taken, which bill of exception so signed as above, shall constitute and be a part of the record; and upon an appeal, the court before whom the said appeal shall be tried, shall proceed to judgment according to the same exception as it ought to be allowed.

SEC. 104. Actions of account shall and may be brought and maintained against the executors and administrators of any guardian, bailiff and receiver, and also by one joint tenant and tenants in common, his executors and administrators, against the other as bailiff, for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint tenant and tenants in common—and the auditor appointed by the court, when such action shall be pending, shall be, and is hereby empowered to administer an oath, and examine the parties touching the matter in question; and for their pains and trouble in and taking such accounts, have such allowance as the court shall adjudge to be reasonable, to be paid by the party against whom the balance of the account shall appear to be.

SEC. 105. If any action be brought in good faith by any person, to recover any penalty under any law of this State, or of the United States, and the defendant shall plead in bar thereto a former judgment recovered against him or them, by any other person for the same cause of action, or a former judgment rendered in his or their favor, in a former action brought by any other person for the same cause of action, that then the plaintiff in such action brought in good faith may aver that the said former recovery in said popular action was had by covin, or else to aver, that the former judgment in the said popular action, in favor of the defendant or defendants was had by covin—that then, if after said collusion or covin so averred, be lawfully found, the plaintiff or plaintiffs in that action sued with good faith, shall have recovery according to the nature of the action and execution upon the same, in likewise and effect, as if no such judgment had been before had. And no release made by such party, whether before action brought, or after, shall be in any wise available or effectual; and every person pleading such false plea, shall be further liable to indictment in any court having jurisdiction of the same; and upon conviction, shall be imprisoned at the discretion of the court.

Action of account may be brought against executors and administrators of guardians.

When plaintiff may reply fraud.

No release by former plaintiff good.

SEC. 106. Where any action of debt shall be brought on any single bill, or when any action of debt or *scire facias*, shall be brought on any judgment, if the defendant hath paid the money due upon such bill or judgment, such payment shall and may be pleaded in bar of such action or suit; and when an action of debt is brought, upon any bond which hath a condition or defeasance to make void the same of a lesser at a day or place certain, if the obligor, his heirs, executors or administrators, have before the action brought paid to the obligee, his executors or administrators, the principal and interest due by the defeasance or condition of such bond, though such payment were not made strictly according to the condition or defeasance; yet it shall and may nevertheless be pleaded in bar of such action, and shall be as effectual a bar thereof, as if the money had been paid at the day and place according to the condition or defeasance, and been so pleaded.

In action on a bond &c. payment may be pleaded.

SEC. 107. If at any time pending an action on any such bond with a penalty, the defendant shall bring into court where the action shall be pending, all the principal money and interest due on such bond, and also all such costs as have been expended in any suit or suits in law or equity upon such bond, the said money so brought in, shall be deemed and taken to be in full satisfaction and discharge of said bond; and the court shall and may give judgment to discharge every such defendant of and from the same accordingly.

When bond shall be deemed discharged, &c.

SEC. 108. Every judgment given in a court of record or before a single magistrate, having jurisdiction of the subject, shall be and continue in force until reversed according to law.

Judgment in force.

SEC. 109. When an appeal shall be taken by any defendant from the judgment of a justice of the peace to the County Court, the said court shall have power, upon sufficient cause being shown, on affidavit *filed*, to compel the plaintiff to give bond and sufficient security for the costs of said suit, in the event of the plaintiff's failing to prosecute the same with effect.

Prosecution bond required

SEC. 110. When an appeal shall be so taken to the County Court, the same shall be reheard by the said court; whereupon an issue shall be made up and tried by a jury at the first term to which it is returned, unless legally continued; and judgment shall be given thereon, and the party cast shall pay the costs of all the proceedings, to be taxed by the court; and execution

Appeals when to be tried. &c.

may issue for the same against the principal and securities, when judgment is granted against the plaintiff.

When pl'tff appeals, at his costs unless, &c.

SEC. 111. *Provided*, if judgment be entered for the plaintiff by the justice, and he appeal, such appeal shall be at the costs of the plaintiff, unless the court, on the trial, shall be of opinion, that there was sufficient cause for such appeal; and in such case plaintiff shall recover his costs, on motion.

Court to give judgment on constables levy on land.

SEC. 112. When any justices' execution shall be levied on the lands and tenements of any person or persons, and returned to the County Court agreeably to law, it shall be the duty of said court, upon application of the plaintiff therein named, to enter up a judgment for the amount of said recovery and costs: *Provided*, it shall not be lawful to tax any other fees than those already prescribed by law.

Pl'tff may take out execution for balance.

SEC. 113. If by the sale of the lands and tenements so levied upon and returned to court, a sufficient sum shall not be produced to satisfy the judgment and costs, the plaintiff is hereby authorised to sue out an execution from the court for the residue thereof, in the same way, and under the same rules and regulations, as if the judgment had been originally rendered by said court.

No warrant to abate &c.

SEC. 114. No attachment, warrant or other process issued by a justice, shall be set aside for want of form, if the essential matters required are set forth.

No execution to issue after a year and day from judgment, and how to obtain execution in such case.

SEC. 115. No execution shall issue upon any judgment obtained in any of said courts, after a year and day from the rendition of such judgment: *Provided*, that whenever execution hath been issued upon said judgment within the year and day, it shall be lawful for the clerk to issue an execution to enforce said judgment at any time within a year and day from the issuing of the last execution; and when the party claiming the benefit of such judgment, shall come after the year and day as above stated, he shall not be entitled to an execution on his judgment until he have caused a scire facias to be issued to the defendant, wherein the sheriff shall be commanded that he give notice to the party of whom it is complained, that he appear before the court, in which the judgment is, at a certain day, to shew, if he have any thing to say, why the judgment ought not to have execution; and if he do not come at the day, or do come and say nothing why execution ought not to be done, the sheriff shall be commanded to cause the judgment to be executed.

SEC. 116. In all cases where a verdict shall pass against a plaintiff, the same plaintiff shall not be non-suited. No non-suit after verdict.

SEC. 117. When a certiorari or writ of habeas corpus cum causa, and the sheriff or other officer to whom directed, shall return, upon the same, that the prisoner which is so holden in prison, is condemned by judgment given against him, and held in custody by virtue of an execution issued against him, the said prisoner shall not be let to bail, but shall be presently remanded, where he shall remain until discharged in due course of law. Party committed in execution not to be discharged on Habeas Corpus.

SEC. 118. In all actions the death of either party between the verdict and the judgment shall not be alleged for error so as such judgment be entered within two terms after such verdict. Death of party, &c.

SEC. 119. When any judgment after a verdict shall be had by or in the name of any executor or administrator, in such case, an administrator debonis non may sue forth scire facias, and take execution on such judgment. When an administrator debonis non, may have execution.

SEC. 120. Whenever suit shall be brought upon any bond given by any executor, administrator or guardian, for the faithful performance of his or her duty as such, it shall be the duty of the court, at the appearance term of said suit, on motion of either party, to refer the same to any person or persons to whom both the parties agree to have it referred; and if they cannot agree on persons to whom it shall be referred, then the court may refer it to the clerk or any other person; and such person, persons or clerk to whom any reference shall be made under this act, shall take an account under the same rules, regulations and restrictions, as are now provided for taking an account in a court of equity; whose report, when confirmed by said court, shall be conclusive evidence of the amount of the plaintiff's demand, only as against the then parties; and it shall be the duty of the court to make an allowance for taking such account in the same manner, as is now done in courts of equity; which allowance shall be paid by the plaintiff or defendant, or both, as the court in its discretion may direct. When action bro't on a guardian bond, &c. on motion at appearance term, cause to be referred to auditor to take account, &c.

SEC. 121. In all cases where the plea of fully administered shall be found in favor of the administrator or executor, and the plaintiff in the original action, resorts to a scire facias to render the lands of the deceased intestate or testator liable for the satisfaction of his debt, he shall be entitled to recover all On sci. fa. against heirs, &c.

the costs expended in the former suit; and the same shall be assessed by the jury, and judgment rendered therefor as for his debt.

Cause either civil or criminal may be removed.

SEC. 122. In all causes whether civil or criminal in which it shall be suggested, on oath or affirmation, on behalf of the State, or the traverser of the bill of indictment, or of the plaintiffs or defendants in said causes, that there are probable grounds that justice cannot be obtained in the county in which said causes shall be pending, that then, and in that case, the judge of said court is hereby authorized to order a copy of the record of said cause to be removed to some adjacent court for trial: *Provided*, that no cause shall be removed on oath or affirmation, unless the oath or affirmation set forth the facts whereon the deponent or affirmant founds his belief that justice cannot be obtained in the county wherein the suit is pending, so that the judge may decide upon such facts, whether the belief is well grounded.

Civil cause may be removed by parties to a convenient city.

SEC. 123. The parties to any suit in any of the Superior Courts of Law and Equity within this State, may remove suit by consent, for trial, to any convenient county, which removal by consent, shall be entered of record; and thereupon it shall be the duty of the clerk to transfer the papers relating to such suit in like manner as prescribed for the removal of causes on affidavit of either party; and the court to which such suit shall be removed, shall have full power and authority to proceed to hear and determine the same as fully, as if the same had been originally commenced in such court.

Clerk to send evidence.

SEC. 124. Whenever any suit shall be directed to be removed from any of the Superior Courts, agreeably to the above section of this act, it shall be the duty of the clerk to transmit a transcript of the record of said suit to the court to which the same is directed to be transmitted, together with any depositions or other written evidences which may be filed therein.

Cause to be removed on affidavit but twice.

SEC. 125. When any application shall be made to remove any cause, whether civil or criminal, to an adjacent county for trial, which cause shall have been before removed, it shall be the duty of the person so applying, to set forth on affidavit, particularly, and in detail, the grounds of such application; and the presiding Judge may, in his discretion, remove the same to any adjacent county for trial: *Provided*, that no cause, under any circumstances, shall be removed more than twice.

SEC. 126. In all suits in the County and Superior Courts, wherein the title or bounds of lands shall come in question, if it shall appear to the court necessary, such court may order two surveyors, one to be named each party to attend and run out the lands in dispute, agreeable to the bounds and lines expressed in each parties titles, and make three accurate plans of such surveys, and return the same to such court—which order such surveyors are required to obey; and the allowance for the service rendered is to be taxed in the bill of costs, and paid by the party cast: *Provided nevertheless*, if the parties shall agree to have but one surveyor appointed to perform such services, that then and in such cases the court shall order one surveyor only to attend, survey and run out the lands in dispute, who shall return three plans in the same manner, and be entitled to the same allowance as he would have been entitled to, if two surveyors had been appointed.

In actions when the bo'nds of land come in question, court may direct 2 surveyors to survey, &c.

SEC. 127. In all cases where the clerk of the Superior or County Court issues process to the county of which he is clerk, it shall not be necessary for him to annex the seal of his office thereto; and if any such seal should be notwithstanding annexed, it shall not be lawful to raise any charge in the bill of costs for the same.

When clerk not affix seal of cr't to process.

SEC. 128. It shall be the duty of the sheriff of every county in this State, by himself or his lawful deputy, to serve all notices that may be tendered or delivered to him, or that are, or may be required to be given in any cause, motion or proceeding, either at law or in equity, as well for commencing as for proceeding in the same, until the same shall be ended; and in case the sheriff of any county in this State, in which such notice is to be served, shall be a party, or interested in the proceedings aforesaid, that then it shall be the duty of the coroner of the county for which said sheriff was appointed to serve all such notices that are to him tendered or delivered.

Sheriff &c. to execute all notices.

SEC. 129. The said officers shall serve the same by delivering a true copy thereof to the person to whom the same shall be directed, if he be found in his county, or by leaving a copy thereof at the usual place of abode of such person, if in his county; and shall certify on the notice the time when said notice was served, or a copy left at the place of abode; and such return shall be evidence of the service of the said notice as may

Notices how served.

be therein stated; and the said officers shall deliver respectively the said notice with his return to the party, his attorney or agent, at whose instance such notice issued, upon demand of the same.

SEC. 130. Any sheriff or coroner neglecting to execute and return such notice, or making a false return thereon, shall be subject to the same action and penalties as for neglecting to serve or falsely returning process directed to him from the Superior Courts of law of this State, to be prosecuted, recovered and applied as actions and penalties are directed to be prosecuted, recovered and applied for neglecting to serve, or falsely returning process issued from the Superior Courts of this State—*Provided that,*

SEC. 131. Nothing herein contained, shall prevent any person from giving notice and proving the same as heretofore directed.

SEC. 132. Where any scire facias shall issue to the sheriff of any county within this State, the return of the sheriff thereon, that the same has been executed, shall be deemed sufficient evidence of the service of such scire facias; and it shall not be held necessary that the same should be made known in the presence of witnesses.

SEC. 133. At the trial of all actions at law upon contract, it shall be competent for either of the defendants to shew in evidence, that he, she, or they, is, or are surety or sureties; and if it be satisfactorily shown, it shall be the duty of the jury in their verdict, or of the justice of the peace in his judgment, to discriminate the principal and surety, which shall be endorsed on the execution, by the clerk or justice of the peace issuing it.

SEC. 134. When any execution endorsed as aforesaid, shall come into the hands of any officer for collection, it shall be his duty to levy the same on goods and chattels and lands and tenements of the principal, or so much thereof as shall be necessary to satisfy said execution; and for want of such sufficient property of the principal, also on the goods and chattels, lands and tenements of the surety or sureties, and make sale thereof as the law does or may direct: *Provided nevertheless,* that in all such levies, a sale shall first be had on all the property of the principal levied on before that of the surety or sureties.

SEC. 135. Whenever any suit shall be brought in any of said courts, in which security shall be given for the prosecution of the suit, or when any case shall be brought up to any of said courts by an appeal from the County Courts, or otherwise, in which a bond for the prosecution of the suit shall have been given in the court below, and judgment shall be given in the Superior Court against the plaintiff for the costs of the defendant or defendants, it shall be the duty of the court, upon motion of the defendant, also to give judgment against the surety for the prosecution for said costs; whereupon execution shall issue jointly against the plaintiff and his security.

When court shall give judgment for costs against security for the prosecution &c.

SEC. 136. It shall and may be lawful for the defendant or defendants against whom any final judgment or decree for the payment of money, shall or may be rendered or made, by any court of record in this State, to pay the whole or any part of the judgment or decree to the clerk of the court in which said judgment or decree shall or may be rendered or made, at any time after the rendering of such judgment or the making of such decree, although no execution shall or may have issued to enforce the payment of such judgment or decree—and such payment of money shall be as good and available to the party making the same, as if made to the sheriff or other legal officer, under and by virtue of an execution issued on such judgment or decree.

Defendant may pay judgment to the clerk of the court without execution.

SEC. 137. The clerks of courts of record to whom any money shall or may be paid to satisfy in whole or in part, any final judgment or decree, shall pay the same to the party or parties entitled to receive the same, under the same rules and penalties as if the same had been paid into his office, under and by virtue of an execution issued on such final judgment or decree.

Clerk to pay the same to party entitled to receive.

SEC. 138. It shall not be lawful for any judge in delivering a charge to the petit jury, to give an opinion whether a fact is fully or sufficiently proved, such matter being the true office and province of the jury; but it is hereby declared to be the duty of the judge in such cases to state in a full and correct manner, the facts given in evidence, and to declare and explain the law arising thereon.

Judge how to deliver his charge to the jury.

[Ratified 23d January, 1837.]

[Revised Statute.]

No. LXVI.

SUPREME COURT.

An Act Concerning the Supreme Court.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That there shall be appointed by joint vote of the two houses of the General Assembly, three Judges, being men of integrity and learning in the law, who shall be styled "Judges of the Supreme Court of North Carolina," shall be commissioned by the Governor, and shall hold their offices during good behavior.

Three judges
of the Sup'r
cr't to be ap-
pointed.

Court to be
holden in Ra-
leigh twice
a year.

SEC. 2. It shall be the duty of said Judges and of their successors in office to hold the Supreme Court of this State at the city of Raleigh twice in every year, viz: on the second Monday of June, and on the last Monday of December, in each and every year; and they shall continue to sit at each term until all the business on the docket shall be determined, or continued upon good cause shown; and said court shall bear the name and style of the Supreme Court of North Carolina, and shall be deemed a court of record, and the papers and records belonging to the clerk's office thereof shall be constantly kept within the city of Raleigh.

Oaths to be
tak'n by the
judges.

SEC. 3. The said judges, before they act as such, shall, before the Governor for the time being, or some judicial officer of the State, severally take the oath to support the constitution of the United States, the oath appointed for the qualification of public officers, and also an oath of office.

'two judg's to
ld court.

SEC. 4. When any one of the Judges of said court is disabled from attending from sickness or other inevitable cause,

two of the Judges of the said court shall and may hold the said court, hear and determine causes, and possess and exercise every other authority which by law may appertain to said court, as fully to all intents and purposes, as if all the Judges of the said court were present.

SEC. 5. The Judges of said court shall appoint one of their number to preside therein, who shall thenceforth be styled Chief Justice of the Supreme Court of North Carolina, and that the said Chief Justice and each and every of the other Judges of the Supreme Court aforesaid shall have, use, exercise and enjoy the same powers and authorities, rights, privileges and pre-eminences, in every respect, as are now had, exercised, used and enjoyed by the Judges respectively, of the Superior Courts of law and Equity within this State, except that no Judge of the Supreme Court shall be authorised to hold a Superior Court; and that for the purpose of carrying such powers and authorities into execution, each of the said Chief Justices and Judges of the Supreme Court may make any fiat, may order or issue any process and perform any act which it is lawful for any Judge of the Superior Courts to make, order, issue or perform.

To appoint
chief justice.

Power of
Judges to is-
sue process.

SEC. 6. The Court shall have power to hear and determine all questions at law brought before it by appeal from a Superior Court of law, and to hear and determine all cases in Equity brought before it by appeal from a Court of Equity or removed there by the parties thereto; and in every case such court may render such sentence, judgment, and decree as on an inspection of the whole record it shall appear to them ought in law to be rendered thereon; and shall have original and exclusive jurisdiction in repealing letters patent, and shall also have power to issue writs of certiorari, scire facias, habeas corpus, mandamus, and all other writs which may be proper and necessary for the exercise of its jurisdiction and agreeable to the principles and usages of law; and that it may at its discretion, make the writs of execution which it may issue returnable either to the said court or to the Superior Court from which the same may have been removed: *Provided always*, that when an execution shall be made returnable as last mentioned, a certificate of the final judgment of the Supreme Court shall always be transmitted to the Superior Court aforesaid and there be recorded. And pro-

Power and
jurisdiction of
the court.

To issue exe-
cution.

vided further, that the said Superior Court may enforce obedience to the said execution; and in the event of its not being executed, may issue any new or farther execution or process thereon, in the same manner as though the first execution had issued from the said Superior Court; and provided further, that in criminal cases the decision of the Supreme Court shall be certified to the Superior Court from which the case was transmitted to the Supreme Court; which said Superior Court shall proceed to judgment and sentence, agreeably to the decision of the Supreme Court and the laws of the State.

Certificate of
decision, &c.

Decision to
be certified.

Appointment
of clerk, &c.

SEC. 7. The Judges of the Supreme Court aforesaid shall have power to appoint a clerk of the said court, who shall hold his office for four years, and who, before entering on the duties of his office, shall enter into bond with sufficient security, payable to the State of North Carolina, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties, and for the safe keeping of all records committed to his custody; which bond shall be lodged with the Secretary of State; and who shall also before said Judges, or one of them, take the same oath as is prescribed by law to be taken by the clerks of the Superior Courts, and shall keep his office in the City of Raleigh, in one of the rooms of the State House; and the Judges are authorised to hold the court in the State House.

Clerk to re-
cord bills, &c.

SEC. 8. It shall be the duty of said clerk in all cases in equity now pending in that court or which may hereafter be in said court to record all bills, answers, pleas, replications and demurrers with all decrees, whether interlocutory or final, made therein, together with the opinions of the Chief Justice and Judges of said court; and the said clerk shall only record other parts of the proceedings in equity cases, when for sufficient reasons it may be specially ordered by said court: Provided that no account, deposition, or commission to take the same shall be ordered to be recorded, except at the expense of the party or parties requiring it to be done.

His pay for
such services.

SEC. 9. In estimating the allowance to the clerk for making the record as directed, the Judge shall not exceed the sum of thirty cents for each page recorded.

Judges to
prescribe
rules of prac-
tice.

SEC. 10. The Judges of the Supreme Court shall prescribe and establish from time to time, rules of practice for the Superior Courts; which rules the clerk of the Supreme Court shall

certify to the Judges of the Superior Courts, who shall cause the same to be entered on the records of the said courts.

SEC. 11. When an appeal shall be taken to the Supreme Court, from any interlocutory judgment at law of a Superior Court, or any interlocutory order, or decree of any Court of Equity, the Supreme Court shall not enter any judgment, reversing, affirming, or modifying the judgment, order or decree so appealed from, but shall cause their opinion to be certified to the court below with instructions to proceed upon such order, judgment or decree, or to reverse or modify the same according to said opinion; and it shall be the duty of the court below to enter upon its records the said opinion at length, and to proceed in the said cause according to said instructions.

Upon appeals from interlocutory judgments, &c.

SEC. 12. All exhibits or other documents relative to cases in Equity now pending or which may be hereafter pending in the Supreme Court, may be proved by the parol testimony of a witness or witnesses to be examined in said court, in the same manner and under the same rules as such exhibits or documents may be proved in the Superior Courts; and suitors in said court shall have subpoenas to enforce the attendance of witnesses, who shall be liable to the same penalties and actions for non-attendance, and be entitled to the same compensation for travelling, ferriage and attendance as witnesses in the Superior Courts: *Provided always*, that the witnesses attending the Supreme Court shall be taxed in the bills of costs and paid by the party on whose behalf they may be summoned.

Exhibit may be proved by witnesses in said courts.

Witnesses entitled to the same pay, &c.

SEC. 13. It shall be the duty of the Judges of said court to deliver their opinions or judgments in writing, with the reasons at full length upon which they are founded; and it shall not be lawful for the clerk of the said court to make any entry upon the records of the said court, that any cause depending therein is decided, nor to give to any person or persons whatever any certificates of such decision, nor to issue execution for the costs in such suit, until after the Chief Justice or some Judge or Judges, members of the said court, shall have delivered publicly and in open court the opinion of the said court, stating at length the ground and argument upon which such opinion shall be founded and supported, and shall have also delivered a written copy of the same opinion to the clerk, which shall afterwards be filed among the records of the said court and published in the reports herein directed by law to be published of the decisions made by the said court.

Judges to deliver their opinion in writing.

Clerk not to give a certificate nor to issue execution until opinion filed.

Power of the
c't to amend
proceedings.

SEC. 14. The Supreme Court shall have power to make any amendments in any case pending before it, by making the parties thereto which said court may deem necessary and proper for the purposes of justice, and upon such terms as said court shall prescribe; and also whenever it shall appear to them necessary for the purposes of justice to allow and direct the taking of further testimony in any case in equity which may be removed to the said court for trial, under such rules and restrictions as the said court may in its discretion prescribe.

Clerk to
transmit to
courts below,
certificates
&c.

SEC. 15. The clerk of the said court shall immediately after the rise of each term thereof, transmit to the clerks of the Superior Courts of law and Courts of Equity, certificates of the decisions of the Supreme Court in cases sent from said courts, and thereupon the said clerks respectively shall issue execution for the costs incurred in said cases in the courts from which the same was sent; and the clerk of the Supreme Court shall issue execution for the costs incurred in said court, including all publications in newspapers made in the progress of the cause in that court and by order of the same, and all postage of letters which concern the transfer of original papers.

Judges shall
appoint a Re-
porter.

SEC. 16. The Judges of the Supreme Court shall annually appoint a reporter of the decisions thereof, whose duty it shall be, within five months after the close of each term, to prepare the decisions of said court for the press, and shall contract with some printer to print one hundred and one copies at the expense of the State, which copies shall be distributed as follows, viz: to the Secretary of the Governor one copy, to retain one copy himself, which copies shall remain in their respective offices, and six copies to be deposited in the public library, and the said reporter shall deliver sixty-five copies of said reports, to be deposited, one in the office of the clerk of the Court of Pleas and Quarter Sessions of each county in this State, and twenty-eight copies by him to be deposited in the Executive office of the State, to be transmitted by the Governor to the Executive department of each of the States and Territories, at the expense of the State; and said reporter shall receive, as a compensation for his services, a salary of three hundred dollars, and shall be authorised, on his own account and at his own expense, to print, publish, and vend, and to obtain under this grant, and in conformity with the act of Congress the copy-

right of said reports of cases determined by said court; which salary shall be paid to him, upon satisfactory evidence to the Treasurer that the aforesaid copies have been deposited and distributed within the time aforesaid, and not otherwise.

SEC. 17. Should the office of Reporter become vacant and no suitable person should offer to fill the same, the Judges of the Supreme Court or either of them shall notify the clerk of said court of such vacancy, and it shall then be the duty of said clerk to prepare the decisions for the press, and at his option either to publish the same on his own account, as the Reporter is authorised to publish them, or as agent for the State to contract with some printer in this State or any other State to print the same; and the said clerk, for his own services in preparing the decisions of one year for the press and a compensation to the printer to be paid by him for publishing the same, shall be entitled to receive the salary of the Reporter; and the clerk, upon depositing with the Secretary of State, the copies reserved by law for the State, within six months after the term of decision, shall, upon the certificate of the Secretary of State to that effect, be entitled to receive the compensation by law allowed to the Reporter.

Clerk to perform the duty of reporter---when.

SEC. 18. It shall be the duty of the sheriff of Wake, by himself or deputy, to attend the said court; and shall be allowed for each term thereof he may attend, the sum of two dollars per day for every day said court shall be in session, to be paid by the Treasurer upon the certificate of the clerk of said court that the said Sheriff had performed said duty.

Sheriff of Wake to attend the court.

[Ratified 17th January, 1837.]

[Revised Statute.]

No. LXVII.

COURTS OF EQUITY.

An Act concerning Courts of Equity.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That each Superior Court of Law within this State shall also be and act as a Court of Equity for the same county, and possess all the powers and authorities within the same, that the Court of Chancery which was formerly held in this State, under the Colonial Government used and exercised, and that are properly and rightfully incident to such a court, agreeable to the laws in force in this State.

Courts of Equity established. SEC. 2. Such courts in all equity proceedings shall be styled and called the Court of Equity for the county in which it is held.

Style of c't. SEC. 3. The judges of the said Courts of Equity shall appoint some person of skill and probity to act as Clerk and Master in Equity to each of said courts.

To appoint Clerks. SEC. 4. The rules and methods of proceeding in said courts shall be as follows, to wit:—

Rules of c't. The Plaintiff may file his bill in the clerk's office either during term time or in the vacation; and thereupon the clerk shall issue a writ of subpoena as is usual in cases in Chancery; and when the plaintiff shall specially state his debt or damages, and make oath or affirmation thereto, either before one of the judges of the Superior Courts, of Law and Equity, or before one of the judges of the Supreme Court, or before the Clerk and Master in Equity, the said clerk shall together with the subpoena issue a writ directed to the sheriff of the county where the defendant is supposed to be a resident as follows, to wit:—

Plaintiff may file bill.

Capias when to issue.

The State of North Carolina. To the Sheriff of—County.—Greeting:

You are hereby commanded to take the body of _____ late of your county (if to be found in your county) and him safely keep, so that you have him before the Judges of the Superior Court of Law and Equity for the county of _____, at the town of _____, on the _____ day of _____ next, or till he shall give you good and sufficient security in the sum of \$ _____ (which sum is hereby directed to be double the damages suggested on oath in the bill) to appear and answer at the said court on the day aforesaid, to a bill in equity filed against him by _____ and this you shall in no wise omit at your peril. Witness _____ clerk and master of the said court at _____, the _____ day of _____ in the _____ year of the independence of the State.

Form of the writ

Which writ the sheriff is hereby directed and required to obey; and when any such writ shall issue to any sheriff or other officer, such sheriff or other officer shall not only be liable as special bail for taking an insufficient bond, on exception taken and entered the same term to which such process shall be returnable, the sheriff or other officer having due notice thereof, but such sheriff or other officer, shall also be liable as special bail for failing or neglecting to take from such person or persons arrested by virtue of such writ, a bond with two sufficient securities in double the sum for which such person or persons shall be arrested; and proceedings shall be had against him under the same rules, regulations and restrictions as in such cases in actions at law: *Provided*, that no such writ shall issue against an executor, administrator, or heir at law, who is sued as such; but the process against them and each of them, shall be by a writ of subpœna as usual in other cases of chancery; and the penalty for not attending shall be two hundred dollars—but the said penalty shall not be levied, nor final judgment given, until the term ensuing that to which the suit is returnable, nor without a scire facias having been duly served, and proof thereof made, to the satisfaction of the court, as in cases at law where scire facias is required—and where any other person is made a defendant, together with such executor, administrator, or heir at law as aforesaid, a capias may issue as above against such other person, and a writ of subpœna against such executor, administrator or heir at law. And, in all cases where there are two or more defendants, the plaintiff may issue subpœnas directed to the sheriff or coroner of each of the counties where the defendants are most likely to be found, noting

Sheriff's duty to serve it. Officer liable as special Bail for taking insufficient Bond &c.

Proviso.

on each process, that they are issued in the same suit; and when the same are returned, they shall be docketed, as if only one had issued; and in case any defendant should not be served with such process, the same proceedings shall be had as in cases of other similar process which has not been executed.

Copy of the bill and sub-
poena to be
served on &c. No writ shall be served by the sheriff unless he has a copy of the bill ready to deliver to the defendant, and he is hereby required to deliver the said copy immediately after the service of the said writ; nor shall any service be valid unless it be made at least ten days before the term at which the defendant is required to appear; and where the service is by subpoena, the defendant shall be served with a copy of the bill at least ten days before such term; on failure of any of which requisitions, the defendant may plead the matter in abatement, and the bill shall be dismissed.

Defendant to
plead &c. Upon such writ or subpoena being duly served, and a copy of the bill delivered in proper time, (proof being made to the satisfaction of the court by the return of the sheriff or by affidavit,) the defendant shall appear and put in his answer or plea agreeable to the practice in chancery, or demur; or on failure thereof, the plaintiff's bill shall be taken pro confesso, and appointed to be heard *ex parte* at the ensuing term: *Provided*, that if within the three first days of the ensuing term, the defendant shall offer any satisfactory reason to the court, for his not appearing at the first term, the order for the bill being taken pro confesso and heard *ex parte*, may be discharged, and the defendant then admitted to plead, answer or demur; and such time shall be allowed in this as well as in all other cases for the pleadings on both sides, and such day appointed for the hearing as the court shall direct; and if any defendant or defendants, against whom any subpoena or other process shall issue, shall not cause his, her or their appearance to be entered on such process, within such time and in such manner as according to the rules of the court the same ought to have been entered, in case such process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of the court, that such defendant or defendants reside or resides beyond the limits of the State, or that upon inquiry at his, her, or their usual place of abode, he, she or they could not be found, so as to be served with such process, and that there is just grounds

Court to order publication &c.

to believe that such defendant or defendants is or are gone without the limits of the State, or otherwise absconded to avoid being served with the process of such court, then and in such cases the court out of which such process issued may make an order, directing and appointing such defendant or defendants to appear at a certain day therein to be named; and in cases where such defendant or defendants reside or resides without the limits of the State, a copy of such order shall, within sixty days after such order made, be inserted in some Gazette regularly published within the State, for such length of time as the court may order and direct; and may, when they shall think necessary, direct such order to be inserted in any Gazette of the United States; and in cases where such defendant or defendants shall have withdrawn him, her, or themselves beyond the limits of the State, or otherwise absconded to avoid the service of such process, a copy of such order shall, within sixty days after such order made, be inserted in some Gazette regularly published within this State, for such length of time as the court shall direct, and shall, within the time aforesaid, be posted up at the door of the Court House where such order shall be made, and also in some public place within the county where such defendant or defendants respectively made his, her, or their usual abode, within thirty days next before such his, her or their absenting; and if the defendant or defendants do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on proof made of such publication of such order as aforesaid, the court being satisfied of the truth thereof, may order the plaintiff's bill to be taken pro confesso and make decree thereupon as shall be thought just; and may thereupon issue process as in other cases to compel the performance of the decree, either by execution as hereinafter provided to satisfy the demands of the plaintiff or plaintiffs in the said suit, or by causing the possession of the estate and effects demanded by the bill to be delivered to the plaintiff or plaintiffs, or otherwise, as the nature of the case may require. First, *Provided nevertheless*, that such plaintiff or plaintiffs shall first give sufficient security, in such sum as the court shall think proper, to abide such order, touching the restitution of such estate or effects as the court shall think proper to make concerning the same, upon the de-

Order of publication to be posted up at the Court House.

Court may grant plaintiff a decree unless, &c.

Proviso:

defendant or defendants appearing and petitioning to have the said cause reheard, and paying such costs to the plaintiff or plaintiffs as the court shall order. Secondly, that if any decree shall be made, in pursuance of this act, against any person or persons residing without the limits of the State at the time such decree is pronounced, and such person or persons shall, within two years after making such decree, reside within the State, or become publicly visible therein, then and in such case, he, she, or they shall likewise be served with a copy of such decree within a reasonable time after his, her or their coming into the State, or their public appearance shall be known to the plaintiff or plaintiffs; and in case any defendant or defendants against whom such decree shall be made, shall, within two years after the making of such decree, happen to die before his or her coming into the State, or appearing openly as aforesaid, or shall, within the time last before mentioned, die in custody, before his or her being served with a copy of such decree, then the heir of such defendant as shall have any real estate whereof possession shall have been delivered to the plaintiff or plaintiffs, if such heir may be found, or if such heir shall be a feme covert, infant or *non compos mentis*, the husband, guardian, or committee of such heir respectively, or if the personal estate of such defendant shall have been levied upon or possession thereof delivered to the plaintiff or plaintiffs, then his or her executor or administrator, if any such there may be, may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff or plaintiffs that the defendant is dead, and who is his or her heir, executor or administrator, and where he, she or they may respectively be served therewith within the State. Thirdly, *Provided always*, if any person or persons so served with a copy of such decree shall not, within twelve months after such service, appear and petition to have the said cause reheard, such decree so made as aforesaid, shall stand absolutely confirmed against the person or persons so served with a copy thereof, his, her or their respective heirs, executors, and administrators, and all persons claiming or to claim by, from or under him, her or them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit. Fourthly, *Provided nevertheless*, that if any person so served with a copy

When decree made against persons residing without this State, &c.,

When the defendant shall die within two years, &c.

Defendant &c. may appear within 12 months, &c.

of such decree, shall, within twelve months after such service, or if any person not being so served shall, within three years next after the making such decree, appear in court and petition to be heard with respect to the matters of such decree, and shall pay down or give security for the payment of such costs as the court shall think reasonable in that behalf, the person or persons so petitioning, his, her or their respective representatives, or any person claiming under him, her, or them respectively by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceeding, decree and execution may be had thereon, as there might have been in case the same party had originally appeared, and the proceeding had then been newly begun, or as if no former decree or proceedings had been in the same cause.—

Fifthly, *Provided nevertheless, and be it enacted*, that if any person or persons against whom such decree shall be made, his, her, or their heirs, executors or administrators shall not, within three years next after the making of such decree, appear, and petition to have the cause reheard, and pay down or give security for the payment of such costs as the court shall think reasonable in that behalf, such decree made as aforesaid, shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her or their heirs, executors and administrators, and against all persons claiming, or to claim by, from or under him, her, them or any of them, by virtue of any act done or to be done, subsequent to the commencement of such suit; and at the end of such three years, it shall and may be lawful for the court to make such further order as shall be just and reasonable, according to the circumstances of the case. Sixthly, *Provided always*, that this act shall not extend, or be construed to extend to warrant, or make good any proceedings against any person residing without the State, unless the ground or cause of action, or the transaction on which the bill may be brought, took place within the limits of the State.

Petition for re-hearing may be filed at any term within three years, &c.

Proviso.

Commissions to take testimony may issue directed to any two justices of the peace, who shall have all the powers of commissioners in chancery; and the rules of proceedings in all cases of taking such testimony, shall be conformable to the meth-

Commissions to take testimony to issue

od of proceeding heretofore observed in the courts of chancery in this State, provided no such testimony shall be taken until at least twenty days notice of the time and place of taking the same be given to the opposite party, unless the court for sufficient reasons, should appoint any other limited time for the notice, which they may do in all cases, either by enlarging or shortening the time hereby appointed for taking such testimony, as the case may require.

Commissions may also issue to any justice or justices of the peace to take the plea, answer, or demurer of a defendant, as is accustomed in cases in chancery with respect to commissioners of chancery; and the said justice or justices shall have all the power of such commissioners for that purpose.

Commissions
may issue to
take the plea,
&c.

Any one Judge of the court, or Judge of the Supreme Court, may in the vacation, if it shall be necessary, grant such commissions as are above mentioned, or may himself examine testimony, or take the plea, answer, or demurrer of the defendant, in like manner; he may also grant injunctions or *ne exeat*, when the necessity of the case will not admit of a delay, but still subject to the control and further order of the court; and no *ne exeat* shall issue where sufficient bail has been taken for the party's appearance.

Such com-
mission may
be granted in
vacation by
any Judge,
&c.

It shall be the duty of the said court to direct the trial of such issues as to the court may appear necessary, according to the rules and practice in chancery in such cases. Costs shall be paid by either party, at the discretion of the court. The court may, at any time during the dependence of the suit, require further security from a defendant, or, on failure thereof, make use of such personal process as was formally used by the court of chancery held in this State, and deemed incident to the chancery jurisdiction; and the court shall, in all cases, have power to order such process, to enforce their sentences and decrees, as have usually belonged to courts of chancery.

Court may di-
rect the trial
of such issues
as it thinks
necessary &c.

SEC. 5. It shall be the duty of the several sheriffs in this State to serve all notices, issuing from clerks and masters in equity, to parties concerned in all references to them made; and for neglect or failure to do the same, they shall be subject to the same penalties as by law provided for omission or neglect in serving other process issuing to them.

Sheriff to
serve all no-
tices.

SEC. 6. In all cases where decrees shall be made in any

suit in equity, for any sum or sums of money, it shall and may be lawful for execution to issue thereon against the defendant's body, or against his goods and chattels, lands and tenements, to satisfy such decree and costs, in the same manner as executions may or shall issue at law; and lands and tenements, goods and chattels shall be bound by such decree and execution, in the same manner as lands and tenements, goods and chattels are by judgments and executions at law.

Executions may issue, and property of defendant bound.

SEC. 7. Whenever any suit shall be brought in any of said courts in equity, in which security shall be given for the prosecution thereof, and a decree shall be entered up against the plaintiff for the costs of the defendant or defendants, it shall be the duty of the court, upon motion of the defendant, also to make a decree for said costs against the security for the prosecution; whereupon execution shall issue jointly against said plaintiff and securities.

When security given for the prosecution, &c.

SEC. 8. Where the defendant or defendants in any case now depending, or hereafter to depend, in any of the Courts of Equity within this State, shall die after the service of a copy of the complainant's bill and subpœna, it shall and may be lawful, on suggesting the death of such defendant or defendants, to issue a *scire facias* against the legal representatives of such deceased person or persons, in the same manner, and under the same rules, regulations and restrictions, as are used in suits at common law; and service of such writ, on the legal representatives, shall be as affectual and valid to revive and carry on such suit, as if a bill of revivor had been filed against them, and they served with a copy thereof.

When defendant dies after service of a bill, &c.

SEC. 9. Whenever a party complainant, in any suit in equity, shall die after filing the bill, it shall and may be lawful for the legal representatives of such deceased person to carry on such suit, *provided* application to that effect be made by such representatives to the court in which such suit may depend, at or before the second term after the decease of such party, and not thereafter.

When complainant dies, &c.

SEC. 10. No bill, answer, or other paper or proceeding in any suit in any court of Equity in this State (interlocutory decrees excepted) shall be enrolled until the cause is finally decreed on, and then only upon motion by the party to take benefit by such decree; and the court shall have power, and are

No bill, answer, or other paper to be enrolled till final decree.

hereby directed; to adjudge and determine what papers shall and may be enrolled in any suit on motion as aforesaid.

SEC. 11. No injunction commanding the stay of an execution obtained in any court of this State, except on judgment in action of detinue, shall be granted by the Judges or any of them for any other or greater sum than what the complainant or complainants shall, on oath, declare to be just, and not until such complainant or complainants shall enter into bond, with sufficient security, before the master of the court of equity whence the injunction issues, for the payment into court of the sum complained of, and all costs upon the dissolution of the injunction.

SEC. 12. No injunction to stay an execution shall issue but within four months after the judgment at law is obtained, unless it shall appear, from the oath of the complainant or complainants, to the Judge before whom application is made for an injunction, that such application has been delayed in consequence of the fraud or false promises of the plaintiff at law, practised or made at the time of, or after, obtaining judgment, or unless it shall appear, on oath, that the said complainant or complainants was or were out of the State at the time of entering up judgment, so that application could not be made within the time aforesaid.

SEC. 13. In all cases where bonds are given on obtaining an injunction, upon the dissolving of the injunction, said bonds shall be proceeded on in the same manner, and under the same rules, regulations and restrictions that bonds given upon appeals from the county to the Superior Courts are proceeded on.

SEC. 14. No injunction, bill or other process in equity, requiring a stay of any execution obtained against a citizen or citizens, on the part of the State, shall be granted by the Judges thereof, or any of them, until the complainant or complainants shall first produce a receipt from the public Treasurer, or other public officer, shewing the actual payment and discharge in full of all such part of the judgment obtained, authorised to give the same as aforesaid, as he or they, by their bill of complaint, shall not, on oath, declare is unjust.

SEC. 15. In any of the Courts of Equity, where any of the parties defendant is an infant or person *non compos*, and resides out of this State, having no guardian residing within the State

it shall be lawful for the said courts to appoint a guardian to such infant or person *non compos*, to defend his or her interest in the suit to which he or she may be defendant: *Provided nevertheless*, that the said infant or person *non compos*, may, at any time within three years after the decree shall be made in said suit, appear in said court and petition to be heard with respect to the matter of such decree; and such proceedings, decree and execution may be had thereon as there might have been in case the proceedings has been then newly begun, or as if no former decree or proceedings had been in the same cause.

When a defendant is an infant or non compos and resides without the State, &c.

SEC. 16. In any case which now is, or hereafter may be, pending in any Court of Equity, it shall and may be lawful for each court, on sufficient cause shewn by affidavit, rendering such a removal necessary for the purposes of justice, to order the said cause, before a hearing, to be removed into the Supreme Court: *Provided*, that such removal shall not be permitted until such cause shall have been set down for hearing; nor shall any parol evidence be received in the Supreme Court, either before the Judges thereof or the jury whom they may cause to be empannelled for the trial of any issues of fact, except witnesses to prove exhibits on other documents.

Cause may after it is set for hearing be removed to Supreme court.

SEC. 17. No bill of review or a petition for a re-hearing shall lie or be allowed upon a final decree, in any of the Courts of Equity within this State, but within five years next after such decree shall have been made, and not after; saving, nevertheless, the rights of infants, *feme coverts* and persons *non compos mentis*, so that they avail themselves of the benefit of the writ of error or bill of review within three years after their disabilities shall have been removed.

Time within which bills of review shall lie or be allowed.

[Ratified 4th January, 1837.]

[Revised Statute.]

No. LXIX.

JUSTICES OF THE PEACE.

An Act Concerning the power and jurisdiction of Justices of the Peace.

Justice to
take the oath
appointed for
public officers

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That every person appointed a justice of the peace, before entering upon and executing the said office, shall, within twelve months thereafter, and not after that time, unless re-appointed, publicly, in the Court House of his county on a court day, take the oaths appointed, or which shall be appointed, by the General assembly for the qualification of public officers, and also an oath of office. And if any person shall presume to execute the office of a justice of the peace, without first qualifying himself in the manner by this act required, he shall, for every such offence, forfeit and pay the sum of two hundred dollars, one half thereof to the county, the other half to the person suing for the same, to be recovered with costs, by action of debt, in any court of record within this State, where the same is cognizable.

Justices be-
ing a candi-
date not to sit
upon the elec-
tion of officers

SEC. 2. No justice of the peace, being a candidate for the office of a Sheriff, County Court Clerk, Register, Entry Taker, Surveyor, County Trustee, or Ranger of his county, shall vote or sit on the bench at the election of such officer. And if any justice of the peace shall sit on the bench or vote in such election, his vote shall not be counted, and he shall forfeit and pay, for every such offence, the sum of one hundred dollars, to be recovered by action of debt, one half to the person suing for the same, and the other half to the use of the county.

SEC. 3. When any justice of the peace hath or shall remove himself out of the county for which he is or shall be appointed,

and shall not return within twelve months to reside therein, his appointment shall be void: And it shall not be lawful for such justice to act as a justice of the peace, unless re-appointed by the General Assembly, under a penalty of one hundred dollars for every such illegal act, to be recovered by action of debt, one half to the use of the county, the other half to the person suing for the same. Justice remaining out of the county 12 months to lose his office.

SEC. 4. All justices of the peace shall, within their respective counties, have full power and authority to maintain, keep and preserve the peace, solemnize the rites of matrimony, and issue necessary process to enforce the collection of debts and other contracts coming within their jurisdiction. Power of the justice.

SEC. 5. No justice of the peace shall practise as an attorney in the Courts of Pleas and Quarter Sessions of the county for which he is such justice; nor shall he be appointed, or act as clerk or deputy thereof, or as sheriff or deputy sheriff, constable, or county trustee, or jailor, within his county. And if any justice shall accept any of such appointments, he shall thereby vacate his office as such justice: And if he shall, after the acceptance of any such appointment, act as a justice, without a re-appointment by the General Assembly, he shall, for every such act, forfeit and pay the sum of one hundred dollars, to be recovered in any court having cognizance thereof, in the name of the wardens of the poor of such county, to be by them applied to the use of the poor. Justice not to practice as an attorney, &c.

SEC. 6. All debts and demands due on bonds, notes and liquidated accounts, when said accounts shall be stated in writing, and signed by the party from whom the same shall be due, when the principal does not exceed one hundred dollars, although the principal and interest together may exceed that sum; and all debts and demands of sixty dollars and under, for a balance, due on any special contract, note or agreement, or for goods, wares and merchandise, sold and delivered, or for work or labor done, or for specific articles, whether due by obligation, note or assumpsit, or for any judgment which may have been granted by a single magistrate, and no execution have issued thereon within twelve months, or for any forfeitures or penalty incurred by any act of the General Assembly, shall be cognizable and determinable by any one justice of the peace out of court. Justices jurisdiction in civil matters.

Form of warrant and its execution.

SEC. 7. All warrants issued by a justice of the peace, shall be made returnable on or before thirty days from the date thereof, Sundays excepted, and not after; and when issued against any person, executors and administrators, female debtors excepted, shall command the sheriff, constable or other officer to take the body of the person therein mentioned as defendant, if to be found in his county, to answer the complaint of the plaintiff in such warrant, before some justice of his county; and such officer, when required by the plaintiff, shall take bond, with sufficient security, of the party arrested, in double the sum for which such person shall be held in arrest, (which sum and how due shall be expressed in the warrant,) conditioned for his appearance at a certain time and place therein to be specified, before some justice of the county where the warrant issued; which bond shall be assigned by such officer to the plaintiff, and returned with the warrant, and shall be filed by the justice that shall try the warrant with the other papers in the suit; and in case the sheriff, constable or other officer shall fail or neglect to take such bond, with security as aforesaid, he shall be held and deemed special bail, and the plaintiff may proceed to judgment against him according to the rules hereinafter prescribed.

SEC. 8. When any sheriff, constable or other officer shall serve a warrant on any person or persons, who shall refuse to give bond and security for his or her appearance as aforesaid, such officer is hereby required to commit such person or persons to the jail of his county, in order that he may have such person or persons forth coming at the day appointed for trial; and it shall be the duty of such officer to produce his prisoner at such trial; and all warrants, whether by summons, arrest or attachment, shall be heard or determined on the day appointed by the officer serving the warrant as aforesaid, which day shall be on or before the return day set forth in the warrant, unless the justice shall, for good reasons, put off the trial to some other day at his discretion. And in case the plaintiff shall fail to attend or prosecute his suit on the day appointed as aforesaid, the defendant appearing shall be discharged; and it is hereby declared to be the duty of the officer serving a warrant, to notify the plaintiff of the time and place appointed to try and determine the cause; *provided*, that when the sheriff, constable

When a defendant arrested refuses to give bail, such officer to commit him to the jail of the county.

or other officer shall have committed any defendant to jail as aforesaid, it shall be the duty of such officer to give immediate notice thereof to some justice in the county; and such justice shall appoint a day for the trial, and notice of the time of such trial shall be given and served on the plaintiff by the officer who served the warrant.

SEC. 9. All bail taken according to the directions of this act, shall be liable to the recovery of the plaintiff; but the plaintiff, after final judgment, shall not take out execution against the bail until an execution against the body of the defendant be first returned by the sheriff, constable or other officer, that the defendant is not found in his county, and not until a notice, in writing, issued against the bail by the justice who has possession of the papers in the original suit, hath been made known to the bail; and after the return of such execution against the principal, and notice against the bail, execution may issue against the principal and bail, or any of them, or any of their estates, unless the bail shall make it appear that the principal is dead, or that the judgment has been satisfied, or unless the bail shall surrender the principal at or before the return of such notice to the officer who served the notice; in which latter case the justice shall commit the principal to the jail of his county, until he shall satisfy the judgment and costs.

No execution
to issue a-
gainst bail
until ca. sa.
&c.

SEC. 10. Such bail shall, at any time before final judgment had against him, have full power and authority to arrest the body of his principal and secure him, until he shall have an opportunity of surrendering him in discharge of himself to the officer who made the arrest or served the notice; and such officer is hereby required to receive such surrender, and hold the body of defendant in custody as if bail had never been given.

Bail may ar-
rest principal
in order to
surrender
him

SEC. 11. When any judgment is given by a single magistrate, it shall be in his power or that of any other justice of the peace, to award execution against the goods and chattels, lands and tenements, or body of the party cast, which process shall be executed and returned by the sheriff, constable or other lawful officer to whom the same may be directed, in the same manner as other writs of *fieri facias*, or *capias ad satisfaciendum*, are to be executed and returned: *Provided always*, that where a judgment shall be given by a justice of the peace as aforesaid, execution thereon shall be stayed in the following manner, viz: For all sums not exceeding four dollars, twenty

Execution
how to issue
and be re-
turned.

days; for all sums above four dollars, and not exceeding ten dollars, sixty days; for all sums above ten dollars, and not exceeding twenty dollars, one hundred and twenty days; and for all sums above twenty dollars, six months. And for the true and faithful payment thereof, with interest and costs, the party praying such stay of execution shall, if required, give sufficient security; and the acknowledgment of such security entered by the justice, and signed by the party, shall be sufficient to bind him; and if the judgment shall not be discharged at the time to which the execution has been stayed, then it shall be lawful for the justice who has possession of the judgment, to issue execution as aforesaid against the principal and security.

Judgment &c
not entitled to
stay.

SEC. 12. When any warrant shall be granted on a former judgment, on the trial of such warrant, the former judgment shall be evidence of the debt, subject to such deductions as the defendant may make appear to have been paid; and if judgment in such case passes against the defendant, he shall not be entitled to any stay on the same.

Justice may
continue trial
upon sufficient
cause
shewn.

SEC. 13. Every justice of the peace, before whom a warrant is brought for trial, shall have full power and authority, on sufficient excuse shewn, on oath, by either the plaintiff or defendant, their agent or attorney, to postpone from time to time or continue for trial the same: *Provided* such continuance or postponement shall in no case exceed thirty days; and it shall be lawful for any justice of the peace to act on said postponement or continuance, the original date of the warrant exceeding thirty days notwithstanding.

On trial of civil
warrant
deposition of
witnesses, &c.

SEC. 14. When, on the trial of a civil warrant, the testimony of a witness not resident within the county where the same is pending, is required by either party, the deposition of said witness, taken by a single magistrate of the county where the witness may be, upon reasonable notice to the adverse party of the time and place of taking the same, shall be read in evidence; and the magistrate, if the deposition is taken within this State, shall have power to issue a summons to compel the attendance of the witness.

SEC. 15. Whenever a judgment shall be given in the absence of either plaintiff or defendant, by any justice of the peace, whether execution hath been issued or not, on application of such absent party, his or her agent or attorney, within

ten days after the date of said judgment, to the justice who awarded the same, on sufficient cause shown, on oath or affirmation, why he, she or they could not attend the day of trial, it shall be the duty of the said justice to issue his order to the plaintiff, defendant or officer, as the case may require, in possession of the papers relative to the suit, to forbear any further proceedings thereon, and immediately to bring the same before him or some other justice for re-consideration, *provided* that the applicant shall give sufficient security for his appearance: It shall also be the duty of the justice aforesaid to issue his summons, directed to some proper officer, to cause the parties, with their witnesses, to appear before him or some other justice, at such time and place, not exceeding thirty days, as he may think proper, where the case shall undergo a fair investigation, and be subject to the same proceedings as if it had never been acted on; and the officer to whom the summons may be directed, shall receive for his trouble in executing the same, the same fees he is entitled to for summoning witnesses, to be taxed against the party at whose instance it issued.

Where judgment obtained in absence of a party a new trial may be granted.

SEC. 16. All executions issued by a justice of the peace, against the estate of any person or persons, shall be made returnable in three months from the date thereof, and shall be directed to the sheriff, constable or other lawful officer, commanding him that of the goods and chattels of the party cast, he make such sum or sums of money therein mentioned, or for want of such goods and chattels to satisfy said execution, then he levy on the lands and tenements of such person or persons, and make return thereof to the justice who issued the same, setting forth on the execution the money he has made of goods and chattels, and what lands and tenements he has levied on, where situate, on what water course, and whose land it is adjoining; and the justice to whom the return is made, shall return such execution, with all other papers on which the judgment was given, to the next court to be held for his county; which land shall, by order of said court, be sold by the sheriff of said county, or so much thereof as shall be sufficient to satisfy said judgment, in the same manner as real property is sold by writs of *fieri facias* or *venditioni exponas* issuing from such court; and the clerk of the court where such papers are returned, shall, in a well bound book kept for that purpose, record the

Executions returnable when, how levied, &c.

whole of the papers and proceedings had before the justice; and when any execution shall be returned to a justice not fully satisfied and discharged, it shall be lawful for any justice of the peace for said county to issue another execution for the sum so remaining due on the former execution.

Justice to direct by order on the papers, the officer to summon witnesses.

SEC. 17. Any justice of the peace is hereby authorised and required, on application of either plaintiff or defendant named in any original process issued by a single justice, to direct the sheriff, constable or other lawful officer, by an order in writing on the process, to summon witnesses to appear and give testimony in such suit, at the time and place appointed for trial; and such witnesses failing to appear and give evidence, shall forfeit and pay the sum of four dollars to the party at whose instance he was summoned, and further be liable to the action of the party aggrieved for damage sustained by his non attendance; which fine shall be recovered before any justice of the peace, unless such witness, on affidavit or otherwise, shall shew sufficient cause to the contrary, subject to appeal as in other cases.

Executions against persons removing out of the county, how proceeded on, &c.

SEC. 18. When any execution shall issue to a sheriff, constable or other officer, in virtue of a judgment obtained before any justice of the peace, and the person or persons against whom such judgment may be obtained, shall remove him or themselves to any other county within this State, and the sheriff or other officer cannot find any property whereon to levy said execution, then and in such case, the said sheriff or other officer shall return such execution to the next court to be held for said county; and the plaintiff, on application, shall be entitled to an execution for the whole or any part of said execution which remains unpaid by the return of such officer; and the clerk by order of the said court shall make a record of the same, and issue execution to the county where the defendant or defendants reside, in the same manner and under the same rules as in cases of judgments obtained in said courts.

Manner of removing judgment of a justice from one county to another.

SEC. 19. It shall and may be lawful for any person having a judgment or execution against any person from a justice of the peace, and the said defendant has no property in the county wherein the same may be levied, to return the execution to the clerk of the county in which judgment was obtained out of court; and it shall be the duty of the clerk to certify, under seal, the justice or justices who gave judgment was an acting

justice or justices of said county; on which certificate any justice or justices in any other county in this State, shall and may award execution, for the sums therein expressed, against such defendant or defendants.

SEC. 20. It shall and may be lawful for any justice of the peace, who now is or may be hereafter appointed, to accept and exercise any civil office or appointment of profit or trust, under the authority of the United States, the duties of which appointment shall be confined to this State; any law to the contrary notwithstanding.

Justice may accept appointment under the U. States.

SEC. 21. No process issued by a justice of the peace shall be set aside for the want of form, if the essential matters are set forth therein.

SEC. 22. If either of the parties to a trial before a justice of the peace shall be dissatisfied with the judgment given thereon, he may appeal to the next term of the Court of Pleas and Quarter Sessions, first giving security for prosecuting such appeal with effect.

Either party may appeal upon giving security.

SEC. 23. In all cases where appeals shall be granted from the judgment of a justice, the acknowledgment of the security, subscribed by him or her and attested by the justice, shall be sufficient to bind the security to abide by and perform the judgment of the court.

The acknowledgment of the security signed by the justice sufficient to bind him.

SEC. 24. When any justice of the peace shall grant an appeal to the county court, it shall be the duty of such justice to return such appeal on or before the second day of the court to which it may be returnable; and he is hereby authorised and required, on application of either of the parties, to issue subpoenas, directed to the sheriff or other lawful officer in any county in this State, for witnesses to appear and give testimony at the court to which such appeal is returnable; and the officer to whom such subpoena is directed, and the witnesses summoned in consequence thereof, shall be under the same rules and regulations, and subject to the same penalties, and entitled to the same pay, privileges and emoluments as if such subpoena had issued from the clerk of the court to which such appeal shall be returnable.

Justice to return appeal on or before the second day of the term. To issue subpoenas for witnesses.

SEC. 25. Where any person, against whom a judgment shall be rendered by a single magistrate, shall be desirous to appeal to the county court or to stay the same, and shall be unprovided

Party may
appeal or stay
execution.

with security on the day of trial, upon the request of such person, his agent or attorney, it shall be the duty of the justice rendering such judgment to grant such person ten days to give his securities for an appeal or stay of execution, as the case may be, and shall make an entry thereof on the warrant. And when judgment shall be entered against either plaintiff or defendant in their absence, the person or persons against whom such judgment hath been given, on making oath within ten days from the rendition of said judgment, before any justice of the county where such judgment may be entered, that he, she or they was or were prevented from attending on the day of trial by bodily infirmity, mistaking the day of trial, or other sufficient cause; and that he, she or they are likely to be injured by such judgment, that then and in that case, it shall and may be lawful for such justice to grant an appeal to the next county court or stay of execution, on such person or persons entering into bond with sufficient security as in other cases of granting appeals or staying of execution from the judgment of the justice: and it shall also be the duty of such justice to give to the party craving such appeal, a written order to the constable or other person having such judgment in his or their hands, commanding him to return such judgment, together with such other papers and documents as may be in their hands relative to such judgment, to him the said justice before the next county court, and also commanding said officer to give notice to the party in whose favor such judgment hath been given, of an appeal having been granted thereon; and that it shall be the duty of the justice, on receiving such judgment and other papers, to make return thereof, together with the appeal bond and affidavit of the party craving such appeal, to the next ensuing court of his county, to be tried as other appeals from justices judgments.

Execution
may issue in
the mean
time.

SEC. 26. Nothing in the preceding section contained, shall prevent the party entitled to the same, from taking out execution at any time before the same is stayed or an appeal granted.

Officer to re-
turn the pa-
pers to justice

SEC. 27. If any execution shall issue upon any judgment where the defendant prayed an appeal or stay of execution before the ten days be expired, upon security being given as by this act directed, such execution shall be returned to the justice of the peace who issued it, and shall not be acted on by any officer; and the officer or other person who has any such

execution, shall, on due notice being given him in writing from the justice who granted the execution, deliver up the same or be liable to the action of the party grieved.

SEC. 28. Every justice of the peace within the county for which he shall be appointed, shall have power to restrain evil doers, rioters and disturbers of the public peace, and to take them and cause them to be imprisoned and punished, and take of them that be not of good fame, security for their good behavior. Justices to restrain rioters.

SEC. 29. If any riot, assembly or rout of people against law be made, any two justices of the peace and the sheriff, shall come with the power of the county, (if need be) and arrest them; and the same justices and sheriff shall have power to record that which they find done in their presence against law; and if such offenders be departed before the coming of the justices and sheriff, then the same justices and sheriff shall diligently inquire, within a month after, of such riot, rout or unlawful assembly, and shall record the same—and the record so made by them in either case, said justices shall return to the next succeeding term of the court of pleas and quarter sessions or of the Superior Court to be held for their county. Two justices with sheriff to suppress riots

SEC. 30. It shall be the duty of the justices of the peace dwelling nighest when such riot, rout or unlawful assembly shall be made, to execute the provisions of the preceding section. The justices nearest, &c.

SEC. 31. It shall be the duty of all magistrates to suppress all such riots, routs and unlawful assemblies—and may, when necessary, use the power of the county for that purpose, and shall take such offenders and put them in prison, to be dealt with according to law. All magistrates to act.

SEC. 32. It shall be the duty of all constables in each and every county, within their respective counties, or upon any bay, river or creek, adjoining their counties, to serve all notices that shall be to them tendered or delivered, which are or may be required by law to be given for commencing or prosecuting any cause before any justice of the peace out of court. Constables to serve notices.

SEC. 33. The constable shall serve the same by delivering a true copy thereof to the person to whom the same should be delivered, if to be found in his county, or by leaving a copy thereof at the usual place of abode of such person, if in his How notice to be served and returned.

county; and shall certify on the notice, the time when such notice was served, or copy left at the place of abode; and such return shall be evidence of the service of the said notice as may be therein stated, and the said constables shall deliver the said notice with the return thereon to the party, his attorney or agent, at whose instance such notice issued, upon demand of the same.

Penalty on
constables for
neglect, &c.

SEC. 34. Any constable, neglecting or refusing to execute and return such notice, or making a false return thereon, shall be subject to the same action and penalties as for refusing or neglecting to serve, or falsely returning process or precepts, directed to them from a justice of the peace out of court, to be prosecuted, recovered and applied as actions and penalties are directed to be prosecuted, recovered and applied for refusing or neglecting to serve, or falsely returning process or precepts issued from a justice of the peace out of court.

Proviso.

SEC. 35. Nothing contained in the three preceding sections, shall prevent any person from giving notice and proving the same as heretofore.

[Ratified 2nd January, 1837.]

ENTRIES.

CHAP. XIX.

An Act to amend the several acts of the General Assembly, prescribing the time to pay for entries of Lands in this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the author-

Time of pay-
ing entry mo-
ney extended.

ity of the same, That all entries of lands, for the years one thousand eight hundred and thirty-three, one thousand

and eight hundred and thirty-four, and one thousand eight hundred and thirty-five, the purchase money for which may become due and payable on or before the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, may be paid in, and the payment of the same is hereby extended to the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and on that day shall be punctually paid; any law to the contrary notwithstanding: *Provided always*, that nothing in this act shall be so construed as to prejudice the priority of the entry of land by any person, the payment of the purchase money for which it is extended by this act, but that all such entries shall have and possess all the privileges and benefits of the existing laws, as if the purchase money had been paid at the time it became due, and this act had not been passed: *Provided also*, that nothing in this act contained shall be construed so as to interfere with any other person who has made entries before the passage of this act.

Proviso.

SEC. 2. This act shall be in force from and after its ratification.

[Ratified the 10th January, 1837.]

CHAP. XX.

An Act fixing the time for perfecting titles to lands heretofore entered and paid for.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That all persons who have made entries of vacant land, and paid the purchase money to the State for the same, since the first day of January, one thousand eight hundred and eleven, shall have until the first day of

Allows till
Jan. 1, 1838,
to persons
who have
paid.

January, eighteen hundred add thirty-eight, to perfect their titles to the same by grant.

Persons who have not paid, allowed till Jan. 1, 1837.

SEC. 2. *Be it further enacted*, That all persons who have heretofore made entries of land agreeably to the law now in force, and have not paid the purchase money into the Treasury, shall have until the first day of January, eighteen hundred and thirty-seven, to perfect titles; any law to the contrary notwithstanding.

SEC. 3. *And be it further enacted*, That this act shall be in force from and after its ratification.

[Ratified 27th December, 1836.]

GOVERNOR.

CHAP. XXI.

An Act prescribing the manner in which contested elections of Governor shall be determined in this State.

Person intending to contest the election of Govern'r, to give notice, &c.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That hereafter, when any person or persons shall contest the election of any person who may be elected Governor, or may have received the largest number of votes, agreeable to the returns of the respective sheriffs of the State, such person or persons shall, in writing, give notice to him whose election he or they intend to contest, of such his or their intention, as well as the specific grounds upon which he or they may intend to contest his election; setting forth the county or counties in which he or they alledge that spurious or illegal votes were given, or any other evasions of the law or constitution,

having relation to the case, shall have taken place, at least thirty days before the first day of December in the year in which such election is held, and also in one or more newspapers published in Raleigh; and satisfactory proof that such notice has been given, shall be required before the General Assembly proceed to inquire into the truth of such allegations: *Provided, however,* that if the person whose election is contested is out of the State, or not to be found at the time, that thirty days notice, in one or more of the newspapers published in Raleigh, shall be deemed sufficient.

SEC. 2. *Be it further enacted,* That the sheriffs of the several counties shall, within thirty days after the election for Governor, in addition to the returns now required by the constitution, make out, and transmit to the Secretary of State, a duplicate of the vote for Governor in his county, which the Secretary shall keep in his office for the inspection of any person wishing to examine the same; and every sheriff failing or refusing to make the returns required by the constitution, or transmitting the duplicate as herein required, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court having jurisdiction thereof, in the name of and to the use of the State; and it is hereby made the duty of the Secretary to sue for the same; and such sheriff shall, moreover, be held and deemed guilty of a misdemeanor, and, upon conviction thereof in any of the Superior Courts of law in this State, shall be fined, at the discretion of the court, not exceeding one thousand dollars.

Sheriff to transmit duplicate to the Secretary of State.

Penalty upon sheriffs failing to return.

SEC. 3. *Be it further enacted,* That any person who shall vote for Governor, other than those specified by the constitution, shall in all cases be liable to the same fines and penalties as persons are now subject to for voting illegally for members of the House of Commons.

Penalty upon illegal voters.

SEC. 4. *Be it further enacted,* That in future the Speaker of the Senate shall open, in the presence of a majority of the two Houses, the returns for Governor, during the first week in December in which the Legislature shall be

Returns by whom and when to be opened

Upon sugges-
tion, either
House may
examine, &c.

in session; and upon a resolution or the suggestion of any member of either House, such House shall proceed to examine whether the individual returned as having the largest number is duly elected. Each House shall separately determine all such cases; and unless a majority of each House shall declare the person returned as having the largest number of votes is not duly elected, then the Speaker of the Senate, in presence of both Houses, shall pronounce such person duly elected.

Depositions
may be ta-
ken, &c.

SEC. 5. *Be it further enacted,* That it may be lawful for any person to take depositions to be read in such cases, before two magistrates, which depositions shall have the certificate and seal of the clerk of the county court in which such depositions are taken, setting forth that such persons are acting justices of the peace for the county: *Provided, however,* that no such deposition shall be deemed evidence, unless ten days notice shall have been given to the person whose election is contested; which notice shall be given in writing, to be proved by the person delivering it, who shall depose before a justice of the peace that such notice was delivered by him, setting forth the date of its delivery. If, however, the person whose election is contested, is out of the State, or not to be found, fifteen days notice, given in a newspaper published in Raleigh, shall be sufficient.

[Ratified 23rd January, 1837.]

INTERNAL IMPROVEMENT.

CHAP. XXII.

An Act to aid the Internal Improvements of this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That, besides the funds heretofore set apart for Internal Improvements, there shall be added and appropriated for that purpose, all the surplus revenue received by this State from the treasury of the United States, under the late act of Congress, to regulate the deposits of the public money, after deducting the sum of three hundred thousand dollars, which is to be devoted to the redemption of the public debt of the State; the sum of three hundred thousand dollars, which is to be paid for stock subscribed in the Bank of Cape Fear; and the portion of said surplus which is to be added to the Literary Fund, and to be applied to draining the swamp lands, according to the provisions of sundry acts of the present General Assembly.

Appropriates
surplus reve-
nue.

SEC. 2. *Be it further enacted, That* the Board of Internal Improvements shall hereafter consist of the Governor of the State, for the time being, who shall be *ex-officio* President thereof, and of two commissioners, to be appointed annually by the Governor, by and with the advice of the Council of State; any two of whom shall constitute a board for the transaction of business; and the said board shall have the same powers and authority, and be subject to the same duties and restrictions, as the Board of Internal Improvements heretofore existing; and in case of vacancies accruing in said board, the Governor

Board of In-
ternal Imp.
of whom to
consist, &c.

and council may fill the same as before directed; and they may, in like manner, remove any of the commissioners appointed as aforesaid.

SEC. 3. *Be it further enacted,* That the said board may hold its sessions wherever, and whenever the Governor may direct; and the said commissioners shall receive, for their services, the sum of three dollars each, per day, and their travelling expenses, for the time they may be employed in the public service.

Board, meetings of, and their compensation.

SEC. 4. *Be it further enacted,* That the public Treasurer shall keep the accounts of the said board in the same manner as heretofore; and for that special purpose, may employ a clerk at a sum not greater than three dollars per day, for the time he may be engaged as such: *Provided,* that his compensation shall not exceed the sum of five hundred dollars in any one year.

Treasurer to keep acco'ts and employ clerk.

SEC. 5. *Be it further enacted,* That all the monies which are hereby appropriated to the fund for Internal Improvement, as well as any other moneys which may come into the treasury of said board, shall be deposited in the banks of this State, until they shall be disposed of in manner as hereinafter directed.

Money to be deposited in banks.

State's subscription to Raleigh and Wilmington Road.

SEC. 6. *Be it further enacted,* That whenever it shall be made to appear to the said Board of Internal Improvement, by a certificate, under the corporate seal of the Wilmington and Raleigh Rail Road Company, signed by their Treasurer, and countersigned by their President, that at least three fifths of the whole capital stock of said company, which may be necessary to construct said Rail Road from the town of Wilmington to Weldon, on the Roanoke river, have been subscribed for, and taken by individuals or corporations, and that at least one fourth of such private subscriptions, of not less than three fifths of the whole capital as aforesaid, has been actually paid into the hands of the said Treasurer, and that the remainder of said subscription is either so paid or is made by solvent persons fully able to pay, and the said board shall be satisfied of the truth thereof, they shall be, and they

are hereby authorised and required, to subscribe, on behalf of the State, for the remaining two fifths of the capital of said company; and said subscription on the part of the State, shall be paid in manner following, that is to say: one fourth thereof shall be paid, upon such certificate as aforesaid, at the time of subscription; one other fourth upon a like certificate, that another fourth of such private subscriptions has been paid by the subscribers; the next fourth upon a like certificate; and the residue, upon a like certificate. And the said board are also authorised and required to subscribe and pay, on behalf of the State, to the Fayetteville and Western Rail Road Company, two fifths of the capital stock which may be necessary to construct said Rail Road from the town of Fayetteville to the Yadkin river above the Narrows; which sum shall be ascertained by actual surveys and estimates of a competent engineer. And they shall likewise subscribe and pay, on behalf of the State, to the North Carolina Central Rail Road Company, two fifths of the capital stock which may be necessary to construct the Rail Road last aforesaid, from the port of Beaufort to the town of Fayetteville, which shall be also ascertained by a skillful engineer as aforesaid; the subscriptions and payments to the two latter companies being under the same rules, regulations and restrictions as are herein before provided, as to the Rail Road Company first mentioned: *provided*, that the said board, by virtue of such subscriptions, and payment on behalf of the State, shall appoint two fifths of the whole number of directors in each of the corporations aforesaid; and that in all general meetings of the stockholders, in any of said companies, the said commissioners of Internal Improvement, or any other representative of the State, whom the said board may appoint, shall be entitled to two fifths of the whole number of votes which may be given at such meeting.

SEC. 7. *Be it further enacted*, That until the said funds for Internal Improvements shall be actually required for the payment of the subscriptions herein directed

Manner of
payments.

Subscriptions
to Fayette-
ville & Wes-
tern Road.

Do. to central
road.

To be paid as
above.
Proviso.

Board may
lend.

to be made, or for some other object, to which they shall be devoted by the Legislature, it shall be the duty of the board aforesaid, and they are hereby authorised and required, to lend the same, upon good security, either to individuals or corporations, taking bonds therefor, payable semi-annually, but capable of renewal, should the board not direct otherwise, and bearing interest from date; which said bonds shall be recorded by the Treasurer of the board in a book kept for that purpose, and shall be deposited as special deposits in one of the banks in this State.

Failure of
company, &c.
to release the
State from
obligation to
subscribe.

SEC. 8. *Be it further enacted*, That if any of the aforesaid incorporated companies shall fail to obtain the requisite number of private subscribers, to give to such company a corporate existence by the terms of its charter, for one year from and after the adjournment of the present session of the General Assembly, or shall fail to commence the construction of their Rail Road, and to call in and receive one fourth of the payment on the subscription as aforesaid, before the next regular biennial session of the same, or shall fail to complete the same within the time limited by their acts of incorporation, then the State shall be no longer bound to make or pay the subscriptions aforesaid.

No other fund
pledged.

SEC. 9. *Be it further enacted*, That no other fund, than the portion of the surplus revenue first aforesaid, shall be considered as pledged for said subscriptions; and that the State may cease to be a subscriber after said surplus is exhausted, but shall be a stockholder to the amount of shares for which she has actually paid in any of said companies.

Governor to
cause publica-
tion of pay-
ment.

SEC. 10. *Be it further enacted*, That it shall be the duty of the Governor, as President of said board, during the recess of the General Assembly, to cause publication of any subscription or payment, made in pursuance of this act, to be made in one or more public newspapers, printed at the city of Raleigh, as soon thereafter as the same can be conveniently done.

SEC. 11. *Be it further enacted*, That all the profits

accruing to the State, from her subscription, under this act, to Internal Improvement, and from loans which may be made by the board, shall be added to the Literary Fund.

Profits added
to Literary
Fund.

SEC. 12. *Be it further enacted*, That this act shall be in force from and after its ratification.

When to take
effect.

[Ratified 20th January, 1837.]

LITERARY FUND.

CHAP. XXIII.

An Act to drain the swamp lands of this State, and to create a fund for Common Schools.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That there shall be a board of literature in this State, to be denominated and called by the name of "The President and Directors of the Literary Fund of North Carolina;" and by that name they are incorporated into a body politic and corporate, and shall be capable of suing in any court of record in this State.

Establishing
a board of
literature in
this State.

SEC. 2. That the Governor of this State, by virtue of his office, shall be the president of the said board; and there shall be three other members of the said board biennially nominated and appointed as such by the Governor of this State, under and with the advice of his council; but in case a vacancy occurs, the same shall be filled by the other members of the board.

Gov. to be
President of
the board, &
to appoint 3
other mem-
bers, &c.

SEC. 3. That all the swamp lands of this State, not heretofore duly entered and granted to individuals, shall

Lands vested in said corporation. be vested in the said corporation and successors, in trust, as a public fund for education and the establishment of common schools.

Other property and funds vested in said corporation. SEC. 4. That in addition to the said lands, the following property and funds shall be vested in said corporation and their successors, in trust as aforesaid, to wit: all the shares of stock owned by the State in the Bank of the State of North Carolina, excepting one thousand shares, together with all the shares of stock now held in said bank in the name of the president and directors of the Literary Fund, making, in all, five thousand shares; and also five thousand shares of stock in the capital of the Bank of Cape Fear, and the profits and dividends arising from said stock; which profits shall be re-invested by the said president and directors from time to time as they accrue, for the use of said fund, as they may judge best; subject, however, at all times, to the direction and control of the General Assembly.

Board to adopt ways & means to cause lands to be surveyed, drained, &c. SEC. 5. That the said president and directors of the Literary Fund shall be, and they are hereby invested with full power and authority to adopt all necessary ways and means, for causing so much of the swamp lands aforesaid to be surveyed, as they may think capable of being reclaimed; and after the said lands, or any part of them, shall be surveyed, to contract with one or more persons to construct canals, ditches and other works necessary for the purpose of reclaiming the said lands, upon such terms and conditions as may be prescribed by the said corporation; the contractor or contractors, in each case, giving bond and security for the faithful performance of the agreement.

Written consent of individuals to vest titles in said corporation. SEC. 6. Whenever it shall be necessary to construct any of the works of said corporation on the lands of any individual proprietor, the written consent of such proprietor, without any formal deed of conveyance for the lands necessary to the work, and its future unrestricted enjoyment, shall vest the title thereof in the said corporation forever; and when any infant or person non compos

mentis, or feme covert, shall be owner thereof, the guardian of such infant or person non compos mentis, shall be, and he is hereby authorized to give such consent; and the feme covert, with her husband, may do so, without any separate examination; and the consent so given, shall, in either case, be good and valid to all intents and purposes.

SEC. 7. That whenever the consent of the proprietor aforesaid shall be withheld or refused, it shall be lawful for the said corporation, or their agents, to enter on the said lands, and lay off so much of the same as may be necessary to be used in said work, the value of which shall be assessed to the proprietor according to the law of the land; and upon the payment thereof, the title of said land shall be vested in the said corporation forever: *Provided*, that in the assessment of said valuation, the benefit that will accrue to the proprietor by reason of said improvement, may be likewise reckoned and set off against the said damages.

When proprietor shall refuse consent, corporation may enter on land, and have it assessed.

SEC. 8. That when there are lands, owned by individuals, which can be reclaimed by reason of the canals, ditches or other works of the said corporation, the said lands owned by individuals shall be assessed to contribute an equitable proportion of the costs of said works; which assessment shall be made by the said president and directors, or by a board of commissioners appointed by them; and the assessment so made, shall be charged on said lands: *Provided, however*, that the said corporation may, by contract with individual proprietors, agree upon the said assessment, and accept payment thereof in labour or money.

Lands of individuals improved by canals, &c. to pay proportion of costs.

SEC. 9. The said president and directors shall have power and authority to appoint an engineer and surveyor and other servants, under them, to plan the works herein contemplated, upon the most reasonable terms they can be procured; and they may enact all necessary rules and regulations for surveying and reclaiming the swamp lands of this State, or any of them; for assessing the lands of individuals, which may be improved by the works; and

President and directors to appoint an engineer and surveyor, and adopt rules for surveying, assessing, &c.

for collecting said assessments: and the assessments so made shall be published weekly, for five weeks, in one of the newspapers published in Raleigh, and also filed in the office of the clerk of the Superior Court where the lands assessed are situate; and if no objections are filed at the court next after such advertisement, the said assessments shall be confirmed by the court, and the lands adjudged liable for the amount, and execution may be issued for the sale of said lands, to satisfy the same, on motion to the court for that purpose: and if any reasons be shown against the said assessments, they shall be heard and determined by the said court; and the said assessment shall be increased or diminished as the court shall adjudge is right.

SEC. 10. The said corporation, and their officers or agents, shall have a right to enter upon the lands of all and any persons whomsoever, for the purpose of surveying; and all the grants and deeds for swamp lands heretofore made, shall be proved and registered in the county where such lands are situate, within twelve months; and every such grant or deed not being so registered within the time aforesaid, shall be utterly void and of no effect, and the title of the proprietor in said lands shall revert to the State of North Carolina.

Corporation may enter upon any lands.
Grants and deeds to be proved and registered.

SEC. 11. That the said corporation may sell and convey any part of the lands, which may be reclaimed, for the best price that can be obtained for the same; and the title of the purchaser or purchasers, shall be good and valid in law and equity. But the corporation shall not sell any canal by them constructed under this act.

Corporation may sell land, &c.

SEC. 12. That the corporation aforesaid, shall not expend any part of the moneys and stocks herein before vested in them for the purpose of reclaiming the said lands.

Moneys corporation not to expend.

SEC. 13. That two hundred thousand dollars shall be, and is hereby appropriated to the use of the said president and directors; and they have power to expend so much thereof, in reclaiming the swamp lands, as can be

Sum appropriated to their use.

beneficially applied to that object; and if the same shall not be immediately required, the said president and directors shall have power to loan the same, on short credit and good security, or to deposit it with a bank or banks, at a reasonable rate of interest, as they may see fit, until it is required for the work herein provided for.

SEC. 14. That besides the powers herein before given, the said president and directors are invested with all the rights and powers heretofore belonging to the president and directors of the Literary Fund of this State; and also with all powers and authority necessary and proper for reclaiming the swamp lands of this State, and for obliging the owners of any part of said lands to contribute an equitable share of the expenses, whenever such owners are benefited by the work of the company.

Rights and
powers of
corporation.

[Ratified 20th January, 1837.]

CHAP. XXIV.

An Act to repeal so much of the act, passed during the present session, entitled "an act to establish a fund for Internal Improvement, and to create a board for the management thereof," as is inconsistent with an act passed at the same session, entitled "an act to aid the Internal Improvements of this State;" and also to repeal so much of the act, passed during the present session, entitled "an act to create a fund for the establishment of common schools," as is inconsistent with another act, passed during the same session, entitled "an act to drain the swamp lands of this State and to create a fund for common schools."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the au-

Repealing
clause.

thority of the same, That so much of the act, passed during the present session, entitled "an act to establish a fund for Internal Improvement, and to create a board for the management thereof," as is inconsistent with an act, passed at the same session, entitled "an act to aid the Internal Improvement of the State;" and also so much of the act, passed during this session, entitled "an act to create a fund for the establishment of common schools," as is inconsistent with another act, passed during the same session, entitled "an act to drain the swamp lands of this State, and to create a fund for common schools," be, and the same are hereby repealed.

Pay of Lite-
rary Board.

SEC. 2. *Be it further enacted, That the persons composing the Literary Board, created under an act, entitled "an act to create a fund for the establishment of common schools," shall be entitled to receive the same pay, and under the same regulations, as persons composing the board created under an act entitled "an act to aid the Internal Improvements of this State."*

If C. F. Bank
fail to accept,
&c.

SEC. 3. *Be it further enacted, That if the stockholders in the Cape Fear Bank shall fail to accept the amendment of their charter, which is made by an act of the present General Assembly, so that the funds of the State cannot be invested in the stock of said bank as by said act is directed, it shall be the duty of the President and Directors of the Literary Fund to loan out the sum so directed to be invested and added to the Literary Fund, or otherwise to secure and manage the same, so as to cause said fund to accumulate as rapidly as possible.*

SEC. 4. *This act shall be in force from and after its ratification.*

[Ratified 23d January, 1837.]

CHAP. XXV.

An Act to provide for draining the Mattamuskeet Lake.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Governor of this State be, and he is hereby authorised and empowered to appoint three commissioners, who shall be, and they are hereby constituted a board of commissioners for the purposes hereafter named. And the Governor is hereby authorised to supply any vacancy that may occur by death, resignation, removal, or refusal to act.

Governor to
appoint com-
missioners.

SEC. 2. *Be it further enacted,* that the said commissioners are hereby authorised to examine and ascertain the most practicable route for a canal, to lead from Mattamuskeet Lake, in Hyde county, to some convenient water course, which will drain the said Lake. That when the said board of commissioners shall have ascertained and fixed upon the route of said canal, they are hereby authorised and empowered, on behalf of the State, to contract with one or more persons to cut or open said canal; the said contract to be made on such terms and conditions as the said commissioners may think proper, taking bonds, with good securities, in double the amount of the contract, conditioned for its due and faithful performance.

Commission-
ers to locate
and contract
for canal.

SEC. 3. *Be it further enacted,* That it shall not be lawful for any person to enter lands that are now vacant, and which may hereafter be reclaimed by the operations of this canal.

Land not to
be entered.

SEC. 4. *Be it further enacted,* That the said commissioners shall be allowed the sum of three dollars per diem, for every day they may be engaged in performing the duties enjoined by this act.

Pay of com-
missioners.

SEC. 5. *Be it further enacted,* That the Public Treas-

Sum Treas-
urer to pay.

urer be, and he is hereby authorised and directed, to pay, on the warrant of the said commissioners, a sum not exceeding eight thousand dollars, out of any moneys belonging to the Literary Fund.

Commission-
ers to con-
tract with in-
dividuals for
their aid.

SEC. 6. *Be it further enacted;* That said commissioners, before locating the canal, shall ascertain what assistance, in cutting the same, can be procured from those who may receive benefit therefrom; and in the location of the said canal, the commissioners shall have reference to such assistance, and are hereby authorised to make, with said individuals, such contract, in behalf of the State, for the purpose aforesaid, as they may deem necessary.

Commission-
ers to report,
&c.

SEC. 7. *Be it further enacted,* That the said commissioners shall report to the next General Assembly. This act is to be in force from and after its passage.

To give bond.

SEC. 8. *Be it further enacted,* That the said commissioners shall give bond for the faithful performance of their duties; which bond shall be taken by the Governor, payable to the State of North Carolina.

Ratified 18th January, 1837.

MISCELLANEOUS.

CHAP. XXVI.

An Act concerning the Revised Statutes.

Revised Stat-
utes when to
take effect.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the following acts, passed at the present session of this General Assembly, and known as "the Revised Statutes," shall take effect and go into operation on

the first day of January next and not sooner, except those as to which a different provision is expressly made therein, and the acts concerning Courts of Justice, the Militia, the collection and management of the public revenue, the Treasurer of the State and Comptroller, Pilots and pilotage, salaries and fees, which shall take effect immediately, to wit:

1. An act ascertaining the mode of proving book debts.
2. An act concerning entries and grants of land.
3. An act concerning wrecks, and wrecked property.
4. An act concerning the militia of this State.
5. An act concerning public documents.
6. An act concerning the mode of choosing Senators and Representatives in the Congress of the United States.
7. An act concerning bastardy, and prescribing the mode of legitimating bastard children in certain cases.
8. An act concerning divorce and alimony.
9. An act concerning attorneys at law.
10. An act concerning constables.
11. An act providing for the support of the poor.
12. An act concerning bail in civil cases.
13. An act concerning executors and administrators.
14. An act concerning Coroners.
15. An act concerning the Comptroller.
16. An act concerning quarantine, and to prevent the introduction and communication of contagious diseases.
17. An act concerning the Treasurer of the State.
18. An act to provide for the collection and management of a Revenue for this State.
19. An act concerning religious societies and congregations.
20. An act prescribing what shall be evidence in certain cases.
21. An act to prevent the abatement of suits in certain cases.
22. An act to prevent the destruction of oysters in this State.
23. An act concerning the Secretary of State.
24. An act concerning mad dogs.
25. An act concerning last wills and testaments.

26. An act for the relief of such persons as have been disabled by wounds, or rendered incapable of procuring for themselves and families subsistence, in the militia service of this State, and providing for the widows and orphans of such as have died.
27. An act concerning overseers.
28. An act for restraining the taking of excessive usury.
29. An act providing for the appointment of electors to vote for a President and Vice President of the United States.
30. An act concerning the action of replevin.
31. An act concerning hunting.
32. An act concerning the currency of this State.
33. An act concerning the draining of lands.
34. An act providing for the appointment of notaries.
35. An act concerning corporations.
36. An act to establish a fund for Internal Improvement and to create a board for the management thereof.
37. An act prescribing a mode by which partition of real and personal estates may be made among tenants in common, and in what cases such estates may be sold for a division.
38. An act to reduce into one the several acts concerning pilots and commissioners of navigation.
39. An act concerning the Attorney General and Solicitors for the State.
40. An act concerning strays.
41. An act concerning idiots and lunatics.
42. An act concerning weights and measures.
43. An act authorising attachments to issue for the recovery of debts and directing the proceedings thereon.
44. An act concerning iron and gold mines.
45. An act concerning fences.
46. An act to regulate descents.
47. An act concerning the appointment and duties of a patrol in each county.
48. An act concerning legacies, filial portions and distributive shares of intestate's estates.

49. An act concerning cattle, horses and hogs.
50. An act for the relief of sick and disabled American seamen.
51. An act concerning the repeal of statutes.
52. An act concerning incorporated towns.
53. An act to enable women in certain cases to maintain actions of slander.
54. An act concerning charities.
55. An act for regulating ordinaries.
56. An act concerning the University of North Carolina.
57. An act for the more effectual suppressing of vice and immorality.
58. An act prescribing the mode of recovering against certain officers therein mentioned, and their securities.
59. An act concerning apprentices.
60. An act concerning oaths.
61. An act concerning the Governor and Council of State.
62. An act concerning the improvement of rivers and creeks, and to prevent obstructions to their navigation.
63. An act concerning mills and millers.
64. An act concerning the appointment of guardians and the management of orphans and their estates.
65. An act for the relief of insolvent debtors.
66. An act concerning the Supreme Court.
67. An act concerning Courts of Equity.
68. An act concerning the powers and jurisdiction of Justices of the Peace.
70. An act appointing commissioners to take affidavits.
71. An act to empower the several County Courts to establish fairs in their respective counties.
72. An act declaring what parts of the common law shall be in force in this State.
73. An act prescribing the salaries and fees of the several officers of this State.
74. An act concerning offices.
75. An act concerning the burning of woods.
76. An act concerning the seat of Government and public buildings.

77. An act concerning surety and principal.
78. An act to create a fund for the establishment of common schools.
79. An act providing for the appointment and directing the duties of County Trustees.
80. An act concerning bills, bonds and promissory notes.
81. An act prescribing the mode of subjecting the lands of deceased debtors for the payment of their debts.
82. An act concerning auctions and auctioneers.
83. An act concerning the clerks of the County and Superior Courts.
84. An act concerning deeds and conveyances of lands and slaves, mortgages and powers of attorney, their execution, probate and registration.
85. An act concerning Sheriffs.
86. An act for limiting the time within which actions may be brought, and for quieting the title to lands and slaves, and prescribing the time within which presumption of satisfaction may arise.
87. An act concerning waste.
88. An act concerning gaming.
89. An act concerning the processioning of lands.
90. An act concerning courts of justice, practice, pleas, and process.
91. An act concerning Registers.
92. An act prescribing the disposition of money remaining in the hands of clerks and sheriffs a certain time.
93. An act concerning court houses, prisons and stocks, and prescribing the appointment and duties of the Treasurer of public buildings.
94. An act concerning the appointment and duties of clerks and masters in equity.
95. An act concerning county revenue and county charges.
96. An act concerning marriage.
97. An act concerning prisoners.
98. An act for the prevention of frauds and fraudulent conveyances.
99. An act concerning estates.

100. An act concerning crimes and punishments.
101. An act concerning executions, and execution sales.
102. An act concerning appeals and proceedings in the nature of appeals.
103. An act concerning the General Assembly of the State of North Carolina.
104. An act concerning the public roads, ferries and bridges in this State.
105. An act concerning slaves and free persons of color.
106. An act concerning forcible entry and detainer.
107. An act concerning writs of quo warranto and mandamus.
108. An act to prohibit the circulation of Bank notes, under five dollars.
109. An act concerning the amendment of process, pleadings and other proceedings at law.
110. An act concerning widows.
111. An act to prevent the taking away of boats, canoes and pettiaugers from landings or elsewhere without leave.
112. An act concerning the public arms.
113. An act concerning proceedings in criminal cases.
114. An act for the better security of personal liberty.
115. An act for establishing public landings and places of inspection, and for the appointment of inspectors and regulation of inspections.

SEC. 2. All acts and parts of acts, passed before the present session of this General Assembly, the subjects whereof are revised and re-enacted in the Revised Statutes, or which are repugnant to the provisions therein contained, and all the statutes of England or Great Britain heretofore in use in this State, are hereby declared to be repealed, and of no force and effect from and after the first day of January next, with the exceptions and limitations hereafter mentioned.

Acts repeal'd,
with excep-
tions and li-
mitations.

SEC. 3. The repeal of the acts and statutes mentioned in the next preceding section, shall not affect any act done or any right accruing or accrued or established, or any suit or proceedings had or commenced in any case before the time

Repeal not to
affect &c.

when such repeal shall take effect; but the proceedings in every such case shall be conformed, where necessary, to the provisions of the Revised Statutes.

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

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

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

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

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

SEC. 9. The Revised Statutes enumerated in the first section of this act, shall not be published in the usual pam-

phlet form, (except those herein before directed to take effect immediately,) with the other acts of the present session, but shall be published in a separate volume, under the superintendence and direction of two commissioners, to be appointed by the Governor, who, in case of vacancy after the appointment, shall fill the same; who shall procure the same to be done in good style, upon the most economical terms, giving a preference, when the style and terms of printing are equal, to the printers of this State; shall take bond for the faithful performance of the work of those who may undertake the same. They shall be arranged, in the publication, in alphabetical order, according to their heads or titles, with marginal references as reported by the commissioners of revision, and also with references to the decisions of the Supreme Court upon their subject, and with a full index. In the same volume shall be published the constitution of the United States, and the constitution and bill of rights of this State, and the Mecklenburg declaration of Independence, with a short narrative thereof. There shall also be published in the same volume, the acts of a public nature passed at this session, excluding all acts granting corporate privileges.

Public Statutes to be published in separate vol's under the superintend'nce of commissioners, &c.

How to be arranged.

What shall be published in same vol.

SEC. 10. There shall be published, in a second volume, the second charter of Charles the second, to the Lords Proprietors of this State; the Great Deed of Grant from the Lords Proprietors; the Grant from George the second to Earl Granville; and the following acts, to wit: all the acts relating to the boundaries of the State, and its several counties; all acts ceding the lands of this State to the General Government; all acts incorporating banks and rail road, turnpike and navigation companies, which are now in force and use; all acts relative to the incorporation or to the corporate powers of the Trustees of the University; and such other acts, now in force, and not repealed by this act, as the superintendents may in their discretion think proper to place in the said second volume.

Matters to be published in a 2nd volume.

SEC. 11. There shall be published of the first volume of the said Revised Statutes, five thousand copies; and of the second volume, one thousand copies; the copy right whereof

No. of copies to be published, &c.

shall be secured to this State by the said superintendents; and the expense of preparing, printing, publishing, binding and distributing the said copies, shall be paid by the Public Treasurer, on the warrant of the Governor, founded on requisitions made from time to time by the said superintendents.

How to be
distributed.

SEC. 12. The said copies, when completed, shall be distributed, under the direction of the Governor, as follows, to wit: to the Library of the Congress of the United States, ten copies; to the several States and territories, three copies each; to the Library of the University of North Carolina, three copies; to the Governor, Treasurer, Secretary of State and Comptroller, two copies each, for the use of their respective offices; to the State Library, five copies; to the clerks of both houses of the General Assembly, five copies each, for the use of their respective houses; to the clerk of the Supreme Court, and the clerks of the several Superior and County Courts, one copy each, for the use of their respective courts; to the Judges of the Supreme and Superior Courts, one copy each; to the members of the present General Assembly, who shall not be justices of the peace on the first day of January, one thousand eight hundred and thirty eight, one copy each; to the justices of the peace of the several counties, one copy each, of the first volume only. All the remaining copies shall be sold, for the benefit of the State, by such person, in such manner, and upon such terms, as the Governor shall direct and appoint.

Compensation
of superintendents.

SEC. 13. The said volumes shall be published as speedily as practicable: and when completed and delivered to the order of the Governor, the superintendents shall receive such compensation as to the Governor shall seem just and reasonable, to be paid by the Public Treasurer, upon his warrant.

Copies to be
received as
evidence of
law.

SEC. 14. *Be it further enacted*, That the copies of the Revised Statutes, which shall be printed as aforesaid, shall be received as evidence of the law before all tribunals, and in all places, in the same manner, to all intents and purposes, as the originals in the office of the Secretary of State.

[Ratified 23rd January, 1837.]

CHAP. XXVII.

An act allowing sheriffs or their deputies to administer oaths in certain cases.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That whenever the freeholders, designated in the act of seventeen hundred and seventy seven, chapter twenty-three, passed in relation to mills, shall be assembled for the purposes specified in that act, the sheriff or any justice of the peace may administer the oath required to be taken by them.

Sheriff or
justice may
administer
oaths.

SEC. 2. *And be it further enacted,* That 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.

Deputy may
administer
oaths.

[Ratified 14th December, 1836.]

CHAP. XXVIII.

An Act increasing the liabilities of Sheriffs.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in future whenever a sheriff, by himself or deputy, shall receive into his hands claims for collection, it

Duty of sh'ff, shall be his duty as an officer, diligently to endeavor to collect, and pay them over in like manner as constables are now bound; and in default of such duty, he shall be liable to the owner of such claims for damages, which may be recovered in any court of law, by suit on his official bond, executed under the provisions of the act of the General Assembly, passed in the year seventeen hundred and seventy-seven, chapter eight; and for moneys collected on such claims, the sheriff and his sureties shall be liable in like manner and for like damages, as are now provided for in the case of money collected by sheriffs under process of law.

Penalty, &c.

[Ratified 19th December, 1836.]

CHAP. XXIX.

An Act making an appropriation for carrying on and completing the Capitol of this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the sum of one hundred and twenty thousand dollars be, and the same is hereby appropriated for carrying on, completing and furnishing the capitol now being erected in the city of Raleigh; and the commissioners appointed by law are hereby authorised, or a majority of them, to draw on the Public Treasurer of this State for such sums, out of the said appropriation, as they, or a majority of them, may require from time to time in the progress of said work; and the warrants of said commissioners shall be a sufficient authority to the Treasurer for payment of the sums so required.

[Ratified 19th January, 1837.]

CHAP. XXX.

An Act concerning depositions of persons confined in jail.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That whenever it may be necessary to use the testimony of any prisoner who may be confined in jail, it shall be lawful for the party desiring to use it, to take his or her deposition, under the same rules and regulations as are prescribed for the taking of depositions in other cases; and such deposition so taken may be read in evidence in the absence of the prisoner confined in jail as aforesaid; subject, however, to the same exceptions as other depositions.

Deposition of
prisoners may
be taken and
read in evi-
dence.

[Ratified 15th January, 1837.]

CHAP. XXXI.

An Act to authorise Courts of Equity to direct the Clerks and Masters thereof to execute titles for all property sold under decrees of said courts.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in all cases hereafter where any clerk and master in equity, shall sell any real or personal estate, in obedience to a decree of a Court of Equity, and shall be authorised, by said decree, to make title to the purchaser or purchasers for the same, the deed of the clerk and master of the court ordering the sale, shall be held, deemed and ta-

ken as good and sufficient to convey to the purchaser or purchasers such title, interest and estate in the real or personal property so sold, as the party of record owning the same had therein.

SEC. 2. *Be it further enacted*, That this act shall be in operation from and after its passage.

[Ratified 22nd December, 1836.]

CHAP. XXXII.

An Act to make compensation to the Secretary of State for additional services required of him.

Preamble.

Whereas, by a resolution of the General Assembly of one thousand eight hundred and thirty-one, the Secretary of State was required to collect the books of the State Library, and discharge the duty of Librarian; and by an act of the present General Assembly, respecting the public printing, important additional duties are required of him:

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Secretary of State be allowed the sum of fifty dollars per annum, for his services as State Librarian, during the term he has, and may continue to discharge the duties of State Librarian; and the sum of one hundred dollars every two years, for the services required of him by the act aforesaid, concerning the public printing, to be paid by the Public Treasurer as an addition to the salary of the said Secretary of State.

\$50 as Librarian.

\$100 for duties required by act concerning public printing.

[Ratified 23d January, 1837.]

CHAP. XXXIII.

An Act to alter the time of holding elections in the counties of Halifax, Northampton and Martin.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the elections for members of Congress, for Governor, for clerks of the Superior and County Courts, sheriffs, and members of the General assembly, shall hereafter be holden, in the years in which they severally occur, in the counties of Halifax, Northampton and Martin, on the first Friday in August, under the same rules and regulations as are now prescribed by law.

Elections
when to be
held.

SEC. 2. *Be it further enacted,* That all laws, and clauses of laws, coming within the meaning and purview of this act, be, and the same are hereby repealed.

Repealing
clause.

SEC. 3. *Be it further enacted,* That this act shall be in force from and after its ratification.

When to tak'
effect.

[Ratified 6th January, 1837.]

CHAP. XXXIV.

An act concerning the Public Arms now in the Arsenals in Raleigh and Fayetteville.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be the duty of the Adjutant General, and he is hereby authorised, to employ some well qualified artist, at as low price as possible, to repair the public arms

Adj. Gen. to
have public
arms repair'd,
&c.

now in the Arsenals at Raleigh and Fayetteville, and to have each Musket and rifle deeply stamped with the letters, N. C.

Arms, where
to be deposit-
ed and distri-
buted.

SEC. 2. *Be it further enacted*, That when the said arms are so stamped, and in proper order for service, they shall be deposited by the Adjutant General at the following places of depot, viz: At Morganton, six hundred and thirty-five rifles, to be distributed one hundred and five to each of the counties of Rutherford, Burke, Buncombe, Yancy, Haywood and Macon. At Salisbury, one thousand one hundred and fifteen rifles, and three hundred and six muskets, to be distributed, one hundred and five rifles to each of the counties of Rowan, Wilkes, Davie, Davidson, Lincoln, Iredell, Stokes, Surry, Ashe, Cabarrus and Mecklenburg; and one hundred and two muskets to each of the counties of Guilford, Randolph and Montgomery. At Fayetteville, eight hundred and sixteen muskets, to be distributed, one hundred and two to each of the counties of Cumberland, Moore, Anson, Richmond, Robeson, Columbus, Bladen and Sampson. At Wilmington, three hundred and six muskets, one hundred and two to each of the counties of New-Hanover, Brunswick and Duplin. At Raleigh, eight hundred and sixteen muskets, to be distributed, one hundred and two to each of the counties of Wake, Johnston, Franklin, Orange, Person, Chatham, Rockingham and Caswell. At Newbern, six hundred and twelve muskets, to be distributed, one hundred and two to each of the counties of Craven, Carteret, Jones, Lenoir, Wayne and Onslow. At Washington, five hundred and ten muskets, to be distributed, one hundred and two to each of the counties of Beaufort, Hyde, Pitt, Green and Edgecombe. At Elizabeth City, five hundred and ten, to be distributed, one hundred and two to each of the counties of Camden, Currituck, Tyrrel, Pasquotank and Perquimons. At Plymouth, six hundred and twelve muskets, to be distributed, one hundred and two, to each of the counties of Washington, Bertie, Hertford, Martin, Gates and Chowan. At Halifax, five hundred and ten muskets, to be distributed, one hundred and two to each of the counties of Halifax, Nash, Northampton, Warren, Granville. And the Adjutant General is hereby author-

ized to employ, at each of the above depots, an agent to receive and distribute the said arms.

SEC. 3. *Be it further enacted,* That the Adjutant General shall forthwith inform the seignior Colonel of several counties at what depot the quota belonging to his county may be, who shall send for the said arms, and receipt to the Adjutant General therefor. The Colonel shall deposite the arms with one or more companies of his regiments, and take the Captain's receipt therefor; and each soldier shall sign the receipt for his musket or rifle in the muster book; and the expenses of conveying the arms from the depots shall be paid out of the fines collected in the company or companies receiving the said arms. When any soldier, from age or any other cause, leaves the company, he shall hand over the musket or rifle to the Captain; and any person selling a musket or rifle stamped as aforesaid, shall be subject to indictment in any court, and be fined and imprisoned at the discretion of the court.

Adj. Gen. to inform seign. Col. &c. who shall send for arms, &c.

Receipts to be given, &c.

SEC. 4. *And be it further enacted,* That when any Volunteer Company, which has been, or may be incorporated, shall be dissolved, the muskets or rifles shall be delivered over to the Colonel, and by him disposed of as heretofore directed.

When volunteer company shall be dissolved, &c.

SEC. 5. *Be it further enacted,* That the expenses of repairing and stamping the public arms, in pursuance of this act, and also of removing them to the several depots, shall be paid by the Treasurer, on the warrant of the Governor.

Expenses how paid.

[Ratified 20th January, 1837.]

CHAP. XXXV.

An Act to amend an act, entitled “an act concerning the election of Governor and members of the General Assembly,” passed in the year one thousand eight hundred and thirty-five.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That each one of the sheriffs of the several counties in this State, shall hereafter be entitled to receive the sum of two dollars for each and every day he may be necessarily engaged in making the returns of elections for Governor in his or their respective counties, according to the provisions of the fourth section of said act, and in travelling to and from the city of Raleigh, by the most usual road from and to his residence; any law to the contrary notwithstanding.

Compensation of sheriff for making returns of election for Gov.
To be certified by Sec. of State.
 SEC. 2. *Be it further enacted,* That the said compensation to the sheriffs shall be ascertained and certified by the Secretary of State; and the same shall be passed as public accounts, and paid by the Treasurer.

SEC. 3. *Be it further enacted,* That this act shall be in force and operation from and after its ratification.

[Ratified 20th January, 1837.]

[Revised Statute.]

No. XXXVIII.

PILOTS AND COMMISSIONERS OF NAVIGATION.

An Act to reduce into one, the several acts concerning Pilots and Commissioners of Navigation.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That at the first Court of Pleas and Quarter Sessions to be held for the county of New Hanover, after the first day of May annually, the justices of the said court, a majority being present, shall appoint five discreet persons to act as commissioners of navigation and pilotage for Cape Fear river; and said commissioners are authorised and empowered to appoint a clerk, whose duty it shall be to keep a book and record therein all the orders, rules and proceedings of the said board of commissioners. Commission-
ers of naviga-
tion for Cape
Fear, how ap-
pointed.

SEC. 2. The said commissioners shall have authority in all matters that may concern the navigation of the said river from Negro Head Point downwards, and out of each of the Inlets; and with respect to throwing trash in the river at the town of Wilmington, and the construction of wharves, shall have a concurrent jurisdiction with the commissioners of the town of Wilmington; and the commissioners of pilotage, and the commissioners of the said town shall consult together upon the best methods of preventing any injury being done to the channel, by wharves or otherwise, opposite to the said town; and when there is no harbor master, the commissioners of pilotage, or such of them as shall reside in the town of Wilmington, shall decide all disputes about the mooring of vessels and other matters which properly fall within the department of a harbor master. Powers of the
Commission-
ers.

Power of said
commission-
ers as to pilot-
age.

SEC. 3. The said commissioners shall be, and they are hereby authorised and empowered from time to time to make and establish such rules and regulations respecting the arrangement and station of the pilots, and respecting the rates of pilotage, as to them shall seem most advisable and advantageous for the navigation of said river, and shall and may lay and impose reasonable fines and penalties for the purpose of enforcing the execution of such rules and regulations; and all fines annexed to said rules and regulations, shall and may be recoverable before any justice of the peace of New Hanover county, or any commissioners of navigation, in the name of the board of commissioners, who are hereby authorised to warrant therefor, and when recovered, shall be applied to the repair of public wharves and docks and improvement of the channel of said river: *Provided*, that any person considering himself aggrieved by such judgment, may appeal to the next Court of Pleas and Quarter Sessions of New Hanover county, first giving security for prosecuting the appeal, in like manner as is directed by law upon other appeals from justices of the peace.

Harbor mas-
ter may be ap-
pointed.

SEC. 4. The said commissioners shall and may appoint a harbor master for the port of Wilmington, and prescribe the duties of his office, who shall be entitled to receive from the master of each vessel that shall enter said port the sum of one dollar.

Commission-
ers to appoint
pilots.

SEC. 5. The commissioners of pilotage for the bars and rivers of Cape Fear, or a majority of them, are hereby authorised and empowered from time to time to examine as many persons as shall offer themselves to be pilots for Cape Fear river aforesaid, and on approving any such person to be a pilot, shall give to such person a commission, under their hands and seals, to act as a pilot for the bars and rivers according as they shall find him qualified.

Bond to be
given by pi-
lots.

SEC. 6. Every such person, before he obtains a commission, or a branch to be a pilot, shall give bond, with two sufficient securities, payable to the State of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his office; which bond shall be filed with and preserved by the said board of commissioners, in trust for such person or persons as shall appear to be injured by such pilot: and the person so injured may bring suit on such bond,

in the name of the State, and recover the damage by him sustained; and the bond shall not be void upon the first recovery, or if judgment be rendered for the defendant, but may be put in suit from time to time by any person who shall be injured by a breach of its conditions, until the whole penalty shall be recovered.

SEC. 7. Upon the misbehavior of any pilot in his office, the said commissioners, or a majority of them, shall be and they are hereby authorised to remove such pilot from his office, by a note in writing, directed to him and subscribed by them, and to appoint another in his stead in manner aforesaid; and the commissioners shall put up notice, in writing, in all public places within the said port, or publish in some convenient newspaper that such pilot is removed. Pilot may be removed.

SEC. 8. If any person not authorised as a pilot for Cape Fear in manner as by this act directed, shall assume and take upon himself the office of pilot, and shall bring or attempt to bring into the said river any vessel whatever, such person shall forfeit and pay the sum of forty dollars, to be recovered by action of debt, one half to the person who shall sue for the same, and the other half to the commissioners of navigation for said river: *Provided always*, that it shall be lawful for any person to conduct into the port of Brunswick, any vessel in danger from distress of weather, or in a leaky condition; any thing herein to the contrary notwithstanding. Penalties on persons not authorised as pilots for acting as such.

SEC. 9. The said commissioners of navigation, a majority of whom may form a board, shall have power and authority to hear and decide on all matters of dispute between any pilot and master of a vessel, or between the pilots themselves respecting the pilotage of vessels, and any one of said commissioners may issue a warrant against any master of a vessel, for the recovery of any pilotage, and against any pilot for the recovery of any demand one pilot may have against another relative to pilotage, and for the recovery of any forfeiture or penalty incurred by any act of the General Assembly for regulating the pilotage of Cape Fear river; which warrant shall be directed to the sheriff or any constable of New Hanover county, who are hereby respectively directed and enjoined to obey and execute the same, and all other process authorised by this act; and on any warrant issued as aforesaid, any one of the said Commissioners to decide disputes.

commissioners may give judgment for any sum not exceeding sixty dollars, and may issue execution thereon in the usual manner of issuing execution on judgments given by justices of the peace; and any execution so issued shall and may be levied and satisfied agreeably to the rules and regulations prescribed for the levy of and sale under other execution issuing under judgments had before justices of the peace as aforesaid; and any commissioner before whom any warrant is tried, shall have power and authority to summon witnesses and administer an oath under the rules and regulations prescribed by law, in cases of trials before justices as aforesaid.

SEC. 10. If any Cape Fear pilot shall obtain a judgment before any justice of the peace, or before any commissioner, against any master of a vessel for pilotage, compensation or detention, or against any other pilot for any forfeiture or penalty payable to him by any act of the General Assembly; or if any master of a vessel shall obtain any judgment as aforesaid, against any such pilot for any forfeiture or penalty made payable to him by any law of this State, there shall be no stay of execution: *Provided always*, that if any party shall consider himself aggrieved by any judgment as aforesaid, he may appeal to the ensuing court of pleas and quarter sessions of New Hanover county; but if any judgment given against any defendant shall be affirmed in the county court, and it shall be the opinion of the said court that the said appeal was prayed for and obtained for the purpose of delay, the said court shall order and adjudge the said defendant to pay at the rate of twenty per cent. on the amount of the original judgment, which shall be added thereto; and execution shall and may issue for the whole amount as in other cases of judgments in said court.

SEC. 11. When the commissioners of navigation for Cape Fear, shall make any alteration in the rates of pilotage, they shall cause such rates to be set up in the office of the collector of the port, and shall also cause the same to be certified under their hands, and annexed to the several pilots branches.

SEC. 12. The commissioners aforesaid shall have power, and they are hereby authorised and required to make known and determine as far as occasion may require, to the pilots of the main and new inlet bars, how many decked boats are necessary for the attendance on them respectively, in each of which

No stay of execution allowed. But appeal may be taken.

Notice to be given, when.

Commissioners to prescribe the number of boats.

decked boats any number of said pilots, not exceeding three, may act and be concerned as partners and joint owners.

SEC. 13. The pilots now having branches or commissions, or who may hereafter have branches or commissions to pilot over the main bar or New Inlet bars of Cape Fear river, shall be entitled to pilot and navigate vessels into port over either bar; and the pilot who shall bring a vessel into port over either bar, shall be entitled exclusively to navigate the same vessel out of port over either bar: *Provided always*, when any vessel shall be ready to go out of port, and such pilot so exclusively entitled, does not attend to navigate the said vessel out of port, the captain or master of such vessel may employ any other pilot to navigate such vessel out of port, provided such other pilot so by the captain or master to be employed, shall be a branch or commissioned pilot for the bar, over which such vessel is to be navigated out; and every pilot who shall navigate a vessel out of port contrary to the meaning of this act, shall, for every such offence, forfeit and pay the sum of forty dollars, to be recovered before any jurisdiction having cognizance thereof, to the use of the pilot or pilots who by this act would have been entitled to navigate said vessel out of port.

Rights of pilots, &c.

SEC. 14. Each and every pilot of the said river shall keep at least one apprentice, and instruct him in the art and mystery of a pilot; and each of the said pilots may keep two apprentices and no more, which said apprentices, upon being authorised by a majority of said commissioners, may pilot any vessel which their several masters are entitled to pilot, for the behoof and emolument of their said masters, without let or molestation, subject however to the same regulations as the said pilots are.

Pilots to keep apprentices.

SEC. 15. When any pilot of said river shall have notice from the master of any vessel or other person in his behalf, to attend in piloting such vessel, and shall not go on board for that purpose without delay, the pilot having such notice shall forfeit and pay the sum of ten dollars (unless he shall at the time of such notice have the actual and personal charge of some other vessel) for each and every day's delay of the vessel which he had notice to attend, by reason of such pilot's neglect, to be recovered by a warrant under the hand of any one of the commissioners, on oath being made of the fact, (which oath any of the commissioners is hereby authorised to administer) and to be

Penalty on pilot for not attending when requested.

paid to the master or owner of the vessel so detained or delayed: *Provided*, that no bar pilot shall be considered as obliged to take charge of any vessel outward bound, in order to pilot her over either of the bars, until the pilotage to which such pilot might or would be entitled for such service be previously paid him, or satisfactory security for the payment thereof be given him.

Masters to
pay pilots for
detention.

SEC. 16. If the master of any vessel shall send for or take on board any pilot to conduct such vessel from her station to any other place in the said river, and shall afterwards neglect or delay to remove such vessel, (wind and weather permitting) such master shall pay unto the pilot one dollar for attending each and every day he shall be so detained; and if any vessel which shall be boarded by a pilot without the harbor, should happen to be blown off to sea by the violence of the weather, the pilot on board such vessel shall also be entitled to receive from the master thereof, one dollar for every day he shall be at sea, until the said vessel shall be brought into port, which sum such master is hereby required to pay.

Penalty on
pilots, &c.

SEC. 17. When any Cape Fear branch pilot shall see a vessel on the coast having a signal for a pilot, or shall hear a gun or guns fired off the coast, and shall refuse or neglect to go to the assistance of such vessel, such pilot shall, on conviction, forfeit and pay the sum of forty dollars, to be recovered by action of debt in any court of record in this State, the one half to the informer, the other half to the master of such vessel; and such pilot so refusing or neglecting, may, upon due proof being made before the commissioners of navigation, be removed by them from being a branch pilot.

Pilots entitled,
&c.

SEC. 18. When any master of a vessel shall refuse a pilot to come into or up the Cape Fear river, or in any part of the said river, to go out of either of the inlets, then such pilot so refused, shall be entitled to the full pilotage in the same manner as he would have been, had he been actually employed for the purpose of piloting such vessel.

When pilot
entitled to one
third fees.

SEC. 19. When any vessel shall come over a bar before a pilot boards her, she shall pay only one third fees for coming in, unless when it may happen the weather is so bad, that no person can board a vessel; in which case, if he shall hail her without the bar, he shall be entitled to full fees.

SEC. 20. If any vessel deepens or lightens between Wilmington and the flats, between the flats and Brunswick, or between Brunswick and Fort Johnston, the pilot shall be paid for the greatest draught of water; and shall besides be entitled to demand at the rate of one dollar and twenty-five cents per day, for every day he may be delayed in loading or unloading such vessel, in which no fraction or part of a day shall be allowed or deducted.

Rate of
charge.

SEC. 21. Each Cape Fear bar pilot shall, within such convenient time as the said commissioners shall direct, furnish himself with a good telescope or spy-glass, under such penalty as the commissioners shall think proper; and such spy-glass shall always be taken in the boat, when the pilot goes out to sea.

Pilots to have
a telescope or
spy-glass.

SEC. 22. No vessel or boat entering Cape Fear river, either by the old bar, or the new inlet, under forty tons burthen, shall be compelled to take a pilot or pay pilotage to any person whatever, except where signals are made for a pilot. And no vessel, coming in at either of the said inlets, with a view to the more convenient prosecution of her voyage, or to make a harbor, shall be subject to the payment of pilotage.

What vessels
exempt from
pilotage.

SEC. 23. It shall not be lawful for any master of a vessel or other person, to throw any stone, earth, or other ballast or other thing, which can be injurious to the navigation of said river, into the same, within seven miles of the town of Wilmington, except it be at such place as may be designated by the commissioners of the navigation and pilotage of Cape Fear river; and any person guilty of a violation of this section, shall be liable to an indictment in the County or Superior Court of Law of New Hanover county; and on conviction thereof, shall be punished by fine and imprisonment, or either, at the discretion of the court.

Throwing
ballast, &c.
into the river
prohibited.

SEC. 24. The captain, master or commander of any vessel, from which any stone, earth or other ballast, or any other thing, which can be injurious to the navigation of said river, may be thrown contrary to the provisions of the preceding section, shall forfeit and pay the sum of two hundred dollars, to be recovered in the name of the commissioners of navigation and pilotage of Cape Fear river, for the time being, by action of debt in the Superior Court of Law of New Hanover county;

Penalty on
captain, &c.

one half to the use of the informer, and the other half to the use of the said commissioners, for the improvement of the navigation.

Duty and power of commissioners. SEC. 25. It shall be the duty of the commissioners, for the time being, to enforce these penalties; and all the powers and authority now vested in the commissioners of pilotage and navigation of Cape Fear river, below Negro Head Point, shall be and remain in said commissioners, and shall extend up both branches of said river seven miles above said point.

Penalty on branch pilots, &c. SEC. 26. If any branch pilot of Cape Fear river shall knowingly suffer any kind of ballast or trash to be thrown out of any vessel, into any part of the channel of the said river, and shall not, within ten days after the commission of such offence, make information thereof to one or more of the commissioners of pilotage, such pilot shall, upon conviction, be forever rendered incapable of acting as a pilot for the said river, or any part thereof.

Commissioners of navigation for Newbern, Washington and Edenton. SEC. 27. Five commissioners of navigation for each of the Ports of Newbern, Washington and Edenton, shall annually be chosen by the freemen of the said towns respectively entitled to vote for commissioners of their towns, at the same time, and in the same manner that commissioners of the said towns are respectively elected: *Provided*, that no person shall be eligible as a commissioner of navigation in either of the said towns, unless he be a resident of such town, and possessed of a freehold within the same.

Pow'r of such commissioners. SEC. 28. The said commissioners shall have power to contract with proper persons to examine, from time to time, the situation of the Swash, and keep the same, and all other channels leading from Ocracock Bar to Newbern, Washington, Edenton, Plymouth and Elizabeth City, well and sufficiently staked out; and to cause buoys and beacons to be placed where the said commissioners shall think most convenient for the safety of vessels.

Commissioners of Ocracock and their duty. SEC. 29. Levin Burress and William B. Quidley, of Cape Hatteras; Joseph Williams, Benjamin Gaskins and George Hobbs, of Ocracock; Alpheus Whitehurst and Valentine Robertson, of Portsmouth; be a board of commissioners for the port of Ocracock, whose duty it shall be to meet at Ocracock at least

three times in each year, or a majority of them, after giving at least twenty days' notice of each meeting; and when any person is desirous of becoming a pilot at Ocracock bar and the Swashes, and through Pamlico and Albemarle sounds, he shall be examined by said board; and such persons so examined and found competent to take charge of any ship or vessel as a pilot, the board aforesaid shall issue to him a branch, and receive the bond, with security, under the rules and regulations prescribed by law; and no person shall be authorised to act as a Bar Swash pilot, unless he shall have a branch from said board; the said board shall keep an office at Ocracock, in which shall be filed the bonds of the pilots; and every pilot receiving from said board a branch, shall pay to the said board two dollars and fifty cents; of which sum, those living on Portsmouth and Cape Hatteras, shall receive ten cents per mile, travelling to and from the meeting of said board; and the balance shall be divided between all the members of said board. That when a vacancy shall occur in said board, by death, resignation or refusal to act, a majority thereof shall appoint some suitable person to fill said vacancy, whose residence shall be at the same place where the vacancy occurred; and said commissioners shall keep a regular journal of their proceedings, and before the said commissioners enter on the duties of their office, they shall take and subscribe in their journal before any justice of the peace of the counties of Carteret and Hyde, or before the collector of the port of Ocracock, the following oath: "I do solemnly swear, that I will truly, faithfully and impartially examine every person who shall apply to me for a branch, to the best of my ability: so help me God." The branches shall expire in three years from the date thereof.

SEC. 30. That all vessels not owned by citizens of this State, nor hailing from a port of this State, and over forty tons burden, shall be compelled to take a pilot from the 1st October to the 1st April. Vessels to take a pilot.

SEC. 31. The board of branch pilots thus appointed, before they enter upon the duties of their office, shall take and subscribe before some justice of the peace for the county of Carteret, the following oath, to wit: I do solemnly swear that I will truly, faithfully and impartially examine all persons by this act directed, according to the best of my ability—so help me God. Oath of branch pilots.

SEC. 32. When any pilot who stands an examination under the aforesaid board, and receives a branch, is afterwards found incompetent, by intoxication or otherwise, to perform the duties of a pilot, the commissioners aforesaid shall have power, upon the request of the board aforesaid, to revoke said branch; and from that time such pilot shall be disqualified from any further exercising the business of a pilot.

SEC. 33. The court of pleas and quarter sessions of Carteret county, a majority of the justices being present, shall annually, at the first term after the first day of May, appoint five commissioners of navigation for Old Top Sail Inlet, and the waters thereof—and the court of pleas and quarter sessions of Onslow county, a majority of the justices being present, shall appoint, at the first term after the first day of May annually, five commissioners of navigation for Bogue Inlet and its waters—and the said commissioners shall have the same powers and authorities with regard to the pilots and pilotage of old Topsail Inlet and its navigation, and Bogue Inlet and its navigation respectively, and as to staking out their respective channels, and the placing of buoys and beacons, as are given to the commissioners of navigation for the ports of Newbern, Washington and Edenton.

SEC. 34. If any person shall pretend to pilot or take charge of any ship or vessel, without having passed an examination as aforesaid, and obtained a certificate for so doing and also giving bond as hereafter directed, he shall forfeit and pay, for each and every offence, the sum of two hundred dollars, to the use of any person suing for the same.

SEC. 35. All pilots appointed by the commissioners of navigation for Newbern, Washington, Edenton, old Topsail and Bogue Inlets, shall give bond with sufficient securities for the amount and in the manner prescribed for the bonds of the Cape Fear pilots in section sixth of this act, and subject to the same rules, regulations and right of recovery as are there prescribed.

SEC. 36. The commissioners of navigation, or a majority of them, in the respective ports of this State, upon complaint being made to their satisfaction of the improper conduct of any pilot acting under their authority, shall have full power to disqualify such pilot from piloting thereafter. And should such pilot, after such disqualification, attempt to take charge of any

vessel, he shall be subject to the penalty of two hundred dollars, to be recovered in the same manner as if he had never obtained license for so doing.

SEC. 37. When any branch pilot shall see any vessel on the coast having a signal for a pilot, and shall neglect or refuse to go to the assistance of such vessel, on proper proof being made of such neglect or refusal, he shall forfeit the sum of forty dollars, to be recovered by action of debt before any competent jurisdiction, the one half to the informer, and the other half to the master or owner of said ship or vessel.

Penalty on
pilot for re-
fusing, &c.

SEC. 38. If any ship or vessel coming into any of the Inlets and taking a pilot on board, shall be by contrary winds or otherwise driven off the coast, the master or owner of such vessel shall allow and pay the said pilot one dollar per day for each and every day he shall be on board the said vessel, over and above the pilotage.

Pilot's pay,
&c.

SEC. 39. If a branch pilot shall go off to any vessel bound in, and offer to pilot her over the bar, the master or commander of such vessel, if he refuses to take such pilot, shall pay and satisfy to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in.

Pilot to be
paid, &c.

SEC. 40. No pilot, acting under the authority of the commissioners of navigation for Newbern, Edenton, Washington or old Topsail Inlet, shall be entitled to pilotage for any vessel under sixty tons burthen, unless such vessel shall have given a signal for a pilot, or otherwise shall have required the assistance of a pilot.

No pilotage
on vessels un-
der 60 tons
burthen.

SEC. 41. All branch pilots legally authorised by the commissioners of navigation for Edenton, Washington or Newbern, shall be entitled to demand and receive of the commander of such vessel as they may have charge of, the following pilotage, viz: For every vessel of sixty tons burthen, from the other side of the bar, at any distance within the limits of the pilot ground to Beacon Island road, or Wallace's channel, six dollars; and for all vessels drawing eight feet water and less than twelve, one dollar per foot; and for all vessels drawing twelve feet or upwards, one dollar and twenty-five cents per foot; and two dollars for each vessel over either of the Swashes; and for every ship or vessel from the mouth of the Swash to either of

Rates of pi-
lotage for the
Ocracock pi-
lots.

the ports of Newbern or Washington, drawing any draught of water, one dollar per foot; and for every ship or vessel from the mouth of the swash to the port of Edenton, twelve dollars; and to the port of Elizabeth City, ten dollars; and the same allowance down as up, and outwards as inwards.

**Rates at old
Topsail inlet.** SEC. 42. The branch pilots for old Topsail Inlet shall be entitled to demand and receive of the commander of such vessel as they may have charge of, the following pilotage, to wit: For every vessel of sixty tons burthen, from the outside of the inlet at any distance within the limits of pilot ground into Bogue Road, or Shacklesford Road, at the option of the commander, six dollars; and for all vessels drawing eight feet water, and less than twelve, one dollar per foot; and for all vessels drawing twelve feet and upwards, one dollar and twenty-five cents per foot; and the same fees for piloting outwards as inwards.

**Rates at
Bogue inlet.** SEC. 43. The branch pilots for Bogue Inlet shall be entitled to demand and receive of the commander of such vessels as they may have charge of, the following pilotage, to wit: For bringing any vessel into the said inlet drawing less than seven feet from the outside of the bar to the anchorage, before the town or the customary place in Hill's channel, fifty cents per foot; for vessels drawing more than seven feet, seventy cents per foot; and the same fees for piloting outwards as inwards.

**Rates to be
annexed to
branches.** SEC. 44. It shall be the duty of the commissioners of navigation for the several ports of this State, to annex to the branch or certificate by them given to each pilot, a copy of the fees to which by law such pilot is entitled.

**No slave to
act as pilot o-
ver any bar.** SEC. 45. If any slave or slaves shall, with the consent of his or their owner, and not accompanied by a pilot, go off to any ship or vessel for the purpose of bringing such ship or vessel over any bar or inlet of this State, or shall pilot any such ship or vessel out and over any bar or inlet, the owner of such slave or slaves shall forfeit the value of such slave or slaves, to be recovered in any court having cognizance thereof, one half to the person suing for the same, the other half to the use of the county where the owner resides.

SEC. 46. No master or other person belonging to any vessel trading to this State, shall cast or throw overboard into any channel or river within this State, any stones or other ballast

whatsoever, any oysters or oyster shells, under the penalty of two hundred dollars for every such offence; and if any person or persons shall wilfully pull down any beacon, stake or other mark, erected or placed in virtue of this act, he or they shall for every such offence forfeit and pay one hundred dollars; and such penalties shall be recovered by the commissioners of navigation for the respective ports by action of debt, in any court having competent jurisdiction.

Penalty for throwing ballast into any channel.

SEC. 47. All penalties and fines recovered by the commissioners of navigation under this act, except when otherwise herein particularly directed, shall be by them applied to the placing of stakes, buoys and beacons, and otherwise improving the navigation leading to their several ports.

[Ratified 28th December, 1836.]

CHAP. XXXVI.

An Act to amend an act, entitled "an act to aid Internal Improvements in this State," passed at the present session of the General Assembly, and to defray the civil and contingent charges of the State Government.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That from the fund set apart and established by the said act, to aid Internal Improvements in this State, the sum of one hundred thousand dollars be, and the same is hereby appropriated for defraying the civil and contingent expenses of the State Government, if the same shall be deemed necessary and requisite; and that in the disbursement of the moneys belonging to said fund, the appropriation hereby made shall be preferred to those designated in the aforesaid act.

\$100,000 appropriated for contingent expenses of government.

SEC. 2. *Be it further enacted, That this act shall be in operation from and after its ratification.*

[Ratified 21st January, 1837.]

CHAP. XXXVII.

An Act concerning Brokers.

Tax on brokers.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That every person using the profession of a Broker, either as agent, factor or principal, dealing in the sale of bills of exchange, or the purchase of the bills of any bank incorporated by this State, shall be subject to an annual tax of twenty-five dollars; such person using such profession or any branch of it, shall apply to the sheriff of the county in which he shall intend to pursue, or use such profession, and shall pay said tax, and obtain from the said sheriff a receipt therefor: and if any person shall pursue or exercise such profession not having paid such tax, he shall pay a tax of fifty dollars, to be levied, collected and accounted for as other taxes.

When to take effect.

SEC. 2. *Be it further enacted, That this act shall be in force from and after the ratification thereof.*

[Ratified 10th January, 1837.]

[Revised Statute.]

No. IV.

MILITIA.

An Act concerning the Militia of this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That all free white men and white apprentices, citizens of this State, or of the United States, residing in the State, who are or shall be of the age of eighteen, and under the age of forty-five years, shall, as soon as is practicable, be severally and respectively enrolled in the militia of this State, by the captain or commanding officer of the infantry company within the bounds of whose district (to be allotted him as hereinafter directed) such citizen shall reside; and it shall, at all times, be the duty of every captain or commanding officer of any company, to enrol every such citizen, except as hereinafter excepted; and also those between the ages aforesaid, and not exempt by law, who may from time to time, come to reside within the bounds of his district, and remain therein thirty days; and he shall without delay, notify such citizen of his enrolment, by a proper non-commissioned officer of the company, by whom the notice may be proven.

Who are to
be enrolled &
how proved.

SEC. 2. The Vice President of the United States; the officers judicial and executive of the United States; the members of both Houses of Congress, and their respective officers; the Judges of the Supreme and Superior Courts of law, and justices of the peace; Councillors of State; the Secretary, Comptroller, Treasurer, the Governor's private Secretary, Attorney General, Solicitors; the Clerks of the several courts of record; the State Printer; high Sheriffs of the several counties; Physicians and Surgeons; Ministers of the Gospel of every denomi-

Who are ex-
empted from
militia duty.

nation, that are properly and regularly ordained, and have the cure of souls; all custom-house officers; postmasters and stage drivers, or mail carriers employed in the care and conveyance of the mail to the post-offices of the United States; all ferry-men employed on any ferry of a public road, provided the same shall not exceed one superintendent and one other to each ferry; all millers of public mills, provided that this exemption shall only extend as to each mill to one person subject to do military duty, whose occupation and daily employment it is to attend and perform the duty of a public miller; all inspectors of produce; all branch and licenced pilots; all mariners actually employed in the sea service of the United States, or of any merchant; all officers and students of the University, and all other seminaries of learning within this State: *Provided always*, that nothing herein contained, shall be so construed, as to exempt any person from performing duty in case of invasion or insurrection in this State.

SEC. 3. The members of the several fire companies, so long as they shall continue members of said companies, that now are or hereafter may be established in this State, be, and they are hereby declared exempt from all militia duty, except in time of war, invasion, or insurrection. It shall be the duty of the captains of all fire companies, once a year to make a regular return to the colonel commandant of the regiment by the 15th day of October, under the penalties now imposed on captains of militia companies, on failure of making returns, in the limits of which the company exists, of all persons belonging to said company liable to muster; and the colonel of the regiment shall include them in his regular annual returns to the General of the brigade and Adjutant General. Persons having scruples of conscience against bearing arms, who shall produce to the captains of their respective districts, certificates signed by the clerks of their respective churches, that they are regular members thereof, and shall make oath or affirmation before a justice of the peace, that they are, from religious scruples, averse to bearing arms, and shall also produce a certificate from such justice, that such oath or affirmation has been duly made, shall not be compelled to muster or perform military duty, except in cases of insurrection or invasion, or pay any tax for said exemption; but they shall be subject to taxa-

Members of
fire compa-
nies exempt-
ed.

Persons of
conscientious
scruples ex-
empted.

tion in time of insurrection, invasion, or war; and also to furnish their quota of men, or pay an equivalent.

SEC. 4. The captains or commandants of companies, shall enrol and keep enrolled, on their muster rolls, all within the limits of their respective districts, who are exempt from performing militia duty by law, except in time of invasion or insurrection; and shall return the number of exempts in their annual returns to the commandants of regiments, who shall make a like return of all exempts in their respective regiments in their annual returns to the Brigadier and Adjutant Generals: regulations for which annual reports are hereinafter prescribed.

Officers to
make returns
of exempts.

SEC. 5. It shall not be lawful for any captain or other militia officer in this State, to enrol any free persons of colour, except for musicians.

No free per-
son of color to
be enrolled.

SEC. 6. Every citizen enrolled and notified as is directed in the first section of this act, shall, within six months thereafter, provide himself with a good musket, smooth bored gun or good rifle, shot-pouch and powder-horn, and shall appear so armed and accoutred when called out to exercise, or in actual service. The commissioned officers shall severally be armed with a sword or hanger, or an espartoon; and every citizen so enrolled, and providing himself with arms and accoutrements, as herein directed, shall hold the same exempt from all suits, executions or sales, for debts, or for the payment of taxes: and if he shall fail to provide himself with arms and accoutrements, as herein directed; and if the commissioned officers of his company, shall deem him in sufficient circumstances to equip himself, he shall forfeit and pay as follows: for the want of a good and serviceable musket or rifle, the sum of fifty cents; and all parents, guardians, and masters, shall furnish those of the militia, who shall be under their care or command, with the arms and equipments above mentioned, under the like penalty for each neglect: *Provided*, such guardian shall have sufficient in his hands, belonging to his ward, to purchase said arms. If the company court martial, after examination on oath, shall adjudge any person enrolled to be incapable of providing himself with arms and accoutrements, as here required, they shall report thereof to the next regimental or battallion court martial, as the case may be, who may, if it shall appear necessary, exempt such person from the fines here imposed, until such arms

Forfeitures
for not being
equipped.

and accoutrements shall be provided and delivered to him by the court martial, who shall take security for the safe keeping of such arms and accoutrements, to be returned when required.

Infantry how divided. SEC. 7. The infantry shall be divided into divisions, brigades, regiments, battallions, and companies. Each division shall consist of at least two brigades, each brigade of at least four regiments, each county forming at least one regiment: Each regiment when convenient shall consist of at least two battallions, each battallion of five companies, and each company of sixty four privates.

Regm'ts, Brigades and divisions, here distinguished SEC. 8. The following are hereby declared to be the regiments, brigades, and divisions of the Infantry, to be known and distinguished as here designated, viz:

No. of Division.	Of what Brigades composcd.	No. of Brigade.	Of what Regiments Composcd.
1	1st, 18th,	1	1st, 2nd, 3rd, 4th,
2	4th, 14th,	18	5th, 6th, 10th, 9th,
3	6th, 16th,	4	41st, 44th, 33rd, 34th, 35th, 32nd,
4	7th, 10th, 11th,	14	53rd, 54th, 42nd, 43rd, 51st, 93rd,
		6	45th, 47th, 48th, 49th, 55th, 56th, 94th,
		16	59th, 37th, 38th, 50th,
		7	63rd, 64th, 87th, 88th,
		10	76th, 77th, 78th, 79th, 71st,
5	15th, 19th,	11	68th, 69th, 60th, 61st, 62nd, 95th,
6	3rd, 12th,	15	79th, 80th, 81st, 92nd, 52nd, 89th,
7	5th, 17th,	19	90th, 86th, 82nd, 83rd, 84th,
8	2nd, 13th,	3	30th, 39th, 24th, 31st,
9	8th, 9th,	12	25th, 26th, 40th, 28th,
		5	20th, 21st, 18th, 14th, 15th, 16th,
		17	29th, 35th, 36th, 22nd, 23rd,
		2	17th, 18th, 19th, 27th,
		13	12th, 11th, 8th, 17th,
		8	67th, 91st, 65th, 66th, 57th, 58th, 96th,
		9	46th, 72nd, 73rd, 74th, 75th,

Counties.	No. of Regiment.	How distinguished in counties when there are more than one Regiment.	Counties.	No. of Regiment.	How distinguished in counties where there are more than one Regiment.
Currituck	1		Orange	48	Hawfield's do.
Camden	2		"	49	Haw River do.
Pasquotank	3		Person	50	
Perquimons	4		Richmond	51	1st, do.
Chowan	5		"	93	2nd do.
Gates	6		Iredell	52	South do.
Tyrrell	7		"	89	North do.
Washington	8		Anson	53	Lower do.
Bertie	9		"	54	Upper do.
Hertford	10		Randolph	55	West do.
Hyde	11		"	56	East do.
Beaufort	12		Guilford	57	West do.
Martin	13		"	58	East do.
Halifax	14	Upper Regiment	Caswell	59	
"	15	Lower do.	Montgomery	60	East do.
Northampton	16		"	61	West do.
Carteret	17		Cabarrus	62	
Craven	18		Rowan	63	Fork do.
Pitt	19		"	64	Lower do.
Edgecombe	20	Upper do.	Stokes	65	North do.
"	21	Lower do.	"	66	South do.
Nash	22		Rockingham	67	Lower do.
Warren	23		"	91	Upper do.
Onslow	24		Mecklenburg	68	North do.
Jones	25		"	69	South do.
Lenoir	26		Lincoln	70	Upper do.
Greene	27		"	71	Lower do.
Johnston	28		Surry	72	North do.
Franklin	29		"	73	South do.
New-Hanover	30		Wilkes	74	Lower do.
Duplin	31		"	75	Upper do.
Sampson	32		Rutherford	76	West do.
Cumberland	33	Lower do.	"	77	South do.
"	34	Upper do.	"	78	East do.
Wake	35	East of Raleigh	Burke	79	Morganton
"	36	West of do.	"	80	Lower Creek
Granville	37	North Regiment	"	81	Pleasant Gardens
"	38	South do.	"	92	Toc River
Brunswick	39		Buncombe	82	Cany River
Wayne	40		"	83	Ashville
Bladen	41		"	84	South
Robeson	42	Lower Regiment	Columbus	85	
"	43	Upper do.	Haywood	86	
Moore	44		Davidson	87	Lower
Chatham	45	Lower do.	"	88	Upper
"	94	Upper do.	Macon	90	
Ashe	46		Cabarrus	1	Volunteer
Orange	47	Hillsborough do.	Stokes	2	do

Officers of the
Infantry their
grade and
how to be
appointed.

SEC. 9. The officers of the infantry shall be as follows: To each division there shall be one major general, and two aids de camp, with the rank and pay of major: one division inspector, and one division quarter master, with the rank and pay of lieutenant colonel, to be appointed by the major general, and commissioned by the Governor: to each brigade, one brigadier general, and one aid de camp, with the rank and pay of major, one brigade inspector, with the rank and pay of major, one hospital surgeon and two mates, and one assistant deputy quarter master general, with the rank and pay of a captain, to be appointed by the brigadier general, and commissioned by the Governor: To each regiment one colonel, one lieutenant colonel, and one major. There shall also be, to each regiment, one adjutant and one quarter master, who shall be commissioned officers with the rank of lieutenant: one pay master, one surgeon, and one surgeon's mate, one sergeant major, one drum major, and one fife major; all to be appointed by the commanding officer of the regiment: and the adjutant shall, when necessary, discharge the duties heretofore assigned to the brigade inspectors within his regiment, for which service, he shall be allowed by the court martial a reasonable compensation, if they think proper, to be paid out of the fines collected. To each company there shall be one captain, three lieutenants, one ensign, four sergeants, four corporals, one drummer and one fifer. The commissioned officers of each company shall be recommended by the field officers of the regiment, to the Governor, who is requested to issue commissions to fill such appointments, according to the said recommendations. The non-commissioned officers, to wit: Sergeants, corporals, drummers and fifers, shall be appointed by the captain of each company. All commissioned officers of the same rank shall take precedency on command, according to the date of their commissions; and when two or more of the same grade bear an equal date, then their rank shall be determined by lot; to be drawn by them before the commanding officers of the division, brigade, regiment, battallion, company or detachment. The General and field officers, and all other commissioned officers, shall reside within the division, brigade, regiment, battallion or company district, which they respectively command. An Adjutant General of the militia shall be appointed, and commissioned by the Governor of the State, who

shall rank as a Brigadier General, and who shall receive a salary of two hundred dollars per annum, for his services, besides a reimbursement of his expenses, as hereinafter provided, to be paid quarterly by the Treasurer, by a warrant from the Governor: provided, however, that no Major General, Brigadier General or Colonel shall be appointed, or act as Adjutant General. The Governor for the time being shall be entitled to four aids de camp, whom he may appoint and commission with the rank of colonel. The commissions hereby authorised and directed to be granted to the several aids de camp of the Governor, Major Generals and Brigadier Generals shall be held during the pleasure of the officers to whom such aids de camp may be attached.

SEC. 10. The uniform prescribed for the officers of the United States, shall be the uniform to be worn in future, by the commissioned officers of this State.

Uniform of
officers.

SEC. 11. If any officer below the rank of General shall resign, or fail to equip himself according to law within twelve months from the date of his commission, if a colonel, he shall forfeit and pay the sum of fifty dollars; if a lieutenant colonel, he shall forfeit and pay the sum of forty dollars; if a major, the sum of thirty dollars; if a captain, the sum of twenty dollars; if a first lieutenant, the sum of fifteen; if a second or third lieutenant or ensign, the sum of ten dollars; to be sued for and recovered by the adjutant, in the name of the Governor, and to be accounted for to the paymaster. When there shall occur a vacancy in the office of major general, the adjutant general shall issue orders to the brigadier generals in that division, who shall forthwith issue orders to the colonels of their respective regiments, to call together the commissioned officers of their regiments at the usual place of regimental musters, and at such time as the brigadier general shall direct, and shall proceed by ballot to elect a major general of that division; and it shall be the duty of each colonel to transmit to the brigadier general of his brigade, a fair statement of the votes so polled, within ten days after said election; and the brigadier general shall compare the votes transmitted to him by the colonels in his brigade, and shall transmit to the adjutant general a fair statement thereof; and it shall be the duty of the adjutant general to compare the statements made to him by the brigadier generals, and make

Penalty on
officers for
failing to e-
quip them-
selves.

Maj. General
how elected,
&c.

known to the Governor the person for whom the highest number of votes may have been given; and a commission shall be issued by the Governor. And if the office of major general shall

Notice to be
given of death
or removal of
Maj. General.

be vacated by death or removal, it shall be the duty of the brigadier general in whose brigade the major general lived, to inform the adjutant general thereof; and all resignations of major generals shall be made to the adjutant general, and by him made known to the Governor. That when a vacancy shall occur in the office of brigadier general, it shall be the duty of the major general of that division, to issue orders to the several colonels in that brigade, to call together the commissioned officers of their respective regiments at the usual place of review, and at

Brig. General
how elected.

such time as the major general shall direct, who shall proceed by ballot to elect a brigadier general of that brigade; and the several colonels shall transmit within ten days, a fair statement of the votes given, to the major general, whose duty it shall be to compare the several returns so made to him, and inform the Governor who shall have received the highest number of votes; and the Governor shall issue a commission; and if the office of brigadier general shall become vacant by death or removal, it

Notice to be
given of death
or removal of
Brig. General

shall be the duty of the colonel, senior in commission, of the county wherein said brigadier general lived, to inform the major general thereof by mail or otherwise forthwith; and all resignations of brigadier generals shall be made to the major general, and by him made known to the Governor. If, on comparing the votes given in for a major general, there be a tie, the Governor shall make the appointment from the two highest candidates; and if there be a tie in the votes given in for brigadier general, the major general shall make the appointment from the two highest candidates. Where a vacancy shall occur in the

If a tie ap-
pointment
how made.

Col., Lt. Col.
and Maj. how
elected.

office of colonel, lieutenant colonel or major, the senior officer in command, attached to that regiment, shall call together the commissioned officers at the usual place of regimental review, and at such time as he may think proper; and they shall proceed to elect by ballot, officers to supply said vacancies; and a fair statement shall be transmitted by the officer highest in command, to the brigadier general of his brigade, of the officers that have been elected; and it shall be the duty of the brigadier general to inform the Governor thereof, from whom a commission or commissions shall issue. All resignations of colonels,

lieutenant colonels or majors, shall be made to the brigadier general of that brigade; and in case of vacancy in any of those offices by resignation, the brigadier general shall order an election as before directed, and shall inform the Governor of such resignation. When any commission for a major general or brigadier general is issued by the Governor, under the provisions of this section, it shall be the duty of the adjutant general to have the same published in one of the papers in the city of Raleigh.

Resignations
to whom
made, &c.

SEC. 12. When any officer commanding a division, brigade or regiment shall have occasion to be absent from his usual residence two months or more, it shall be his duty to notify the officer next entitled to the command, of such his intended absence, and also, his next superior officer in command.

Officers about
to be absent
to give notice.

SEC. 13. All officers who have in their hands either money or papers, received by virtue of their appointments, shall when they leave their office, pay and deliver the same to their successors in office, under the penalty of one hundred dollars, to be recovered in the name of the Governor, and applied as hereinafter directed.

Officers to re-
turn money or
papers.

SEC. 14. The rules of discipline, and system of tactics, which are now or hereafter may be approved and prescribed by congress shall be, and the same are hereby established as the rules for the discipline of the militia of this State, except such alterations as shall be rendered necessary by unavoidable circumstances.

Rules of dis-
cipline.

SEC. 15. The regimental or battalion courts martial of the several regiments or battalions in this State, shall have power so to lay off the several captain's districts, as to render it as convenient to the inhabitants, as a due regard to the requisite number of persons liable to perform military duty will permit: and they may at any subsequent court martial, so alter or consolidate their respective districts, as to create new ones, unite portions of districts together, so as to form other and separate districts, as a majority of the court martial may think proper; and all allotments or alterations shall be duly recorded by the judge advocate in the books of the regiment or battalion. When a small number of inhabitants are so detached by water courses or mountains, as to render their attendance inconvenient at any place where they have been accustomed to muster, and when such detached sections contain a population

Captains' dis-
tricts how
laid off.

of thirty-six men, liable to perform military duty, it shall be the duty of the regimental or battalion court martial, to lay that section off into a separate captain's district and appoint officers in the same manner as in other districts; and when there shall be two or more regiments in any county, within this State, a majority of the officers composing such regiments shall have full power to alter and regulate the boundary lines of their regiments; and in the event the officers should not agree with respect to said lines, it shall be the duty of the County Court, a majority of the justices being present, to establish the said lines; and when so fixed, the Judge advocate of each regiment shall spread the same on their journals.

SEC. 16. Every captain or commanding officer of a company, shall at least twice a year, at such place as may be designated by a majority of his company, and agreeably to the order of the commanding officer, muster, train and exercise such company, and shall cause them to remain under arms at least two hours on every day, by himself or one of his lieutenants or his ensign; and then and there teach them the manual exercise, and the proper company manœuvres; at which muster the officers and privates shall appear armed and equipped as herein-before required. It shall not be lawful for the captains to call their men together without their consent, for the purpose of company musters, more than twice in each year, except in cases of insurrection or invasion: *Provided*, that this enactment shall not apply to volunteer companies; and provided further, that when any person enters into the rank in the extra musters, he shall be subject to the same discipline, and governed by the same rules and penalties, as govern them in their regular musters. - If any captain or commanding officer of a company shall fail or neglect to muster his company as herein directed, he shall forfeit and pay the sum of six dollars, to be adjudged by the next regimental court martial; and if he or any commissioned officer of the company shall fail to appear equipped as directed at the said muster, the officer so failing shall pay the sum of four dollars; and if a non-commissioned officer or private shall fail to attend at a company muster, he shall forfeit and pay a sum not exceeding two dollars, nor less than one dollar; and if he attend without being armed and accoutred, he shall pay a sum not exceeding one dollar nor less than

Regulations
as to compa-
ny musters.

fifty cents, which sum shall be adjudged by the company court martial according to the circumstances of the delinquent: *Provided*, that every absentee shall be allowed until the next succeeding company muster to make his excuse, which shall always be on oath, the officer highest in rank present being hereby authorised to administer the same. Where companies consist principally of persons residing within any town, and the muster ground is at or within one mile of said town, all fines imposed by this act for not appearing at reviews and musters, or if appearing, not being properly armed and accoutred, shall be doubled.

SEC. 17. The commissioned officers of the company, or any two of them, after each and every muster of the company, shall on the same day meet in court martial, and proceed to try and determine on all cases which may come before them; and on conviction of any delinquent, the officer highest in rank present, shall enter up judgment, and issue writs of execution against the goods and chattels, or body of the delinquent, as in judgments in civil cases, directed to the constable of that district; which constable shall proceed to execute the same, in the same manner and under the same rules as are established by law for the government of constables in their duty in civil cases; and shall be allowed the same fees for his services, and shall make his returns to the next company court martial. The right of appeal shall be allowed from a company to a battalion or regimental court martial, but no appeal shall be granted, unless the person praying the same, shall give security, to be approved by the captain or presiding officer of the company court martial, to abide by the decision of the battalion or regimental court martial; which appeal shall be taken in like manner as appeals from the judgment of justices of the peace to the County Courts, and shall be proceeded on in like manner by the battalion or regimental courts martial.

SEC. 18. For the encouragement of military music, it shall and may be lawful for the captain of each and every military company of infantry in this State, to select from among the persons enrolled in their respective companies, one fifer and one drummer, each being properly qualified for their appointment; which selection shall be made under the direction and with the approbation of the field officers belonging to the regi-

Company
courts martial

Company
musicians
how appointed
and their
privileges.

ment to which such company is attached; and when such selection of musicians is made, it shall be the duty of the field officers to grant a certificate to such musicians of their appointment; and the County Court of the county in which such companies respectively are, shall exempt and discharge such musicians so selected, during their continuance in appointment, from serving on all juries, from working on the public roads, and from the payment of poll taxes. Such musicians shall be removable at the pleasure of the field officers of the regiment to which they severally belong, and shall attend each and every muster of their respective companies, and also the muster of the officers, and perform the duties of their appointment, under the penalty of four dollars for each and every neglect, to be collected and applied in the same manner that other fines are.

Overseers
roads, &c.

SEC. 19. No overseer of any road in this State, shall order the hands under him to work on the days previously appointed for musters by the captain of the company to which such hands belong.

Captains to
make returns.

SEC. 20. The captains shall at the several musters, or within thirty days after being required so to do, or immediately, if required at a regimental or battalion muster, make a return of their respective companies to the commanding officer of the regiment or battalion, under penalty of ten dollars in the first case, or disobedience of orders in the second case.

Regimental or
battalion
musters.

SEC. 21. There shall be in every year at least one regimental or battalion muster, to be ordered by the commandant of such regiment or battalion, at such place as may have been designated, or may hereafter be designated by a majority of the commissioned officers of such regiment or battalion; at which such commanding officer shall cause the militia to be exercised at least two hours on each day.

Penalty on
officers failing
to attend re-
views or mus-
ters.

SEC. 22. If any officer shall fail to attend at any review, regimental or battalion muster, or, attending, be not armed as required by this act, he shall, on conviction before a court martial, forfeit and pay, if a field officer, the sum of twenty dollars; if a commissioned officer under that grade, the sum of ten dollars; and every non-commissioned officer or private, who shall fail to attend such review or muster, shall, on conviction, pay such sum as shall be adjudged against him by the commissioned officers of the company to which he belongs, not exceeding four

dollars nor less than one dollar, to be ascertained at the next company muster; and when collected, to be accounted for with the court martial; or, if appearing, be not armed as by law directed, shall, for such default, forfeit and pay a sum not exceeding one dollar and fifty cents, nor less than fifty cents, to be adjudged and accounted for as aforesaid.

SEC. 23. The commanding officer of each regiment or battalion, shall give to the commanding officers of the companies under his command, not less than ten days notice of the battalion or regimental musters or reviews which may at any time be ordered.

Commandants to give notice of muster.

SEC. 24. Every commissioned officer of the infantry, by appointment of the commanding officer of each regiment, shall meet the day before that on which the commanding officer of such regiment or battalion has appointed for holding of reviews or regimental musters in their respective counties, where the said commissioned officers of infantry shall be exercised by the adjutant, or by the commanding officer of such regiment or battalion, at least three hours; when and where they shall be instructed in all matters of field exercise and discipline, according to the system which now is or may hereafter be established by law. And any commissioned officer who shall fail or neglect to appear at the time and place so appointed by the commandant of his regiment or battalion, as required by this section, or, if appearing, be not armed and equipped as by this act directed, when at any review or parade, such commissioned officer so failing and neglecting, shall forfeit and pay the same sum which such commissioned officer would be compelled to pay in cases of failure and neglect at any regimental or battalion reviews or parades; and the same shall be recovered in the same manner, and the money applied as in other like cases directed by this act. And such commissioned officers shall, in every instance whatever, be subject to the same punishment for neglect of duty or disobedience of his superior officers, as such commissioned officer would be subject to when in actual military service.

Commissioned officers to meet for exercise.

SEC. 25. If any officer shall suffer himself to be intoxicated, or behave in a riotous or disorderly manner when required to be on duty, or disobey the orders of his commanding officer, he shall either be fined and reprimanded by the court martial,

Penalties on officers misbehaving.

or, at their discretion, shall be cashiered. *Provided*, he shall not be cashiered but by a court martial regularly detailed for his trial as herein-after directed. If any non-commissioned officer or private shall, during the time of muster, resist his commanding officer, or refuse to obey his lawful commands, if a non-commissioned officer, he shall be kept under guard during such muster, and fined at the discretion of the court martial, not exceeding two dollars.

SEC. 26. If any person liable to perform duty, shall appear at or near the parade ground during the term of any review or muster, and shall not take his proper station and perform the duties required of him by law, or behave himself in a disorderly manner while on parade, it shall be the duty of the commanding officer of the regiment or corps, to order the said person under guard, there to be detained during the time of exercise or the service then performing, and until the militia are discharged; and such person shall further be fined at the discretion of the court martial.

SEC. 27. No officer or soldier directed by this act to appear and muster as aforesaid, shall be liable to be taken or arrested in any civil action or process whatever, on the day such person is directed to appear, or in a reasonable time either in going to, continuing at, or returning from the place appointed to muster or appear; but every such arrest is hereby declared to be void. Every person required by this act to attend musters and reviews, going to or returning from the same, shall be suffered to pass over any toll bridge or toll causeway, and shall be put over any ferry without delay, free from any charge whatever. If any ferryman or proprietor of any toll bridge, shall demand pay, or refuse to put over such person, he shall forfeit and pay, for every such offence, four dollars, to be recovered by warrant, before any justice of the peace, to the sole use of the informer.

SEC. 28. All parents, masters and guardians within this State, shall, and they are hereby declared to be liable for the payment of any fines incurred by those under their care, as well for non-attendance at company, battallion or regimental musters and general reviews, as not being armed and equipped as herein-before provided.

SEC. 29. The commanding officer of each regiment or bat-

Regimental
and battalion
courts martial

talion shall order a court martial to be held at the place appointed for the muster of the same, on the day after the regimental or battalion muster, or on the same day, if convenient, which court shall consist of a majority of the officers of the regiment or battalion, one of whom shall be a field officer and two of the grade of captain, and the highest officer in rank present, shall be the President. The court shall be notified to their duty, by the adjutant of the regiment or battalion, by a roster to be kept by him; and the said court, when convened, shall appoint a judge advocate, who shall himself, in the presence of the court, take the following oath: "I, A. B. do swear that I will well and truly perform the duties of judge advocate of this court, according to the best of my skill and ability: so help me God." And the judge advocate shall administer the following oath to the members of the court martial: "I, A. B. do swear that I will hear and determine all the causes which may come before this court, and that I will faithfully report all delinquents that come within my knowledge, that I will account for all fines and forfeitures by me collected or received, and in all cases enforce a due execution of the militia laws of this State, to the best of my knowledge and ability: so help me God." They shall enquire into the age and ability of all persons that come before them by appeal, and exempt such as may be judged incapable of service; also try and decide on all persons charged with omission or commission, as well by officers as by privates. The said regimental or battalion court martial shall hear and determine all appeals from the company court martial, and order and dispose of all fines for buying drums, fifes, and other implements of war, for the use of the company whence the same shall arise, and for supplying the militia with arms and accoutrements, and for other purposes, that will promote the good thereof. The judge advocate shall be allowed a reasonable salary, to be paid out of the fines for his services. His duty shall be to write at length the proceedings of the said court. For all fines which, may be imposed by the court martial, he is hereby authorised and required to enter up judgment and issue execution, which, if against commissioned officers, shall be directed to the adjutant or constable; if against non-commissioned officers or privates, shall be directed to a constable of the county to which the delinquent belongs. The

constable or adjutant shall proceed to distrain and sell, in the same manner and under the same rules as are established by law for the government of constables in their duty in civil cases, and shall be allowed the same fees for their services. The adjutant or constable shall in all cases make due returns to the next succeeding court martial; and in case of failure of such adjutant, sergeant, or constable to do the several duties as required of them by this act, in collecting and accounting for all fines, such adjutant, sergeant, or constable, as the case may be, shall incur a penalty or fine of double the amount that such adjutant, or constable was bound to collect and account for.

PAYMASTER'S DUTY. SEC. 30. It shall be the duty of the paymaster to demand and receive of the adjutants, sergeant, and constables and others who may have collected fines and forfeitures, and distribute the same agreeably to the directions of the court martial, and settle his accounts annually with the judge advocate. And the paymasters respectively shall, before they enter on the duties of their office, give bond and sufficient security, in the sum of two hundred dollars, payable to the commanding officer of the regiment and his successors in office, for the faithful accounting for, agreeably to law, of all sums of money which may come into his hands by virtue of his appointment. And it shall be the duty of the commanding officer aforesaid, under the penalty of two hundred dollars, to sue for and recover the same; and when the same is so received by him, apply it as is already by law directed. And the several paymasters shall be allowed a reasonable compensation for their services, by the court martial. In case there shall be no paymaster appointed by the commandant of any regiment, then and in that case, each commandant shall perform and execute the duties of paymasters as above required.

OATHS TO BE TAKEN, &c. SEC. 31. Every officer, at the first meeting of the court martial, after being commissioned, shall take and subscribe the following oath, to be administered in open court martial, by the judge advocate, or if a company officer, it may be taken before the commanding officer of the regiment: "I, A. B. do solemnly swear that I will execute the office of _____, according to the rules of military discipline, and the laws of this State, to the best of my knowledge and ability, and that I will support the constitution of the United States, and of this State:

so help me God.”—and also the following oath: “I, A. B. do swear that I will at the court martial of the company to which I belong, duly administer justice and apply fines and penalties according to law, and to the best of my ability, without favor, affection or partiality; so help me God.” No officer shall be allowed to sit in a regimental, battalion or company court martial, unless he shall have taken and subscribed the oaths aforesaid.

SEC. 32. If at any regimental, battalion, or company court martial, or company of the officers, there shall be any delinquents, either for non-attendance or not being properly armed and accoutred, or for disorderly conduct, proclamation shall be made by the captain or commanding officer, calling the names of all delinquents enrolled, that they attend the trial, at the following company court martial, which shall be deemed a legal notice. If field officers or officers of the regimental staff, such notice shall be given by the commanding officer or adjutant of the regiment or battalion, or to the officers assembled; and if any officer or private has an excuse to offer to the court martial, he may send his affidavit, taken before a civil magistrate, or produce a witness, or he may personally appear and make oath to the cause of his delinquency; and in all cases, whether from neglect or failure of the officers and privates of regimental or battalion musters, or appeals from the company courts martial, and all other cases of which the regimental courts martial have jurisdiction, their determination shall be final.

Proceedings
at court martial.

SEC. 33. The several courts martial shall have power and legal authority to adjourn from day to day, or to any future day, when it shall be the duty of the officers entitled to compose the same to attend, under the penalties by law established in other like cases for non-attendance, and at which time the unfinished business of the court may be acted upon. If there should not meet a sufficient number at the place of adjournment to form a quorum, the officer ordering the same shall have power to continue its adjournments.

Court martial may adjourn.

SEC. 34. It shall be the duty of each commanding officer of a regiment to exact and enforce regular settlements of all fines collected under the militia laws, from the several persons charged with the collection thereof within his regiment; which

Duties of officers as to fines.

finer shall be appropriated as directed by law. And it shall be the duty of each captain or commanding officer of a company to report, in writing, once in every six months, to the commanding officer of the regiment to which he belongs, the amount of fines assessed in his company within that period.

SEC. 35. Every commandant of a regiment shall, at least once in every year, on or before the 25th day of October, make a return to the brigadier general of the brigade to which such regiment belongs, and shall transmit a duplicate of the same to the adjutant general, on or before the fifteenth day of November, in every year; at the bottom of which he shall report whether or not his regiment was reviewed by the major or brigadier general, and at what time.

SEC. 36. It shall be the duty of a major general to review his division once in every three years, and a brigadier general to review his brigade once in every two years, the several corps composing the division or brigade, to meet by order of the reviewing general by regiments, at such time as he may appoint, and at the usual places of regimental musters in their respective counties. It shall be the duty of the major and brigadier generals to give fifty days notice, by order, to the commandants of their regiments or brigades, of the time of the review, previous to such review taking place. Any major or brigadier general failing to give notice as above directed, shall forfeit and pay for every offence, the sum of forty dollars, to be recovered before any jurisdiction having cognizance thereof, one half to the use of the county in which such recovery is had, and the other half to the use of the person suing for the same.

SEC. 37. The brigadier general of each brigade shall make a return of his brigade to the major general of his division, on or before the 10th day of November, in each and every year, and shall transmit a duplicate of the same to the adjutant general, on or before the fifteenth day of November, in which he shall state when his brigade was last reviewed by the major general of his division. The major general shall make a return of his division to the adjutant general, on or before the annual meeting of the General Assembly.

SEC. 38. If any general officer or commandant of a regiment shall fail to review his division or brigade, or muster his regiment, or to make an annual return of his division, brigade

or regiment, as is now required by law, or if any major or brigadier general shall fail to equip himself, it shall be the duty of the Governor to cause the adjutant general to give such delinquent officer thirty days notice of his neglect of duty; and if such delinquent does not, within forty days thereafter, render a satisfactory excuse for such neglect, by showing to the Governor that such delinquency happened in consequence of indisposition, absence from the State, or other sufficient cause, it shall be the duty of the Governor to strike his name from the list of officers. And when the Governor shall thus strike the name of any officer from the list of officers, he shall communicate it to the adjutant general, who shall have it published in some newspaper within this State, and issue proper notices to supply the vacancy.

Penalty for failing to review, &c.

Sec. 59. It shall be the duty of the adjutant general to distribute all orders from the commander in chief of the State to the several corps, to attend public reviews if required, when the commander in chief of the State shall review the militia or any part thereof; to obey all orders from him relative to carrying into execution, and perfecting the system of military discipline established by law; to furnish blank *forms* of different returns that may be required, and to explain the principles upon which they shall be made; and also, to furnish blanks for such returns; to demand and receive from the several officers of the different corps throughout the State returns of the militia under their command, reporting the actual situation of their arms and accoutrements, and their delinquencies, and every other thing which relates to the advancement of good order and discipline. All which the several officers of the divisions, brigades, regiments and battalions, are hereby required to make in the manner herein directed, that the adjutant general may be duly furnished therewith previous to the biennial meeting of the General Assembly. From all which returns he shall make proper abstracts, and lay the same, with a report of the general state of the militia, magazines and military stores, and such improvements as he may think necessary for the advancement of discipline and benefit of the militia biennially, to the General Assembly, or to the commander in chief of the State, who is requested to lay the same, without delay, before the said Assembly. And the adjutant general shall al-

Duty of adjutant general.

so, annually make a return of all the militia of this State to the President of the United States. In failure of which recited duties, he shall suffer the following fines and penalties; for not attending all public reviews, when required by the Governor or commander in chief of the State, fifty dollars; for not furnishing blank forms, as required by this act, the sum of ten dollars, for each neglect, to be recovered before any jurisdiction having cognizance thereof, one half to the use of the informer, and the other half to the use of the State; for not distributing all orders from the commander in chief of the State, or for not making returns as required by this act, upon conviction of either before a general court martial, to be ordered by the Governor, he shall be cashiered. The said adjutant shall be compensated for the expense of all the blank forms of returns necessarily prescribed in his department, and the postage of all letters to and from him in his capacity as adjutant general, to be paid to him by the treasurer of the State, on the adjutant general producing a stated account of the same by him certified. The adjutant general shall keep a roster of the names and dates of the commissions of each major and brigadier general in this State, likewise the counties under each of their commands respectively, designating therein the numbers of each division, brigade and regiment, ready at all times for immediate inspection; shall at least once in every three years transmit a copy of this roster, certified by him, to the President of the United States, to the Governor of this State, and to the General Assembly. And he shall from time to time make report to the Legislature, of what shall be done by him in virtue of his appointment, and accompany such report with such remarks as may by him be deemed necessary for the better regulation and improvement of the militia discipline throughout the State.

Returns and
orders issued
through the
post office.

SEC. 40. If no immediate opportunity offers for forwarding orders or returns, the certainty of which ensures a speedy delivery thereof, which can be easily ascertained and proved, then it shall be the duty of the officer issuing the order, or making the return, (as the case may be,) to lodge the same, properly directed, in the post office, marked on the back "public service," under which he shall write his name and grade; and a return thus made shall be deemed sufficient and good in law.

SEC. 41. The governor for the time being, is hereby au-

thorized to mitigate or remit all fines and penalties which may be recovered in any of the courts of justice, against any general or field officer, arising under the militia laws of this State. Govern'r may remit fines.

SEC. 42. There shall be in each brigade of militia in this State, one regiment of cavalry; there shall be to each regiment of cavalry, one colonel, one lieutenant colonel, and one major; to be appointed, in case of vacancy, by joint vote of both houses of the General Assembly, and commissioned by the governor for the time being. Regiments of cavalry how to be formed, officered, and equipped. And out of the militia enrolled in this State, there may be formed, out of each battalion that has a separate muster, at least one troop of cavalry, to be formed of volunteers, which shall be uniformly clothed in regimentals at their own expense, the color and fashion to be determined by the field officers of cavalry of the regiment or battalion to which they belong; to each troop one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, one trumpeter, and no less than twenty-four dragoons. The commissioned officers to furnish themselves with good horses, at least fourteen and one half hands high, to be armed with a sword and pair of pistols, the holsters of which shall be covered with bear-skin; and each dragoon shall furnish himself with a serviceable horse, at least fourteen and a half hands high, a good saddle, bridle, breast plate, cruppers and valise, a pair of boots and spurs, one pair of pistols and holsters; the holsters to be covered with bear-skin; a sword and cartouch-box, to hold twelve cartridges for pistols. And the field officers and commissioned officers shall reside within the brigade, regimental or troop district in which they respectively command. There shall also be to each regiment of cavalry, one adjutant, one quarter master, one pay master, one surgeon and one surgeons' mate; each of the rank of lieutenant, to be appointed by the commanding officer of each regiment. The commissioned officers of troops of cavalry shall be recommended by the field officers of the regiment to which they belong, and commissioned by the governor for the time being.—All non-commissioned officers of each troop shall be appointed by the captain of such troop. All commissioned officers shall take rank according to the date of their commissions; and where two or more of equal grade bear the same date, then their rank shall be determined by lot, to be drawn by them be-

fore the commanding officer of the regiment to which they belong.

Troops of
cavalry when
to muster,
how returns
to be made,
&c.

SEC. 43. Each troop of cavalry shall muster at least once in every three months, at such time and place as the captain or commanding officer of such troop shall direct. And it shall be the duty of the captain to make a true return of his troop to the commanding officer of the regiment to which he may belong, on or before the first day of September, in each and every year, under the penalty of thirty dollars for each neglect. The troops of cavalry, when attending the general muster of the regiment or battalion of infantry, shall be under the command of any field officer of the cavalry, if present on parade, except on review days, when ordered by the major general, adjutant general, or brigadier general; and at the reviewing of the regiment of cavalry, when ordered by the colonel thereof, the cavalry shall be under the command of the officers of the cavalry only, except a general officer shall be present on parade.

Field officers
of cavalry to
review and
make returns.

SEC. 44. It shall be the duty of the field officers of cavalry, once in every two years, to review the troops of cavalry composing their respective regiments, at some place most convenient in the brigade, to be designated by a majority of the commissioned officers of the regiment, at such time as the commanding officer of the regiment shall appoint, of which, at least thirty days' notice shall be given to the commanding officers of the several troops. The commanding officer of each regiment of cavalry shall, once in every year, on or before the first day of October, make a just and full return, after the form prescribed by the adjutant general, of all officers and dragoons under his command, and their equipments, to the brigadier general to whose brigade the said regiment belongs; and shall also transmit to the adjutant general, on or before the fifteenth day of November, in each year, a duplicate of such returns; and at the bottom of the same, shall state when his regiment, or the several troops composing it, were last reviewed by the brigadier and major generals.

Cavalry cor'ts
martial.

SEC. 45. A majority of the commissioned officers of each troop, and a majority of the commissioned officers of each regiment, immediately after their respective troop or regimental musters, shall hold troop or regimental courts martial in the same manner; and the courts shall have the same power, du-

ties and authorities, and shall be governed by the same rules and regulations, as the company or regimental courts martial of the infantry herein before prescribed: *Provided, however,* that the delinquents of each troop of cavalry, at any regimental parade, shall be heard, and either fined or excused at the troop court martial next succeeding such regimental muster or review. And the troop courts martial shall make returns to the next succeeding regimental court martial, of their proceedings, and of all monies by them caused to be made, to be disposed of as herein directed.

SEC. 46. The fines of the officers, non-commissioned officers and privates of the troops and regiments of cavalry, for not holding musters, not attending musters, parades and reviews, or not being armed and equipped as required by law, shall be the same as herein before prescribed for officers, non-commissioned officers, and privates of the infantry in similar cases. Fines of cavalry officers and privates.

SEC. 47. All fines and forfeitures incurred by the cavalry, officers or privates, and not herein particularly appropriated, shall be applied to the purposes of first buying trumpets, and then at the disposal of the regimental courts martial, to the use and benefit of the troop whence the same arose. Those fines paid by the field and staff officers, and not particularly appropriated, shall be equally divided among the troops composing the regiment to which they respectively belong. All other fines and forfeitures shall be appropriated and divided at the discretion of the regimental court martial, for the promotion and advancement of military discipline. How cavalry fines to be appropriated.

SEC. 48. It shall be the duty of the adjutant of the regiment to attend the regimental parade, and receive and execute such orders as the commanding officer may deem expedient; and the said adjutant shall take an oath of office in open court martial, and, from time to time, call upon, and bring suit against all delinquent captains, and other commissioned officers, below the grade of captain, for fines and penalties by them incurred, and which are not otherwise specially provided for in this act; and to receive and account for the same annually with the paymaster of the regiment, for which services the adjutant shall be allowed a reasonable compensation, to be paid out of the fines so collected by order of the court martial.— Duty of the adjutant of the regiments.

And in case any adjutant shall fail to attend and perform his duty, as required by this act, he shall forfeit and pay the sum of one hundred dollars.

Certain sections of this act to apply to the cavalry.

SEC. 49. The following sections of this act, in relation to the infantry, are hereby declared to apply to the cavalry, to wit: so much of the 12th, 13th and 39th sections, as relates to officers under the grade of brigadier general, also the 14th, 15th, 26th, 27th, 28th, 29th, 31st, 32nd, 35th, 40th, 41st and 42nd sections.

When cavalry troop less than required by law, &c.

SEC. 50. No person shall be commissioned in any troop of cavalry, unless the number is such as shall be prescribed by this act. And when from default of numbers or otherwise, a troop shall no longer be entitled to muster as cavalry, it shall be the duty of the captain of infantry, in whose company district the members of such troop shall reside, to cause them to be enrolled in their respective companies.

Volunteer companies may be formed.

SEC. 51. That out of the militia of this State, there may be enrolled as many volunteer companies of artillery, light infantry, grenadiers or rifle-men, as may see fit to form themselves into such; each company to consist of forty-four privates, four sergeants, four corporals, one captain, and three lieutenants.

Their uniform, duties and liabilities.

SEC. 52. That the said companies shall be clothed in regiments, to be furnished by themselves, of their own choice and fashion, and shall attend battalion and regimental reviews, parades and drills, whenever ordered by the colonel of the county, or commanding officer of the regiment to which they respectively belong; shall be subject to his orders, liable to the same fines and penalties for the non-performance of military duty, misdemeanors in office, or dereliction of duty, as the militia of this State now are or may hereafter be subjected by law.

Volunteers may form a regiment.

SEC. 53. That whenever there may be a sufficient number of volunteer companies in any one brigade in this State, to form a regiment, containing as many companies as five, the commissioned officers of such companies may meet together at such time and place as a majority of them may designate, and proceed to elect (a majority of said commissioned officers being present) a colonel, lieutenant colonel and major; the result of said election to be certified by the senior officers present at

said meeting (who shall also preside thereat) to the brigadier general of said brigade, whose duty it shall be to lay said result before the Governor, who shall forthwith issue commissions to the said officers.

SEC. 54. The captains and lieutenants of said companies shall be elected by a majority of the members of their respective companies; and the non-commissioned officers of said companies shall be appointed by the commissioned officers thereof. Officers how appointed.

SEC. 55. The captain or commanding officer of each company of artillery, light infantry, grenadiers or riflemen, shall at least once in three months muster their men at such time as such captain may direct, and at such place as may be agreed on by a majority of the company; and that each of said companies may adopt rules and regulations for their own government, not inconsistent with the laws and constitution of this State or of the United States. Musters of artillery, light infantry, &c.

SEC. 56. That whenever a regiment of volunteers shall be formed and officered, as herein before required, it shall be their duty to make annual returns to the brigadier general and adjutant general, as is, or may be, required to be made by the field officers of infantry or militia. Regiment to make returns.

SEC. 57. That no person who now is, or shall hereafter procure himself to be, enrolled in any company of artillery, light infantry, grenadiers, or rifle-men, or in any volunteer company, shall be permitted to return to the infantry, except by the consent of the field officers of the regiment, or by removal out of the county, regiment or battalion, wherein such person was enrolled; and it shall be sufficient for any person to be enrolled and approved by the captain of said volunteer company, without the intervention of any other officer: *Provided nevertheless*, that any person enrolling himself with any captain of a volunteer company, shall be subject to perform all the duties and exercises in the infantry, and under the officers thereof, until such person so enrolling himself shall fully and completely equip himself with clothing and arms required and settled on for such company, and a certificate to that effect procured from the captain with whom he has enrolled, and produced to the captain under whom such person so served before such enrollment, or his successor in office. Persons enrolled in artillery &c not to return to infantry, &c.

SEC. 58. Whenever there may be formed a regiment of

Reviews.

volunteers as herein before provided, it shall be the duty of the commanding officer of such regiment to review his regiment, as often as the colonel or commanding officer of infantry may be required to do by law.

[Vacancies
how filled.

SEC. 59. That whenever a vacancy shall occur by death, resignation or otherwise, among the field officers of said regiment, it shall be the duty of the officer highest in command to notify the brigadier general thereof, whose duty it shall be to call the commissioned officers of said regiment together, at some convenient place, for the purpose of electing some one to fill said vacancy; and may either detail some officer to superintend said election, or may make it the duty of the officer highest in rank, that may be present, to attend thereto, and transmit to him the returns of said election; and it shall be the duty of said general to transmit the result of said election to the Governor, who shall forthwith commission the officer or officers so elected.

* Certain sec-
tions applied
to the artille-
ry, &c.

SEC. 60. Each and every section of this act relative to the infantry, which can be applied to the government and disciplining of the artillery, light infantry, grenadiers or riflemen, or which can by construction be applied to them, or either of them, is hereby declared to be in force for the government and disciplining of the artillery, light infantry, grenadiers and riflemen respectively.

Gen. Courts
martial—how
to be appoint-
ed and held.

SEC. 61. The Governor or commander in chief, shall appoint general courts martial for the trial of major generals. Major generals, each within his own division, shall appoint division courts martial for the trial of brigadier generals. Brigadier generals, each within his own brigade, shall appoint brigade courts martial, for the trial of all officers above the grade of captain; and in like manner the colonel or commandant of each regiment or battalion, shall appoint regimental or battalion courts martial for the trial of all commissioned officers under the grade of a field officer. In every case, the officer ordering the court martial, shall cause the officer accused to be arrested, to be furnished with a copy of the charges against him, and to be notified of the time and place appointed for his trial.

SEC. 62. When a court martial is ordered, the officer ordering it shall appoint the President, judge advocate and provost martial; and if it be a general court martial, orders shall be issued to such divisions as, in the opinion of the Governor or

commander in chief, may most conveniently furnish the members thereof: if it be a division court martial, orders shall be issued to such brigades as, in the opinion of the officer ordering it, may most conveniently furnish the members thereof: if it be a brigade court martial, orders shall be issued to such regiments in the brigade as, in the opinion of the officer ordering it, may most conveniently furnish the members: if it be a regimental court martial, the officer ordering it, may and shall appoint the members.

Officers of
general courts
martial how
to be selected.

SEC. 63. The President of a general court martial shall not be under the rank of a major general, and the court shall be composed of two brigadier generals and ten field officers as members, six of whom shall be of different divisions: the president of a division court martial shall not be under the grade of a brigadier general, and the court shall be composed of twelve field officers as members, six of whom shall be of a different brigade: the president of a brigade court martial shall not be under the rank of a colonel, and the court shall be composed of twelve officers as members, to be taken from the brigade, none of whom shall be under the rank of captain: the president of a regimental court martial shall not be under the grade of a field officer, and the court martial shall be composed of a majority of the officers of the regiment as members.

Of what rank
the officers
shall be.

SEC. 64. Whenever the commanding officer of a division, brigade, regiment or battalion, shall be ordered to furnish any officer or officers as a member or members, supernumerary or supernumeraries of a court martial, such officer or officers shall be regularly detailed from the roster of the division, brigade, regiment or battalion, by the commanding officer thereof, forthwith after receiving orders therefor: *Provided*, that in case of sickness, inability or absence of any officer whose term it may be to serve on a court martial, the detailing officer, shall certify such circumstance to the officer who ordered the court martial, and detail the officer next in succession.

Officers for-
courts martial
to be regular
ly detailed.

SEC. 65. Officers ordered to be detailed to serve on courts martial, shall be detailed in the following manner: brigadier generals by the major generals of division, from the division rosters; colonels, lieutenant colonels and majors, by the commanding officers of brigades, from the brigade rosters; captains and subalterns by the commanding officers of regiments or battalions, from the regimental or battalion rosters.

How to be de-
tailed.

Courts martial how constituted.

SEC. 66. All courts martial, for the trial of officers, shall be constituted of a president, judge advocate and provost martial, together with the number of members prescribed by the provisions of this act; and the officer ordering a court martial shall and may, at his discretion, order a number of officers to be detailed as supernumeraries, in addition to those intended to serve as members, to attend the organization thereof; and in case there should be any vacancy or vacancies, the judge advocate shall fill such vacancy or vacancies from the supernumeraries, beginning with the highest in grade, and proceeding in regular rotation.

Rank and oath of officers of a court martial.

SEC. 67. All officers on a court martial shall take rank by seniority of commission, without regard to corps; and before any court martial shall proceed to the trial of any officer, the judge advocate shall administer to the president and each of the members the following oath: "You, A. B. do swear, that you will well and truly try and determine, according to the evidence, the matter now before you, between the State of North Carolina and the prisoners to be tried; and that you will duly administer justice, according to the militia laws of North Carolina, without partiality, favor, or affection; and you do further swear, that you will not divulge the sentence of the court until it shall be published by the proper authority, neither will you disclose the vote or opinion of any particular member of the court, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; so help you God." And the president shall administer to the judge advocate the following oath: "You, A. B. do swear that you will faithfully and impartially discharge the duty of judge advocate on this occasion, as well to the State as to the accused, and that you will not disclose the vote or opinion of any particular member of the court, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law; nor divulge the sentence of the court to any but to the proper authority, until it shall be duly published by the same; so help you God."

How witnesses to be summoned.

SEC. 68. The judge advocate of any court martial, constituted according to the provisions of this act, shall and may issue a summons, in the nature of a subpoena in criminal cases, directed to the provost martial, to summon witnesses for the

State and the accused; and the persons summoned by him shall be bound to attend and give evidence before the court martial, under the penalty of forty dollars, to be recovered by the party aggrieved, in an action of debt, before a justice of the peace, unless the witness can prove his inability to attend.

How to be
sworn.

SEC. 69. All witnesses shall be sworn or affirmed by the judge advocate, before they give their evidence as in criminal cases, according to the following form: "You, A. B. do swear (or affirm, as the case may be,) that the evidence you will give the court, in the case between the State and C. D., shall be the truth, the whole truth, and nothing but the truth: so help you God."

SEC. 70. All trials by court martial shall be carried on in the day time, between the hours of ten o'clock in the morning and five o'clock in the evening; and when the votes shall be called for on any question, the judge advocate shall begin with the youngest in commission, and proceed regularly to the oldest. And at all courts martial, unless two thirds of the members agree that the accused is guilty, the judge advocate shall record his acquittal; and all courts martial authorised and appointed in pursuance of the militia laws of this State, shall have full power and authority to preserve order during their session, and may imprison in the county jail, for the space of eight hours, any and all persons who shall, in the presence of the court martial, behave in a disorderly and contemptuous manner.

Rules for the
government
of courts
martial.

SEC. 71. It shall be the duty of the judge advocate, upon all trials, to state impartially to the court the evidence, both for and against the accused, to take in writing the evidence both for and against the accused, and to minute down the proceedings of the court, all of which, with the judgment or sentence of the court thereupon, authenticated by his signature, and that of the president of the court, with the papers used at the trial, or copies thereof, certified by him, he shall transmit under seal to the officer who ordered the court; and all motions and objections to evidence, whether on the part of the State or the accused; and the opinion of the judge advocate on questions of law made at the trial, shall be stated in writing, and the statement of the complaint and

Duty of judge
advocate.

the defence shall be made in writing, so that a full view of the trial may be had by the officer, whose duty it is to approve or disapprove of the proceedings; and all the original proceedings and judgments or sentence of all courts martial appointed according to the provisions of this act, after having been approved or disapproved by the officer ordering them, shall by him, as soon thereafter as convenient, be transmitted to the adjutant general of the State, to be deposited and preserved in his office, and the party tried by any court martial as aforesaid, upon request by himself or by any person properly authorised, at the adjutant general's office, shall be entitled to a copy of the original record, certified as aforesaid, of the proceedings and sentence of the court, he paying reasonably for the same.

Proceedings
against officers
arrested
and refusing
to attend.

SEC. 72. When any officer shall be arrested, and notified to attend any court martial which may be ordered for his trial, and shall refuse or neglect to attend the same, the said court shall take up the charges and specifications alledged against him, provided he has been served with a copy thereof, and proceed to trial in the same manner as if he were present.

Perjury before
courts martial.

SEC. 73. If any person shall wickedly, wilfully and corruptly, swear falsely before any court martial, touching and concerning any matter or thing cognizable before such court martial, he shall on conviction thereof, be liable to the pains and penalties of perjury; and in all cases, to delinquents and witnesses, oaths and affirmations shall be administered by the judge advocate or presiding officer of such court martial.

Dishonest
conduct, &c.

SEC. 74. Dishonest or ungentlemanly conduct in an officer, shall be punished by cashiering and disabling him from ever holding a military commission in this State.

Detachments
of militia for
the U. States.

SEC. 75. Upon any requisition of the United States for a detachment of the militia from this State, it shall be the duty of every captain of infantry to enter upon his roll, all able bodied free white men between the ages of eighteen and forty-five years, except such as are exempted by the second section of the act of Congress of one thousand seven hundred and ninety-two, and except the Judges of the Superior Courts of law and Equity, and ministers of the gospel

regularly ordained, within his company district, and they are hereby declared to be subject to draft: *Provided*, that nothing in this act shall be understood to subject persons heretofore exempted, to perform ordinary militia duty: and provided further, nothing herein contained shall be construed to conflict with the provisions of the third section of this act.

SEC. 76. It shall be the duty of each captain or commanding officer of a company of militia, detached as part of the requisition under the authority of the United States, to receive and enrol in the place and stead of any person drafted to serve in such company any able bodied free white citizen to serve as a substitute for such person so drafted.

Substitutes
may be re-
ceived.

SEC. 77. If any commissioned officer under the grade of a field officer, appointed to command in any detachment from this State, under the authority of the United States, shall die, resign or remove out of the regiment to which he belongs or may belong, it shall be the duty of the colonel commandant of the regiment to which such officer belonged, to recommend a proper person, resident within the bounds of such regiment, to be commissioned by the Governor, to fill such vacancy.

Vacancies
under the
rank of field
officer how to
be supplied.

SEC. 78. In all cases where a militia-man shall have performed a tour of service, either as a volunteer or drafted militia-man, whether upon the requisition of the United States or of this State, he shall not be liable to stand a second draft until the whole of the militia within his company district shall have performed a like tour of duty.

After one
tour of duty,
exempted
from a second
draft.

SEC. 79. When militia-men are ordered out on duty in aid of the civil authority, either to guard a jail or for any other purpose, and shall neglect or refuse to attend agreeably to orders, each man shall be fined at the discretion of his company court martial, not exceeding five dollars for each day he shall fail to do duty.

Penalty for
refusing to
perform duty.

SEC. 80. In all cases of insurrection among slaves or free persons of color, either in any county of the State, or in an adjoining State, or in case of invasion, seven justices of the peace, deeming the emergency to require it, may, at their discretion, require, in writing, of the commanding officer or officers of their county, to call out the militia under his com-

Seven justi-
ces may call
out militia.

mand, and any volunteer company or companies in said county in the absence of the field officer who is entitled to the command to suppress or repel such insurrection or invasion, or to protect the inhabitants of their county from the danger apprehended; and may again require of the said officer to dismiss his men, when they think the danger is over; and the commanding officer may dismiss in like manner.

Duty of the
commanding
officer on
such requis-
ition.

SEC. 81. It shall be the duty of the commanding officer forthwith to order out the militia in the way he shall judge best to effect the purpose desired; he may make such contracts as he may think most to the interest of the State, for the requisite ammunition, and appoint some one a commissary to provide the necessary rations for the subsistence of the men while in service; and immediately on the discharge of the men, the commanding officer is hereby empowered to dispose of any surplus ammunition or provision for the benefit of the State; and all expenses hereby incurred, shall be properly certified by said officer, and forwarded to the governor, and shall be paid by the State, after undergoing an examination and approval by the governor, treasurer and comptroller, who are hereby created a board for that purpose.

Notice to be
given, by and
to whom.

SEC. 82. The commanding officer of any regiment, as soon as he has called out the militia, under the provisions of the 81st section of this act, shall immediately send an express to the brigadier or major general of his brigade or division, informing him of that fact, and of any other official facts he may be in possession of, and continue to do so from time to time; and the brigadier or major general shall immediately apprize the governor, either by express or mail, as he may judge the emergency requires, of all the circumstances; in the mean time, such general officer shall pursue the most effective measures for repelling such invasion, or suppressing such insurrection; and the militia thus called out, shall be armed according to law.

Three justices
may order
out militia.

SEC. 83. When there may be outlawed or runaway negroes, committing depredations, or in any way alarming the citizens of any county, or when the guarding of a jail is necessary, three justices of the peace, certifying the same in writing, and requesting the officer in command of their coun-

ty, he is hereby required to effect the object set forth in said request of the justices; and the expenses of said militia, so called out, shall be paid by the court of the county, who are hereby authorised to lay a sufficient tax to pay said militia, at the same rates as the regular troops of the United States are by law now entitled to when in actual service.

SEC. 84. The militia of this State, both officers and soldiers, when called into the service of the State, shall receive the same pay and rations as when called into the service of the United States.

Pay of the militia when in service.

SEC. 85. Every officer who shall refuse or neglect on call or alarm given, to appear at such times and places as shall be appointed by his commanding officer, shall on conviction before a court martial be cashiered, and rendered incapable of ever after holding a military appointment under the authority of this State, and be further liable to pay the sum of forty dollars, to be collected as herein directed, and if a non-commissioned officer or private, he shall forfeit and pay the sum of ten dollars. If any person do not march against the enemy when commanded, by himself or substitute, or refuse or neglect to do his duty or perform the services he is requested to perform by his officer, or quit his post, desert or mutiny, it shall and may be lawful for the commanding officer of the regiment or corps to order a court martial for the trial of such offender. The members when met, shall individually, before they proceed, take the following oath: "I swear well and truly to try and determine, according to the evidence of the matter before me, between this State and the person now to be tried, so help me God;" and shall, on trial and conviction, order punishment on the offender, according to the articles of war established for the regulation of the army: *Provided*, such punishment shall not extend to sentence of death, except in case of desertion to an enemy, or mutiny.

Punishment for refusing to appear when alarm given.

SEC. 86. If any non-commissioned officer or private militiaman, while in the pay and service of this State, shall wilfully desert the service, or abandon the post assigned to him, without being regularly discharged or permitted by an

Punishment for desertion.

officer duly authorised for that purpose, such non-commissioned officer or private so deserting or abandoning his post, and being thereof convicted by a court martial having jurisdiction of the offence, shall be adjudged to have forfeited the pay and emoluments due to him at the time of his desertion, and be subject to a fine, not less than twenty and not exceeding fifty dollars, and imprisonment not exceeding six nor less than one month, at the discretion of the court martial, and furthermore turned over to serve as a private soldier in the regular army of the United States, at the discretion of the court martial, not exceeding double the term of time which he had been called out to serve in the militia of this State.

Repealing
Clause.

SEC. 87. All acts heretofore passed on the subject of the militia are hereby repealed: *Provided*, that this act shall not extend to military appointments made by recommendation to the present Legislature; and provided, that nothing herein contained, shall be construed to repeal any private act of the General Assembly, incorporating, granting privileges to, or regulating particular corps, whether of the volunteers or of the ordinary militia.

Adjutant
General to
have copies of
this act
printed.

SEC. 88. It shall be the duty of the adjutant general to have copies of this act printed, and distributed, one copy to each general officer, one copy to each field officer, and two copies to each company, to be distributed as is provided for the distribution of the acts of the General Assembly.

SEC. 89. *Be it further enacted*, That this act shall be in force from and after its passage.

[Ratified 20th January, 1837.]

PUBLIC PRINTING.

CHAP. XXXVIII.

An Act concerning the Public Printing of the State

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That hereafter it shall be the duty of the Secretary of State to let out, to the lowest bidder, the printing of the Acts and Resolutions of the General Assembly, passed at each and every session thereof; to let out also, separate and apart from the Acts, the printing of the Journals of the Senate and House of Commons; and the manner of letting out the said printing shall be as follows: The Secretary of State shall give reasonable notice, and receive sealed proposals, in writing, for the printing aforesaid, under such rules and regulations as he may prescribe.

Secretary of
State to let
out printing of
laws, &c.

SEC. 2. The Secretary of State shall also let out, to the lowest bidder, by the printed page, the public printing which shall be required to be done by either or both Houses of the General Assembly, jointly or separately, during the session, in the manner prescribed in the foregoing section, and communicate to the General Assembly, on the second day of their session, the name of the person or persons with whom the said agreements shall be made.

Ditto print-
ing for the
session.

SEC. 3. The person or persons with whom the contract aforesaid shall be made, shall give bond, payable to the State, in the sum of one thousand dollars on each contract, (with approved security,) conditioned to perform faithfully the contract so made with him or them, within the time, and in such manner, as shall be prescri-

Contractors
to give bonds

bed by law. The bonds, and the security to said bonds, must be accepted and approved by the Governor, and the same shall be endorsed on the bonds, after which they shall be filed in the office of the Secretary of State.

Proposals
where filed.

SEC. 4. The Secretary of State shall file with the Governor, all the proposals which shall be made to him for doing the printing aforesaid.

Number of
copies to be
printed.

SEC. 5. There shall be a sufficient number of the journals of each session of the General Assembly to supply each member thereof with one copy, and the offices of the Governor, Treasurer, Secretary and Comptroller, and the Clerks of the County Courts of this State with each a copy, and one other copy for each of the clerks of the General Assembly; a sufficient number of the acts passed at each session, to serve each member of the General Assembly with one copy; also one copy for each of the public officers and clerks as aforesaid, one copy for each Judge and clerk of the Supreme and Superior Courts, one for the Attorney General and each of the Solicitors, one for every clerk and master of equity, and for every justice of the peace and sheriff throughout the State, and one copy of the public laws for the executive of each State and Territory in the Union.

Arrangement
as to printing
laws, &c.

SEC. 6. The public laws shall be printed separate from the laws of a private nature, leaving a blank page between the public and private laws; and there shall likewise, be printed, in the margin of each page, the year in which the laws were passed. The printer shall also attach to the acts of the General Assembly the statement of the revenue of North Carolina, agreeably to the Comptroller's statement, and an index of the laws.

Time allow-
ed to Secreta-
ry, Clerks
and Printer.

SEC. 7. The Secretary of State shall, within thirty days from the rise of each General Assembly, furnish the printer with complete copies of all laws; and the clerks of each house shall, within twenty days after the same time, deliver to the printer complete copies of the Journals of each house; and it shall be the duty of the printer to have such laws and journals of each session prin-

ted; and when thus finished, and addressed to those entitled to receive them, he shall cause them to be packed up in parcels for each county and delivered, within ninety days from the close of each session, to the Secretary of State.

SEC. 8. The Secretary of State shall employ a trusty person or persons, to carry to the clerks of the several County Courts, or to some person in his behalf; the copies of the journals and acts of Assembly hereby directed to be distributed, on the cheapest and best terms he can.

Secretary to
have laws
distributed.

SEC. 9. The Governor, Treasurer, Comptroller and Adjutant General of this State, are authorised to have printed for their several offices, such blanks and other necessary printing as may be suitable and proper to enable them to discharge the duties required of them by law; the amount for which printing shall be reasonable and just, to be judged of and allowed by the board to be composed of the Governor, Secretary of State, Treasurer and Comptroller.

Departments
authorised to
have printing
done.

SEC. 10. The journals, acts of Assembly, reports of committees, and other documents printed for the Assembly, shall be printed in octavo form.

Form of
printing.

SEC. 11. A book shall be kept by the Secretary of State, in which the names of each justice of the peace shall be recorded; and by the list so kept, the acts aforesaid shall be distributed; and when a justice of the peace in any county shall resign or die, or his office otherwise become vacant, it shall be entered therein.

Secretary to
keep justice
book.

[Ratified 7th January, 1837.]

CHAP. XXXIX.

An Act concerning the Public Printing.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in all cases, where advertisement is now required by law to be made in the State Gazette, the same may be hereafter made in any newspaper printed at the seat of government.

Publications
may be made
in any paper
in Raleigh.

SEC. 2. *Be it further enacted, That this act shall be in force from and after its ratification.*

[Ratified 23d January, 1837.]

RAIL AND OTHER ROADS.

CHAP. XL.

An Act to incorporate the Raleigh and Columbia Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful to open books in the City of Raleigh, under the direction of William Boylan, Thomas P. Devereux, Duncan Cameron, William H. Haywood, jun. Charles Manly, Alfred Jones, Beverly Daniel, Weston R. Gales, George W. Mordecai, or any three of them; and at Haywood, under the direc-

Where and
under whom
books may be
opened.

tion of Jonathan Harralson, Charles J. Williams, Spence McClennahan, Robert Faucett, or any three of them; and at Pittsborough, under the direction of William H. Hardin, Nathan A. Stedman, Joseph Ramsay, Green Womack, or any three of them; at Carthage, under the direction of John B. Kelly, A. Currie, John Morrison, Cornelius Dowd, and J. A. D. McNeill, or any three of them; and at Rockingham, under the direction of Walter F. Leak, James P. Leak; Stephen Wall, and William B. Cole, or any three of them; and at Wadesborough, under the direction of William B. McCorkle, Thomas D. Park, Absalom Myers, Alexander Little, Hampton B. Hammons, or any three of them; and at Fayetteville, under the direction of E. P. Mallett, C. Johnston, John Huske, E. L. Winslow, T. N. Cameron, or any three of them; and at such other places, and under the direction of such other persons, as any three of the commissioners herein before named to superintend the receiving of subscriptions at Raleigh, shall direct, for the purpose of receiving subscriptions to an amount not exceeding one million of dollars, in shares of one hundred dollars each, for the purpose of effecting a communication by a rail road, from some point at or near the termination of the Raleigh and Gaston Rail Road, in the city of Raleigh, to some other point, to be selected by the company hereby incorporated, on the dividing line between the States of North Carolina and South Carolina, within thirty miles of Rockingham, in Richmond county, and for providing every thing necessary and convenient for the purpose of transportation on the same.

Amount of
capital, &c.

SEC. 2. The times and places for receiving subscriptions, shall be advertised in one or more newspapers published in the city of Raleigh and town of Fayetteville, and the books for receiving the same shall not be closed in less than ten days; and if it shall appear that more than ten thousand shares of the capital stock aforesaid, shall have been subscribed for within the said ten days, it shall be the duty of the said commissioners at Raleigh,

Time and
place to be
advertised, &
if necessary
subscriptions
reduced.

or any five of them, to reduce the number of shares subscribed for among the subscribers, in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to ten thousand: *Provided however*, that no reduction shall be made of the subscription of any citizen of this State until the whole of the subscriptions of non-residents shall be stricken off; but if the whole amount shall not be subscribed for within ten days from the time the books shall be opened to receive subscriptions, then the books may be closed or continued open, or closed and re-opened, without further notice, as a majority of the above mentioned commissioners at Raleigh may judge to be most expedient, until the whole number of shares shall be subscribed for.

Amount re-
quired to in-
corporate
subscribers.

SEC. 3. When three thousand shares shall be subscribed for, in manner aforesaid, the subscribers, their executors, administrators or assigns, shall be, and they are hereby declared to be incorporated into a company by the name and style of the "Raleigh and Columbia Rail Road Company," and by that name, shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real, personal, and mixed, so far as shall be necessary for the purposes herein after mentioned, and no farther; and shall have perpetual succession, and by said corporate name, may sue and be sued, and may have and use a common seal, which they shall have power to alter or renew at pleasure; and shall have and enjoy and may exercise all the powers, rights and privileges which other corporate bodies may lawfully do, for the purposes mentioned in this act; and may make all such by-laws, rules and regulations, not inconsistent with the laws of this State or of the United States, as shall be necessary for the well ordering and conducting the affairs of the company.

Subscriptions
how to be p'd.

SEC. 4. Upon any subscription of stock, as aforesaid, there shall be paid at the time of subscribing, to the said commissioners or their agents appointed to receive such

subscriptions, the sum of two dollars on every share subscribed, and the residue thereof shall be paid in such instalments, and at such times, as may be required by the President and Directors of said company.

SEC. 5. The said commissioners, or their agents, shall forthwith, after the first election of President and Directors of the company, pay over to the said President and Directors all moneys received by them; and on failure thereof, the said President and Directors may recover the amount due from them, or from any one or more of them, by motion, on ten days previous notice, in the Court of Pleas and Quarter Sessions, or the Superior Court of Law, of any county wherein such commissioner or commissioners, their executors or administrators, may reside, or by warrant before a justice of the peace of said county.

Commissioners to pay over moneys.

SEC. 6. When three hundred thousand dollars or more of the stock shall have been subscribed, public notice of that event shall be given by any three or more of the said commissioners at Raleigh, who shall have power at the same time to call a general meeting of the subscribers, at such convenient place and time as they shall name in said notice.

When gen'l meeting shall be called.

SEC. 7. To constitute any such meeting, a number of persons entitled to a majority of all the votes which could be given upon all the shares subscribed, shall be present, either in person or by proxy; and if a sufficient number to constitute a meeting do not attend on that day, those who attend shall have power to adjourn from time to time, until a meeting shall be formed.

Number required to constitute meeting.

SEC. 8. The subscribers, at their general meeting before directed, and the proprietors of stock at every annual meeting thereafter, shall elect a President and five Directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said President and Directors, or any of them, may at any time be removed, and the vacancy thereby occasioned be filled

Appointment of officers.

by a majority of the votes given at any general meeting. The President, with any two or more of the Directors, or in the event of the sickness, absence, or disability of the President, any three or more of the Directors, who shall appoint one of their own body President, *pro tem.* shall constitute a board for the transaction of business. In case of vacancy in the office of President, or any Director, happening from death, resignation, removal, or disability, such vacancy may be supplied by the appointment of the board, until the next annual meeting.

SEC. 9. The President and Directors of said company shall be, and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining of a rail road, to be located as aforesaid, with as many sets of tracks as they, or a majority of them, may deem necessary; and may cause to be made, and also to make and construct, all works whatsoever, which may be necessary and expedient, in order to the proper completion of the said rail road.

SEC. 10. The said President and Directors shall have power to make contracts with any person or persons on behalf of the company, for making the said rail road, and performing all other works respecting the same, which they shall judge necessary and proper, and to require from the subscribers, from time to time, such advances of money on their respective shares, as the wants of the company may demand, until the whole of their subscriptions shall be advanced; to call, on any emergency, a general meeting of the subscribers, giving one month's notice thereof in one of the newspapers printed in the city of Raleigh; to appoint a Treasurer, Clerk and such other officers as they may require, and to transact all the business of the company during the intervals between the general meetings of the stockholders.

SEC. 11. If any stockholder shall fail to pay the sum required of him by the President and Directors, or by a majority of them, within one month after the same shall have been advertised in one of the newspapers published

Rights and
powers of pre-
sident and di-
rectors, as to
construction,
&c. of road.

As a con-
tract, &c.

in the city of Raleigh, it shall and may be lawful for the President and Directors, or a majority of them, to sell at public auction, and to convey to the purchaser, the share or shares of such stockholder, so failing or refusing, giving one month's previous notice of the time and place of sale, in manner aforesaid; and after retaining the sum due, and all charges of the sale, out of the proceeds thereof, to pay the surplus over to the former owner or to his legal representative; and if the said sale shall not produce the sum required to be advanced, with the incidental charges attending the sale, then the President and Directors may recover the balance of the original proprietor or his assignee, or the executor or administrator of either of them, by suit in any court of record having jurisdiction thereof, or by warrant before a justice of the peace of the county of which he is a resident; and any purchaser of the stock of the company, under the sale by the President and Directors, shall be subject to the same rules and regulations as the original proprietor.

Stock of delinquents may be sold.

SEC. 12. *Be it further enacted*, That if the capital stock of the company hereby incorporated, shall be found insufficient for the purpose of this act, it shall and may be lawful for the President and Directors of the said company, or a majority of them, from time to time to increase the said capital stock to an amount not exceeding two millions of dollars, by the addition of as many shares as they may deem necessary—first giving to the individual stockholders for the time being, or their legal representatives, the option of taking such additional shares, in proportion to the amount of stock respectively held by them—and opening books in the city of Raleigh and such other places as the President and Directors may think proper for any balance of the capital stock created, which may not be taken by the stockholders for the time being, or in their behalf; and the subscribers for such additional shares of the capital stock in the said company are hereby declared to be thenceforward incorporated into the said company, with all the privileges and advan-

Capital stock may be increased.

tages, and subject to all the liabilities of the original stockholders.

SEC. 13. *Be it further enacted*, That the President and Directors, or a majority of them, shall have power to borrow money for the objects of this act, to issue certificates or other evidences of such loans, and to make the same convertible into the stock of the company, at the pleasure of the holder: *Provided*, that the capital shall not thereby be increased to an amount exceeding two millions of dollars, and to pledge the property of the company for the payment of the same with its interest: *Provided*, that no certificate of loan, convertible into stock, or creating any lien or mortgage on the property of the company, shall be issued by the President and Directors, unless the expediency of making a loan on such terms, and if issuing such certificates, shall have first been determined on at a general meeting of the stockholders, by two-thirds of the votes which could legally be given in favor of the same.

President and
directors may
borrow money.

SEC. 14. *Be it further enacted*, That the said President and Directors, their officers, agents and servants, shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their rail road, and to lay out the same according to their pleasure, so that the dwelling-house, yard, garden or curtilage of no person be invaded without his consent; and that they shall have power to enter in and lay out such contiguous lands as they may desire to occupy, as sites for depots, toll-houses, ware-houses, engines, sheds, work-shops, water stations, and other buildings, for the necessary accommodation of their officers, agents and servants, their horses, mules, and other cattle, and for the protection of property entrusted to their care: *Provided*, that the land so laid out on the line of the rail road, shall not exceed (except at deep cuts and fillings) eighty feet in width, and that the adjoining land for the sites of buildings (unless the President and Directors can agree with the owner or owners for the purchase of the

Condemnation of lands
for the purposes of the
road.

same) shall not exceed one and a half acres in any one parcel. If the President and Directors cannot agree with the owner or owners of the lands, so entered on and laid out by them, as to the terms of purchase, it shall be lawful for them to apply to the Court of Pleas and Quarter Sessions of the county in which such land, or the greater part of it, may lie—and upon such application, the court shall appoint five disinterested and impartial freeholders, to assess the damages to the owner from the condemnation of the land for the purpose aforesaid; no such appointment, however, shall be made unless ten days' previous notice of the application shall have been given to the owner of the land, or the guardian, if the owner be an infant or *non compos mentis*, if such owner or guardian can be found, within the county; or if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month next preceding, in some newspaper printed as convenient as may be to the court house of the county, and shall have been posted at the door of the court house, on the first day, at least, at the next preceding term of said court. A day for the meeting of the said freeholders to perform the duty assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until their business shall be finished. Of the five freeholders so appointed, any three or more of them may act, after having been duly sworn or solemnly affirmed before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages that will be sustained by the proprietor of the land, from the condemnation thereof for the use of the company—and that they will truly certify their proceedings thereupon to the court of said county.

SEC. 15. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same, and hearing such proper evidence as either par-

Freeholders to go upon land and ascertain damages. ty may offer, they shall ascertain, according to their best judgment, the damages which the proprietor of the land will sustain by the condemnation thereof for the company. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee simple interest therein; they shall take into consideration the quality and quantity of the land to be condemned, the additional fencing that will be required thereby, and all the inconvenience that will result to the proprietor from the condemnation thereof, and shall combine therewith a just regard for the advantages which the owner of the land will derive from opening the rail road through the same.

Freeholders to make a written report. SEC. 16. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings, under their hands and seals, in substance as follows: We, ——— freeholders, appointed by an order of the Court of Pleas and Quarter Sessions, for the purpose of ascertaining the damages that will be sustained by ——— the proprietor of certain lands in the said county, which the President and Directors of the Raleigh and Columbia Rail Road Company propose to condemn for their use, do hereby certify, that we met together on the land aforesaid, on the — day of ———, the day appointed therefor by the said order, (or the day to which we were regularly adjourned from the day appointed for our meeting by the same order;) and that, having been first duly sworn, (or solemnly affirmed, as the case may be) and having visited the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing which would probably be occasioned by its condemnation, and all other inconveniences which would probably result therefrom to the proprietor of said land, and that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of the said land from the opening of the aforesaid rail road through the same; that under the in-

fluence of these considerations, we have estimated and do hereby assess the damages aforesaid at the sum of ——. Given under our hands and seals, this — day of ——. At the foot of the report so made, the Magistrate before whom the said freeholders were sworn, shall make a certificate in substance as follows:— “— county, set. I, —, a justice of the peace of said county, do hereby certify that the above named freeholders, before they executed their duties, as above certified, were solemnly sworn (or affirmed) before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named —, by the condemnation of the aforementioned land for the use of the Raleigh and Columbia Rail Road Company, and that they would certify truly their proceedings thereon to the court of the said county. Given under my hand, this — day of —.”

SEC. 17. The report of the freeholders, so made, together with the certificate of the justice of the peace, as aforesaid, shall be forthwith returned by the said freeholders to the court of the county; and unless good cause can be shown against the report, it shall be confirmed by the court and entered upon record; but if the said report should be disaffirmed, or if the said freeholders, being unable to agree, should report their disagreement, or if, from any other cause, they should fail to make a report within a reasonable time after their appointment, the court may, in its discretion, as often as may be necessary, supersede them or any of them, appoint others in their stead, and direct another view and report to be made in the manner above prescribed.

SEC. 18. On the confirmation of any such report, and on payment or tender to the proprietor of the land, of the damages so assessed, or the payment of said damages in to court, when for good cause shown, the court shall have so ordered, the land received and assessed as aforesaid, shall be vested in the Raleigh and Columbia Rail Road Company, and they shall be adjudged to hold the same in

Said report to
be returned
to court.

Land assess'd
on payment
of damages,
&c.

fee simple, in the same manner as if the proprietor had sold and conveyed it to them.

While proceedings are pending, &c. company may enter upon land.

SEC. 19. While these proceedings are pending, for the purpose of ascertaining the damages to the proprietor for the condemnation of his land, and even before they shall have been instituted, the President and Directors, if they think that the interest of the company requires it, may, by themselves, their officers, agents and servants, enter upon the lands laid out by them, as aforesaid, and which they desire to condemn and apply to the use of the said company. If, when they so take possession, proceedings to ascertain the damages as aforesaid, be pending, it shall be their duty diligently to prosecute them to conclusion; and when the report of the freeholders, ascertaining the damages, shall be returned and confirmed, the court shall render judgment in favor of the proprietor of the land, for the amount thereof, and either compel its payment into court, or award process of execution for its recovery, as to them shall seem right.

No stay of proceedings unless, &c.

SEC. 20. In the meantime, no order shall be made, and no injunction shall be awarded by any court or judge, to stay the proceedings of the company in the prosecution of their work, unless it be manifest that their officers, agents or servants, are transending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated for in damages.

If president and directors take possession of land before purchased or condemned, &c.

SEC. 21. If the President and Directors shall take possession of any land before the same shall have been purchased by them, or condemned and paid for according to the provisions of this act, and shall fail for forty days to institute proceedings for its condemnation as aforesaid, or shall not prosecute with due diligence the proceedings commenced for that purpose, it shall be lawful for the proprietor of the land, upon giving to the said President and Directors, or any of them, ten day's previous notice, to apply to the court of the county in which the land, or the greater part thereof, shall lie; and upon such applica-

tion, the court shall appoint five disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land to the use of the company, shall appoint a day for their meeting, to perform the duties assigned them, and shall dismiss at the cost of the company any proceeding then depending in their behalf for the condemnation of the said land. The freeholders so appointed, any three or more of whom may act, shall proceed in the performance of their duties, in all respects in the same manner as if they had been appointed by the President and Directors of the company; and the court shall in like manner confirm and disaffirm their report, supercede them or any of them, and appoint others in their stead, or direct another view and report to be made, as often as may be necessary; and when any such report, ascertaining the damages, shall be confirmed, the court shall render judgment in favor of the proprietor for the damages so assessed and double costs, and shall thereupon either compel the company to pay into court the damages and costs so adjudged, or award process of execution therefor, as to them shall seem right.

SEC. 22. When the judgment rendered for the damages assessed and costs shall be satisfied by the payment of the money into court, or otherwise, the title of the land for which such damages are assessed shall be vested in the company, in the same manner as if the proprietor had sold and conveyed it to them. *Be it further enacted*, That the written consent of any owner or proprietor of any lands through which the said road is to be constructed, showing his or their agreement to the same, shall be valid and effectual to give the same power and authority over all land required for the construction of the road, as if the same had been conveyed by deed of bargain and sale, or condemned upon petition, as aforesaid.

Title of land
vested in
company.

SEC. 23. The said President and Directors, for the purpose of constructing their rail road aforesaid, and the works necessarily connected therewith, or of repairing the same after they shall have been made, or of enlarging or otherwise altering the same, shall be at liberty, by themselves, their

President and
directors &c.
may enter
upon any ad-
jacent lands,
&c.

officers, agents or servants, at any time, to enter upon any adjacent lands, and to cut, quarry, dig, take and carry away therefrom, any wood, stone, gravel or earth, which they may deem necessary: *Provided, however,* that they shall not, without the consent of the owner, cut down any fruit tree, or any tree preserved in any lot or field, for shade or for ornament, nor take any timber, gravel, stone or earth, constituting any part of any fence or building. For all wood, stone, gravel or earth, taken under authority of this act, for all incidental injuries done to the inclosure, crops, wood or ground, in taking and carrying away the same, the said President and Directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial and disinterested freeholders, who, being appointed for that purpose by any justice of the peace there-to required by the owner, shall be sworn by him, and shall then ascertain the compensation upon their own view, of the wood, gravel, earth or stone taken, and for the injury done as aforesaid, in taking them: *Provided, however,* that it shall be the duty of the owner or owners to show to the justice of the peace to whom the application is made, that ten days' previous notice of making the same, has been given to the President or one of the principal agents of the rail road company; and no award which may be given under any appointment, without such notice, shall be obligatory or binding on the company: *Provided, however,* that either party, not satisfied with the award which may be given as above, may appeal to the Court of Pleas and Quarter Sessions of the county in which the land may be situated, who may, as in the case of the assessment of lands, confirm or disaffirm the report of the freeholders, supercede them or any of them, and appoint others in their stead, or direct another view and report to be made, as often as may be necessary.

Penalty for
wanton or
wilful injury
to lands, &c.

SEC. 24. If the said President and Directors, in entering upon the land of any person under the authority of this act, for the purpose of laying out, constructing, enlarging, altering or repairing any of their said works, shall, by themselves or their officers, do any wanton or wilful injury to such land

or its appurtenances, or to the crops growing or gathered, or to any other property thereon, the Raleigh and Columbia Rail Road Company shall pay to the person so injured double the amount of damages which shall be assessed by a jury in any proper action therefor; or if said injury be done by any person or persons who may have contracted with the company for the construction of any portion of the road, or any of the works connected therewith, he or they shall be responsible to the party injured in the like amount.

SEC. 25. Whenever, in the construction of said rail road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said President and Directors so to construct the said rail road across such established roads or ways, as not to impede the passage or transportation of persons or property along the same; or when it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual a proper wagon way across said rail road, from one part of his land to the other: *Provided, however*, that in order to prevent the frequent crossing of established roads or ways, or in case it may be necessary to occupy the same, it may be lawful for the said President and Directors to change the said roads to points where they may deem it expedient to do so; and that for entering upon or taking any land that may be necessary therefor, they shall be, and are hereby authorised to proceed under the provisions of this act, as in the case of land necessary for their rail road: *Provided, further*, that previous to the making of any such change, the said company shall make and prepare a road equally good with the portion of the road proposed to be substituted; but nothing herein contained shall be so construed as to make it incumbent on the company to keep in repair the portion of any road which they may have changed, as aforesaid.

Duty of company when it shall be necessary to cross any road or way.

SEC. 26. The said President and Directors, or a majority of them, shall have power to purchase with the funds of the company, and place on the rail road constructed under his act, all machines, wagons, vehicles, and carriages and teams of every description whatsoever, which they may deem

Power as to providing for the transportation of persons or property.

necessary or proper for the transportation of persons or property; or if they should deem it more expedient to do so, they may contract with any other rail road company or companies, or with any individual or individuals, for effecting the transportation on the same.

Property of
company ex-
empt from
taxation how
long.

SEC. 27. All machines, wagons, vehicles and carriages, purchased as aforesaid with the funds of the company, or engaged in the business of transportation on said rail road; and all the works of said company constructed, or property acquired under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years; and thereafter the Legislature may impose a tax not exceeding twenty-five cents per annum per share on each share of the capital stock, whenever the annual profits thereof shall exceed six per cent.

Rights and
duties of com-
pany as to
transporta-
tion.

SEC. 28. Upon the road hereby authorised, the company shall have the exclusive right of transportation. Where it is completed, they shall at all times furnish and keep in good repair the necessary carriages and other requisites for the safe and convenient transportation of persons and property; and it shall be their duty at all times, upon the payment or tender of the tolls hereby allowed, to transport to any depot on the road which the owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported, at said depot, on the road most convenient for the reception thereof.

Penalty for
failure in
these duties.

SEC. 29. They shall give no undue preferences to the property of one person over that of another, but as far as practicable, shall carry each in the order of time in which it shall be delivered or offered for transportation, with the tolls paid or tendered. If the company, or any of its officers or agents, shall fail to receive, transport, or deliver in due time, any property so offered or delivered to them for transportation, or shall fail to take up or set down any passenger or pas-

sengers, at such convenient point as he or they may desire, upon the payment or tender of the passage money hereby allowed, they shall forfeit and pay to the party so injured double the amount of the lawful toll paid or tendered, and shall moreover be liable to an action on the case, in which full damages and double costs shall be recovered.

SEC. 30. So soon as any portion of the rail road, hereby authorised, may be in readiness for transportation, it shall be lawful for the said President and Directors to transport, by their officers or agents, or by contractors under them, persons and property on the same; and they shall have power to charge for the transportation of persons, goods, produce, merchandize and other articles, and for the transportation of the mail, any sum, not exceeding the following rates, viz: On persons, not exceeding six cents per mile for each person, unless the distance, which any person be transported, be less than ten miles, in which case the President and Directors may be entitled to make an extra charge of fifty cents for taking up and putting down each person so transported; for the transportation of goods, produce, merchandize and other articles, not exceeding an average of ten cents per ton per mile; and for the transportation of mail, such sums as they may agree for; and the said President and Directors shall be furthermore entitled to demand and receive for the weighing, storage and delivering of produce and other commodities at their depots and ware-houses, rates not exceeding the ordinary ware-house rates charged for such services.

Rates of
transporta-
tion, &c.

SEC. 31. *Be it further enacted*, That if the said President and Directors shall deem it advisable to construct the bridges which may be necessary on the line of their rail road of sufficient width to admit of the passage of common roads, as well as their rail road, over the same, they may be entitled to demand and receive from all the persons, and for wagons, carriages, and all four and two wheeled vehicles, and for all beasts of burden, sheep and hogs, passing the same, the tolls which may be allowed by the Court of Pleas and Quarter Sessions of the county in which the said bridge may be.

Toll for pass-
ing their
bridges.

When dividend may be declared.

SEC. 32. As soon as ten miles of the rail road hereby authorised, shall be completed, the President and Directors shall annually or semi-annually declare and make such dividend as they may deem proper, of the nett profits arising from the resources of the said company, after deducting the necessary current and probable contingent expenses of the said company, and shall divide the same among the proprietors of the stock of the said company, in proportion to their respective shares.

Annual meetings when and where held.

SEC. 33. An annual meeting of the subscribers to the stock of the said company, shall be held at such time and place, in each year, as the stockholders, at their first general, or at any subsequent meeting, may appoint—to constitute which, or any general meeting called by the President and Directors, according to the provisions of this act, the presence of proprietors entitled to a majority of all the votes which could be given by all the stockholders, shall be necessary, either in person or by proxy properly authorised; and if a sufficient number do not attend on that day or any day appointed for a general meeting called by the Directors aforesaid, the proprietors who do attend may adjourn from time to time until such general meeting shall be had.

Votes regulation of.

SEC. 34. In counting all votes of the said company, each member shall be allowed one vote for each share, not exceeding two shares—one vote for every two shares above two and not exceeding ten—and one vote for every five shares above ten, by him held at the time in the stock of the company: *Provided, however,* that no stockholder, whether an individual, body politic or corporate, shall be entitled to more than sixty votes on any amount of the capital stock of said company, held by him or them.

Distinct accounts, &c.

SEC. 35. The President and Directors shall render distinct accounts of their proceedings and disbursements of money, to the annual meeting of the stockholders.

Time allowed for commencing and finishing work.

SEC. 36. The works hereby required of the Raleigh and Columbia Rail Road Company, shall be executed with diligence; and if they be not commenced within two years after the passage of this act, and finished within ten years after

the first general meeting of the stockholders, then this charter shall be forfeited.

SEC. 37. The President and Directors shall cause to be written or printed, certificates of the shares of the stock in the said company, and shall deliver one such certificate, signed by the President and countersigned by the Treasurer, to each person, for the number of shares subscribed by him, which certificate shall be transferable by him, subject however, to all payments due or to become due thereon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company, to be kept for the purpose, shall thenceforth become a member of the company aforesaid, and shall be liable to pay all sums due or to become due upon the stock assigned him: *Provided, however,* that such assignment shall in no wise exempt the assignor or his representative from their liability to the said company for the payment of all such sums, if the assignee or his representative shall be unable or fail to pay the same.

Certificates of
stock, &c.

SEC. 38. If any person or persons shall wilfully, by any means whatever, impede or hinder the construction of, injure, impair, or destroy any part of the rail road to be constructed under this act, or any of the necessary works, machines, wagons, vehicles, carriages, or other property belonging to the said company, or shall place any obstruction on said road, such person or persons shall be deemed guilty of a misdemeanor, and on conviction thereof in the Court of Pleas and Quarter Sessions, or Superior Court of Law, of the county in which the offence may be committed, shall be fined and imprisoned at the discretion of the court.

Penalty for
hindering or
injuring road.

SEC. 39. *Be it further enacted,* That when the General Assembly may be of opinion that the charter hereby granted shall have been violated, it may be lawful, by joint resolution of the two Houses, to direct the Attorney General, with such Assistant Counsel as the Governor or Legislature may think proper to engage, to issue a writ of *scire facias*, returnable before the Judges of the Supreme Court, calling upon the said corporation to show cause why their charter shall not be forfeited, subject to the same proceedings as are now pro-

Proceedings
to be had on
violation of
charter.

scribed by law in case of other corporations. Their books shall at all times be open to the inspection of a committee of the General Assembly appointed for that purpose; and the President of said company shall biennially make a report to the Legislature, on or before the third week of their session, of their receipts and expenditures, and of such other of their proceedings as he shall deem proper.

Any rail road
may cross. SEC. 40. *Be it further enacted*, That any rail road which may hereafter be constructed by the State or by any company incorporated by the Legislature, shall be at liberty to cross the road hereby allowed to be constructed, upon a level or otherwise, as may be advantageous, provided the free passage of the Raleigh and Columbia Rail Road is not thereby obstructed.

Depot may be
erected at the
point of in-
tersection. SEC. 41. *Be it further enacted*, That whenever the rail road shall be so crossed or approached by any other rail road incorporated by this State, the said Raleigh and Columbia Rail Road Company may erect a depot at or near the point of intersection, where they may receive and deliver passengers and freight, and take therefor the same rates of compensation, and be subject to the same regulations, as at other depots—and should they fail or refuse to erect such depots, the State or company owning such intersecting road, may erect one, and the company hereby incorporated shall receive and deliver passengers and freight at such depots, under the same regulations as aforesaid, unless the same shall be rendered impracticable by the situation of the rail road at such place.

SEC. 42. *Be it further enacted*, That this act shall take effect and be in force from and after its ratification, and shall endure and continue for the term of ninety years, and no longer.

[Ratified 23d January, 1837.]

CHAP. XLI.

An Act to increase the capital stock of the Halifax and Weldon Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Halifax and Weldon Rail Road Company be, and they are hereby authorised to increase their capital stock ten thousand dollars in addition to the capital now authorised by law, and for this purpose, to open books of subscription, at the town of Halifax, under the direction of James Holliday, Thomas Ousby, James Simmons, Michael Ferrell and Redding J. Hawkins, or any three of them, and at such other places, and under the direction of such other persons, as the said commissioners at Halifax may appoint, and to keep the same open until the stock aforesaid shall have been subscribed.

Books of subscription to be opened for additional capital.

SEC. 2. *Be it further enacted,* That whenever the said additional stock shall have been subscribed, or any part thereof, the owners or subscribers for such additional stock shall be vested with all the rights, benefits and privileges, and shall be subject to all the duties, obligations, liabilities and restrictions, and in all respects stand upon an equal footing with the original stockholders in the said Halifax and Weldon Rail Road Company.

New subscribers placed on a footing with the old.

[Ratified 21st January, 1837.]

CHAP. XLII.

An Act empowering the Halifax and Weldon Rail Road Company to subscribe their stock to the Wilmington and Raleigh Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the stockholders in the rail

Stock may be
subscribed
upon terms to
be agreed up-
on by compa-
nies.

road company, created by an act of Assembly, passed in the year one thousand eight hundred and thirty three, chapter seventy-five, entitled "an act to incorporate the Halifax and Weldon Rail Road Company," to subscribe their stock upon the books of the rail road company, incorporated by an act of Assembly, passed in the year one thousand eight hundred and thirty three, chapter seventy eight, entitled "an act to incorporate the Wilmington and Raleigh Rail Road Company," upon such terms as may be stipulated between the stockholders in the Halifax and Weldon Rail Road Company, and the President and Directors of the Wilmington and Raleigh Rail Road Company.

Stock and
works to be
vested in Wil-
mington and
Raleigh road.

SEC. 2. Upon the subscription of the stock held by the stockholders in the Halifax and Weldon Rail Road Company, in the books of the Wilmington and Raleigh Rail Road Company, all the property, real and personal, owned and held by the Halifax and Weldon Rail Road Company, shall vest in and be owned and possessed by the Wilmington and Raleigh Rail Road Company aforesaid, and be owned and held and possessed by the said company in the same manner that all the other property, real and personal, which has been acquired by the said company is owned, held and possessed; and the road which may have been built, or partly built, by the Halifax and Weldon Rail Road Company, shall thenceforward be deemed, to all intents, as well criminal as civil, a part of the Wilmington and Raleigh Road.

SEC. 3. So soon as the subscription hereby authorised shall have been made, all the rights and privileges acquired under

the before recited act of Assembly, passed in the year one thousand eight hundred and thirty three, entitled ‘‘an act to incorporate the Halifax and Weldon Rail Road Company,’’ shall cease and the corporate existence of the said company be determined. So soon as subscription shall be made &c.

SEC. 4. The assent of the said Wilmington and Raleigh Rail Road Company, and Halifax and Weldon Rail Road Company, to the subscription of stock as aforesaid, evidenced by a paper writing, under the hands and seals of the President and Directors of the said corporations, shall be made matter of record, by registering the same in the Register’s office of Halifax county, and recording it in the office of the Secretary of State. Assent of companies to be recorded.

[Ratified 10th January, 1837.]

CHAP. XLIII.

An Act to amend the charter of the Portsmouth and Roanoke Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Portsmouth and Roanoke Rail Road Company be, and they are hereby authorised to charge for toll and transportation, on all produce, goods, wares and merchandize conveyed on their road, at a rate not exceeding four cents per ton, per mile, for toll, and eight cents per ton, per mile, for transportation, except on specie and bullion; on which articles the said company is hereby authorised to charge double the foregoing rates; for a single small package, twenty-five cents, including the charge for receiving and delivering the same; and for pleasure carriages, such rates as the parties interested may agree upon, so that the rates charged are uniform and equally apply to all persons. Rates of toll.

SEC. 2. *Be it further enacted,* That whenever the said Portsmouth and Roanoke Rail Road Company shall have es-

Company not bound to transport from or to any other place than one of its depots, established a depot, at some convenient point between Margettsville and Gareysburg, then it shall not be obligatory on said company to take up or put down any passenger or produce or other commodity at any other than a regularly established place of deposite on said road; but if the said company can, at any time, conveniently take up and put down passengers at other places than their regular places of deposite, then the said company shall be authorised and empowered to charge fifty cents in each case for so doing in addition to the rates now authorised by law.

SEC. 3. *Be it further enacted*, That as soon as the afore-said depot shall be established, if the said President and Directors shall, by reason of the said rail road being out of repair, or from any other cause, fail or neglect to transport any produce or other commodities, which may be deposited at any established depot on said rail road in this State, and which the said President and Directors, or either of them, shall be required to transport, the toll for the transportation being tendered to some acting agent of said road, for such failure or neglect the company shall be liable to the action of the party injured by such failure or neglect.

SEC. 4. *And be it further enacted*, That this amended charter shall take effect and be in force when the President and Directors shall signify their acceptance thereof, and file the same in the office of the Secretary of State.

[Ratified 19th January, 1837.]

CHAP. XLIV.

An Act to amend the charter of the Cape Fear, Yadkin and Pedee Rail Road Company.

Be it enacted by the General assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the subscribers and stockholders of the Cape Fear,

Yadkin and Pedee Rail Road Company, be hereafter known by the name and style of the Fayetteville and Western Rail Road Company.

Change of
name.

SEC. 2. *Be it further enacted*, That they are hereby authorised and empowered to construct and finally complete a rail road from the town of Fayetteville to some point on the Yadkin river above the Narrows; thence, by two branches, the one leading directly to the town of Wilksborough, the other running across the valley of the Catawba river, so as to intersect the Charleston and Cincinnati Rail Road, at the most eligible point.

Road where
to commence
and terminate

SEC. 3. *Be it further enacted*, That the capital stock of said company shall consist of twenty thousand shares, of one hundred dollars each, amounting to two millions of dollars.

Amount of
capital.

SEC. 4. *Be it further enacted*, That when the nett profits of said company shall have amounted to a sum equal to the capital stock, with six per centum interest thereon, then the charges for transportation shall be regulated as not to exceed, upon the whole capital stock expended, after deducting all charges for keeping said road in repair and for other purposes, fifteen per centum interest upon the whole capital stock expended, by said corporation.

Charges for
transportation
regulation of.

SEC. 5. *Be it further enacted*, That if, upon the examination of that part of the route leading from the point where the road shall strike the Yadkin river, or any portion thereof, and extending through the valley of said river to the town of Wilksborough, the stockholders of said corporations, in general meeting, (a majority of two thirds being in favor thereof,) shall determine upon the expediency of rendering said river or any portion thereof navigable, they shall be, and are hereby vested with all necessary powers to carry the same into effect; and may own, possess and employ upon said river, steam boats and pole boats, and all other crafts suitable or necessary to said navigation; and shall possess all the powers and privileges now possessed and enjoyed by the Cape Fear Navigation Company, and shall also be subject to all the limitations and restrictions which are imposed on the said company, so far as they may be applicable to the navigation of the Yadkin river; and shall be entitled to demand and receive freight for transportation on goods, wares, merchandize, produce and passengers conveyed on their boats, at a rate not exceeding the rate

Company au-
thorised to
render Yad-
kin river nav-
igable.

which they by their act would be entitled to receive, if conveyed on said rail roads: *Provided*, that nothing contained in this act shall be so construed as to prevent individuals from navigating such portion of said river as is now open for navigation, without hinderance or the payment of any toll whatsoever.

SEC. 6. *Be it further enacted*, That it shall be the duty of Corporation to keep a record of its proceedings. said corporation to keep a full and fair record of their proceedings, in books provided for that purpose, and shall produce said records in any court of justice, whenever required so to do by order of said court.

If 20 miles of Road, &c. SEC. 7. *Be it further enacted*, That if twenty miles of said rail road be not completed within four years after the passage of this act, then this act shall be void and of no effect.

Repealing clause. SEC. 8. *Be it further enacted*, That so much of the act incorporating the Cape Fear, Yadkin and Pedee Rail Road Company, as comes within the meaning and purview of this act, be, and the same is hereby repealed.

How long to exist. SEC. 9. *Be it further enacted*, That this corporation shall exist for the term of ninety years, and no longer, unless renewed by the Legislature.

When to take effect. SEC. 10. *Be it further enacted*, That this act shall be in force from and after the ratification thereof.

Produce. &c. order of transportation. SEC. 11. It shall be the duty of the said company to transport all produce and other commodities, delivered at any place of deposite established by said company on said road, and to transport the same in the order of time in which such produce and other commodities shall have been received, so as to do equal justice to all and give preference to no one.

When corporation may be taxed. SEC. 12. *Be it further enacted*, That all the property owned by the said company shall be deemed and held as personal estate, and shall not be subject to taxation for fifteen years from the passage of this act; after which time, whenever the nett profits of the said company shall exceed six per cent. per annum, the General Assembly of this State may impose a tax, not exceeding twenty-five cents per share, on each share of the capital stock of the said company.

SEC. 13. *Be it further enacted*, That if the North Carolina Central Rail Road Company shall determine in favor of constructing their rail road from or near the harbour of Beaufort, to intersect and unite with the rail road authorised to be con-

structed by this act, it shall be the duty of the said Fayetteville and Western Rail Road Company to give a preference, in the transportation of all produce and other commodities, brought to their rail road by the North Carolina Central Rail Road, so as to occasion no delay thereof; and if the said company shall refuse or neglect to transport the said produce and other commodities, as required by this section, the said company shall be liable to the person or persons aggrieved, for any damage or injury which may result, for such refusal or neglect, to be recovered before any court of record having cognizance thereof.

If the North Carolina central rail road shall determine &c.

[Ratified 9th January, 1837.]

CHAP. XLV.

An Act to amend the charter of the Louisville, Cincinnati and Charleston Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the charter of the Louisville, Cincinnati and Charleston Rail Road Company be, and the same is hereby amended in the following particulars, that is to say: three of the twenty-four Directors of the said company shall be elected from stockholders residing in each of the States of Kentucky, Tennessee, North Carolina and South Carolina; and twelve of the said Directors may be elected from the stockholders at large without regard to their place of residence.

Directors election of.

SEC. 2. That the said rail road company shall be discharged from all obligations to construct any branches of the said rail road in the State of Kentucky, or to extend the main road in the said State, further than from the Southern line thereof to Lexington, in the said State.

Discharged from obligations as to branches in Kentucky.

SEC. 3. That whenever it shall be the unanimous vote of the General Directors residing in any State requiring it, the

Amount of subscriptions

in each State, general board of Directors shall apply the amount subscribed how it may by that State or its citizens, in the first place, to the construction of such portion of the said road as may be within the limits be first applied. of that State.

SEC. 4. In case the State of Kentucky should not agree to the amendments above proposed, the said rail road company shall be, and hereby is constituted a body politic and corporate, in the States of South Carolina, North Carolina and Tennessee, with all the powers, rights and privileges granted to it by the acts of the Legislatures of the last mentioned States, incorporating it, discharged from all obligations to construct any road in the State of Kentucky, or to have any Directors therein, or to have more than twenty one General Directors; but nothing herein contained shall be construed to release the said company from the obligations to extend their road to the south boundary of Kentucky.

SEC. 5. *Be it further enacted,* That the said rail road shall pass up the valley of the French Broad River, and cross the Blue Ridge, into Rutherford county North Carolina.

SEC. 6. *Be it further enacted,* That it shall be lawful, and power is hereby given to North Carolina, or any company incorporated by her authority, to join the said road, in any of the States where the said rail road shall be constructed under this charter.

[Ratified 19th January, 1837.]

CHAP. XLVI.

An Act to incorporate the Norfolk and Edenton Rail Road Company.

Preamble. WHEREAS, an act of incorporation was passed by the Legislature of this State, at its session in one thousand eight hundred and thirty four, entitled "an act to incorporate the Albemarle Rail Road Company," which act was confirmed by the

Legislature of Virginia, on the twelfth day of February, one thousand eight hundred and thirty-five, upon condition that the said Albemarle Rail Road should intersect "the Portsmouth and Roanoke Rail Road," at such point thereof, at or near Suffolk, as should be selected by the President and Directors of the Portsmouth and Roanoke Rail Road Company, and upon such terms as they should deem expedient; which location or conditions defeated the intentions of the said act, and prevented any farther progress therein, than that of opening books of subscription at Edenton, Suffolk and Norfolk, for one hundred days, as required by the act, but at which places not a share was subscribed. And whereas it is further represented to this Assembly that a number of the citizens of the counties of Chowan, Perquimons, Pasquotank and Camden, in this State, and of the Borough of Norfolk, in the State of Virginia, are still desirous to construct a similar rail road, provided it shall pass through the said counties, and terminate in the Borough of Norfolk; and, for the accomplishment of so desirable an object, have pledged themselves by subscribing for large sums of money, have already had the route of the road surveyed, and will immediately commence its construction on being invested with the same powers and privileges which were granted to the Albemarle Rail Road Company, or with others of similar import:

Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful to open books in the town of Edenton, under the direction of James C. Johnston, Joseph B. Skinner, Joseph H. Skinner, Joshua Skinner, Cha's W. Mixon, James Norcom, Sen. or a majority of them; and in the Borough of Norfolk, under the direction of Marshall Parks, George McIntosh, John N. Tazewell, Richard H. Chamberlaine, John Cowper, Henry Woodis and Walter Herron, or any three of them; and at such other places, and under the direction of such other persons as the commissioners herein named, or any three of them, shall designate and appoint, for the purpose of receiving subscriptions to the amount of four hundred and fifty thousand dollars, to be divided into shares of fifty dollars each, to constitute a joint capital stock for the purpose of making a rail road from the town of Edenton, in this State, to the Borough of Norfolk, in the State of Virginia;

Books of sub-
scriptions to
be opened &c.

the subscriptions already made for the purposes aforesaid, being held and considered as so much of the capital stock of this company, to construct the rail road from Edenton to Norfolk, and being placed on the same footing as those which may hereafter be made.

SEC. 2. The time and places of receiving such further subscriptions, shall be advertised in such manner as the commissioners before named may direct, and the books for receiving the same shall be kept open thirty days; and should it appear at the expiration of the thirty days, that more than the requisite sum shall have been subscribed for upon the books, including the subscription already made for this object, it shall be the duty of the commissioners, or any three of them, to reduce the number of shares subscribed for by each individual or body corporate, in fair and equal proportions, until the whole number of shares be reduced to ninety thousand: *Provided*, that no reduction shall be made on subscriptions not exceeding five shares; but should the whole amount of stock not be subscribed for within thirty days, then the books may be kept open until the whole amount of shares shall have been subscribed: *Provided however*, that as soon as three thousand shares shall have been subscribed, the subscribers are hereby authorised to close the books; and they, the subscribers, their heirs, executors, administrators or assigns, shall be, and they are hereby declared to be incorporated into a company, by the name and style of "the Norfolk and Edenton Rail Road Company," and in that name may sue and be sued, plead and be impleaded, and shall possess and enjoy all the rights, privileges, and immunities of a corporation or body politic in Law or Equity, and may make such bye-laws, rules and regulations, not inconsistent with the laws of this State, or of the United States, as they may deem necessary, for the well ordering and conducting the affairs of said company.

SEC. 3. *Be it further enacted*, That upon every share subscribed, there shall be paid by the person subscribing, the sum of one dollar, to the commissioners authorised to receive the subscriptions, the persons having already subscribed being subject to the same conditions; and the residue thereof shall be paid in such instalments, and at such times, as the President and Directors of the company may require. The said com-

Time and place of receiving subscriptions to be advertised; and subscriptions how to be reduced, &c.

Subscriptions payment of \$2 upon each share.

missioners, and all persons holding money paid on subscriptions of stock, shall forthwith, after the election of President and Directors for said company, pay over all money in their hands belonging to the company; and upon failure thereof, the President and Directors may recover the amount due from them, or any one or more of them, by motion, on ten days' previous notice, in writing, in the Superior or County Court of any county wherein such commissioner or commissioners, their executors or administrators may reside.

Sec. 4. *Be it further enacted*, That when three thousand shares or more of the stock shall be subscribed, public notice may be given by any three or more of the commissioners, who shall call a general meeting of the subscribers, giving thirty days' public notice in some newspaper printed in Edenton and Norfolk, of the time and place of said meeting. To constitute any such meeting, a number of persons entitled to a majority of votes upon all shares subscribed, shall be present, either in person or by proxy; and should a sufficient number not attend, those present shall have power to adjourn from time to time, until a majority of the shares subscribed shall be represented. The meeting shall then proceed, a majority of the stock being represented, to elect a President and six Directors, who shall hold their office until the next annual meeting of the stockholders, and until their successors in office shall be appointed, subject, nevertheless, to the provisions hereafter mentioned. An annual meeting of the stockholders of said company shall be held at such time, in each year, as the stockholders, in their first general meeting may appoint; at which the election of President and Directors shall take place in like manner as above; and when a vacancy may occur, by death, resignation or otherwise, the vacancy shall be filled, for the time being, by the remaining President and Directors; or if the presidency be vacant, the Directors may fill as above. Any two or more Directors may have power, in the absence of the President, to appoint one of their body President *pro tempore* and transact business: *Provided always*, the majority of votes representing shares in said company, given at any time against any President or Directors of said corporation, shall vacate his office or appointment; and shall also have power to fill such vacancy until the next annual meeting of the stock-

When 3000 shares shall be subscribed company may go into operation.

holders. Any one or more stockholders, owning one thousand shares, may, at any time, require the President and Directors to convene a general meeting of the stockholders, on giving thirty days' public notice, specifying the object of such meeting.

SEC. 5. *Be it further enacted,* That the President and Directors of the said company shall be, and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining a rail road to be located as aforesaid, with as many sets of tracts as they or a majority of them, may deem necessary and proper to be made; also to construct all works whatsoever, which may be necessary and expedient, in order to the proper completion of the rail road. The said President and Directors of the company shall have power to make contracts with any person or persons for any work to be done upon or for the said road, in such manner, and under such rules and regulations, as they may deem proper; and all such contracts and agreements, made by the company or their legal agents, with any person or persons, shall be binding on the individual or individuals making them, and also on the company. The President and Directors shall have power to call on all the stockholders for a due and equal proportion of the amount subscribed by them to the capital stock of said company, in such sums, and at such times, as they, the President and Directors, may deem proper and right, by giving one month's notice of such call in some newspaper circulating among the subscribers. The President and Directors shall have power to appoint a Treasurer, Clerk and all other officers that they may deem necessary and proper, to aid and assist in managing and prosecuting said work, and to fix their compensation, and take such bonds, with security for the performance of duty, as they may prescribe. If any stockholder or subscriber shall fail to pay the sum required of him by the President and Directors, or a majority of them, within one month after the same may have been advertised in some newspaper, it shall and may be lawful for the President and Directors, or a majority of them, to sell at public auction, and to convey to the purchaser, the share or shares of such stockholders so failing or refusing, giving one month's public notice of the time and place of sale, in manner aforesaid; and after retaining the

Rights and powers of President and Directors, as to road, contracts, payment of stock, appointment of officers, &c.

sum due and all charges of sale, out of the proceeds thereof, to pay the surplus over to the former owner or his legal representative; and if the said sale shall not produce the sum required to be advanced, with the incidental charges attending the sale, then the President and Directors, or a majority of them, may recover the balance of the original proprietor or his assignee or the executor or administrator, or either of them, by motion, on ten days' notice, before the court of that county of which he is an inhabitant, or by warrant before a justice of such county; and any purchaser of the stock of the company under the sale of the President and Directors, shall be subject to the same rules and regulations as original subscribers to the capital stock of the said company.

SEC. 6. *Be it further enacted,* That the President and Directors, their officers, servants, agents and contractors, shall have full power and authority to enter upon all lands and tenements, through which they may think it necessary to make the said rail road, and to lay out the same according to their pleasure, so that neither the dwelling house, yard or garden of any person be invaded without his or her consent. If the President and Directors cannot agree with the owner of the lands on the terms upon which the rail road shall be opened through it, it shall be lawful for them to apply to the court of the county in which the land lies; and upon such application, it shall be the duty of the court to appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to such land which will result from opening the said rail road through it. No such appointment shall however be made unless ten days' previous notice, in writing, of the application shall have been given to the owner of the land, or to the guardian, if the owner be an infant or *non compos mentis*, if such owner or guardian can be found within the county; and if he cannot be found, then such appointment shall not be made, unless notice of the application shall have been published at least one month in some public newspaper. A day for the meeting of the freeholders, to perform the duties assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until the business shall be finished. Of the five freeholders so appointed, any three or more of them may act, after having duly

Company
may open ro'd
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How damag's
shall be as-
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sworn or solemnly affirmed, before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages, which will be sustained by the proprietor of the land, from the opening of the said rail road through the same, and that they will certify their proceedings thereupon to the court of the said county

Freeholders to assemble on land and ascertain damages.

SEC. 7. *Be it further enacted*, That it shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land through which the rail road is to be opened; and after viewing the same, and hearing such proper evidence as either party may offer, to ascertain, according to their best judgment, the damages which the owner of the land will sustain by opening the rail road through the same. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee simple interest; they shall take into consideration the quantity and quality of the land which the rail road will occupy, the additional fencing and gates that will be required thereby, and all other inconveniences which will result to the said land from the opening of the said rail road, and shall combine therewith a just regard to the advantages which the owner of the land will derive from opening the rail road through the same.

Freeholders to make written report.

SEC. 8. *Be it further enacted*, That when the said freeholders shall have agreed upon the amount of the damages, they shall forthwith make a written report of their proceedings, under their names and seals, in substance as followeth: "We, ——— freeholders, appointed by order of the court of ———, for the purpose of ascertaining the damages which would be sustained by ———, the proprietor of certain lands in said county, through which the Edenton and Norfolk Rail Road Company propose to open a rail road, do hereby certify that we met together on the ——— day of ———, the day appointed for that purpose by the said order, (or the day to which we were regularly adjourned from the day appointed for our meeting by the said order, as the case may be,) and that, (first having duly sworn or affirmed) and having viewed the premises, we proceeded to estimate the quality and quantity of the land aforesaid which would be occupied by the said rail road, the quantity of additional fencing or gates which would probably be occasioned thereby, and all other inconveniences which seemed

to us likely to result therefrom to the land; that we combined in these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of the land from the opening of the aforesaid rail road through the same; that under the influence of these considerations, we have estimated and do assess the damages aforesaid at the sum of _____ dollars. Given under our hands and seals, this _____ day of _____." At the foot of the report so made, the magistrate before whom the said freeholders were sworn or affirmed, shall make a certificate, in writing, in substance as followeth: "_____ county, to wit. I, _____, a justice of the peace for the said county, hereby certify that the above named freeholders, before they executed their duties as above certified, were solemnly sworn (or affirmed) before me that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named _____ from the opening of the above mentioned rail road through his (or her) land; and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand _____ day of _____." The report of the freeholders so made, together with the certificate of the magistrate aforesaid, shall be forthwith returned by the said freeholders to the court of said county; and unless good cause be shown against the report, it shall be confirmed by the court and entered on record; but if the said report should be disaffirmed, or the said freeholders, unable to agree, should report their disagreement, the court may, at its own discretion, as often as may be necessary, supersede them, or any of them, appoint others in their place, and direct another view and report to be made in the manner above prescribed. On the confirmation of any such report, and on the payment or tender of payment of said damages in court, when, for good causes shown, the court shall so have ordered it, the President and directors shall be at liberty in the mean time to open the said rail road upon the ground viewed and assessed by the freeholders aforesaid: *Provided always*, that either party dissatisfied with the sentence, order or decree of the County Court, may appeal therefrom to the Superior Court of said county.

SEC. 9. *Be it further enacted*, That whenever it shall be necessary to subject the land of individuals to the use of said

President and Directors may if necessary, enter upon lands without the consent of proprietors, &c.

company, in opening and constructing said rail road through the same, and the consent of the proprietor or proprietors cannot be obtained, it shall be lawful for the president and directors of the said company and for their superintendents, agents, contractors, labourers and servants, to enter upon such lands, and proceed in opening and constructing the said rail road through the same. The pendency of any proceedings in court or before assessors or valuers, to ascertain the damages that will be sustained by the proprietor or proprietors of such lands, from opening and constructing the said rail road through the same, shall in no manner hinder or delay the progress of the said work. In the mean time, no order shall be made and no injunction shall be awarded by any court or judge, to stay the proceedings of the company in the prosecution of their works, unless it be manifest that they, their officers, agents or servants are transcending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages: the true intent and meaning of this act being, that all injury that may be done to any land, without the consent of the proprietor or proprietors thereof, by opening and constructing the said rail road through the same, over and above the advantages of the said rail road to such proprietor or proprietors, shall be fully and completely compensated for in damages, when ascertained as aforesaid, if they be not paid to the party or parties entitled to the same or into court, by the company, during the term at which the report shall be confirmed, the clerk of the said court at any time after the adjournment of the court, on the application of the party or parties entitled to the said damages, or his or their attorney, shall issue an execution for the amount of such damages against the said company, which may be legally issued against a corporation on a judgment for money.

SEC. 10. *Be it further enacted*, That if the said president and directors shall not obtain the consent of the proprietor or proprietors of any land through which they may propose to open and construct said rail road, and shall not apply to the said County Court and procure assessors or valuers to be appointed as before directed, within forty days from the time the said president and directors, their superintendents, agents, contractors, labourers or servants shall commence opening and constructing

If President and Directors fail, &c. proprietors of land may apply to court for assessors.

the said rail road through such land; then it shall be lawful for the proprietor or proprietors of said land, at any time previous to an appointment of valuers by the said president and directors, giving the said president and directors ten days' previous notice, by serving the same on the president or any one or more of the directors, to apply to the said County Court; and upon such application, it shall be the duty of the said court to make the appointment of assessors or valuers, as before directed, who shall be qualified in the same manner, and shall, upon the same principles, and in the same manner, in all respects, proceed to assess and report to the court the damages that will result to the proprietor or proprietors of such land, as if they had been appointed on the motion of the said president and directors; and the said court shall proceed upon the said report, and confirm or set aside the same, and appoint other assessors or valuers in all respects as if the same had been made by assessors or valuers appointed on the motion of the said president and directors; and if the said president and directors shall not pay the proprietor or proprietors of such lands, or into court, the damages assessed during the term of the court on the like application, the clerk shall issue the like execution, for the amount of the damages, against said company.

SEC. 11. *Be it further enacted*, That all machines, wagons, vehicles and carriage, purchased as aforesaid with the funds of the company, or engaged in the business of transportation on said rail road, and all the works of the said company constructed, or property acquired under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever, for the term of fifteen years; and thereafter the Legislature may impose a tax not exceeding twelve and one half cents per annum, per share, on each share of the capital stock, whenever the annual profits thereof shall exceed six per cent.

When company may be taxed, &c.

SEC. 12. *Be it further enacted*, That the said President and Directors, for the purpose of making the said rail road, or of repairing the same after it shall have been made, shall also be at liberty, by themselves, their officers, agents and servants, at

May enter upon adjacent lands, &c.

any time, to enter upon any adjacent lands, and to cut, quarry, dig, take and carry away therefrom, any wood, stone, gravel or earth which they may deem necessary: *Provided, however,* that they shall not, without the consent of the owner, take any timber, gravel, stone or earth constituting any part of any fence or building. For all wood, stone, gravel or earth, taken under the authority of this act, or for incidental injuries done to enclosures, crops, woods or grounds, in taking or carrying away the same, the said President and Directors shall make, to the owners a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, disinterested and intelligent freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn or affirmed by the justice, and then shall ascertain the compensation, upon their own view, for the wood, stone, gravel or earth taken, and for the injury done as aforesaid, in taking them: *Provided, however,* that it shall be the duty of the said proprietors to show to the justice of the peace to whom application is made that ten days' previous notice of the time of making the same, has been given to the President or the principal superintendent of the said rail road; and no award which may be given under any appointment, without such notice, shall be obligatory or binding on said company.

When road
shall cross a-
ny way, &c.

SEC. 13. *Be it further enacted,* That whenever, in the construction of said rail road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said President and Directors so to construct the said rail road across any other road or way already established by law, as not to impede the passage or transportation of persons or property thereon; and when it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon ways across the said rail road, from one part of his land to the other.

Purchase of
machin's &c.

SEC. 14. *Be it further enacted,* That the said President and Directors shall have power to purchase, with the funds of the said company, and place on said rail road, all machines, locomotives, engines, cars, wagons, vehicles, carriages and teams of any description whatever, which they may deem necessary for the purpose of transportation. All machines, locomotives, engines, cars, wagons, vehicles, carriages and teams purchased as aforesaid, and the works and buildings constructed under

authority of this act, and all profits which shall accrue from the same, shall be vested in the respective share holders of the company forever in proportion to their respective shares.

SEC. 15. *Be it further enacted*, That so soon as the rail road shall be completed, or any ten miles thereof, the President and Directors shall be entitled to demand and receive on the same, the following rates of toll, to wit: on persons, not exceeding six cents per mile, for each person, unless the distance which any person be transported be less than ten miles, in which case the President and Directors may be entitled to make an extra charge of fifty cents for taking up and putting down each person so transported: on all goods, produce, merchandize or commodity of any discription whatsoever, a sum not exceeding twelve cents per ton per mile: for the transportation of the mail, such a sum as they may agree for with the agents of the government: That they shall furthermore be entitled to demand and receive for the weighing, storage and delivering of produce and other commodities, rates not exceeding the ordinary ware-house rates, charged in the sea ports in this State, or in the State of Virginia, until the nett profits received shall amount to a sum equal to the capital stock expended, with six per cent. per annum interest thereon, from the time the money was advanced by the stockholders, until received back in the nett profits; but when the nett profits received as aforesaid, by the tolls aforesaid, shall amount to a sum equal to the capital stock expended, with six per cent. interest thereon, then the toll which the said President and Directors shall be entitled to demand and receive as aforesaid, shall be fixed and regulated from time to time by the President and Directors, so as to make them sufficient, in their estimation, to yield a nett profit of fifteen per cent. per annum on the capital stock invested in said road, and the constructions connected with it, and the cost of the locomotive engines, cars, carriages and other vehicles, and the renewal and repairs of the same. It shall be the duty of the said company to transport all produce and other commodities, which may be delivered at any place of deposite, established by said company, according to the order of time in which the same may be received, so as to do equal justice to all and give preference to no one. The company, however, will not be bound to transport any produce or other commodities,

Rates of toll.

unless the owner thereof shall pay or tender to the said company, at their toll gate or gates, the tolls due upon such commodities under this act.

Toll gates may be erected. SEC. 16. *Be it further enacted*, That it shall be lawful for the said President and Directors, and they are hereby authorised to erect toll gates at any point or points on the line of their rail road.

Regulation as to votes, gen. meetings, &c. SEC. 17. *Be it further enacted*, That in counting all the votes of the said company, each member shall be allowed one vote for each share as far as ten shares, and two votes for every five shares above ten, by him held at the time in the stock of the said company. The presence of the proprietors entitled to a majority of all the votes which could be given by all the stockholders, shall be necessary (in all meetings of the stockholders,) either in person or by proxy, properly authorised. If a sufficient number to constitute a majority do not attend on any day appointed for the general meeting, the proprietors who do attend may adjourn from time to time, until a general meeting shall be formed, consisting of a majority of the stockholders.

Distinct accounts to be rendered. SEC. 18. *Be it further enacted*, That the President and Directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of the subscribers.

When tolls may be demanded and dividends made. SEC. 19. *Be it further enacted*, That so soon as the said rail road shall be completed, or any ten miles thereof, the President and Directors of the said company may demand proportionable tolls, and shall semi-annually declare and make such dividends of the nett profits of the tolls herein granted, as they may deem advisable, to be divided among the proprietors of the stock of the said company, in proportion to their respective shares.

Penalty for charging unlawful toll. SEC. 20. *Be it further enacted*, That if any toll gatherer, at any toll gate to be erected under the authority of this act, shall ask, demand or receive any other or greater toll than herein allowed, he shall forfeit and pay to the party aggrieved thereby, ten dollars for every such offence, recoverable with cost by warrant before any justice of the peace; and if such toll gatherer, being at the time of incurring such penalty in the service of the company, shall be unable to pay the judg-

ment awarded against him, the said company shall be liable to pay the same.

SEC. 21. *Be it further enacted*, That if the said President and Directors shall not begin the said work within two years after the passage of this act, or shall not complete the same within five years thereafter, then the interest of the said company in the said rail road, and the tolls aforesaid, shall be forfeited and cease.

Limits within which road shall be commenced and completed.

SEC. 22. *Be it further enacted*, That the said President and Directors shall cause to be printed certificates for shares of stock in the said company, and shall deliver one certificate, signed by the President and Secretary, to each person for the shares subscribed by him, which certificate shall be transferable by him, subject however to all payments due or to become due; and such assignee, having first caused the transfer or assignment to be entered in a book of the company, to be kept for that purpose, shall thenceforth become a member of that company, and shall be liable to pay all sums due, or which may become due on the stock assigned to him: *Provided, however*, that such assignments shall in no case exempt the assignor or his representatives from their liability to the said company, for the payment of all such sums, if the assignee or his representatives shall be unable or shall fail to pay the same.

Printed certificates of stock to be given to subscribers, &c.

SEC. 23. *Be it further enacted*, That it shall be lawful for the said company to purchase lands, tenements and hereditaments, from the proprietors, or from the corporation of any town, within or through which the said road may pass, at each point of termination, or at any intermediate point of said road, in the vicinity thereof, not exceeding ten acres, to be used by them for all necessary purposes of said rail road, or to be disposed of by them when they shall deem it proper.

Company may purchase lands, &c.

SEC. 24. *Be it further enacted*, That if any person or persons shall wilfully and by any means whatsoever, injure, impair or destroy any part of the rail road, or any of the necessary works, buildings, machines, wagons, vehicles or carriages, belonging to the said company, he, she or they shall forfeit and pay to the company five times the actual damages so sustained, to be sued for, and recovered with full costs before any tribunal having cognizance of the same, by action of debt, in the name and for the use of the said company.

Penalty for injuring road.

Penalty for
obstructing
road.

SEC. 25. *Be it further enacted*, That if any person or persons shall wilfully, and with evil intent, place, or cause to be placed on the aforesaid line of the said rail road, any obstruction or impediment, so as to jeopardize the safety and endanger the lives of persons travelling on said road, he, she or they shall be deemed guilty of an indictable misdemeanor, and, upon conviction thereof, in either the County or Superior Court of the county in which such offence may have been committed, shall be punished by fine and imprisonment, or either, at the discretion of the court.

Capital may
be increased.

SEC. 26. *Be it further enacted*, That if the capital stock of the company hereby incorporated, shall be found insufficient for the purposes of this act, it shall and may be lawful for the President and Directors, having first obtained the sanction of a majority of the company, to increase the said capital stock, from time to time, to an amount not exceeding five hundred thousand dollars, by the addition of new stock, having first given twenty day's public notice, that the individual stockholders at the time being, or their legal representatives, may have the option of taking such additional shares, in proportion to the amount of stock held by them respectively; after which, if necessary, books of subscription shall be opened in Edenton and Norfolk, when the new subscribers for such additional shares of the capital stock are hereby declared to be thenceforward incorporated in the said company, with all the privileges and advantages, and subject to all the liabilities of the original stockholders.

Company
may borrow
money.

SEC. 27. *Be it further enacted*, That the President and Directors and company shall have power to borrow money for the objects of this act, and to issue certificates or other evidence of such loan, and to make the same convertible into stock of the company at the pleasure of the holder, provided that the capital stock shall not be increased thereby to an amount exceeding five hundred thousand dollars; and to pledge the property of the company for the payment of the same and its interest: *Provided*, that no certificate of loan convertible into stock, or creating any lien or mortgage on the property of the company, shall be issued by the President and Directors, unless the expediency of making a loan on such terms, and of issuing such certificates, shall have first been determined on at a general meeting of the stockholders, by two thirds of the votes which could legally be given in favor of the same.

SEC. 28. *Be it further enacted*, That this act and every part and provision of the same, shall be subject to be altered, amended, or modified by any future Legislature, as to them shall seem necessary and proper, except so much thereof as prescribes the rates of compensation or tolls for the transportation of produce and other commodities, allowed to the said company, and the rate allowed for the transportation of passengers; *and provided also*, that the right of property acquired by the said company, under this act, shall not be taken away or impaired by any future Legislature.

This act may be altered by future Legislature.

SEC. 29. *Be it further enacted*, That it shall not be lawful for any other company, or person or persons whatever, to travel upon or use the road of said company, or to transport persons or property of any description along the said rail road, without the license or permission of the President and Directors of said company: *Provided*, that the State reserves to itself or to any company to be incorporated by its authority, the right and privilege to connect with the road hereby authorised, any other road leading from, to or across this to any part or parts of the State, so that in forming such connection no injury shall be done to the work of the company hereby incorporated.

No other person or company shall use road, &c.

SEC. 30. *Be it further enacted*, That this company may exercise the corporate powers hereby granted for the term of ninety years, and no longer, unless by renewal of the charter.

Company how long to exist.

SEC. 31. *Be it further enacted*. That this act shall be in force from and after its passage by the General Assembly of North Carolina and the Legislature of Virginia.

When to take effect,

[Ratified 22nd December, 1836.]

CHAP. XLVII.

An Act to incorporate the North Carolina Central Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful to open books in the town of

Books of sub-
scription
where to be
opened.

Beaufort, in the county of Carteret, under the direction of Jeconias Pigott, Benj. Lecraft, James Manney, Bridges Arendell, Elijah Whitehurst, Elijah Pigott, Peter Pelletier, James Davis, Levi Oglesby, Isaac Hellen and Francis L. King, or any three of them; at Trenton, in the county of Jones, under the direction of Hardy Bryan, Lemuel H. Simmons, Emanuel Jarman, John H. Hammond, Nathaniel W. Waples, Francis Duvall, Calvin J. Morris, Charles Gerock, James Brown, James McDaniel, Hardy O. Newton, Jonathan Wood and Owen B. Cox; at Newbern, under the direction of John Washington, John H. Bryan, John M. Roberts, Oliver Dewey, Sen. Hardy B. Lane, John Harris, John M. Bryan and Abner Hartley; at Onslow Court House, under the direction of William P. Ferrand, John A. Averett, Daniel Dixon, F. J. Humphry and Jarvis Marble; at Kinston, in the county of Lenoir, under the direction of Nathan G. Blount, John C. Washington, Needham Whitfield, and John P. Dume; at Kenansville, in Duplin county, under the direction of John E. Hussey, Jeremiah Pear-sall and Stephen Miller; at Wanesborough, under the direction of Richard Washington, Jonas Mace, Gabriel Sherrod, and Nicholas Washington; at Snow Hill, under the direction of Charles Edwards, Wyatt Moye and James Harper; at Clinton in Sampson county, under the direction of William McKey, R. C. Holmes and Ollen Mobley; at Smithfield, under the direction of David Thompson, Bythyn Bryan, John McLeod and Josiah Watson; at Fayetteville, under the direction of John Huske, Edward L. Winslow, Charles T. Haigh and Dillon Jordan; at Raleigh, under the direction of Charles Manly, Weston R. Gales, Allen Rogers, William Roles, and Johnston Busbee; at Pittsborough, in Chatham county, under the direction of William Albright, Green Womach and Robert Faucett; at Carthage, in Moore county, under the direction of John Morrison, Samuel C. Bruce and C. H. Dowd; at Hillsboro', in Orange county, under the direction of James Mebane, James S. Smith and James Webb; at Greensborough, in the county of Guilford, under the direction of James T. Morehead, Jesse H. Lindsay and John A. Mebane; at Ashboro', in the county of Randolph, under the direction of W. B. Lane, Jonathan Reding and Michael Cox; at Lawrenceville, in the county of Montgomery, under the direction of William Harris, James

Gaines and John B. Martin; at Lexington, in the county of Davidson, under the direction of William R. Holt, Samuel Hargrave and Charles L. Payne; at Louisburg, in the county of Franklin, under the direction of John D. Hawkins, William P. Williams and Henry G. Ruffin; at Oxford, in the county of Granville, under the direction of John C. Taylor, Robert B. Gilliam and James Wyche; at Concord, in Cabarrus county; under the direction of Keah P. Harris, William Phifer and Paul Barringer; at Charlotte, in the county of Mecklenburg; under the direction of Stephen Fox, James Hutchison and James Dunn; at Salisbury, under the direction of Charles Fisher, Thomas G. Polk, John Clement and Burton Craige; at Statesville, in the county of Iredell; under the direction of Theophilus Falls, Abner Franklin and Joseph W. Stockton; at Huntsville, in the county of Surry, under the direction of Nicholas Williams, Samuel Speir and Samuel Davis; at Germanton, in the county of Stokes, under the direction of Matthew R. Moore, C. L. Banner and R. D. Golding; at Wilkesborough; in the county of Wilkes, under the direction of James Wellborn, John Finley and Eli Petty; at Morganton, in the county of Burke, under the direction of A. L. Erwin, Thomas Walton and Robert Pearson; at Lincolnton, in the county of Lincoln, under the direction of D. Rienhardt, C. C. Henderson and P. Summer; at Rutherfordton, under the direction of Edmond Bryan, Theodore T. Buckett and John Gray Bynum; at Jefferson, in the county of Ashe, under the direction of George Bowers, John Faw and John Ray; at Ashville, in the county of Buncombe, under the direction of James W. Patton, John B. Whitesides and James M. Smith; at Waynesville; in the county of Haywood, under the direction of William Johnston, Joseph Cathey and Robert Love; at Burnsville, in the county of Yancy, under the direction of Bachus J. Smith, John W. McEllory and Joseph Smith; at Franklin, in the county of Macon, under the direction of Jesse R. Siler, John Almon and James W. Gwyn; and at such places and under the direction of such persons, as any three of the commissioners herein before named to superintend the receiving of subscriptions at Trenton, shall direct; for the purpose of receiving subscriptions to an amount not exceeding two millions of dollars, to constitute a joint capital stock for the purpose of effecting a

Amount of
capital

Route of road.

communication, by a rail road, from some point at Beaufort Harbor, in the immediate neighborhood of the waters of Beaufort Harbor, through or near Newbern; thence through or near Trenton, in Jones County; and thence, Westwardly, by the most convenient and eligible route, through the central parts of North Carolina, or as near the same as may be deemed expedient, to the Tennessee line, or as far as may be practicable; or from the point of commencement, at or near Beaufort Harbor, by the most eligible route, to intersect and unite with the rail road of the Cape Fear, Yadkin and Pedee Rail Road Company, at or near the town of Fayetteville; the route, whichever may be preferred and adopted, to be determined by the company hereby incorporated, in a general meeting of the stockholders. That the said books shall be opened, in each place, at such time as the commissioners or deputy commissioners shall and may respectively appoint; and shall be kept open, at each place, at least sixty days at a time; and if it shall appear that more than the whole amount authorised by this act shall be subscribed, then it shall be the duty of the commissioners, or a majority of them, appointed to receive subscriptions at Trenton, to reduce the number of shares subscribed for, among the subscribers, in fair and equal proportions, to the amount of stock subscribed for, respectively by each, until the whole number of shares shall be reduced to twenty thousand. But if the whole of the shares shall not be subscribed for within one year from the time books shall be opened to receive subscriptions, then the books may be closed, or continued open, as a majority of the commissioners named to receive subscriptions at Trenton may judge most beneficial, until the whole number of shares shall be subscribed for. And the time and place of receiving such subscriptions, as aforesaid, shall be advertised in one or more newspapers published in the city of Raleigh, and in the town of Newbern, Fayetteville and Salisbury.

Regulations
as to opening
books, reduc-
ing subscrip-
tions, &c.

When com-
pany may go
into opera-
tion.

SEC. 2. When two thousand shares shall be subscribed in manner aforesaid, the subscribers, their executors, administrators or assigns shall be, and they are hereby declared to be incorporated into a company, by the name and style of "the North Carolina Central Rail Road Company," and by that name may sue and be sued, plead and be impleaded, and shall

possess and enjoy all the rights, privileges and immunities of a corporation, or body politic in law; and may make all such bye laws, rules and regulations, not inconsistent with the laws or constitution of this State, or of the United States, as shall be necessary for the well ordering and conducting the affairs of the company.

SEC. 3. Upon any subscription of stock as aforesaid, there shall be paid at the time of subscribing, to the person or persons appointed by this act, or by virtue of this act, to take subscriptions, the sum of one dollar on every share subscribed; and the residue thereof shall be paid in such instalments, and at such times as may be required by the President and Directors of said company. The said commissioners, and deputy commissioners, shall forthwith, after the election of a President and Directors of the company, pay over to the said President and Directors, all moneys received by them: and on failure thereof, the said President and Directors may recover the amount due from them, or from any one or more of them, by motion, on ten days' previous notice, in the Superior Courts or in the Courts of Pleas and Quarter Sessions, or before a Justice of the county in which such commissioner, his executors or administrators may reside.

SEC. 4. *Be it further enacted*, That when two thousand shares or more of the stock shall have been subscribed, public notice of that event shall be given by any three or more of the said commissioners appointed to receive subscriptions at Trenton, who shall have power at the same time, to call a general meeting of the subscribers, at such convenient place and time, as they shall name in said notice. To constitute any such meeting, a number of persons holding a majority of all the shares subscribed shall be present, either in person or by proxy; and if a sufficient number to constitute a meeting, do not attend on that day, those who do attend shall have power to adjourn from time to time, until a meeting shall be formed.

SEC. 5. *Be it further enacted*, That the subscribers, at their general meeting before directed, and the proprietors of the stock, at every annual meeting thereafter, shall elect a President and five directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said

Subscriptions
payment of.

Gen. meeting
first call of.

President and
Directors e-
lection of.

President or any of the Directors, may at any time be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any general meeting. The President, with any three or more of the Directors, or in the absence of the President, any three of the Directors, who shall appoint one of their own body President *pro tempore*, shall constitute a board for the transaction of business. In case of vacancy in the office of President or any Director, happening from death, resignation, removal or disability, such vacancy may be supplied by appointment of the board, or by the proprietors in general meeting.

Their rights
and powers,
as to construc-
tion of road.

SEC. 6. *Be it further enacted*, That the President and Directors of the said company shall be, and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining of a rail road, to be located as aforesaid, and to begin at such point, and be prosecuted in such direction as the stockholders shall direct, and may cause to be made and constructed all works whatsoever, which may be necessary and expedient in order to the completion of said rail road.

They may
make con-
tracts, &c.

SEC. 7. *Be it further enacted*, That the President and Directors shall have power to make contracts with any person or persons, on behalf of the company for making the said rail road, and performing all other works respecting the same, which they shall judge necessary and proper; to call, on an emergency, a general meeting of the proprietors of the stock, giving one month's notice thereof, in some newspaper published at the seat of Government; to appoint a Treasurer, Clerk and such other officers, and transact all the business of the company during the intervals of the general meetings of the same.

Shares of de-
linquent
stockholders
to be sold.

SEC. 8. *Be it further enacted*, That if any stockholder shall fail to pay the sum required of him by the President and Directors, or a majority of them, within one month after the same shall have been advertised in some newspaper published at the seat of Government, it shall and may be lawful for the President and Directors, or a majority of them, to sell at public auction, and to convey to the purchaser, the share or shares of such stockholder so failing or refusing, giving one month's previous notice of the place and time of sale in manner aforesaid; and after retaining the sum due, and all charges of the sale out of

the proceeds thereof, to pay the surplus over to the former owner, or his legal representatives; and if the sale shall not produce the sum required to be advanced, with the incidental charges attending the same, then the President and Directors may recover the balance of the original proprietor, or his assignee, or his executor, or administrator, or either of them, by motion, on ten days' notice, before the Court of Pleas and Quarter Sessions of the county of which he is an inhabitant, or by warrant before a justice of said county; and any purchaser of the stock of the company, under the sale by the President and Directors, shall be subject to the same rules and regulations as the original proprietor.

SEC. 9. *Be it further enacted*, That if the President and Directors cannot agree with the owner of land through which it may be necessary to make the said rail road, as to the terms upon which the said rail road shall be opened through the same, then it shall be lawful for the said President and Directors to file their petition in the Court of Pleas and Quarter Sessions of the county wherein the land lies, under the same rules and regulations as are now prescribed by law in laying off public roads; and upon the filing of said petition, the same proceedings shall be had as in cases of public roads; and when the jury shall have assessed the damages to be paid to the owners of the land through which the same shall be laid off, then it shall be lawful for the said President and Directors, upon paying to the owner or owners of said land, his, her or their guardian, as the case may be, or into the office of the clerk of the Court of Pleas and Quarter Sessions of the county wherein the land lies, the sum or sums so assessed, to enter upon the land laid off, and construct the road thereon; to make all necessary excavations and embankments, and all other structures necessary to the construction and preservation of said road; and to hold the said land to their own use and benefit during their corporate existence; and in all things to have the same power and authority over said land so laid off, during their existence as a corporation, as though they owned the fee simple therein: *Provided*, that nothing in this act contained, shall be so construed as to give power to said company to lay off said road through the yard, garden or burial ground attached, or appertinent to the dwelling-house on any plantation

If President and Directors cannot agree with the owners of land, they shall petition court to have damages assessed.

through which it may be deemed necessary to lay off said road, without the consent of the owner thereof.

Proceedings
when gravel,
stone or earth
are wanted.

SEC. 10. *Be it further enacted*, That whenever any wood, gravel, stone or earth may be wanted for the construction or repairing of said road, and the President and Directors cannot agree with the owners of the lands adjacent as to the terms on which they can procure the same, then it shall be lawful for the President and Directors, by themselves or officers or agents, to enter upon any adjacent lands, not in a state of cultivation, and take therefrom all wood, stone, gravel or earth so needed as aforesaid: *Provided*, that they shall not, without the consent of the owner, cut down any fruit trees or trees preserved in any lot or field for shade or ornament, or take any timber, gravel or stone constituting any part of a fence or building; and where any gravel, stone, wood or earth shall be so taken as is provided for in this act, it shall and may be lawful for the owner to file his petition in the Court of Pleas and Quarter Sessions of the county wherein the land lies, from which said earth, stone, gravel or wood may have been taken, first giving ten days' notice to said President and Directors, their officer or agent, of the filing of such petition, praying to have a jury summoned to go upon the land and assess the damages he, she, or they may have sustained thereby; upon which it shall be the duty of the court to order a jury as in laying off public roads, which jury shall go upon the land, and, after being duly sworn to do equal justice to all parties in assessing the said damages, shall consider what damages the owners of said land shall have sustained, and, after assessing the same, shall return their proceedings to the said court; and if the court shall approve thereof, the damages so assessed, together with all costs, shall be paid by the President and Directors; but if the said court shall not approve thereof, they shall order another jury to be summoned, who shall proceed in like manner to assess said damages, and return their proceedings to said court; and upon approval thereof by said court, said damages and costs shall be paid by said President and Directors; and if said President and Directors shall not pay the damages so assessed, and all costs, execution may issue against them therefor, as against other corporations: *Provided always*, that either party, not satisfied with the sentence or decree of the County Court, may

appeal therefrom to the Superior Court of Law for said county.

SEC. 11. *Be it further enacted*, That it shall be lawful for said company to purchase lands, from the proprietors, at any point on said road, not exceeding ten acres in any one tract, to be used by them for all necessary purposes of said road, or to be disposed of by them when it shall be deemed proper.

Company
may purchase
land.

SEC. 12. *Be it further enacted*, That whenever, in the construction of said rail road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said President and Directors of said company so to construct the said road across such established road or way as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon ways across said road or roads, from one part of his land to the other.

Duty of com-
pany when
necessary to
cross any
road, way or
land.

SEC. 13. *Be it further enacted*, That the said President and Directors, or a majority of them, shall have power to purchase, with the funds of said company, and place on the said rail road constructed by them under this act, all machines, wagons, vehicles, boats, carriages and teams of any description whatsoever, which they may deem necessary and proper for the purposes of transportation.

May purchase
machines, &c

SEC. 14. *And be it further enacted*, That all machines, wagons, vehicles, boats, carriages, and all other personal property, purchased by said company, or works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective share holders of the company forever, in proportion to their respective shares; and the said shares shall be deemed personal estate, and the property of the said company and the shares therein shall be exempt from any public charge or tax whatsoever, for the term of fifteen years; and thereafter the General Assembly may impose a tax not exceeding twenty-five cents per share per annum on the capital stock of the said company, whenever the nett profits thereof shall exceed six per cent. per annum.

Exempt from
taxation how
long.

SEC. 15. *Be it further enacted*, That so soon as ten miles of said road shall be completed, and as often thereafter as any other section of like length shall be completed, the said President and Directors shall transport all produce or other com-

Produce, &c.
transporta-
tion of:

Rates of toll.

modities that shall be delivered at any place of deposite established by said company, on said road; and it shall be the duty of the said company to transport the same in the order of time in which such produce and other commodities shall have been received, so as to do equal and impartial justice to all, provided the owner of produce or other commodities required to be transported by said company on said rail road, shall pay or tender to said company, at their toll gate or gates, the toll due upon such produce or commodities under this act; and it shall be lawful for the President and Directors of the said company, and they are hereby authorised to erect, on such section or sections, a toll gate or gates; and they shall be entitled to demand and receive a sum not exceeding the following rates, viz: on goods, produce, merchandize, or property transported, not exceeding four cents a ton per mile for toll; and eight cents a ton per mile for transportation: and for the transportation of passengers, not exceeding six cents per mile for each passenger, until the nett profits received shall amount to a sum equal to the capital stock expended, with six per centum per annum interest thereon, from the time the money was advanced by the stockholders until received back in the nett profits; but when the nett profits received as aforesaid, from the tolls aforesaid, shall have amounted to a sum equal to the capital stock expended as aforesaid, with six per centum per annum interest thereon as aforesaid, then the tolls which the said President and Directors shall be entitled to demand and receive, for the transportation of produce; or other commodities, on the said rail road, shall be fixed and regulated from time to time, by the President and Directors, so as to make them sufficient, in their estimation, to yield a nett profit equal to fifteen per centum per annum, on the capital stock expended in making and completing the said rail road, over and above what may be necessary for the repairs and the renewal of the same. The President and Directors shall report to the stockholders the amount of tolls received during each year, the expenses and charges incurred during each year; and the nett annual profit or loss on the capital expended; and it shall not be lawful for any other company or person or persons whatsoever to travel upon or use the road of said company, or to transport persons or property of any discription along said road, without the license or permis-

President &
Directors
shall report;
&c.

sion of the President and Directors of said company; and nothing herein contained shall be construed to prevent the said company from making a contract for the transportation of the mail upon such terms as may be agreed on between said company and the agent of the United States.

SEC. 16. *And be it further enacted*, That it shall be lawful for the company hereby created to receive donations and borrow money for the object of this act, and to pledge the property of the company for the payment of such loans, and to make and issue all proper evidences of such loans, and assurances for repayment thereof. Company may borrow money, &c.

SEC. 17. *And be it further enacted*, That it shall and may be lawful for the company hereby created so to construct all such bridges as it may be necessary for them to erect for the purposes of their rail road, as to afford general accommodation to all travellers, and to demand, and receive from the persons passing over and using such bridges a reasonable toll, which shall in no case exceed the highest rate of toll now allowed by law on any bridges of the State: *Provided, however*, that no toll shall be demanded for using said bridge on account of either property or persons passing along the rail road, and paying tolls therefor; and if it shall be necessary for the company, in the selection of the route or construction of the road by them to be laid out and constructed, to connect the same with or to use any turnpike road, bridge or canal, made or erected by any company incorporated or authorised by any law of this State, it shall be lawful for the President and Directors of the company hereby created to contract with such corporations or persons for the right to use such roads, bridges or canal, or for the transfer of any of their rights and privileges of such corporations. Regulation as to bridges, &c

SEC. 18. *And be it further enacted*, That it shall be lawful for said company to erect scales at their toll gate or gates, to weigh the burthen of any wagon, carriage, machine, or other vehicle, used in transporting produce or other commodities along said road. Scales erection of.

SEC. 19. *And be it further enacted*, That an annual meeting of the proprietors of the stock of the said company shall be held at such time and at such place, in each and every year, as the stockholders, at their first general meeting, or at any Annual meetings of company.

subsequent general meeting may appoint; to constitute which or any general meeting called by the President and Directors, according to the provisions of this act, the presence of proprietors holding a majority of all the shares shall be necessary, either in person or by proxy, properly authorised; and if a sufficient number do not attend on that day, or any day appointed for a general meeting called by the Directors as aforesaid, the proprietors who do attend may adjourn from time to time, until a general meeting shall be had.

Votes regulated of. SEC. 20. *And be it further enacted,* That in counting all votes of the said company, each member shall be allowed one vote for each share as far as ten shares, and one vote for every five shares above ten, by him held at the time in the stock of the said company.

Distinct accounts, &c. SEC. 21. *Be it further enacted,* That the President and Directors shall render distinct accounts of their proceedings and disbursements of money, to the annual meeting of the subscribers.

Semi-annual dividends. SEC. 22. *And be it further enacted,* That so soon as the said rail road shall be completed so far as the company may deem it expedient to extend the same, the President and Directors of the said company, or a majority of them, shall semi-annually declare and make such dividend, from the nett profits from the tolls herein granted as they may deem advisable, to be divided among the proprietors of the stock of said company in proportion to their respective shares.

Liability for failing to transport. SEC. 23. *And be it further enacted,* That after said rail road shall be completed and put into operation, if the said President and Directors shall, by reason of the said rail road being out of repair, or from any other cause, fail or neglect to transport any produce or other commodities, which shall be deposited convenient to said rail road, and which the said President and Directors shall be required to transport as aforesaid, the toll for transportation being tendered, as a penalty for such failure or neglect, the company shall be liable to the party injured for such failure or neglect.

Penalty for demanding unlawful toll. SEC. 24. *And be it further enacted,* That if any toll gatherer, at any toll gate to be erected by the authority of this act, shall ask, demand or receive any other or greater tolls than are herein allowed, he shall forfeit and pay to the party aggrieved

thereby two dollars, for every such offence, recoverable, with cost, by warrant before any justice of the peace; and if such toll gatherer, being at the time of incurring such penalty in the service of the company, shall be unable to pay the judgment recovered against him or her, the said company shall be liable to pay the same.

SEC. 25. *And be it further enacted*, That if the said President and Directors shall not begin the said work within five years after the passage of this act, or shall not complete fifty miles thereof within ten years thereafter, then the interest of said company in the said rail road and the tolls aforesaid, shall be forfeited and cease.

Limits within which road shall be commenced and completed.

SEC. 26. *Be it further enacted*, That the President and Directors shall cause to be written or printed certificates for the shares of the stock in the said company, and shall deliver one such certificate, signed by the President and countersigned by the Treasurer, to each person for every share subscribed by him; which certificate shall be transferable by him, subject however to all payments due thereon; and such assignee having first caused the transfer or assignment to be entered into a book, to be kept by the company for that purpose, shall thenceforth become a member of said company and shall be liable to pay all sums due, or which shall become due upon the stock assigned to him: *Provided, however*, that such assignment shall in no wise exempt the assignor or his representatives from their liabilities to the said company, for the payment of all such sums, if the assignee or his representatives shall be unable or shall fail to pay the same.

Certificate of stock.

SEC. 27. *And be it further enacted*, that if the said President and Directors or a majority of them, cannot agree with the proprietors for the purchase and sale of any such quantity of ground, not exceeding one acre at any one place, as may be necessary for a toll house or a house to cover any stationary engine, or for any other necessary purpose, it shall and may be lawful for the President and Directors to file a petition in the Court of Pleas and Quarter Sessions of the county in which the land lies against the proprietor of the land, setting forth the circumstances; and upon its being made appear to the satisfaction of such court that the said President and Directors have caused the proprietor of such land to be notified ten days be-

Proceeding in case of non-agreement for purchase of land.

fore court, the said court shall order the sheriff to summon a jury of good and lawful men, who, after having taken an oath (which oath the sheriff or his deputy is hereby authorised to administer) that — will assess the damages which such proprietor will sustain, by reason of the condemnation of such land, shall assess the amount the petitioners ought to pay to such proprietor; and the said jury in assessing such damages shall take into the estimation the benefit resulting to said proprietor from constructing said rail road or canal through or near the lands of said owner or proprietor, but only in extinguishment of damages; and upon payment of the value found by the jury, upon any such proceeding, to the proprietor of the ground so condemned by the jury or upon the payment thereof into court when, for good cause shown, the court shall have ordered it, the said President and Directors and their successors shall be and stand seized of the ground so condemned in fee simple.

Penalty for
injuring road.

SEC. 28. If any person or persons shall wilfully, by any means whatever, injure, impair or destroy any part of the rail road, or canal or canals constructed by authority of this act, or any of the necessary works, buildings, machines, wago s, vehicles or carriages, such person or persons shall be punished according to the laws which may be in force in this State at the time, for the protection of the public works or property of the State.

Company
how long to
exist.

SEC. 29. *And be it further enacted,* That the corporation shall exercise the corporate powers hereby granted for ninety years and no longer without a renewal of the charter.

Authority re-
served to con-
nect other
roads with
this.

SEC. 30. *And be it further enacted,* That full right and privilege is hereby reserved to the State, or to any company hereafter to be incorporated under the authority of this State, to connect with the road hereby provided for any other rail road leading from the main route to any part or parts of this State: *Provided,* that in forming such connection no injury shall be done to the works of the company hereby incorporated.

Compensa-
tion to officers
&c.

SEC. 31. *And be it further enacted.* That such compensation shall be made from time to time, to any of the officers, servants or agents of the company, as the proprietors in general meeting shall prescribe, or may authorise the President and Directors to allow.

[Ratified 19th January, 1837.]

CHAP. XLVIII.

An Act to amend an act, entitled an act to incorporate the Franklin Turnpike company, and for other purposes, passed in the year one thousand eight hundred and thirty-five.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That from and after the passage of this, that the act before recited be, and it is hereby so amended as to extend the said turnpike road from the ford of the Savannah creek, above the Rev. Charles Stiles's house, to within fifty feet of the ford of the said creek, beow or east of the ford which the said turnpike road heretofore stopped at by law. Act amended so as to extend road.

SEC. 2. *Be it further enacted,* That said road is hereby declared to be a public high way, as it has heretofore been by law, under the same rules and regulations now prescribed by law. Road to be a public highway.

[Ratified 4th January, 1837.]

CHAP. XLIX.

An Act to lay off and construct a State Road from the town of Franklin, in Macon county, across the Nantahala mountain, to Valley River, and thence to the Georgia line.

Be it enacted by the General Assembly of the State of North Carolina and it is hereby enacted by the authority of the same. That the Governor be, and he is hereby authorised to appoint some fit person as a commissioner to locate and lay

Governor to appoint commissioner to lay off road. off a State road from the town of Franklin, in Macon county, across the Nantahala mountain, into the Territory lately acquired from the Cherokee Indians, and to the county site of the county hereafter to be erected out of said Territory; thence along the best and most eligible route, to the Georgia line, in the direction of Alabama; and said commissioner, for his services and his expences, shall receive the sum of three dollars per day, during the time he may be in actual service, to be taken out of the sum hereinafter appropriated.

Commissioner authorized to appoint surveyor, &c. SEC. 2. *Be it further enacted,* That said commissioner be, and he is hereby authorised to employ a surveyor, chain carriers, and other assistants to aid him to lay off and mark said road, and to divide the same into sections of convenient extent; and he is hereby authorised to pay them fair and reasonable compensation for their respective services, to be taken out of the sum hereinafter appropriated.

Commissioners to let out road, and to give notice, &c. SEC. 3. *Be it further enacted,* That when the road, or any part thereof, shall, in this manner, be laid down, marked off and divided into sections of convenient extent, the commissioner shall give thirty days' public notice, by advertisement in the counties of Macon, Haywood and Buncombe, and also in the newspaper published in the county of Rutherford, of the time or times for letting out the contracts for making said road, which shall take place in the town of Franklin; and he shall let the contracts out by sections, at public auction, to the lowest bidder, the various sections being plainly designated by posts, marked and set up on the line of the road: *provided,* that the commissioner need not divide off into sections that part of the road extending from the new county site to the Georgia line; but shall only locate the same, and cause the timber to be cut down and removed out of it.

Contractors to give bonds, &c. SEC. 4. *Be it farther enacted,* That the commissioner shall take, from each contractor, a bond with approved security, for the faithful execution of the work, according to specifications to be set forth; one of which shall be, that there shall not be at any place a greater rise in the road than one foot in eight. The bond shall be made payable to the Governor; and on failure of any contractor to execute his contract within the time prescribed and according to specifications, then the commissioner shall commence suit on the bond, and prosecute it to

judgment and execution; and the money thus collected shall be applied to improving said road.

SEC. 5. *Be it further enacted*, That for the purpose of constructing said road, a sum not exceeding nine thousand dollars be, and the same is hereby appropriated out of the fund set apart for Internal Improvement; and the Governor is hereby authorised to draw his warrant, or warrants, on the public Treasurer in favor of the commissioner, for such portion of this appropriation as to him may seem necessary and proper.

Sum appropriated, &c

SEC. 6. *Be it further enacted*, That said commissioner, before entering on the duties of his commission shall take an oath for the faithful discharge of the trust reposed in him, and shall execute to the Governor a bond, with good and approved security, for the faithful application of the money placed in his hands; and on the completion of the road, he shall fully and correctly account with the Governor for all the money received and expended by him.

Commissioner to take oath, give bond, &c

SEC. 7. *Be it further enacted*, That said commissioner shall commence the laying out and location of the road in the month of March next, and shall cause the construction of the same to be completed by the first day of November next; and on the completion of the road he shall carefully examine the same; and if done according to contract, he shall receive it, and thereupon make a full report of all his proceedings to the Governor, together with an accurate chart of the road.

When commissioner shall commence and complete road &c.

[Ratified 14th January, 1837.]

[Revised Statute.]

REVENUE.

No. XVIII.

An Act to provide for the collection and management of a Revenue for this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That there shall be annually levied and collected, from all the real property with the improvements thereon, within this State, subject to taxation, the sum of six cents on every hundred dollars value thereof.

Tax on real
estate.

What real es-
tate shall be
subject to tax-
ation.

Entries of
land.

Tax a lien on
real estate.

SEC. 2. All real estate, held by deed, grant, or lease, or by title of dower or courtesy, or otherwise, shall be subject to the payment of public taxes, except the real estate belonging to the University of this State, and such houses, lots and other real estate as are set apart and appropriated to divine worship, or for the education of youth, or the support of the poor; and except also such real property as is or shall be exempted in any act creating a society or company with corporate powers and privileges.

SEC. 3. All entries of land shall be subject to taxation like other real estate.

SEC. 4. If any person shall return, as his taxable property, any land, and shall dispose thereof before the taxes due thereon shall have been paid, and shall have no estate to satisfy said taxes within reach of the sheriff, the purchaser of said land shall pay the taxes due thereon, and may be proceeded against as if he had originally given in the same.

SEC. 5. A tax of five dollars shall be laid on all turnpike roads where toll is received, and on all gates which have been

or hereafter may be erected across any public road in this State; which roads and gates shall be given in at the same time that real estate is given in for taxation.

Tax on turn-
pike roads
and gates.

SEC. 6. An annual tax of twenty cents on each and every free male poll between the age of twenty-one and forty-five years, and a tax of twenty cents on each and every slave poll, of both sexes, between the ages of twelve and fifty years, shall be levied, collected, and accounted for as hereinafter provided: *Provided always*, that the several County Courts shall be authorised to exempt from the payment of a poll tax, such infirm free persons as they may think proper objects, and also the slaves disabled by bodily infirmities or void of reason; such incapacity to be judged of and certified by the County Court, shall not be deemed taxable property, nor given in as such by their respective owners.

Poll tax

SEC. 7. A tax on all stud horses and jack asses within this State, of the highest sum which the owner or keeper of such stud horse or jack asses shall ask or receive for the season of one mare, shall be levied, collected and accounted for; and all stud horses and jack asses which are not stationed in any one county, and all those that may be brought from another State to stand for a less term than the season in this State, shall pay the sheriff of some county the amount of the season, as soon as the season of such stud horse or jack ass shall commence, or produce a certificate from a justice of the peace from the county from whence such horse or jack ass came (if in the State,) that such stud horse or jack ass has been enlisted for taxation; and it shall be the duty of the sheriff to collect the said tax; and on failure of the owner or keeper of such stud horse or jack ass to pay the same, when demanded, it may be lawful for the sheriff to distrain for the same by seizing such stud horse or jack ass, and make sale thereof for the tax.

Tax on stud
horses and
jack asses.

SEC. 8. All owners or keepers of stud horses and jack asses shall enlist the same for taxation as other taxable property is enlisted; and on failure of such owner or keeper to enlist such stud horse and jack ass as aforesaid, they, or either of them, shall be liable to pay a double tax for such horse or jack ass.

Stud horses
and jack asses
to be listed.

SEC. 9. The owner or possessor of every billiard table shall give in such billiard table in the same manner as other

Tax on billiard tables.

taxable property, and shall pay for each billiard table, a tax of five hundred dollars; and no billiard table shall be kept until such tax shall be paid to the sheriff of the county in which such billiard table is or may be erected or kept up, and a license to erect or keep the same shall be first granted by said sheriff; and if any billiard table is erected or kept up without such licence first had and obtained, the sheriff of the county where such table is or may be erected or kept up, shall seize and destroy the same by burning.

Tax on land
peddlars.

SEC. 10. Each and every person who shall peddle in any county in this State, and not on a navigable stream, goods, wares or merchandise, not of the growth or manufacture of this State, or any wooden clock, or the machinery or materials thereof, or jewelry, which machinery or clock shall be manufactured of materials not of the growth, produce, or manufacture of this State, shall pay to the sheriff of each and every county in which he shall so peddle goods, wares, or merchandise, or jewelry, or any wooden clock, or the machinery or materials thereof, the sum of twenty dollars on every cart, wagon, or other vehicle, employed in the transportation of said goods, wares or merchandise: *Provided*, that should two or more persons employ one cart, wagon, or other vehicle to transport their goods, wares, or merchandise, each and every of them shall pay the aforesaid tax on said cart, wagon or other vehicle by them employed; nor shall any thing in this section be construed to authorize two or more persons, under the pretence of being partners in trade, to peddle goods, wares, or merchandise under the same license; which tax shall be accounted for by the sheriff in like manner as other public State taxes; and upon paying such tax, and obtaining a receipt therefor, such person shall be authorized and permitted to hawk and peddle goods, wares, and merchandise, wooden clocks, or the machinery or materials which shall not be of the manufacture of this State, or jewelry as aforesaid, in such county and no other, for the term of one year thereafter: and every person who shall peddle goods, wares, or merchandise not of the growth or manufacture of this State, except vegetables or other provisions of the produce of the United States, on any navigable waters in this State, except as excepted in the next section, shall pay to the sheriff of each and every county in which he

Tax on peddlars by water.

shall so peddle, twenty-five dollars, as a tax to the State, to be levied and accounted for as above; and on payment thereof, shall be authorized and permitted to peddle goods as aforesaid, in such county, and no other, for the term of one year thereafter; and each and every person who shall peddle in any county without previously having paid the tax thereon, and having obtained a license as hereinafter directed, or who shall refuse or neglect, upon the request of the sheriff or his lawful deputy, or any justice of the peace, to show a license therefor, shall pay a tax of one hundred dollars, to be collected by the sheriff of the county where such failure takes place by distress and sale of the property of such delinquent, and to be applied one half to the use of the State, and the other half to the use of the sheriff: *Provided nevertheless*, that nothing in this act contained shall extend to tax persons who shall sell books only; and *provided*, nothing herein contained shall exempt the persons thus licensed, from being liable to the duties imposed on those who sell goods, wares, and merchandise, or wooden clocks, or the machinery or materials thereof, which shall not be of the manufacture of this State, at auction.

SEC. 11. Any person who shall peddle goods, wares, or merchandise, not of the growth or manufacture of this State, except vegetables or other provisions of the produce of the United States, on the south side of Albemarle Sound, and the waters emptying therein (Roanoke and Cashie excepted) shall pay to the sheriff of each and every county in which he may so peddle, the sum of five dollars annually, as a tax to the State, to be levied, collected and accounted for as other taxes upon pedlars: *Provided, however*, that nothing in this section contained shall be construed to extend to persons peddling on the land, but only to those peddling on the waters aforesaid.

SEC. 12. The several sheriffs of the State shall collect and enforce the payment of the taxes by this act imposed upon pedlars, notwithstanding the pedlar may rent or procure houses for the purpose of carrying on a temporary sale of goods.

SEC. 13. The comptroller shall issue to the several sheriffs blank licenses to peddle goods within this State, who shall, upon application of any person desirous to traffick and peddle goods, countersign and issue the same to the person so applying, upon his paying the taxes imposed by this act; and all li-

Tax on pedlars by water on the south side of Albemarle, except on Roanoke and Cashie

Temporary store not to exempt.

Comptroller to issue blank licenses for pedlars

censes so issued by the Comptroller, and delivered to any sheriff, shall stand as a charge against said sheriff for the amount of said licenses; and the sheriff shall be entitled, in the settlement of his public accounts, to a credit for all licenses by him not issued and countersigned, which he shall return to the Comptroller; and the Comptroller shall annually issue and deliver to the members of the General Assembly, to be delivered to the respective sheriffs, not less than eight licenses for each county, before the rise of the General Assembly; and should any sheriff, who shall have received any licenses as aforesaid, resign, or the term of his service expire, without having issued the licenses so delivered to him, he shall deliver the same to his successor; and the receipt of such successor shall be allowed said sheriff in the settlement with the Comptroller: *Provided*, that it shall not be lawful for the sheriff of any county to issue such license unless the applicant shall first deliver to such sheriff a certified copy of an order from the Court of Pleas and Quarter Sessions of the county for which the license is wanted, permitting the same to issue, which order the said County Court is hereby authorized and required to make, seven or more justices being present, upon satisfactory evidence of the good moral character of such applicant.

Tax on retail stores and wholesale & commission merchants.

SEC. 14. Every merchant or jeweller, who shall sell goods, wares and merchandize, not of the growth or manufacture of this State, in any retail store, shall pay the following tax, to wit: if the amount of his capital stock in trade (which capital shall comprehend all purchases of goods, wares and merchandize made within the year immediately preceding the first day of April) shall be between four hundred and two thousand dollars, a tax of six dollars; if between two thousand and five thousand dollars, a tax of eight dollars; if between five thousand and ten thousand dollars, a tax of twelve dollars; if between ten thousand and fifteen thousand dollars, a tax of sixteen dollars; and if the amount of his capital stock in trade as aforesaid, shall be above fifteen thousand dollars, a tax of twenty dollars; and every wholesale merchant shall pay a tax of twenty-five dollars, and every commission merchant a tax of fifteen dollars; and every such merchant or jeweller, if a resident of this State, having a store on the first day of April, in each and every year, shall apply to the sheriff of the county in

which he sha'll have such store, and tender an affidavit, stating the amount of the capital stock which he has employed in trade in such store, and sha'll pay the tax thereon, and sha'll receive from the sheriff a license to keep the same; but any merchant unwilling to make such affidavit, may obtain such license by paying the tax of twenty dollars; and every such merchant keeping a store of goods not of the growth and manufacture of this State, without such license, shall forfeit and pay the sum of fifty dollars, to be levied, collected and accounted for as other public State taxes; and every person, whether resident or transient, who shall open such store at any time after the first day of April, shall apply to the sheriff for a license, which sha'll be granted upon such applicant giving bond and security to the sheriff, to pay the tax required by this section on the amount of such goods, wares and merchandize, as such applicant shall sell between the time of such application and the first day of April succeeding, under the same penalties, to be collected in the same manner, as the other penalties hereby imposed; and all wholesale and commission merchants shall take out licenses in the same manner, and under the same regulations, restrictions and penalties, as retail merchants and jewellers, except that they need not tender the affidavit stating the amount of capital stock. And it shall be the duty of the Comptroller to issue to the sheriff of each county blank licenses for merchants, to be used and accounted for in the manner as prescribed in the case of pedlars.

SEC. 15. Every person using the profession of a broker, either as agent, factor or principal, dealing in the sale of bills of exchange or the purchase of the bills of any bank incorporated by this State, shall be subject to an annual tax of twenty five dollars; such person using such profession or any branch of it, shall apply to the sheriff of the county in which he shall intend or desire to pursue or use such profession, and shall pay said tax, and obtain from the said sheriff a receipt thereof; and if any person shall pursue or exercise such profession, not having paid such tax, he shall pay a tax of fifty dollars, to be levied, collected and accounted for as other taxes.

Tax on brokers.

SEC. 16. All persons who shall bring negro slaves from

Tax on bringing negroes from another State to this for sale.

another State into this State, for sale, shall pay to the sheriff of some one county the sum of ten dollars upon each negro slave so brought; and it shall be the duty of the respective sheriffs in this State to collect the tax hereby imposed; but if the said person or persons shall produce to the sheriff of any one county the certificate of the sheriff of any other county, duly authenticated, under the seal of the clerk of the county in which such sheriff resides, that he has paid the tax hereby imposed, he or they shall be permitted to proceed without the payment of any further tax; and it shall be the duty of the sheriff of each county into which any negro slave shall be taken by any person or persons whatsoever, to seize such negro slave until the tax hereby imposed be paid, or until he or they shall produce to the sheriff an affidavit, subscribed by him or them before some justice of the peace within this State, duly authenticated by the certificate of the clerk and seal of the court of the county, setting forth that the slave or slaves so seized were not by him or them, or any other person, with his or their privity and consent, brought in evasion or illusion of the revenue laws of this State; and any person guilty of making any false affidavit for such person, shall, on conviction, be deemed guilty of wilful and corrupt perjury; and the owners or possessors of all such slaves so seized shall pay to the sheriff all expense that may accrue in consequence of seizing, keeping and feeding such slaves; and the slaves so seized may be detained by the sheriff until such payment; and in default thereof, the said sheriff may sell the same at public auction, at the court house of the county, upon twenty days' previous notice; which sale shall convey an absolute title to the purchaser.

Tax on stage players &c.

SEC. 17. Each and every person or company of stage players, slight of hand performers, rope dancers, tumblers and wire dancers, or company of circus riders or equestrian performers, and each and every person or company who shall exhibit artificial curiosities of any kind or sort, except models of useful inventions, for a reward, shall, previously to exhibiting or performing in any county of this State, pay to

the sheriff thereof thirty dollars; and every person or company who shall exhibit natural curiosities of any kind or sort, the sum of fifteen dollars, as a tax to the State, to be accounted for by the sheriff as other State taxes; and on paying such tax, the sheriff who receives the same shall give a license to exhibit in his county, which license shall contain a list of such animals or personal performances or other articles to be exhibited; and in that case, such company or person shall be authorised and permitted to perform and exhibit as aforesaid in such county, and no other, for the space of one year thereafter; and each and every itinerant stage player, slight of hand performer, rope dancer, tumbler, or wire dancer or company of circus riders or equestrian performers, or exhibitors of artificial or natural curiosities, except the exhibitors of models of useful inventions, who shall perform or exhibit in any county in this State, without previously having paid the tax herein directed, shall be liable to a forfeiture of sixty dollars, to be collected by the sheriff by distress and sale of the property of such delinquent, and to be applied, one half to the use of the State, and the other half to the use of the sheriff.

SEC. 18. It shall be the duty of all pedlars, stage players, slight of hand performers, rope dancers, tumblers, wire dancers, company of circus riders or equestrian performers, and all exhibitors of natural and artificial curiosities, to exhibit their licenses to any justice of the peace or constable who may demand a view thereof; and if he or they shall neglect or refuse to show his or their license, when so demanded, he or they shall forfeit and pay the sum of twenty dollars for every such neglect or refusal; if any such neglect or refusal shall occur before a justice of the peace, it shall be the duty of such justice forthwith to issue his warrant, in the name of the wardens of the poor in said county, against such offender; and upon the return thereof, to enter up judgment and issue execution for the said sum of twenty dollars and costs, which said sum shall be for the use of the wardens of the poor; and if such neglect or refusal shall happen before a constable, it shall be his duty to arrest the person or per-

Pedlars &c.
to exhibit
their license
when de-
manded.

Penalties for
refusing.

sons so neglecting or refusing, and carry him or them before some justice of the peace, who may, upon warrant, issued for that purpose, give judgment and issue execution forthwith for the said sum of twenty dollars and costs, which said sum shall be one half to the use of the constable, and the other half to the use of the wardens of the poor; provided, that in either case the defendant shall have the right to stay the execution or appeal from such judgment on giving security as in other cases of appeals.

Constables duty to demand such licenses. SEC. 19. It shall be the duty of all constables to demand a view of the license of any pedlar who may be peddling in his county, and a view of the license of any actors, performers or exhibitors as aforesaid, who may act, perform or exhibit in his county, and on his or their refusing to exhibit such license, to prosecute for the penalty imposed by the last section.

Tax on retailers of spirituous liquor. SEC. 20. Every person who has obtained from the county court a license to retail spirituous liquors by the small measure, according to the provisions of law in such cases, shall immediately on obtaining a certificate thereof from the clerk, deliver the same to the sheriff, and pay into his hands the sum of four dollars, and receive therefor a license signed by the Comptroller, and countersigned by the sheriff, which said licenses the comptroller is directed to issue blank to the several sheriffs in this State, at the same time and under the same rules and regulations, and to be accounted for by the sheriffs in the same manner that the pedlars licenses are directed to be issued and accounted for.

Tax on ordinary keepers. SEC. 21. Every person obtaining a license to keep an ordinary or house of entertainment, according to the provisions of the law in such cases, shall pay to the sheriff at the time of paying other public taxes, a tax of four dollars, to be accounted for as other public State taxes.

Time when lists of taxables shall be taken. SEC. 22. The last twenty working days in July in every year, are hereby established as the time when the lists of property required to be listed for taxation, shall be taken in every county in the State.

SEC. 23. At the respective Courts of Pleas and Quarter

Sessions in each county, which shall first happen, after the first day of April in every year, the justices for taking the lists of taxable property shall be appointed, and the clerks of the several courts aforesaid shall give notice thereof, with a list of the names of said justices, and of the districts for which they were appointed, in the course of the term in which said appointments are made, by advertising the same at the court house. The clerks shall issue notices of such appointments to the sheriff of the county, who shall serve the same within ten days on the justices so appointed; and it shall be the duty of each of the justices so appointed to advertise in the district at three different places for which he is appointed, at least ten days before the days established for giving in the list of taxables, the place whereat he will attend to receive the same; and if any justice of the peace so appointed shall become incapable, die or remove out of the county, before the duties of his appointment shall be performed, then any three other justices of the county, on notice of such death, incapability or removal being given them in writing by the sheriff, may, and they are hereby authorised and required to appoint some other justice of the peace, to perform the duties of the person so becoming incapable.

Appointment
of justices to
take lists.

SEC. 24. The inhabitants of the respective districts in each county, shall attend at the time and places appointed by the justices for taking the lists of taxables, and shall return on oath, in writing, to the justice appointed to receive the same, each and every tract of land for which they are liable to pay tax in the county, stating the number of acres of each separate tract, its local situation, and the improvements thereon, the number of town lots with their improvements, the number of free males between the ages of twenty-one and forty-five years, living in their families, also all free negroes and mulattoes between those ages living on their lands with their consent, the number of slaves male and female between the ages of twelve and fifty years, which to them belong, or who live in their family, said slaves to be listed in the county where they reside, all stud horses and jack asses of which they may be the owners or keepers, all

How tax lists
shall be given
in.

the turnpike roads where toll is received, and gates across any public road in this State, and all billiard tables; and the oath to be administered by the justice receiving such list shall be as follows, viz: "You do swear (or affirm as the case may be) that this list by you delivered, contains a just and true account of all the property which by law you are bound to list for taxation, to the best of your knowledge and belief: so help you God."

Tax lists to refer to the 1st day of April preceding.

SEC. 25. The lands, town lots and slaves, and other taxable property, unless otherwise provided, required to be listed according to the preceding section, shall be such as were the property or in the possession of their respective owners on the first day of April in each and every year, and the free polls shall be such as were taxable on that day, and in all cases where any person shall come of age after the said first day of April; and before any election held during the year next ensuing the first day of April aforesaid, it shall be lawful for such person then coming of age, to list himself before the sheriff or his deputy as of the said first day of April, and immediately pay the poll tax of that year; and the sheriff is hereby required to receive the same, and account therefor as for other public taxes.

Lists of Testators &c. to be given by their representatives.

SEC. 26. Lists of the real and other taxable estate of testators, intestates, minors, lunatics, and persons *non compos mentis*, and absentees, shall be returned and given in by the executors, administrators, guardians, agents, and attorneys, in the same manner as the estates of other persons.

Owner failing to give in his land, &c.

SEC. 27. If any person owning lands in any county within this State, or any non-resident shall fail to return, either by himself or agent, to the justice appointed to take the list of taxable property in the district in which the land of such owner or non-resident may be situated, a list of his land, with the number of acres, and their valuation, in manner herein before prescribed, it *

* Here is a defect in the original copy of this act, which can only be remedied by the Legislature.

SEC. 30. When any person shall have failed, either by himself, agent or guardian, to list his lands, and the justice appointed to take the list of taxable property shall have failed to have the same assessed according to the provisions in the last section, it shall be the duty of the sheriff, within the time prescribed for collecting the taxes, to summon one freeholder near to or acquainted with the land, whose duty it shall be, within five days after such notification, to value said lands on oath, which the sheriff or his lawful deputy is hereby authorised to administer. And it shall be the duty of such freeholder, summoned as aforesaid, to transmit under his hand a fair transcript of such valuation to the clerk of the County Court, at or before the succeeding County Court, and also to deliver to the sheriff another transcript of the same within ten days after the valuation aforesaid; and the said freeholder shall receive a compensation for his services, as assessor, of one dollar for every tract of land by him assessed, to be levied and collected by the sheriff at the time he collects the taxes on said land, if not previously paid by the owner; and the clerk of the County Court shall incorporate the returns made by the freeholders aforesaid with those made by the justices.

In case of failure by the owner and justice, the sheriff to have the land valued by one freeholder.

SEC. 31. Any person appointed or summoned by the justices or sheriff as aforesaid, to value lands, who shall refuse or fail to perform the duties required by the two last sections, shall forfeit and pay the sum of fifty dollars, to be recovered in the name of the State to the use of the county.

Penalties on freeholders refusing.

SEC. 32. The valuation of land and their improvements shall be made in dollars and cents, and town property shall be given in and assessed in the same manner as prescribed for other real estate.

What valuation of lands made in.

SEC. 33. When a tract of land shall lie in two or more counties, the owner shall be bound to list the same in the county where he resides, if he resides in either of the counties, and if not, then he may list the same in either of the said counties; and in case of transmitting a list of

Rule when a person owns land in more than one county.

* taxable property from the county in which the person bound to list it resides, to that in which the property is situate, the oath required to the list may be taken before any magistrate of the county in which the person bound to return the same resides.

Courts to appoint a board of valuation.

SEC. 34. It shall be the duty of the several County Courts in this State, at the respective terms when they appoint justices of the peace to take in the list of taxable property for the year one thousand eight hundred and thirty-seven, to appoint two respectable freeholders to be associated with each justice, who, together with such justice, shall be styled the board of valuation. That it shall be the duty of the board of valuation to ascertain, as accurately as may be practicable, the cash valuation of the land in the district to which they belong, and to return the same to their respective County Courts in the manner herein prescribed: *Provided*, said justice and freeholders may, if they deem it necessary, call upon any person to testify as to the value of any tract which may be listed; and they are authorised in such case to administer an oath to any person so called upon. No person giving in his land for taxation, shall hereafter be required to state the value thereof upon oath; and if any individual shall deem himself injured, by too high a valuation being placed upon his land by the board aforesaid, it shall be competent for the ensuing County Court to reduce the same, upon motion and satisfactory proof of such allegation. The individuals composing the said board of valuation, shall annex to their respective returns the following affidavit, signed by them, and certified by some justice of the peace: "We solemnly swear that the foregoing valuations of land, made by us, are, in our judgment and belief, the actual value thereof in cash; and that, in making the same, we have endeavored to do equal justice to the public, and to the individuals concerned."

Compensation of board.

SEC. 35. *And be it further enacted*, That said justice of the peace and freeholders shall each be entitled to receive the sum of one dollar per day, for each day they

may be necessarily engaged in making said valuation and returns, to be paid out of the taxes levied for county purposes.

SEC. 36. If any person bound to list lands or other property, either in his own right or as executor, administrator, guardian or agent, shall fail or neglect so to do, he shall pay a double tax, to be collected by the sheriff out of his individual property, notwithstanding his failure or neglect may be as representative of another; and it is expressly declared that the lands of a minor, lunatic or person *non compos mentis* shall in no case be liable to be sold for taxes.

Persons failing to give in their list to pay double tax.

SEC. 37. The justices appointed to take the list of taxables in each county shall make out a fair copy of the lists of lands by them taken in alphabetical order, with the number of acres and valuation annexed, and return the same, together with the list of other taxable property by them taken, to the clerk of the County Court, at the next succeeding court which may happen after the time prescribed for taking the list of taxable property; and the clerks of these several county courts are hereby required to return to the Comptroller on or before the first day of September, in each and every succeeding year thereafter, an abstract of such lists, shewing the number of acres of land so listed, the valuation thereof, and the valuation of town property which shall be contained in said lists. Any clerk failing to make return of the abstract herein required, shall forfeit and pay the sum of one hundred dollars, to be recovered in the Superior Court of Wake county, on notice, by the Attorney General; and it shall be the duty of the Comptroller to inform the Attorney General of all such delinquent clerks; and on the trial of the notice, the certificate of the Comptroller, certifying such failure, shall be sufficient evidence thereof. The forfeiture thus recovered shall be paid into the public treasury of the State by the clerk of the Superior Court of Wake county: on failure to do so, he and his securities shall be liable on his bond, in a suit at the instance of the State.

Justices appointed to take the lists to return a copy to the next County Court.

Form of the
lists to be re-
turned by the
justices.

SEC. 38. The justices in the lists which they shall re-
turn to the clerks of their respective County Courts, shall
distinguish the persons' names; the several tracts of land,
the quantity and situation of each tract, with its reason-
able value, the town lots, the number of polls, white and
black, and the several other subjects of taxation which
are required to be listed in the following manner.

Gates and Turnpike roads.	Stud horses and jack asses.	Black poll.	White poll.	Town lots.	Value of each tract.	Quantity of each tract of land with its situa- tion.	persons' names.
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Justices shall
return their
own lists.

SEC. 39. The several justices appointed to receive
lists of taxables, shall make their return of their own
lists to the County Courts.

Penalty for
failure of
duty.

SEC. 40. If any justice appointed to receive lists of
taxable property shall fail or neglect to discharge the du-
ty of his appointment, he shall forfeit and pay two hun-
dred dollars, to be recovered in the name and to the use
of the State; and if any clerk of the Court of Pleas and
Quarter Sessions, shall fail or neglect to make return of
an abstract of the list of taxables to the Comptroller, as
prescribed in the 37th section, he shall forfeit and pay one
thousand dollars, to be sued for by the Attorney General,
in the name and for the use of the State.

County
Courts may
grant a certi-
ficate.

SEC. 41. Where it shall appear to the satisfaction of
any of the County Courts of this State, that any person
is charged with more land or polls on his list of taxable
property than he ought to pay for, the said court may
order their clerk to give a certificate for the quantity of
acres and their value, or polls, so overcharged; which
certificate shall be received by the Comptroller of the
State, and be deducted by him from the amount of valu-
ation of land or number of polls to be accounted for by
such sheriff.

SEC. 42. The clerk of each County Court shall re-
cord at length, in alphabetical order, the annual returns
made by the justices in his county; and the court shall
make a reasonable allowance for such service, to be paid

out of the county tax; and the said clerks shall also at the next court after the returns of the taxable property are directed to be made, set up in some conspicuous part of the court house, an alphabetical list of the taxables and taxable property delivered or reported by the persons appointed to take the list of taxable property, adding to each person's taxable property the amount of the tax for which he may be liable; and any clerk neglecting or refusing to perform the duties here required, shall, for every such neglect or refusal, forfeit and pay one hundred dollars, to any person who will sue for the same within six months.

Clerks to record the tax lists and publish them.

SEC. 43. If any justice of the peace shall receive any person's list of taxable property, without taking such person's oath or affirmation, as the case may be, the justice so acting, shall forfeit and pay one hundred dollars for the use of the State.

Penalty for receiving a list without oath.

SEC. 44. The clerks of the several County Courts, shall within thirty days after the board of appeal has finished its session, deliver to the sheriffs of their respective counties a fair and accurate copy of the returns made, in alphabetical order, designating in such copy the separate amount of taxes due and accruing from each species of property; and in addition thereto, shall extend the aggregate amount due from each individual; and the respective sheriffs shall proceed after the first day of April in each and every year, to collect the said taxes, to be accounted for at the time and in the manner herein after provided for; and if any clerk shall fail or neglect to furnish said lists as herein directed, he shall forfeit and pay two hundred dollars, to the use of the State, to be sued for by the sheriff in the name of the State.

Clerks shall deliver to the sheriff a copy of the returns

SEC. 45. Deputy sheriffs and all other persons that shall be employed by the sheriffs of any county, to collect the public, county and parish taxes, shall, *before* they enter on the collection of either of the aforesaid taxes, take an oath in open court or before any two justices of the peace, where such deputy sheriff or collector may re-

Collectors of taxes to take an oath.

side, faithfully and honestly to account for all monies that may be received by them in the capacity of collectors.

Sheriffs to
collect the
taxes.

SEC. 46. It shall be the duty of each and every sheriff, by himself, his deputy or other person appointed for the purpose, to collect the taxes in their respective counties; and if any sheriff shall die shortly before or during the time appointed for the collection of public taxes, so that a successor in office cannot be appointed before the time for collecting the taxes, in such case, it shall be lawful for their securites to proceed in the collection of said taxes, in which business they are hereby declared to have all the power, authorities, privileges and emoluments in and for the receipt and collection of public taxes, which the sheriff deceased possessed and enjoyed.

Sheriffs to
have one year
to collect ar-
rears.

SEC. 47. The several sheriffs, and in case of their death, their sureties shall have one year from the day prescribed for the settlement of the public accounts, to finish the collection of the taxes they are bound by law to account for, after the expiration of which year they shall be barred from the collection of any taxes: *Provided always*, that nothing in this section contained shall be construed to alter the law directing the manner and time of the sheriffs accounting with the Comptroller and Treasurer.

Sheriffs to
collect double
taxes, &c.

SEC. 48. It shall be the duty of the sheriffs to collect the public taxes from each and every individual in their counties respectively, who are liable to pay taxes, whether their names be contained in the list of taxables delivered by the clerks or not; and in all cases where the public taxes shall be demanded of any person whose name and taxable property are not contained in the list furnished by the clerk, the sheriff shall demand and receive from each and every such person, a sum equal to double the amount which he would have been liable to pay in case a list of his taxable property had been given in due time and according to law; and in instances where disputes shall arise as to the amount of the tax for which any person may be liable under this section, the papers and re-

cords in the clerk's office shall be held and deemed sufficient authority, on the part of the sheriff, to entitle them to enforce their demands by distraining or otherwise, in case the party hath at any time within two years then last past given a list of his or her taxable property; but in cases where no such lists have been given in, an estimation, in writing, under the hands and seals of one justice of the peace and three freeholders, convened for that purpose by the sheriff, shall authorise and warrant his demand to the amount of such estimation, saving, nevertheless, the right of appeal from the determination of such justice of the peace and freeholders to the next County Court, where the matters shall be tried and fully determined on in a summary way during the same term.

SEC. 49. It shall be the duty of each and every sheriff, immediately on receiving the list of taxable property from the clerk of his county, to set up at the court house an advertisement, informing the inhabitants of his county that he has received such list and holds it ready for inspection, and requesting them to give him any information of any lands, polls, or other taxable property, in said county, not given in; and any sheriff receiving information of any lands, polls or other taxable property not given in, and neglecting or refusing to collect and account for the same, shall forfeit and pay twelve hundred dollars, to be recovered one half to the use of the State, and the other half to the use of the person suing for the same: *Provided*, that one thousand dollars of this fine shall not be inflicted in any case where the sheriff shall account with the Treasurer within six months from the expiration of the time allowed by law for his settling with the Treasurer.

Sheriff to advertise when he has received the lists.

SEC. 50. Each and every sheriff, or in case of his death, his sureties, shall have the same power to enforce the collection of taxes, by distress and sale or otherwise, during the additional year, which is allowed him to finish the collection of the public taxes, as he could or might have had and used when the said taxes become due.

Sheriff and his securities may distrain &c.

Lien upon
land for the
taxes.

SEC. 51. Any person failing to pay by himself, or through others, the public taxes for which he may be liable, in due time and according to law, and having no visible personal property on which the sheriff can distrain, but being possessed of lands within the county where such taxes became due and payable, it shall and may be lawful for the sheriff of such county, and he is hereby required to distrain on such lands, and to sell the same, or so much thereof as shall be sufficient for the payment of the taxes due and the costs of such sale.

When a per-
son is about
to remove &c

SEC. 52. Whenever the sheriff of any county shall have reason to suspect that any person whose name is or should be on the list of taxable property, returned by the justices, is about to remove himself or property out of the county, the sheriff shall have power to proceed to levy and collect the tax due from such person immediately, before the time appointed for commencing the collection of the taxes: *Provided*, such sheriff shall first make oath before some justice of his county that he has just reason to believe that such person is about to remove himself or property out of the county before the time of the payment of his taxes shall arrive, and obtain a certificate from such justice to that effect.

Sheriff to ad-
vertise.

SEC. 53. Whenever any sheriff shall distrain any article of personal property for the payment of taxes, he shall not sell the same until ten days' previous notice of such sale, and of the amount of taxes due, shall have been given by advertisement at three or more of the most public places in the district where said taxes are due.

Sheriff to ad-
vertise in
some news-
paper in Ra-
leigh.

SEC. 54. It shall not be lawful for any of the sheriffs in this State, either by themselves or their deputies, to sell lands for their taxes until the same have been first advertised for sale in the State Gazette, or some other newspaper published in the city of Raleigh, for the space of one month, and also at the court house of the county where they are situated, the whole of the expense attendant on which shall be chargeable on such lands, and shall be made accordingly; in which advertisements shall be

mentioned the situation of the lands, the streams near which or on which they lie, the estimated quantity, the names of the tenant or tenants in possession, if cultivated, and the names of the reputed owners, where the same can be ascertained: provided, that no sale of lands for taxes shall take place previous to the first day of August in each year.

SEC. 55. The sheriff of every county shall, at the term of the Court of Pleas and Quarter Sessions of his county next preceeding the day he shall fix for the sale of any lands for taxes, in open court, return a list of the traets of land upon which the taxes are unpaid and which he proposes to sell for the taxes, therein mentioning the owners of each tract, and, if the owner be unknown, the name of the last known or reputed owner shall be mentioned; the situation of said lands, and the amount of tax thereon due; which said list shall be read aloud in open court, recorded by the clerk upon the minutes of the court, and a copy thereof shall be put up by the said clerk during the said term in the court room.

Sheriff to return to county court a list of land to be sold.

SEC. 56. It shall be the duty of the sheriff at the term of the Court of Pleas and Quarter Sessions of his county next after any sale of lands by him made for taxes, to return to said court a list of the traets of land by him sold for taxes, the quantity thereof so bid off for the tax, the name of the purchaser, and the sum due or paid to said sheriff by said purchaser for tax and charges; which list shall be read aloud by the clerk in open court, shall be recorded in the minutes of the court, and a copy thereof shall be put up by the clerk during the said term in the court room.

To return a list of lands sold, which shall be recorded &c.

SEC. 57. Every sheriff or clerk, who shall omit to perform the several duties enjoined in the two preceeding sections, shall forfeit and pay the sum of one hundred dollars, to be recovered by any person suing for the same, in an action of debt, and shall be liable, in an action on the case, for such further damages as may be sustained by the owner of the lands in consequence of such irregular sale.

Penalty on sheriffs and clerks for failure.

Sheriff to sell the land to him who will pay the taxes or the smallest part. SEC. 58. When any lands shall, by the above provision, become liable to be sold for the taxes of the same, it shall be the duty of the sheriff to set up the whole of the lands, belonging to any one person or company for which the taxes thereon shall be due, to be sold to the person who will pay the amount of the public, county and poor rates, with all the charges for advertising the same agreeably to law, for the smallest part thereof; and he shall strike off the quantity so bid or offered to be taken for the amount of the taxes and charges aforesaid to the person offering to take the smallest number of acres of the land for the taxes and charges as before mentioned.

Person purchasing to make choice.

SEC. 59. The person purchasing land at any sheriff's sale for the taxes as above provided, shall be at liberty to make choice of the quantity of land so struck off to him out of any part of the land offered for sale, to be laid off in one compact body, as nearly in a square as can be, and adjoining to some of the outlines of such tracts or parces of land.

Persons whose lands are sold may redeem.

SEC. 60. Where land may be sold by any sheriff in this State, for the non-payment of taxes due thereon, by virtue of law, the person or persons, their heirs, executors and administrators, owning such lands, shall be permitted to redeem the same from the purchaser at any time within twelve months after such sale is made, by paying, or tendering in payment, to the purchaser or to the clerk of the court where the list of the sales shall be recorded, according to the 56th section of this act, the full amount which such purchaser gave to such sheriff and twenty-five per cent. on the purchase money, and all costs of sale accruing thereon.

Purchaser to have his land surveyed.

SEC. 61. When any person shall purchase land sold for taxes, he shall, if it is not redeemed within the time mentioned in the last section, procure the same to be surveyed by the county surveyor, within six months after the time for redemption has expired, and present to the sheriff a fair plat of such survey, with the courses and distances fairly set forth and certified, under the hand of

said county surveyor, which survey shall be made at the expense of such purchaser; and the sheriff shall execute and deliver to him a deed for the same.

SEC. 62. It shall be the duty of the county surveyor to survey lands sold for taxes as prescribed in the last section, upon pain of forfeiting fifty dollars; and if he shall fail so to do within the six months, the purchaser of said lands shall be allowed a further time of six months to have said lands surveyed by some other surveyor, a plat of whose survey being returned to the sheriff for the time being, he shall proceed to execute title, as if the said survey had been made by the county surveyor; and his deed shall be good and valid, to all intents and purposes, as if it had been made under the provisions of the last section: *Provided, nevertheless*, that the county surveyor shall not be liable to the penalty aforesaid, unless the purchaser apply to him to survey such lands within two months after he is at liberty to have the survey made.

Penalty on county surveyor for refusing, &c.

SEC. 63. If no person shall bid a smaller quantity than the whole of the lands, then the whole of the said lands so set up shall be considered as a bid for the Governor, and the sheriff shall strike off the same to him accordingly, and execute a good and sufficient deed of conveyance to him and his successors in office, in manner herein after directed, for the use of the State.

When the sheriff shall strike off the lands to the Governor.

SEC. 64. It shall be the duty of the several sheriffs respectively to perfect the said deed or deeds to the Governor, by signing, acknowledging and delivery thereof, in the presence of the next ensuing County Court for the county where the said land shall be; and the clerk shall accordingly register the same in a book to be kept by him for that purpose, which registration shall be deemed valid; and it shall be the further duty of the clerk, after having recorded the deed as aforesaid, to certify the same thereon, and deliver the same to the sheriff (who shall call on him for the same) within twenty days after the rising of the court at which such deed shall have been acknowledged; and the said clerk neglecting to perform and

How the deeds of the sheriffs to the Governor shall be perfected.

deliver the same to the sheriff as aforesaid, shall be liable to a penalty of one thousand dollars, to be recovered against him, by the Attorney General or one of the solicitors for the State, for the use of the State, in any court having cognizance thereof, by motion, first giving to the said clerk ten days' previous notice of such motion.

Sheriffs to deposit the deeds in the Secretary's office, &c.

SEC. 65. It shall be the duty of every such sheriff, before he settles his account with the Comptroller, to deposit such deed or deeds in the office of the Secretary of State, who shall record and keep the same in his office for the benefit of the State. And the said lands so conveyed shall be deemed vacant lands and liable to entry accordingly; and the Secretary of State shall grant a certificate to such sheriff, setting forth the quantity of land so conveyed to the Governor, which certificate shall be returned by such sheriff to the Comptroller; and such sheriff, in addition to the oaths taken on his settlement with the Comptroller as herein after provided for, shall also swear that he has conveyed to the Governor, in conformity to the requisitions of this act, all lands by him sold for the taxes thereof and purchased as aforesaid, for the use of the State; and if any sheriff shall fail or refuse so to do, the Comptroller shall, in his report to the Treasurer, charge such sheriff so failing or refusing with the sum of two thousand dollars, and the Treasurer shall recover the same for the use of the State.

Sheriffs to be allowed for the taxes on the land bid off for the Governor.

SEC. 66. Each respective sheriff shall be allowed, in his settlement with the Comptroller, (the requisites of the three last sections being complied with,) the amount of the tax on all lands so purchased for the use of the State, together with the costs of advertising and recording, and also shall be allowed commissions on the same as if the money had actually been collected; and such sheriff shall also be credited in his settlement with the county treasurer or trustee, and with the wardens of the poor for such of the county and poor tax as the said lands may be sold to satisfy.

SEC. 67. Any person purchasing lands sold for the

taxes due thereon, shall be considered as taking and holding the same subject to the taxes accruing and growing due thereon from the first day of April next preceeding the time of his purchase; but if such person shall fail to complete and perfect his title to said lands according to the above provisions, such lands shall be deemed lapsed or vacant land, and to have reverted to the State, and liable to be entered in the entry taker's office as if the same had never been appropriated.

Lands purchased liable to other taxes, &c.

SEC. 68. Where any sheriff shall sell any lands for the taxes due thereon, and die or remove, or be out of office, before a deed or deeds have been executed for the same, it shall be lawful for his successors in office to make and execute a deed or deeds to the person or persons purchasing the same, if it shall appear that the sale was *bona fide* made: *Provided always*, that before any deed or deeds shall be executed by the sheriff to the person or persons so claiming as purchasers of the land aforesaid, such purchaser or purchasers shall produce to the court of the county in which such lands lie, the receipt of the deceased sheriff for the purchase money, and shall also produce such other testimony, to shew that they had well and truly purchased and paid for the said lands, as may by the said court be deemed satisfactory; and shall also make it appear that they have surveyed the same, and registered a plat thereof, agreeably to law; and also that they have paid the lawful taxes on said lands; on which proof, the said court may issue an order, directing the sheriff to make and execute titles for the same; and all deeds made and executed contrary to the provisions of this section shall be void.

When a sheriff dies his successor may make a deed for lands sold for taxes.

SEC. 69. All sheriffs and receivers of public monies shall settle their public accounts, or cause them to be settled with the Comptroller of this State, the whole of which settlements, except those which now are or may hereafter be excepted by law, shall be made in the months of July, August and September, in each and every year; and it shall be the duty of the Comptroller, on making

Settlements of the sheriffs with the comptroller.

any such settlement, forthwith to report the sums or amount due from such accountant to the Treasurer of the State, setting forth in such report (if a sheriff's account) the nett amount of each species of public tax; and the Treasurer shall raise an account against each and every of such persons, and debit them accordingly.

Sheriffs to
designate the
sources of the
several taxes,
&c.

SEC. 70. It shall be the especial duty of the several sheriffs of this State, in making settlements of their accounts annually with the Comptroller, to designate, in a list by them to be rendered, the different sources from which the taxes by them accounted for were received, and the particular amount of tax from each. And the Comptroller shall give the sheriffs a certified copy of the lists returned by them respectively, which said copy it shall be the duty of the said sheriffs to deposite with the clerks of their respective counties for public inspection.

Sheriffs to
return upon
oath to the
county courts
all taxes re-
ceived from
merchants
&c.

SEC. 71. Every sheriff shall return, upon oath, to the Court of Pleas and Quarter Sessions of his county, at the term next preceeding the time at which he shall settle with the Comptroller for public taxes, a list of all the monies which he may have received from taxes imposed on merchants, retailers of spirituous liquors, stage players, slight of hand performers, rope dancers, tumblers, wire dancers, company of circus riders, equestrian performers, and all exhibitors of natural or artificial curiosities, setting forth, in such list, the name of each person who may have paid any such tax, the amount paid by each and for what tax; which list the court shall cause to be publicly read in open court; and it shall be the duty of the clerk of the court to enter upon the minutes of said court, and preserve such return, and to cause to be set up in some conspicuous place in the court house a fair copy thereof at each and every court which may be held in his county, within six months thereafter, and to furnish each Grand Jury with a copy of the same.

If such return
not made to
the court, &c.

SEC. 72. If the term of the County Court in any county shall happen before the sheriff can complete the collection of the taxes mentioned in the above section, or, from any other cause, the sheriff shall have failed to make his return to the

court aforementioned, then the said list of taxes may be returned and filed with the clerk of said court during vacation, which list shall be sworn to, in the presence of the clerk, before two justices of the peace, by the sheriff returning the same.

SEC. 73. The clerk shall deliver to the sheriff a certified copy of such return, which copy the sheriff shall deliver to the Comptroller at the time of settling for public taxes; and the Comptroller shall charge the sheriff according to such return: *Provided*, that nothing herein contained shall be so construed as to exempt any sheriff from liability for any monies which he may have received on account of such taxes, whether contained in such return or not: *And provided further*, that nothing herein contained shall be so construed to affect in any manner the provisions regulating the issuing of licenses and accounting for them.

A copy of return to be given to sheriff, and by him to Comptroller.

SEC. 74. If any sheriff fail to make the returns to the court, or to the clerk in vacation, or shall fail to deliver a copy thereof to the Comptroller as above required, he shall forfeit and pay the sum of two hundred dollars, and the Comptroller shall charge him with the same in stating his account with the State, and the sheriff shall be moreover liable to pay the taxes which he has or ought to have collected.

Penalty on sheriffs for failure.

SEC. 75. It shall be the duty of the Comptroller, when he shall have just cause to suspect that any sheriff may have made a false return, or sworn falsely, in any matter relative to the collecting or accounting for any tax, to communicate the same to the officer prosecuting in the Superior Court of the county wherein the offence may have been committed; and it shall be the duty of such officer to prosecute such sheriff, if, in his opinion, the circumstances of the case shall justify a suspicion of such sheriff's guilt; and in all such prosecutions, a copy of any list returned on oath, filed in the Comptrollers office, duly certified by the Comptroller, shall be admitted as evidence in the same manner, and have the same effect, as the original, unless the court, for special reasons, shall previously order the original to be produced on trial.

Duty of the Comptroller when he suspects the sheriff of making a false return.

SEC. 76. If any clerk shall fail to perform the duties required of him by the 71st section of this act, or shall neglect or refuse to certify any return made to him as required by the 73d section, or shall falsely certify any return duly made to him, he shall be deemed and taken to be guilty of a misdemeanor in office, and shall, on conviction in any court having cognizance thereof, for any or either of the aforesaid offences, be punished by fine or imprisonment, or removal from office, at the discretion of the court.

SEC. 77. All sheriffs shall, at the time of their annual settlements, render unto the Comptroller, on oath, a list of the names of those persons from whom they have recovered a two fold tax, together with the amount, specifying from what source each species of tax arose.

SEC. 78. Each and every sheriff shall, in his annual settlement with the Comptroller, be allowed for insolvent taxables; but in order to obtain such allowance, he must return to the Court of Pleas and Quarter Sessions of his county, at some term preceding his settlement with the Comptroller, a list containing the names of those for whom he claims as insolvent; and he must make oath that he hath been at the dwelling house or usual place of residence of the person or persons therein named, and that he could not find property of such person or persons sufficient to discharge the respective taxes, or any part thereof, and that the persons contained in such list were insolvents at the time when he ought by law to have accounted for such collection; and the said court shall not be at liberty to allow such sheriff for more insolvent taxables than he shall have thus expressly named and sworn to.

SEC. 79. Such list of insolvent taxables shall be advertised by the clerk, in the court house, within ten days after its return; and any clerk neglecting or refusing to perform the duty hereby required, shall, for every such neglect or refusal, forfeit and pay one hundred dollars, one half to the wardens of the poor, the other half to the person suing for the same.

SEC. 80. If any sheriff shall return to court as insolvent the name of any person who is not enlisted or has actually paid his tax for that year, or shall presume to collect or re-

Punishment of
clerks in cer-
tain cases.

Return two
fold tax.

How the
sheriff shall
be allowed
for insolvent
taxables.

List of insol-
vents to be
advertised.
by the clerk.

ceive by himself or deputy from any person, his tax for the year for which he has been returned an insolvent, without accounting for the same, such sheriff shall forfeit and pay, for every offence, the sum of forty dollars, to be recovered as directed in last section, and applied one half to the use of the county where the offence shall be committed, the other half to the party injured, who may sue for the same.

Penalties on sheriffs in relation to insolvent taxables.

SEC. 81. Each and every sheriff, previous to settling his accounts, shall take and subscribe the following oath in the Comptroller's office: "I, A. B. sheriff of the county of ———, do on this——day of——, one thousand eight hundred and——, make oath that the list now by me given in, is to the best of my knowledge and belief, complete, perfect and entire, and contains the full amount of all monies by me or for me received, or which ought to have been received on account of the public taxes for the year one thousand eight hundred and——, and that I have truly and faithfully endeavored to execute and govern myself by the revenue laws of this State, without favor, affection, or partiality, to the best of my knowledge and ability: so help me God."

Sheriff's oath for settling accounts with Comptroller.

SEC. 82. In addition to the foregoing oath, said sheriff shall swear, that if he collects any delinquent tax beyond those accounted for in said settlement, he will render a true account thereof to the Comptroller, within one year after such collection. And if it shall be discovered that any sheriff, or any person by virtue of having been a sheriff, shall collect delinquent taxes and not account for the same as herein required, each sheriff or other person shall be liable to pay four fold the amount of the sum collected and not accounted for, to be recovered in the name of the State before any jurisdiction having cognizance thereof.

Additional oath to be taken by sheriffs, &c.

SEC. 83. Each and every sheriff, as a compensation for his services in collecting and paying into the treasury, in due time and according to law, the public taxes, shall be entitled to a commission of six per centum on the nett amount of the taxes of his county, to be allowed him by way of deduction in the settlement of his accounts with the Comptroller.

Sheriff's commission for collecting taxes.

SEC. 84. Each and every sheriff shall also be allowed

Compensation for making settlement

the sum of three dollars for every day he may be necessarily engaged in making his settlement with the Treasurer; and shall also be allowed the sum of one dollar and fifty cents for every thirty miles of the estimated distance of going and returning home, by the most usual road from his place of residence to the seat of government, to be paid by the Treasurer; and if any sheriff shall fail to pay the whole amount of the taxes due from him to the State at the time he makes such settlement, he shall not be entitled to any mileage, nor to the three dollars a day allowed for his attendance in making the settlement.

Bond to be given by sheriffs for public taxes.

SEC. 85. Over and above the other bonds directed by law to be given by the sheriff of each county before his entering into office, he shall enter into a distinct bond, with two or more sufficient sureties, to be approved of by the County Court, payable to the State of North Carolina, in the sum of four thousand dollars, conditioned for the due collection, payment and settlement of the public taxes as required by law.

Clerk to furnish the Comptroller with the name of the sheriffs, &c.

SEC. 86. It shall be the duty of the clerks of the County Courts, at the same time when they make a return of the lists of taxable property to the Comptroller, to furnish the Comptroller with a certificate of the name of the sheriff of his county, and the sureties to his bond for the collection of public taxes; which certificates, when certified by the Comptroller, shall, on motion of the Treasurer for judgment against any such sheriff and his sureties, be deemed equally valid in law with the bond of such sheriff; and the court shall give judgment and award execution thereon accordingly.

Penalties on clerks for certain failures.

SEC. 87. If any clerk of the County Court shall fail to furnish the Comptroller with such certificate as directed in the last section, he shall forfeit and pay one thousand dollars, to be recovered by the Treasurer, for the use of the State; and such clerk so failing and forfeiting or failing to return a list of taxable property, as prescribed in this act, shall be considered guilty of a misdemeanor in office, and on conviction shall be dismissed accordingly, and shall thereafter be held ineligible to the appointment of the clerkship of his county.

SEC. 88. In all cases of failure of a sheriff, or other accounting officer, to settle his account within the time by law required, and to take the oaths prescribed by law, it shall be the duty of the Comptroller, and he is hereby directed to report immediately on the same, allowing to the failing sheriff neither commissions nor insolvents, but adding to his account the sum of four hundred dollars as the supposed amount of such delinquent's receipts from the tavern keepers and persons failing to give in their lists of taxable property. And upon such report, and such sheriff or other accounting officer failing to appear and fully pay up and finally settle for the sums so reported against him as directed by law, it shall be the indispensable duty of the Treasurer, and he is hereby required to take judgment without delay for the several sums or balances due the State agreeably to such report, against the sheriff and his sureties, or against such other accounting officer and his sureties; and it is hereby declared that in all cases of delinquency of sheriffs or other accounting officers, the Comptroller's certificate shall be held and deemed sufficient testimony for the court and jury to found their verdict on.

Comptroller's
duty when
the account-
ing officers
fail to acc't.

SEC. 89. No citation or other warning shall be required or held necessary, preparatory to the taking judgment against any delinquent sheriff or other collecting revenue officer; but the delinquency of all such officers shall be, and the same is hereby declared to be held and deemed good and sufficient, and shall be so considered by the courts in this State, as well for the officers themselves as for their sureties; and all motions, at the instance of the Treasurer, by the Attorney General, in behalf of the State, for arrears of taxes or other money due the State, judgment shall be granted as well against the principals as their sureties, without further notice, accordingly.

Summary
judgments
may be taken
against all
accounting
officers.

SEC. 90. All penalties imposed by this act upon clerks, sheriffs and justices, for delinquencies in the performance of any of the duties here enjoined, where the penalties are declared to be solely for the use of the State, shall be recovered in any court of record, by the Treasurer, on motion of the

How penal-
ties on clerks,
justices and
sheriffs shall
be recovered.

Attorney General, or any of the Solicitors of the State, on the certificate of the Comptroller, stating such delinquency, which certificate the Comptroller is hereby required to furnish to the Treasurer immediately after the first day of October in each year.

Summary judgment against any person indebted to the State. SEC. 91. The Public Treasurer shall have power and authority to move for judgment against any person indebted to the State, in any court of record in this State, in the same manner, and under the same rules and regulations which are prescribed in cases of delinquent sheriffs; and the said court shall render judgment and award execution, though the amount thereof may be within the jurisdiction of a justice of the peace.

[Ratified 23d January, 1837.]

[Revised Statute.]

No. XVII.

TREASURER OF THE STATE.

An Act concerning the Treasurer of the State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Treasurer of the State shall

Treasurer to be biennially elected. be elected as early in each biennial session as can be conveniently done. Before entering into office, and within twenty-
Oaths to be taken and bond to be given. one days after his election, he shall take and subscribe the oath prescribed by law before some justice of the peace; he shall give duplicate bonds to the Governor, with securities to be approved by the Governor and the Speakers of the two

houses of the General Assembly, in the penalty of two hundred and fifty thousand dollars, payable to the State of North Carolina, conditioned that he will faithfully account for all monies and other things which shall come to his hands in virtue of his office, and perform all other duties required by law, or which may hereafter be required by law, of the Treasurer of this State; and the said Treasurer shall execute duplicates of the said bond, which shall be endorsed "approved," and signed by the Governor and Speakers of the two houses; and one duplicate shall be delivered by the Governor to the Comptroller, and the other to the Secretary of State, for safe keeping; and the certificate of the Treasurer's qualification shall be delivered to the Comptroller and filed with the bonds: *Provided*, that the election of Treasurer shall not take place until after the Committee of Finance shall have made their report on the state of the Treasury.

SEC. 2. If the person elected Treasurer shall fail to give bond and security within the time mentioned by this act, it shall be the duty of the Governor to communicate the same to the General Assembly, who shall proceed to elect some other person.

Person elected failing to give bond &c.

SEC. 3. If at any time there should not be twenty-one days between the election of Treasurer and the rise of the General Assembly, then the bonds required by this act, shall be given to the Governor within twenty one days after such election, and by him endorsed, "approved;" and if any person elected Treasurer shall fail to give such bonds within the time prescribed, and the Legislature should not then be in session, it shall then be the duty of the Governor to call the council of State and proceed to appoint some other person Treasurer; and the person so appointed shall give bonds and security within twenty-one days, to be approved by the Governor: *Provided*, that in no case shall any person appointed Treasurer, either by the General Assembly or the Governor and Council, enter into office before giving bonds and taking and subscribing the oath of office as above required.

If failure during the recess, Governor and council to appoint another.

SEC. 4. Suit may be brought on either of the bonds given by the Treasurer, and judgment may be entered in the

Judgments may be entered on the bonds, &c. same manner, and under the same rules and regulations, as have been or shall be prescribed for entering judgments against the several sheriffs of this State.

SEC. 5. It shall be the duty of the Treasurer, in books provided for that purpose at the public expense, to state and keep an account of all money received by him for public taxes and impositions, and otherwise, and all monies paid by him for public dues, and in pursuance of acts and votes of the General Assembly, in such a manner that the nett produce of the whole revenue, as well as of every branch thereof, and the amount of disbursements in discharge of the several demands, may distinctly appear; which accounts shall at all times be liable to the inspection and examination of the General Assembly.

SEC. 6. The Treasurer shall form an accurate statement of the treasury, which shall be laid before the General Assembly, and which shall be published and bound up with the laws of each session thereof, in which statement shall be specified the nett produce of the several branches of Revenue, the several allowances for insolvencies, and the arrears of any sheriff or any other person bound to account with the Public Treasurer; all allowances and drafts made by the General Assembly, and warrants issued by the Governor shall be severally enumerated, briefly setting forth in whose favor they were made or drawn, and on what account.

SEC. 7. The books and accounts of the Treasurer and Comptroller shall be subject to the inspection and examination of the Committee of Finance of the Legislature, during each session of the Legislature; and it shall be the duty of the said committee carefully to examine the exact condition and statement of the deposits made in the banks by the Treasurer, and ascertain the amount of funds of the State at the time of the report of the Treasurer to the Legislature, and also ascertain the full amount of money in the treasury by counting the same, and they shall report thereon at each session.

SEC. 8. The Public Treasurer shall not discharge any grant to the Assembly, or warrant of the Governor, unless the said grant or warrant shall particularly express the cause and service for which the same was issued.

SEC. 9. On the first day of November, in each and every year, it shall be the duty of the Public Treasurer and Comptroller for the time being to certify and deliver to the Public Printer, to be by him published for one month, a list containing the names of all the revenue officers of the State, who shall on that day have failed to account for the public taxes, and other monies due by them for the last year and which by law are made payable into the treasury on the first of October preceding, stating in such list the sum due from each officer respectively for that year.

Names of defaulting revenue officers to be published.

SEC. 10. It shall be the duty of the Treasurer and Comptroller of this State at all times, except during the sitting of the Legislature, to have monthly settlements of all accounts of public monies which by law they are required to keep, and once in each month to ballance said accounts, and ascertain the amount of public money in the possession of the Treasurer; which said amount shall immediately thereafter be deposited by the Treasurer in the banks of this State.

Monthly settlements to be made by treasurer and comptroller.

SEC. 11. For all deposits of public money made by the Treasurer in the banks of this State, the cashier thereof shall give duplicate certificates of deposit: one to the Comptroller, which he shall file and safely keep in his office, and the other to the Treasurer, which certificates shall be given by the cashier at the time the deposit shall be made by the Treasurer.

Duplicate to be taken for deposits.

SEC. 12. The Treasurer shall from time to time, as the public interest may require it, check for the public monies deposited in the banks as aforesaid; and for the amounts for which he shall so draw, he shall account to the Comptroller in their monthly settlements; but the Treasurer may check for and keep in the office during the session of the Legislature, an amount of money sufficient to pay the officers and members of the two houses.

Treasurer may check for the money deposited.

SEC. 13. If at any time the Treasurer shall suspect the solvency of any of the banks in which public monies are deposited, it shall be his duty to communicate the same to the Governor; and if, upon an examination of the subject, the Governor shall consider that the public interest requires the public money to be withdrawn from the bank, it shall be the duty of the Treasurer to remove or cause to be removed the deposit in the said bank.

The treasurer and governor's duty when a bank of deposit is suspected of insolvency.

SEC. 14. The Treasurer shall, in all payments made to him, grant two receipts of the same tenor and date, one of which receipts shall be filed in the Comptroller's office, and the other shall be endorsed by the Comptroller, and continued with the person who has made the payment, without which endorsement of the Comptroller, no receipt said to be given by the Treasurer shall be operative.

SEC. 15. The receipts and expenditures of the Literary Fund, and the Fund for Internal Improvements shall be, in all cases, passed through the Comptroller's office, be examined by him and entered on his books, in like manner as all other receipts and expenditures.

SEC. 16. It shall be the duty of the Treasurer of the State, and he is hereby directed to deliver to the Secretary of State all the certificates or other evidences of shares or stock in any of the incorporated companies in which the State is interested; and it shall be the duty of the Secretary of State to register the same in a well bound book to be kept for that purpose, and to endorse such registration on the back of each certificate or other evidence of the claim of the State, which shall be returned to the Treasurer.

SEC. 17. It shall be the duty of the Comptroller, and he is hereby directed, as soon as his accounts shall be passed on by the General Assembly, to endorse upon each certificate, or other evidence of public stock, that the same has been allowed by the General Assembly as a credit to the Public Treasurer, and the date of such allowance, and to return such certificate or other evidence to the Treasurer for safe keeping.

SEC. 18. Whenever any certificate or other evidence of the claim of the State, to shares or stock in any of the incorporated companies shall be lost or destroyed, a certified copy thereof, from the Secretary's office, shall be as good and valid, to all intents and purposes, as if the original were produced.

SEC. 19. Whenever it shall be necessary to collect any moneys or to enforce any demands of the State, in any other State or country, the Treasurer, with the approbation of the Governor, shall appoint an agent or agents for that purpose, and execute to him or them letters of attorney, specifying the powers conferred; and said agent or agents shall receive such compensation from the Public Treasurer, as the Governor and

Treasurer may allow, or as the General Assembly may direct.

SEC. 20. The Public Treasurer of this State shall have full power and authority to move for judgment against any person or persons, acting as agent for the State, who are indebted to the State by or on account of such agency, in any court of record of this State, in the same manner, and under the same rules and regulations which are prescribed in cases of delinquent sheriffs; and the said courts shall respectively render judgment and award execution tho' the amount thereof may be within the jurisdiction of a justice of the peace.

Treasurer
may move
for judgment
against such
agents.

SEC. 21. The Treasurer shall be allowed the sum of five hundred dollars as a salary to such clerk or clerks as he may think proper to employ in the office, to be paid out of the public treasury, in quarterly payments, to wit: on the first day of April, July, October and January, in each and every year, on warrants to be drawn by the Governor.

Treasurer
may employ
a clerk and
clerk's salary.

SEC. 22. For the convenience of the Treasurer and persons having business with him, he shall be required to attend to every application made by them for official duties, at his office, which shall be in the city of Raleigh, between the hours of nine and twelve o'clock, and between two and five o'clock on every day in the year, (Sundays and the fourth of July only excepted,) and said officer shall not be required to attend to any call made at any other time of the day.

Office hours.

SEC. 23. If at any time it shall appear that the Public Treasurer hath neglected, in any instance, to call to account, as directed by law, any delinquents herein before described, by which the public revenue of the State may suffer loss, then and in such case, the said Treasurer shall be held and deemed accountable for sums due by such delinquents, to all intents and purposes, as if the same had actually been paid into his office.

Penalty for
failing to
proceed a-
gainst delin-
quents.

SEC. 24. If at any time it shall appear from the accounts kept between the Comptroller and Treasurer, or it shall appear in any other way, that the Treasurer has not accounted for and paid over the public monies of this State, as directed by law, it shall and may be lawful for the State to move for and obtain judgment against the said Treasurer and his securities, or any of them, in any court of record in this State, first giving to the persons against whom such motion shall be made, at least five days' notice of the time and place, when and where such mo-

Proceedings
against treas-
urer for defal-
cation.

tion will be made; and upon such judgment execution shall issue as in other cases.

Treasurer dying, his debt to the State shall be first paid. SEC. 25. If any person appointed Treasurer, shall die indebted to the State, or being so indebted shall become insolvent, any debt which he may owe to the State shall be first satisfied; and the priority hereby established shall be deemed to extend to cases in which such debtor not having sufficient property to pay his debts, shall make a voluntary assignment thereof, or in which his estate or effects shall be attached, as of absconding, concealed or absent debtors.

Penalty for false entry or other frauds. SEC. 26. If any person appointed Treasurer, of his own head and imagination, or by false conspiracy or fraud with others, shall willingly or falsely make, or cause to be made, any false entry or charge, in any book or books which he is required by law to keep; or shall wittingly and falsely form, or procure to be formed, any statement of the Treasury, to be by him laid before the Governor, the General Assembly or any committee thereof, or to be by him used in any settlement which he is required to make with the Comptroller, with intent, in either or any of said instances, to defraud the State, or any person or persons, such Treasurer shall be deemed and held guilty of a misdemeanor; and upon due conviction thereof, in any of the Superior Courts of this State, shall be fined, at the discretion of the court, not exceeding one thousand dollars, and imprisoned, not exceeding three years.

[Ratified 27th December, 1836.]

[Revised Statute.]

COMPTROLLER.

No. XV.

An Act concerning the Comptroller.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That a Comptroller shall be biennially elected by the General Assembly, in the same manner that the public Treasurer is elected. Comptroller how appointed.

SEC. 2. The person thus elected Comptroller, before entering upon the duties of that appointment, shall give bond, with sufficient security, payable to the State of North Carolina, in the sum of twenty thousand dollars, conditioned for the safe keeping of the public books of accounts and all vouchers which may come into his possession, and for the faithful performance of his duty in office: which bond shall be taken by the Governor for the time being and deposited in the Treasurer's office for safe keeping.

Bond to be given.

SEC. 3. The Comptroller shall also, before entering upon the duties of his appointment, take, before some justice of the peace, the oaths prescribed by law for the qualification of public officers, and also an oath of office.

Oaths to be taken.

SEC. 4. It shall be the duty of the Comptroller to settle and report on all public accounts of the State, and to keep regular books and statements of the same, which he shall do in the manner following, that is to say: he shall report the nett amount which shall annually become due and payable from the respective revenue officers to the Treasurer of the State (to the end he may be informed of the same and enforce the due payment thereof)—first raising an account and debiting in his books each officer so reported against, whom he shall credit by

Comptroller to settle all public acc'ts and keep books.

the account of such receipts as they or any of them shall from time to time produce from the Treasurer.

SEC. 5. The Comptroller shall open an account with the Treasurer, in which he shall debit him with the amount of each respective receipt which the Treasurer shall have given according to the 12th section of the act concerning the Treasurer, and which, pursuant thereto, shall have been filed in his office, and credit him by the amount of such warrants and other cash claims as he shall produce and deliver.

SEC. 6. It shall also be the duty of the Comptroller to raise accounts, and report in like manner, against individuals who may become chargeable on any of the warrants or vouchers hereafter paid them, as though they were revenue officers, taking care not to blend such reports and accounts with those already raised or made, or which may be hereafter raised and made on vouchers in the Comptrollers office.

SEC. 7. All monies becoming payable to the public, which shall not be paid in due time, but shall be sued for and recovered, when received, shall be paid into the treasury by the clerk of the court in which the recovery shall be had; and the receipts for such payments shall be rendered to the Comptroller, charged and filed by him as in other cases.

SEC. 8. It shall be the duty of the Comptroller, on the first day of November biennially, to strike a balance against the Treasurer and all other public accountants in arrear, and report a statement of the same to the General Assembly, with whom he shall settle his own accounts for the warrants and other claims received of the Public Treasurer; and in the year when the General Assembly shall not have a regular session, he shall make a like report to the Governor.

SEC. 9. It shall be the further duty of the Comptroller, immediately after the first day of November, in every year, to prepare the account of the Public Treasurer of this State with the State as the same shall appear on the books of the Comptroller's office, for the year preceding the first day of November, stating the balance of the money in the treasury at the last settlement, the receipts into the treasury within the year, particularizing the monies and account from which the same accrued and were received, the amount received from each respectively, and a particular statement of the disbursements

from the treasury within the same period, and the money remaining in the treasury; and he shall annex to said account a statement of the revenue, from each subject of taxation in every county of the State; of which account and statement the Comptroller shall have printed two hundred and fifty copies, before the meeting of the General Assembly next ensuing the first day of November in every other year, and deliver the same within the first week of the session of the General Assembly, to the clerk of either house, subject to the disposal of the General Assembly; and in each year when the General Assembly shall not have its regular session, the Comptroller shall, immediately after the first day of November, furnish a like account and statement to the Governor, who shall thereupon cause the same to be published in five of the public newspapers of this State; and for the printing and publication as aforesaid, the treasurer shall pay a reasonable compensation on the certificate of the Comptroller.

In certain cases may administer an oath.

SEC. 10. The Comptroller is empowered and authorised to administer an oath or affirmation to accountants and witnesses in support of the justice of such accounts as may be exhibited to him for liquidation, and certify the same accordingly.

SEC. 11. No claim, draft or warrant, from the Governor or any one else, except the certificates for the service of the members of the General Assembly, and their clerks and waiters, and the certificates of the clerks of the Superior Courts, for the salaries of the Judges and the Attorney General and Solicitors, shall be paid by the Treasurer, collector or other receiver of the public revenue or taxes, until such claim, draft or warrant shall have been entered in the Comptroller's office, and charged to the person or persons drawing the same, with the Comptroller's order endorsed to the Treasurer or other receiver of the public revenue to pay the same; and no claim, warrant, or draft, (except as before excepted,) shall be allowed in the settlement of the account of any Treasurer, collector, or receiver of the public revenue or taxes, but under the foregoing rules and regulations.

No warrants &c. to be paid unless first entered in comptroller's office and certified by him.

Instrument for cancelling papers to be procured.

SEC. 12. The Comptroller is authorized and required to procure an instrument of not less than one and a half inches in diameter, for cancelling papers in such a manner as not to render them illegible; and such instrument shall be hereafter used

for the purpose of cancelling the vouchers in the Comptroller's office.

Comptroller's certificate ev-
idence. SEC. 13. An official signed by the Comptroller, shall be received as evidence in the different courts in this State.

[Ratified 20th December, 1836.]

CHAP. L.

An Act to amend an act, entitled "an act to establish a department for adjusting and liquidating the public accounts of this State, and for appointing a Comptroller and other purposes.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Comptroller of this State shall hereafter enter into the duties of his office on the first day of January, and continue therein for two years and until his successor is qualified.

Comptroller when to enter and how long to continue in office.

SEC. 2. *Be it further enacted,* That the Comptroller of this State be elected by a joint vote of both houses of the General Assembly; and in the said election the members of the Assembly shall vote *viva voce*; and the Comptroller shall take the oaths, and give bond as now required by law, which bond shall be for the term of his office, instead of one year.

Comptroller election of &c

SEC. 3. *Be it further enacted,* That Nathan A. Stedman, the present Comptroller, be, and he is hereby appointed Comptroller of this State until the first day of January, one thousand eight hundred and thirty seven, and until his successor is appointed and qualified.

SEC. 4. *Be it further enacted,* That this act shall be in force from and immediately after the ratification thereof.

[Ratified 17th December, 1836.]

SURPLUS REVENUE.

CHAP. LI.

An Act to receive the proportion of the Surplus Revenue to which the State of North Carolina is entitled, under the act of Congress to regulate the deposits of the public moneys.

Whereas, by an act, passed at the last session of Congress, it was directed that the money which shall be in the Treasury of the United States on the first day of January, eighteen hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with such of the several States of this Union, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their Treasurer, or the competent authorities, to receive the same, on the terms specified in said act:

Preamble.

Be it therefore enacted by the General Assembly of this State, and it is hereby enacted by the authority of the same, That the proportion of the surplus revenue which is allotted to the State of North Carolina, by an act of Congress, passed at the last session, entitled "an act to regulate the deposits of the public money," be, and the same is hereby accepted, by and in behalf of said State.

States proportion accepted.

SEC. 2. *Be it further enacted,* That the Governor of this State, immediately after the passage of this act, notify the Secretary of the Treasury of the United States of the acceptance, by this State, of such proportions of the surplus revenue to which it is entitled, according to the provisions of the act of Congress aforesaid.

Gov. to notify Sec. Treas.

SEC. 3. *Be it further enacted,* That the Public Treasurer of this State is hereby authorised, empowered and directed to execute in behalf of this State, such certificates of deposit for said money, pledging the faith of the State for the safe keeping, and for the repayment of the same, as may be prescribed by

Treasurer to execute certificate of deposit.

the Secretary of the Treasury of the United States, according to the provisions of said act of Congress.

Treas. to receive money and deposit in banks, &c. SEC. 4. *Be it further enacted*, That the Public Treasurer is hereby authorised and empowered to receive of the Secretary of the Treasury aforesaid, or his agent or agents, such portions of the public money to which the State is entitled aforesaid, and to execute such acquittances and acknowledgments for the same in behalf of the State, as may be prescribed or required, according to the provisions of the act of Congress aforesaid; and when said money shall be received by the Public Treasurer, he shall deposite the same, for safe keeping, in the present banks of this State, as a separate and distinct fund from the revenues of this State, and not subject to draft except by special order of the General Assembly, or unless the safety of the same shall require it, which shall be determined by the Governor, who may order it to be withdrawn.

When to take effect. SEC. 5. *Be it further enacted*, That this act shall take effect and be in force from and after its ratification.

[Ratified 11th January, 1837.]

CHAP. LII.

An Act to provide for the redemption of the scrip issued by the State, under the act of the General Assembly, passed in the year one thousand eight hundred and thirty-five, and entitled "an act to provide for the payment of the instalments on the shares reserved to the State in the capital stock of the Bank of the State of North Carolina."

Treas. to purchase scrip from Trustees University. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That the Public Treasurer is hereby authorised and directed to negotiate with the trustees of the University of this State, for the purchasing in of the scrip issued by the State, and now held by the trustees of said University, amounting to

one hundred thousand dollars principal; and to effect such purchase, the Treasurer aforesaid, in the name of and on behalf of the State, is hereby directed to transfer in lieu of said scrip, one thousand shares of the capital stock of the Bank of the State of North Carolina, now owned and held by the State in said bank.

SEC. 2. The Governor is hereby empowered and directed to appoint an agent, whose duty it shall be to purchase in, if practicable, the scrip issued by the State and sold to the Secretary of the Treasury of the United States for the use of the Cherokee Indians, amounting to three hundred thousand dollars; and to effect such purchase, the Governor is authorised to draw on any bank or banks of the State, having in it or their possession, any part of the surplus revenue of the United States, which has been or may be deposited with this State, under an act of the twenty-fourth Congress, passed at its first session, entitled "an act to regulate the deposits of the public money," for a sum not exceeding three hundred thousand dollars, with which said sum the agent aforesaid may purchase the said scrip directly, or purchase such other stocks, and transfer the same to the holder of said scrip in lieu thereof, as shall be agreed on between said agent and the holder of said scrip.

Gov. to appoint an agent to purchase scrip of the State, sold to Sec. of Treas.

SEC. 3. Said scrip, when purchased in, under either of the foregoing sections, shall not be cancelled nor be deemed in any wise to be extinguished by such purchase, but shall be deposited in the public treasury of the State, and shall not be re-issued, except in case of a call by the Federal Government, on the State for the surplus revenue deposited with this State, under the before recited act of Congress, and re-issued then only by resolution of the General Assembly.

Scrip not to be cancelled &c.

SEC. 4. The expenses of said agent, and such compensation for his services in the performance of the duties herein prescribed, as the Governor shall deem reasonable and proper, shall be paid him by the Treasurer, on the warrant of the Governor.

Expenses of agent.

SEC. 5. This act shall be in force from the passage thereof.

[Ratified 21st January, 1837.]



PRIVATE ACTS.

CORPORATIONS.

CHAP. LIII.

An act to incorporate the Caldwell Institute, in the town of Greensborough, North Carolina.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Samuel L. Graham, A. W. Venable, James L. Wortham, William A. Shaw, William McPheeters, James Mebane, Frederick Nash, John W. Norwood, Eli W. Caruthers, William D. Paisley, John Leseur, Alexander Wilson and James Philips, and their successors, duly elected and appointed as hereinafter directed, be, and they are hereby declared, made and constituted a corporation and body politic and corporate, in law and in fact, to have continuance for ninety years, by the name, style and title of "Trustees of the Caldwell Institute;" and by the name, style and title aforesaid shall, for ninety years hereafter, be persons able and capable in law to sue and be sued, plead and be impleaded, in all courts either of law or Equity; and shall take, demand, receive and possess all monies, goods and chattels and choses in action, which may be given to them for the use of the said Caldwell Institute, and the same apply according to the will of the donors, when expressed, and, without such declaration, according to their own judgment; and, by purchase, gift, grant or devise, to take, hold and possess to them and their successors forever, any lands, rents, tenements and hereditaments of what kind, nature or quality soever, in special trust and confidence, the same, with the profits thereof, to apply to the use and purpose of endowing and supporting the said Caldwell Institute; and may purchase and hold, for the purpose aforesaid, all such chattels and personal property as to them shall seem requisite.

SEC. 2. *Be it further enacted by the authority aforesaid, That the said corporation shall not at any time consist of more than eighteen persons, whereof the Presbyteries of Orange and Roanoke, in case of vacancies, occasioned by death, resignation or removal, shall elect one half each, and may annually change one third in such manner as to the said Presbyteries shall seem proper, so long as they continue jointly to support the said Institution.*

SEC. 3. *Be it further enacted by the authority aforesaid, That if the presbytery of Roanoke shall at any time hereafter, for any cause, cease to act jointly with the Presbytery of Orange, in support of the Caldwell Institute, and relinquish their interest therein, then, and in that case, the*

duty of electing and changing the Trustees aforesaid, shall devolve solely upon the Presbytery of Orange.

SEC. 4. *Be it further enacted by the authority aforesaid,* That the said Trustees shall have power from time to time to appoint their own President, Secretary and Treasurer, and such Professors, Tutors, and other officers, in and over the said Institute, as to them shall appear proper; and may remove the same for misbehavior, inability or neglect of duty; and they shall have power to make all necessary bye-laws and regulations (not inconsistent with the constitution and laws of the State,) for the government of the same.

SEC. 5. *Be it further enacted by the authority aforesaid,* That the said Trustees shall locate the said Institute in the Town of Greensborough or its vicinity; and shall cause to be erected all such buildings and improvements for the accommodation of the same as they shall deem advisable and proper; and for the benefit of all such persons as may wish to assist themselves by their own industry in procuring their education, the said Trustees shall have power to establish and keep up, if they think proper, a manual labor and agricultural department in said Institute; which department, as a component part of said Institute, shall be conducted on such plan, and on such mode, as the board of Trustees shall from time to time adopt; and five Trustees shall be a quorum to do business.

[Ratified 21st January, 1837.]

CHAP. LIV.

An Act to incorporate the Cane Creek Farmers' and Machanics' Cotton Manufacturing Company of Orange and Chatham.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Jacob Hadly, Joseph Dixon, John Dixon, William McPherson, and William Albright, their associates, successors and assigns be, and they are hereby created a corporation and body politic, in law and in fact, by the name and style of "the Cane Creek Farmers' and Machanics' Cotton Manufacturing Company of Orange and Chatham;" and by that name and style, may sue and be sued, plead and be impleaded, in any court of record; contract and be contracted with; have perpetual succession, and a common seal; and acquire, own and possess real and personal estate; and shall so continue for the term of ninety years.

SEC. 2. *Be it further enacted,* That said corporation shall have power to establish factories and mills for the manufacture of cotton, wool, flax, iron and other the like articles, on Cane Creek, in the county of Orange, and for no other purpose.

SEC. 3. *Be it further enacted,* That said corporation shall have power to make all necessary bye-laws and regulations, for its good government, not inconsistent with the laws and constitution of this State; and

shall have power to appoint their officers and agents to transact their business and conduct their operations.

SEC. 4. *Be it further enacted*, That the capital stock of said company shall consist of not less than twenty thousand dollars, and not more than one hundred thousand dollars, of shares of one hundred dollars each.

SEC. 5. *Be it further enacted*, That an annual meeting of the stockholders, in person or by proxy, shall be holden at the said factory, on the first monday of March, in each and every year; at which meeting proper officers shall be appointed, to conduct the business of said corporation, who shall hold their offices for one year, or until their successors be chosen; but nothing in this clause shall be so construed as to prevent general meetings whenever the interest of the company may require them.

SEC. 6. *Be it further enacted*, That the stockholders of said company, in general meeting, shall have power to adopt rules and regulations with regard to certificates and evidences of stocks, and transfers and assignments of the same; and may have power to increase their capital stock, whenever the business of said company may require it, to an amount not exceeding one hundred and twenty-five thousand dollars.

SEC. 7. *Be it further enacted*, That each stockholder shall vote according to the following scale, that is to say: for each share, not exceeding twenty, one vote; and for every five shares above twenty, one vote.

SEC. 8. *Be it further enacted*, That it shall be the duty of said corporation to keep a full and fair record of their proceedings, in a book or books provided for that purpose; and shall produce said record in any court of justice, when required so to do by such court.

SEC. 9. *Be it further enacted*, That the proper officers of the said company, when expedient, shall semi-annually declare dividends of the nett profits thereof.

SEC. 10. *Be it further enacted*, That this act shall be in force from and after the ratification thereof.

[Ratified 18th January, 1837.]

CHAP. LV.

An Act to incorporate the General Mining and Manufacturing Association.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That there shall be established in the State, a mining and manufacturing company, by the name and style of the "General Mining and Manufacturing Association," the capital whereof shall not exceed one million and a half of dollars, divided into shares of one hundred dollars each.

SEC. 2. *Be it enacted*, That when the sum of two hundred and fifty

thousand dollars (\$250,000) shall have been subscribed, the subscribers, their successors or assigns, are hereby declared to be incorporated by the name and style of the "General Mining and Manufacturing Association;" and shall continue to exist as such for fifty years, and as such may sue and be sued, plead and be impleaded, and have power to make all bye-laws and regulations, not inconsistent with the laws of the State, which may be necessary for the well ordering and conducting of the affairs of said Company; they may have and use a common seal, and the same break, alter, and renew at pleasure; and possess and enjoy all the privileges and rights of a corporation or body politic: *Provided*, that said corporation shall be confined to mining, and such manufactures as are connected with the metallic arts, and shall not exercise any banking privileges.

SEC. 3. *Be it further enacted*, That Wm. J. Alexander and J. H. Bissel, of Charlotte; Wm. A. Graham and K. P. Willis, of Burke; Wm. S. Miller, of New York, and such persons as they may associate with them, are hereby appointed commissioners, and are authorised, at such times and place as they may deem expedient, after sixty days' public advertisement in some newspaper printed in the State, to open books for the purpose of receiving subscriptions for shares of stock in said company.

SEC. 4. *Be it further enacted*, That said commissioners are hereby authorised to receive, in payment of stock, real estate directly connected with the objects of said company; and said commissioners are authorised to adopt some uniform and equitable rule determining the conditions upon which real estate is to be received in subscriptions, for shares of stock in the company; and it is hereby further declared that the stock of said corporation shall be held and deemed personal property: *Provided always*, that the real estate which shall be received in payment of stock as aforesaid shall be subject to the same taxation as other lands in this State.

SEC. 5. *Be it further enacted*, That all legal process against the corporation shall be served upon the President, unless he be absent from the State, in which case it may be served upon a director; if no director can be found, then upon any stockholder in said corporation.

SEC. 6. *Be it further enacted*, That it shall be the duty of said corporation to keep a full and fair record of all its proceedings, in a book or books procured for that purpose; and shall produce the same in any of the courts of record of this State, whenever required so to do by any of said courts.

SEC. 7. *Be it enacted*, That this act shall be in force from and after the ratification thereof.

[Ratified 22d Decmber, 1836.]

CHAP. LVI.

An Act to incorporate the town of Greensborough, in the county of Guilford.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the free white men, resident in the bounds of the town of Greensborough hereafter mentioned, who have attained the age of twenty-one years, to meet on Thursday of February court, one thousand eight hundred and thirty-seven, to be held for the county of Guilford, and on the same day in each and every year thereafter, at some convenient place in said town, and vote for five discreet persons to act as commissioners of said town for the term of one year from the day of said election.

SEC. 2. *Be it further enacted,* That no person shall be eligible to the office of commissioner, unless he shall have constantly resided in said town six months immediately preceding the day of election, and shall have been seized of a lot of land in the bounds of said town for six months immediately preceding the day of election.

SEC. 3. *Be it further enacted,* That all free white men of the age of twenty-one years, who shall have constantly resided in said town for six months immediately previous to the day of election, shall be entitled to vote for said five commissioners.

SEC. 4. *Be it further enacted,* That the persons thus elected commissioners shall, within five days after their election, meet together and appoint one of their body chairman of the board of commissioners; and all warrants and other legal proceedings, on behalf of the commissioners, shall be in the name of such chairman, during his continuance in office; and all legal proceedings against said commissioners, shall be served on, or made known to the said chairman; and the said chairman, during his continuance in office, shall have power to institute and prosecute all suits for the recovery of penalties, or for other causes, in his own name, as chairman. The said commissioners shall have full power and authority to make and enforce all such bye-laws, rules and regulations as they may deem necessary for the better government of said town, not inconsistent with the constitution and laws of this State, nor of the United States; and they shall have power to impose and collect fines and penalties for the violation of any such bye-laws, rules or regulations.

SEC. 5. *Be it further enacted,* That the said commissioners shall have power to impose and collect taxes for the purpose of keeping in repair the public pumps and the public clock, and for such other purposes as they may deem advantageous to the said town and the citizens thereof: *Provided,* that the tax thus imposed shall not exceed the following rates annually, to wit: six cents on every hundred dollars value of real estate, fifty cents on the white or black poll, and six cents on every hundred dollars worth of goods, wares, and merchandize purchased by any merchant of said town within the year immediately preceding the first day of April, in each and every year; and *provided further,* that the tax

of no one individual on his real estate shall exceed the sum of five dollars for any one year.

SEC. 6. *Be it further enacted*, That nothing contained in the foregoing section shall debar the commissioners from laying a tax on other property not mentioned therein; and they shall have power to impose taxes only on such real estate, white and black polls, stores, and other property, as are now subject to taxation by the State.

SEC. 7. *Be it further enacted*, That the said commissioners shall have power to appoint a Treasurer, Secretary and Town Constable, for the term of one year; and the Town Constable so appointed shall have power to execute all warrants and other process, in which the chairman is a party; and shall be entitled to receive forty cents for every warrant, and the like sum for every execution or ca. sa, by him executed, from the party cast: said constable is hereby authorised and empowered to keep the peace in the bounds of said town, and to arrest and to carry before a Magistrate any disorderly or riotous person or persons. It shall further be his duty, with the same powers and authorities as other collectors of the public taxes of the county, to collect the taxes imposed from time to time by the commissioners, and to pay the same over to the Treasurer; and for collecting said taxes, shall be entitled to retain as a compensation five per cent. on the nett amount.

SEC. 8. *Be it further enacted*, That at the time of holding each annual election for commissioners, the citizens entitled to vote for commissioners, shall also vote for three discreet persons, having the same qualifications as those eligible as commissioners, to act as assessors; and it shall be their duty, having first taken an oath before some justice of the peace to act with impartiality, to proceed immediately to assess the value of each and every lot or parcel of land within the bounds of such town, and report the same to the commissioners. In making such assessment, the assessors are to take into account only the land and the permanent improvements thereon, and not to take into account such machinery as might be removed without injury to the freeholder. The said assessors will also ascertain and report the amount of goods, wares and merchandize purchased by each and every merchant as herein before stated, which account shall be rendered by the merchant on oath; and each and every merchant refusing to render such account, shall forfeit and pay as his store tax for that year the sum of ten dollars.

SEC. 9. *Be it further enacted*, That it shall be the duty of the sheriff of the county of Guilford to hold said elections, in each and every year, on the day above stated, under the penalty of fifty dollars, to be recovered in the name of the chairman of the board of commissioners for the year preceeding such failure, for the benefit of said town. The sheriff shall be entitled to receive three dollars, from the commissioners, for holding each election; he shall be sole judge of the qualifications of voters, and shall decide in all cases of a tie; and shall give the persons elected a certificate, certifying that they were duly elected, who are hereby declared to be and to continue such until others are elected, if, from any cause, any regular annual election should not be made.

SEC. 10. *Be it further enacted*, That in case of the death, removal, or refusal to act, of any of the commissioners or assessors, the remain-

ing ones shall declare and make known such fact, and any two justices of the peace, resident in said town, shall have power to hold an election, at such time and place as they may appoint in said town, to fill such vacancy or vacancies, having first advertised the same for ten days at the court house door.

SEC. 11. *Be it further enacted*, That if any person elected commissioner or assessor, shall fail or refuse to act, he shall be subject to a penalty of ten dollars, at the discretion of the commissioners.

SEC. 12. *Be it further enacted*, That the bounds of the town of Greensborough, shall be one mile square, the court house being the centre of the square.

SEC. 13. *Be it further enacted*, That it shall be the duty of the first commissioners elected under this act, as soon after their election as practicable, to have the bounds of said town laid off by a competent surveyor, and marked; an accurate and minute report of which they shall return to the next County Court of Guilford, and have it duly registered in the register's books of said county; the expenses of all which they shall pay out of the moneys raised by taxation.

SEC. 14. *Be it further enacted*, That every person within the bounds of said town, liable to pay poll tax for himself, or for slaves which to him belong, or who live in his family, shall list the same with the chairman of the board of commissioners, by the first day of May, in each and every year; and on failing to do so, he shall forfeit and pay, for every such poll, the sum of one dollar, as their poll tax for that year.

SEC. 15. *Be it further enacted*, That all persons within the bounds of said town, liable to patrol in the county, or to work on the public roads by the laws of the State, shall be required to do these duties within the town, and on the streets, while resident therein, and not elsewhere.

SEC. 17. *Be it further enacted*, That the constable appointed by the commissioners under this act, shall be required to enter into bond, with good and sufficient security, in the sum of five hundred dollars, before entering upon the duties of his office, payable to the State of North Carolina, and shall be conditioned for the faithful performance of the duties of town constable, and for the faithful paying over all moneys collected by virtue of his office.

SEC. 17. *Be it further enacted*. That all fines and penalties under this act, or under the bye-laws of the board of commissioners, shall be recoverable before any justice of the peace of Guilford county; and in all actions arising under this act, there shall be the same right of appeal as in other cases; and in the collection of all such fines and penalties, the town constable is hereby invested with the same powers and authorities of other constables of the county.

SEC. 18. *Be it further enacted*, That a majority of the commissioners shall be competent to do business under all the provisions of this act.

SEC. 19. *Be it further enacted*. That this act shall take effect and be in force from and after its ratification.

CHAP. LVII.

An Act to incorporate the Milton Manufacturing Company.

WHEREAS Stephen Dodson, Warner M. Lewis, William M. McGeehee, Augustus Finley, John Wilson and others of the town of Milton and its vicinity, in this State, have formed a company, for the purpose of manufacturing yarns and cloth, and for carrying on the milling business in its various branches, and with that view have purchased the mills in or near said town, known heretofore by the name of the Milton Mills, together with six acres of land attached thereto; and are erecting there-upon suitable additional buildings for the purposes aforesaid. And whereas the said individuals are desirous of avoiding the inconveniences attending the operations of an unincorporated company consisting of so many partners:

Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the individuals who are now members of said company and such others as may become members hereafter, by their consent, are hereby constituted a body politic and corporate, for the general purposes of manufacturing cotton, hemp, wool and flax, or any of them, and for carrying on the milling business in its various branches, under the name and style of the "Milton Manufacturing Company;" and by that name and style may sue and be sued, contract and be contracted with; may have and use a common seal, and alter the same at pleasure; and may hold real estate, not exceeding two hundred acres of land, in or near the town aforesaid, and personal property, for the purpose of conducting their manufacturing and milling business aforesaid; and shall have power to make such by-laws and regulations, not contrary to the laws of the United States or of this State, as may be deemed expedient and proper for the government of the said corporation.

SEC. 2. *Be it further enacted,* That the capital stock of said company shall not be less than thirty thousand dollars, nor more than one hundred thousand dollars, in shares for one hundred dollars each.

SEC. 3. *Be it further enacted,* That for managing the affairs of the said company, there shall be chosen, within sixty days after the passage of this act, and on the second Wednesday in January every year thereafter, five directors, who shall be stockholders of the company; in which elections, and in all other meetings, the stockholders shall be entitled to one vote for every share held by them respectively and may vote, in person or by proxy, in such manner as may be from time to time prescribed in general meeting. The said Directors, or any three of them, may choose a President, and, in his absence, a President *pro tempore*; they shall have power to call special meetings of the stockholders to supply vacancies in their own body; to appoint such officers, agents and clerks as the stockholders in general meeting shall authorise; to take bonds, with sufficient surety, for the good conduct, fidelity and attention of such officers, agents and clerks; and to do all other acts and things,

touching the affairs of the company, not otherwise specially provided for. Dividends of the nett profits of the said company shall be made at such times as shall be determined by the stockholders in general meeting: *Provided*, that at no time shall the profits accumulate to an amount of more than fifteen per cent. of the capital stock, and remain so accumulated for more than six months; *and provided further*, that no dividend shall be made of any part of the capital stock under the pretence of making a dividend of the profits; and that the surplus only of the property, effects and debts due the company, above the amount of its capital stocks, responsibilities and debts due from it, shall be regarded as profits.

SEC. 4. That the stock of said company shall be deemed personal estate, and may be transferred in such manner as the President and Directors shall from time to time prescribe: *Provided*, that nothing herein contained shall be so construed as to prevent the said company from selling and conveying any part of the land with the appertenancies, which they now hold, or are hereby authorised to acquire and hold, or the said land and appertenancies, when sold, from being considered real estate

SEC. 5. Whenever any of the parties aforesaid hereby incorporated, or others becoming members of the said corporation, by becoming stockholders therein, shall part with, transfer or assign the stock by them respectively held, and cease to be stockholders, they shall respectively cease to be members of the said corporation, as to all its subsequent transactions.

SEC. 6. *Be it further enacted*, That if any of the individuals aforesaid shall fail to pay the amount now subscribed by them respectively, or if any person who may hereafter take stock in said company, shall fail to pay the amount subscribed by them at the time prescribed by the President and Directors, it shall be lawful for the company to recover the amount which may be so due by action of debt, in any court of record in this State; and that such delinquents shall receive no dividend until the amount of such subscription shall have been paid.

SEC. 7. *Be it further enacted*, That the stockholders, or a majority of them in interest, may from time to time enlarge the capital stock of the said company, by selling or ordering their President and Directors to sell shares therein, at such times, in such manner, to such amount, and at such price or prices, as they, in general meeting, may direct, until the capital stock reaches the said maximum amount of one hundred thousand dollars; and upon such additional stock being taken, the owners thereof shall, to all intents and purposes, be members of the company hereby incorporated, and have equal privileges and powers with the original stockholders; and any premiums obtained on such stock, shall be the common property of all the stockholders, in proportion to the capital stock owned by them respectively.

SEC. 8. *And be it further enacted*, That if there should be no election of Directors at any annual meeting as herein before prescribed, the Directors then in office shall continue until the next annual election, or until an earlier election by the stockholders in general meeting, at which the major part of the stock shall be represented.

SEC. 9. *And be it further enacted,* That within sixty days after the first general meeting of the stockholders under this charter, all persons who are now stockholders in the company aforesaid, shall enter their names and also the amount of stock held by them respectively, in a bound book prepared for that purpose, by the President and Directors of said company; and upon such persons so entering or subscribing their names and the amount of stock held by them, the President and Directors of said company shall issue to said persons so subscribing scrip or a certificate for the number of shares subscribed by them respectively.

SEC. 10. *And be it further enacted,* That this act shall commence and be in force, from and after the passage thereof, and shall continue in force for and during thirty years and no longer.

[Ratified 6th December, 1836.]

CHAP. LVIII.

An Act to incorporate the Mutual Insurance Company of Fayetteville.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Charles P. Mallett, John W. Wright, John M. Dobbin, Edward W. Wilkings and Warren Winslow, and all other persons who may hereafter associate with them, in the manner herein prescribed, shall be a corporation by the name of "The Mutual Insurance Company of Fayetteville," for the purpose of insuring their respective dwelling houses, stores, shops and other buildings, household furniture, merchandize and other property against loss or damage by fire.

SEC. 2. *Be it further enacted,* That all persons who shall hereafter insure with the said corporation, and also their heirs, executors, administrators and assigns, continuing to be insured in said corporation, as hereinafter provided, shall thereby become members thereof during the period they shall remain insured by said corporation, and no longer.

SEC. 3. *Be it further enacted.* That the affairs of said company shall be managed by a board of directors, consisting of five members, as hereinafter provided. All vacancies happening in said board, may be filled by the remaining directors, for the remainder of the year for which they were chosen.

SEC. 4. *Be it further enacted.* That Charles P. Mallett, John W. Wright, John M. Dobbin, Edward W. Wilkings and Warren Winslow shall be the first directors of said corporation, and shall continue in office until the first Monday in December, eighteen hundred and thirty seven, and until others are chosen. Annually, in the town of Fayetteville, on the first Monday of December, an election shall be held for five directors: the polls shall be opened at ten A. M. and close at twelve P. M., and shall be held by two stockholders not directors. Each stockholder shall vote by ballot, and a plurality of votes shall determine the election, allowing to each stockholder one vote for every five hundred dollars insured in said company.

SEC. 5. *Be it further enacted*, That the directors may determine the rates of insurance, the amount to be insured, and the sum to be deposited for any insurance.

SEC. 6. Every person who shall become a member of said corporation, by effecting insurance therein, shall before he receives his policy, deposite his promissory note, for such a sum of money, and with such security, and upon such time, as shall be determined by the directors; a part, not exceeding fifteen per cent. of said note, shall be immediately paid; and the remainder of said deposite note, or any note given in renewal or substitution thereof, the discount being paid in advance, if required, shall be paid, in part or the whole, at any time when the directors shall deem the same requisite for the payment of losses by fire, and such incidental expenses as shall be necessary for transacting the business of said company; and at the expiration of the term of insurance, the said note, or such part of the same as shall remain unpaid, after deducting all losses and expenses occurring during said term, shall be relinquished and given up to the maker thereof; and it shall be lawful for the board of directors to invest such portion of their money on hand as may not be immediately wanted for the purposes of said corporation.

SEC. 7. *Be it further enacted*, That when any property insured with this corporation shall be alienated, by sale or otherwise, the policy shall thereupon be void; and be surrendered to the board of directors to be cancelled; and upon such surrender, the assured shall be entitled to receive his deposite notes, upon the payment of his proportion of all losses and expenses that have accrued prior to such surrender; but the grantor or alienee having the policy assigned to him, may have the same ratified and confirmed to him, for his own proper use and benefit, upon application to the directors, and with their consent, within thirty days next after such alienation, on giving security to the satisfaction of said directors for such portion of the deposite or premium note as shall remain unpaid; and by such ratification and confirmation, the party causing such security to be given shall be entitled to all the rights and privileges, and subject to all the liabilities to which the original party to whom the policy issued was entitled and subjected under this act.

SEC. 8. *Be it further enacted*, That every member of said company shall be bound to pay for losses and such necessary expenses, as aforesaid, accruing in and to said company, in proportion to the amount of his deposite note.

SEC. 9. *Be it further enacted*, That suits at law may be maintained by said corporation, against any one of its members; for the collection of any deposite note, or any assessment thereon, or for any other case relating to the business of said corporation. For losses or damages by fire, if payment be withheld more than three months after said corporation be duly notified thereof, suits at law may be prosecuted and maintained by any member against the corporation. No member of the corporation shall be debarred his testimony as a witness in any such cause, on account of his being a member of said company, and no member of the corporation, not being, in his individual capacity, a party to such suit, shall be incompetent as a witness in any such cause, on account of his being a member of said company.

SEC. 10. *Be it further enacted*, That the directors shall, after receiving notice of any loss or damage by fire, sustained by any member, and ascertaining the same, or after the rendition of any judgment, as aforesaid, against said company, for loss or damage, settle and determine the sums to be paid by the several members thereof in their respective proportions of such loss, and publish the same in such manner as may seem proper; and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the Treasurer within thirty days after notice; and on failure to pay the same, suit may be brought. No member shall be required to pay for any loss occasioned by fire at any one time, more than the amount of his deposit note; but any member, upon payment of the whole of his deposit note, and surrendering his policy before any subsequent loss or expense has occurred, may be discharged from said company.

SEC. 11. No policy shall be issued by said company until application be made for insurance for fifty thousand dollars at least.

SEC. 12. *Be it further enacted*, That the board of directors shall appoint one of their body to be the president of the corporation, and the said president, in case of any necessary absence or temporary inability to perform the duties of his station, may, by writing under his hand and seal, appoint some other of the directors president *pro tempore*. Policies of assurance shall be signed by the president. The board of directors shall have the appointment of all other officers, but the president, at the discretion of said board, may also act as Treasurer.

SEC. 13. *Be it further enacted*, That an annual dividend of the nett profits of the corporation shall be declared, on the last Monday of December in each and every year; and said dividend shall be passed to the credit of each stockholder, in proportion to the amount of property insured, and the date of his policy of assurance; the one half of such dividend may be paid to the stockholder, but the other half shall be invested so as to create a perpetual fund for loss or damage sustained; and upon the dissolution of the corporation, the said fund, or the balance thereof, after paying all losses and expenses, shall be equitably divided, due regard being had to the date of membership, and the amount insured. Should such fund amount to twenty-five thousand dollars before said dissolution, it shall be lawful for said company to issue special policies of assurance upon goods, wares, and merchandize, and buildings: *Provided*, that such special assurance shall not constitute the insured a member of the corporation.

SEC. 14. *Be it further enacted*, That this act shall continue in force thirty years and no longer.

SEC. 15. *Be it further enacted*, That this act shall be in force from and after the ratification thereof.

[Ratified 21st January, 1837.]

CHAP. LIX.

An Act to incorporate the Rockfish Manufacturing Company of Fayetteville.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Charles P. Mallett, John Owen, John W. Wright, Charles T. Haigh, Edward Lee Winslow, John W. Sanford, Edward J. Hale and Warren Winsow, their associates, successors and assigns, be, and they are hereby created a corporation and body politic, in law and in fact, by the name and style of "the Rockfish Manufacturing Company of Fayetteville;" and by that name and style may sue and be sued, plead and be impleaded, in any court of record; contract and be contracted with; have perpetual succession, and a common seal; and acquire, own and possess real and personal estate; and shall so continue until the first day of January, one thousand eight hundred and eighty.

SEC. 2. *Be it further enacted,* That said corporation shall have power to establish factories and mills, for the manufacture of cotton, wool, flax, hemp, iron and other the like material, upon Rockfish, in the county of Cumberland, and for no other purpose whatever.

SEC. 3. *Be it further enacted,* That said corporation shall have power to make all necessary bye-laws and regulations, for its good government, not inconsistent with the laws and constitution of this State; and shall have power to appoint their officers and agents to transact their business and conduct their operations.

SEC. 4. *Be it further enacted,* That the capital stock of said corporation shall consist of one hundred and fifty shares, of one thousand dollars each.

SEC. 5. *Be it further enacted,* That an annual meeting of the stockholders, in person or by proxy, shall be holden in the town of Fayetteville, on the first Monday of May, in each and every year; at which meeting proper officers shall be appointed, to conduct the business of said corporation, who shall hold their office for one year, or until their successors be chosen; but nothing in this clause shall be so construed as to prevent general meetings whenever the interest of the company may require them.

SEC. 6. *Be it further enacted,* That the stockholders of said company, in general meeting, shall have power to adopt rules and regulations with regard to certificates and evidence of stock, and transfers and assignments of the same; and may have power to increase their capital stock, whenever the business of said company may require it, to amount not exceeding one hundred and fifty thousand dollars, in addition to the capital herein granted,

SEC. 7. *Be it further enacted,* That each stockholder shall vote according to the following scale, that is to say: for each share not exceeding five shares, one vote; for every four shares above five, and not exceeding thirteen shares, one vote; and for every ten shares above thirteen, one vote.

SEC. 8. *Be it further enacted*, That it shall be the duty of said corporation to keep a full and fair record of their proceedings, in a book or books provided for that purpose; and shall produce said record in any court of justice, when required so to do by such court.

SEC. 9. *Be it further enacted*, That the proper officers of the said company, when expedient, shall semi-annually declare devidends of the nett profits thereof.

SEC. 10. *Be it further enacted*, That this act shall be in force from and after the ratification thereof.

[Ratified 9th January, 1837.]

CHAP. LX.

An Act to incorporate the town of Rolesville.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Eli Alford, John L. Terrill and Thomas I. Terrill, be, and they are hereby appointed commissioners, for the purpose of laying off a town in Wake county, at the place now known by the name of Rolesville; which said town, when laid off by the said commissioners, shall be, and is hereby incorporated and called by the name of Rolesville.

SEC. 2. That the said commissioners, or a majority of them, shall have power to lay off in said town, streets and alleys, squares and lots, in such sizes and in such manner, as they think best; and a plat of the same shall be made out and filed by them in the office of the county court of Wake, and another shall be kept by the said commissioners and their successors. That the said commissioners and their successors shall be, and are hereby incorporated into a body politic and corporate, to be known by the name of "the Commissioners of the Town of Rolesville;" and by that name they may sue and be sued, plead and be impleaded, in any court of record, and before any magistrate or magistrates: they may purchase or otherwise acquire lands and other property, real or personal, and have, hold and retain, or sell and convey the same; and hold or dispose of the proceeds of said sales, in trust for the said town of Rolesville; and from time to time, and at all times hereafter, make such laws, ordinances and regulations for the improvement, government, and good order of the said town, as to them shall seem necessary, and amend, alter or repeal the same; and impose a penalty on those who violate or otherwise neglect to conform to them, or any of them, not exceeding twenty dollars for each offence, to be recovered before a justice of the peace, in the name, and to the use of the commissioners; or, in case of slaves, not exceeding thirty-nine lashes, to be inflicted by the judgment of a justice of the peace.

SEC. 3. That it shall be lawful for the said commissioners annually to levy a tax upon the property and persons of the said town, to be applied to the uses of said town: *provided*, the poll tax shall be levied upon such persons and slaves in said town as are by law bound to pay

county and State tax, and no others; and the tax on real estate shall never exceed one dollar on every one hundred dollars value of real estate; and the poll tax shall never exceed those levied for the county; and for levying the said taxes, the commissioners shall have power to appoint a collector, and he may warrant for said taxes, and recover the same, in the name of the commissioners, before any justice of the peace in Wake county; and account to the commissioners for the said taxes, retaining such commissions as may be allowed by the laws of the corporation.

SEC. 4. That the commissioners shall be bound to keep the streets of the said town in good repair and condition; and for that purpose, they may, by a law of the corporation, compel the inhabitants to contribute either in taxes or labor or both: and if the commissioners suffer or permit the said streets, or any of them, to be out of repair, they may be indicted in the County or Superior Court of Wake county, and fined at the discretion of the court.

SEC. 5. That the commissioners aforesaid shall remain in office until the first Monday of January, one thousand eight hundred and thirty-eight, and until their successors are appointed; and it shall be lawful for the inhabitants of said town annually to meet and appoint three or more commissioners, who shall serve for one year, and until their successors are appointed. The place in said town, and the manner of conducting said elections, shall be designated by a law of the corporation; and if none be passed by the commissioners, the qualified voters may meet and proceed to make an election by such rules as a majority shall judge best.

SEC. 6. That a majority of the commissioners shall be necessary, at all meetings, for the passage of laws to govern the said corporation; and where a vacancy shall happen, it shall be filled in such manner as, by a law of the corporation, shall have been prescribed; and if there be no such law, the other commissioner or commissioners shall fill it.

SEC. 7. No person shall be authorised to retail spirituous liquors in said town, without the license of said commissioners, as well as that of the State, under such penalties as may be prescribed by the corporation laws.

SEC. 8. Any act of the commissioners, as such, witnessed by their signature, shall be as binding on the corporation as if it were sealed with the corporate seal.

SEC. 9. That no person shall be qualified to act as a commissioner, unless he is twenty-one years of age and a resident of said town; and if he removes, it shall vacate his appointment.

SEC. 10. That no person shall be qualified to vote at the election of commissioners, who is not a white man of the full age of twenty-one years, and a resident of said town at and for three months immediately preceding the election.

CHAP. LXI.

An Act to incorporate "the Salem Manufacturing Company."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Theodore Shultz, Frederick H. Shuman, John J. Blum, John C. Jacobson, John Vogler, Samuel Shultz, Emanuel Shober, William and F. Fries, Catharine Stanber, C. F. Denke, Magdalena Fransu, T. C. Pfohl, C. H. Winkler, Charles Kremer, Christian Brietz, Edward Belo, Jacob Reich, C. D. Reebln, Levi Blum, Benjamin Warner, Jacob Shultz, Trangot Lembach, Elizabeth Spach, Margaret Water-on, Henry Leinbach, Solomon Micky, Louisa Thamsh and Johanna E. Shultz, and their associates, their successors and assigns, and such other persons as may be associated with them according to the provisions of the third of this act, their successors and assigns, be, and they are hereby incorporated into a body politic and corporate, under the name and style of "The Salem Manufacturing Company," for the purpose of manufacturing cotton, and if they deem it expedient, hemp, wool and flax, or either of these products, and continue thirty years; and by the name and style aforesaid, they shall be, and are hereby made able and capable in law to have, hold, purchase, receive, possess, enjoy and retain to themselves, their successors and assigns, land, rents, tenements, hereditaments, goods, chattels and effects, and the same to sell, grant, demise, alien or dispose of; to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in courts of record or other legal tribunals; and also to make, have and use a common seal, and the same to break, alter and renew at pleasure; and also to ordain, establish and put in execution such bye-laws, ordinances and regulations as shall be necessary and convenient for the government of said corporation, not being contrary to the laws of this State or of the United States; and for the making whereof full power and authority is hereby given to the board of directors of the said corporation, to be appointed as hereinafter provided; and generally to do and execute all acts, matters and things which a body politic or corporate in law may or can lawfully do or execute, to further its object.

SEC. 2. *Be it further enacted*, That the money heretofore subscribed by the persons in the first article mentioned, amounting to the sum of fifty thousand dollars, shall be deemed the stock of the company, divided into shares of two hundred dollars each; that each person be entitled to the number of shares by him or her respectively subscribed under the articles of association; and that at the first general meeting of the company, after the passing of this act, as hereinafter provided, their names shall be entered upon the book of the company, together with the number of shares to which they are respectively entitled; and upon full payment, receive the proper certificates of stock.

SEC. 3. *Be it further enacted*, That the company, should they at any time deem it expedient, sanctioned by the members representing three fourths of the whole stock, may extend their stock to any sum not

exceeding one hundred thousand dollars, to be raised in such manner, and upon such terms, as the company in general meeting, or the board of directors, shall prescribe; and should the stock, as at present subscribed, be found too large for convenient operation, the same may be reduced in any way the board of directors may deem most convenient; and should the company deem it prudent to discontinue, they may dissolve at any time, provided that members representing three fourths of the whole stock shall desire it; and provided that such dissolution shall not annul or invalidate contracts made by and with the corporation; and that the said corporation may still continue as a corporation, so far as to collect and recover debts, and dispose of their estate, real and personal, to pay debts and divide the surplus; which latter provision shall likewise apply, if the corporation continue until the time of thirty years expire.

SEC. 4. *Be it further enacted*, That within ninety days after the passing of this act, any five of the stockholders herein named may call a general meeting of the company, at any convenient place in Salem, and proceed to elect five directors, requiring a majority of the votes present to make a choice; and the directors thus chosen shall, from among themselves, choose a president: *Provided*, that if three fourths of the stock is not represented at the first meeting thus called, or if, from some other cause, an election does not take place, the meeting may adjourn from time to time, until an election shall take place; and annually thereafter the stockholders shall meet, in Salem, at such place as the board of directors shall deem most convenient, for the purpose of electing five directors; which directors, thus chosen by a majority of the votes present, shall appoint one of their own number president. The directors having appointed president, the president and the other directors shall be termed the board of directors, which board of directors shall appoint the other officers who may be required, and make rules, regulations and by-laws for the same, and manage the concerns of the company generally for one year: *Provided always*, that if three fourths of the stock are not represented at such meeting, or if, from some unavoidable cause, a meeting or an election does not take place at the time appointed, the meeting shall adjourn from time to time, or be convened until an election shall take place; and the board of directors shall be considered in office until other directors are chosen. A majority of the board of directors shall be capable to transact business, and, in case of absence of the president, appoint a president *pro tempore*.

SEC. 5. *Be it further enacted*, That the board of directors may at any time call a general meeting of the stockholders; and the stockholders, or as many of them as hold or represent one fifth of the whole stock, may at any time call a general meeting of the stockholders; and at such meeting, a majority of the votes thereunto agreeing, all officers and directors of the company may be removed, and others appointed in their stead; and such general meeting may, if necessary, do and perform whatever may be done and performed, at the annual meeting of the stockholders, in furtherance of the general welfare of the corporation.

SEC. 6. The board of directors shall keep minutes of their transactions, and proper accounts generally, which they shall submit to the inspection of the annual general meeting, or at any other general meeting,

when called for: dividends of the profits of the concern shall be declared by the board of directors, at convenient times, whenever the state of the funds render it prudent.

SEC. 7. *Be it further enacted*, That the board of Directors shall have power to call in, from time to time, as they may deem expedient, the whole or any part of the capital stock subscribed as aforesaid, and not yet paid, or which may be raised hereafter; and in case of failure or refusal to comply with such requisition, the delinquent stockholders shall be subject to such rules and regulations as shall be established by the said board of directors.

SEC. 8. *Be it further enacted*, That the stock of said company shall be deemed and taken as personal estate, and may be transferred in such manner as the board of directors shall from time to time point out.

SEC. 9. *Be it further enacted*, That the said corporation, through their board of directors, may make contracts, or become bound by instruments, security or agreement, in writing, signed by the president, or by any other person duly authorised by him; but the legal estate in the lands, tenements and hereditaments claimed by the company shall pass to the purchaser only by deed, under the corporate seal of the corporation and the signature of the president.

SEC. 10. *Be it further enacted*, That any legal process against the corporation may be served on the president, and, in case he is not in the State or avoids service, the service of the same on any of the directors shall be deemed sufficient.

SEC. 11. The stockholders at the general meetings shall appoint a chairman, who shall preside for the time being; and they shall likewise appoint a Secretary, who shall continue in office until removed. The meeting shall also keep a fair record of all their proceedings. Upon all questions each stockholder shall be entitled to one vote for each share by him held, and may vote, in person or by proxy, in such manner as shall be from time to time prescribed by the board of directors. It shall require stockholders representing three fourths of the stock to form a general meeting.

SEC. 12. *Be it further enacted*, That this act shall go into operation immediately after the passing thereof.

[Ratified 29th December, 1836.]

COURTS, REGULATION OF.

CHAP. LXII.

An Act to regulate the Courts of Pleas and Quarter Sessions in the county of Ashe.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same. That from and after the passage of this act, the Courts of Pleas and Quarter Ses-

sions for the county of Ashe, shall be held on the fourth Mondays in February, May, August and November, in each and every year.

SEC. 2. *And be it further enacted,* That all laws and clauses of laws coming within the purview of this act, be, and the same are hereby repealed.

[Ratified 6th January, 1837.]

CHAP. LXIII.

An Act to alter the time of holding the Courts of Pleas and Quarter Sessions for the county of Caswell.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Courts of Pleas and Quarter Sessions for the county of Caswell, shall hereafter commence and be held on the first Monday after the fourth Monday in March, June, September and December, in each and every year; any law to the contrary notwithstanding.

SEC. 2. *Be it further enacted,* That all process which has been or hereafter shall or may be issued from the Courts of Pleas and Quarter Sessions, returnable to the terms held on the second Monday after the fourth in March, June, September and December, shall be returned to the courts to be held as prescribed in this act.

SEC. 3. *Be it further enacted,* That this shall be in force from and after its passage.

[Ratified 21st January, 1837.]

EMANCIPATION.

CHAP. LXIV.

An Act to emancipate Henry, Fanny and John, the slaves and children of Miles Howard.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same. That Henry Howard, Fanny Howard and John Howard, children and slaves of Miles Howard, of Halifax county, at the special request of said Miles, be, and they are hereby emancipated and set free, and shall hereafter enjoy all the privileges of free persons of color.

[Ratified 10th December, 1836.]

CHAP. LXV.

An Act to emancipate Isaac, a slave.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Isaac, a slave, the property of Robert Belden, of the county of Cumberland, be, and he is hereby, with the consent and at the request of his said owner, emancipated and set free; and, by the name of Isaac Belden, shall hereafter possess and exercise all the rights and privileges which are enjoyed by other free persons of color in this State: Provided nevertheless, that before said slave shall be emancipated, his said master shall give bond and good security, to the Governor and his successors in office, in the county court of New Hanover county, that the said slave shall honestly and correctly demean himself as long as he shall remain in the State, and shall not become a parish charge; which bond may be sued upon, in the name of the Governor for the time being, to the use of the parish and of any person injured by the mal conduct of said slave.

(Ratified 14th December, 1836)

MISCELLANEOUS.

CHAP. LXVI.

An Act to authorize William L. Blount and his associates to erect a Bridge across Great Contentnea Creek, near Washington's Ferry, on said Creek.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That William L. Blount, of the county of Pitt, and such other persons as may associate themselves with him, be, and they are hereby empowered and authorized to erect a bridge across Great Contentnea, near Washington's Ferry, on said creek, to extend from Blount's land, on the north side, to Washington's land, on the south side of said creek, to be known and called by the name of Blount's Bridge.

SEC. 2. *Be it further enacted, That in the construction of the bridge, an arch or arches of sufficient length, shall be made in the most proper place, so as not to obstruct the passage of any boat or boats that now are, or hereafter may be employed in navigating said creek.*

SEC. 3. *Be it further enacted, That any person or persons who shall wilfully run any boat, flat or raft against the bridge, or shall make fast or tie to the same, or who shall in other manner do any thing whereby the said bridge shall be damaged, such persons so offending shall be subject to double the amount of damages so done to the proprietors thereof, to be recovered, by an action on the case, in either the County or Superior Courts of the counties of Pitt or Lenoir.*

SEC. 4. *Be it further enacted*, That said bridge, when constructed, shall be free for the passage of all persons, whether on foot or otherwise, and from which no tolls whatever shall be collected.

SEC. 5. *Be it further enacted*, That the county court of Lenoir shall appoint twelve commissioners to lay off and assess the lands required for the abutment of said bridge, on the south side of the creek, and also ascertain the damage done to the owner of Washington's Ferry; the value of which land and damages so assessed shall be paid by the petitioners before said bridge is erected; and either party dissatisfied with the decision of the jury, shall have the right of appeal as in other cases.

SEC. 6. *Be it further enacted*, That this act shall be in force from and after its ratification.

(Ratified 21st January, 1837.)

CHAP. LXVII.

An Act to authorise Ebenezer Pettigrew, of the county of Tyrrel, to build a bridge across Scuppernong River, in the county of Washington.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Ebenezer Pettigrew, or he and his associates are hereby authorised and empowered to build and construct a bridge over and across Scuppernong River, in the county of Washington, at the end of his road leading from his Belgrave Plantation to the said Scuppernong River, and to extend across said river from the end of said road to the opposite side or bank thereof.

SEC. 2. *Be it further enacted*, That the said bridge shall be sixteen feet wide, with a well constructed draw overhanging the channel or deepest part of said river, so as not to obstruct the passage of vessels up and down the river.

SEC. 3. *Be it further enacted*, That when the said bridge shall be built as aforesaid, the proprietor or proprietors thereof, for the time being, shall keep the said bridge in good and sufficient repair, under the same rules, regulations, restrictions and penalties prescribed by the law of the State for the keeping of other public bridges.

SEC. 4. *Be it further enacted*, That if any person or persons, or master of a vessel, shall, in any way, damage or injure said bridge, he or they so damaging and injuring said bridge shall be feited and pay the sum of fifty dollars, to be recovered before any authority having cognizance thereof, the one half to the use of the prosecutor, and the other to the proprietor of the bridge.

[Ratified 6th January, 1837.]

CHAP. LXVIII.

An Act to change the site of the Court House and Jail of the county of Hyde.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That Banister Midgett of Currituck, R. M. G. Moore, John Jordan, William Farrow, Thomas R. Burress, Samuel Spencer and Dameron Pugh, Esqrs. of the county of Hyde, be, and they are hereby appointed commissioners for the purposes hereinafter mentioned: and it is hereby made the duty of the sheriff of said county to summon said commissioners, within twenty days after he receives a copy of this act, to meet at the court house of said county on Monday of February term of one thousand eight hundred and thirty seven of the Court of Pleas and Quarter Sessions of said county; and when so met, he shall lay said copy before them.

SEC. 2. *Be it further enacted*, That the said commissioners, or a majority of them, are hereby empowered and required, without delay, to prepare a plan for a new court house and a new jail, for the use of said county, of such size, and to be built of such materials, as to them shall seem requisite and expedient; which plan, with estimates of the expense, and a particular description of such contemplated buildings, shall be by them laid before the justices of said county, on the second day of May term, one thousand eight hundred and thirty-seven, of said court, to govern said court in laying the tax to defray the expenses of their erection; and said commissioners, or a majority of them, shall likewise, without delay, lay off a site for said new court house and jail, of not less than two or more than four acres in size, upon the south-west corner of Zacheriah Gibbs' plantation, or within a quarter of a mile thereof, in that part of said county called Swan Quarter; which site they shall purchase of the proprietor, if they can do so, at a reasonable price, and take a deed in fee simple to the justices of said county, for the purposes aforesaid, and draw their order upon the sheriff, or any other officer of said county holding money belonging to said county, who shall pay the money before any other claim.

SEC. 3. *Be it further enacted*, That said commissioners, or a majority of them, shall without delay contract with one or more responsible persons, in the name and upon the faith and credit of said county, for building upon said site, within two years from the date of which contract, a new court house and a new jail, for the use of said county, according to the plan and description they may have fixed on as aforesaid; taking bonds, in double the amount of such contract, with good security, payable to the chairman of the court aforesaid and his successors, for the due and faithful performance of such contract; and may stipulate on the behalf of said county, such payments as they may deem advisable.

SEC. 4. *Be it further enacted*, That the Justices of the said county, at May term next, not fewer than seven being present, shall levy on the lands and polls of said county a sufficient tax to build said court house and jail; which tax shall be divided between two or more years, in such proportions as the court may deem best, and shall be collected and ac-

counted for as all other county taxes are now collected and accounted for.

SEC. 5. *Be it further enacted*, That said commissioners, or a majority of them, are hereby empowered and required, whenever they shall deem the same advisable, to sell at public auction, on such credits as they may think proper, the present court house and jail of said county, together with the public lot upon which they are situated, and convey to the purchaser a title to the same, reserving to the county, without charge, the use of said buildings and lot, until said commissioners shall have received the new court house and jail aforesaid; and the moneys arising from said sale shall be applied to carrying the provisions of this act into effect.

SEC. 6. *Be it further enacted*, That from and after the time that said new court house and jail shall have been received by said commissioners, or a majority of them, the Superior Courts of Law and Equity, and the Courts of Pleas and Quarter Sessions of said county shall severally be held in the said new court house, and the prisoners of said county be confined in said new jail.

SEC. 7. *Be it further enacted*, That should any one or more of said commissioners die or remove, or refuse to act, before the completion of said new buildings, it shall be the duty of the justices of said county, at the next term after such vacancy has happened, to fill up such vacancy or vacancies; and this act shall be in force from and after the ratification thereof; and all laws and clauses of laws conflicting with the provisions of this act, be, and they are hereby repealed.

[Ratified 29th December, 1836.]

CHAP. LXIX.

An Act to repeal in part an act entitled an act for the better regulation of the town of Edenton, passed A. D. one thousand eight hundred and thirty one.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That so much of the above recited act as renders it obligatory upon the commissioners of the town of Edenton to let out the streets, bridges, &c. of said town to the lowest bidder, be, and the same is hereby repealed.

(Ratified 21st January, 1837.)

CHAP. LXX.

An Act for the better regulation of the town of Fayetteville.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That all free white men of the age of twenty-one years, who reside in said town on the day of election, and shall have resided in the town of Fayetteville six

months immediately preceding the day of election, and shall have paid public taxes, and also all white men owning freeholds on the day of election, within the said town, shall be entitled to vote for magistrate of police and town commissioners.

SEC. 2 *Be it further enacted*, That all acts and clauses of acts coming within the meaning and purview of this act, be, and the same are hereby repealed.

SEC. 3. *Be it further enacted*, That this act shall be in force from and after the ratification thereof.

[Ratified 21st January, 1837.]

CHAP. LXXI.

An Act to prevent obstructions to the passage of Fish up Fishing Creek, in the counties of Edgecombe and Halifax.

Be it enacted by the General Assembly of the State of North Carolina and it is hereby enacted by the authority of the same, That from and after the first day of February next, it shall not be lawful for any person or persons to obstruct the free passage of fish up Fishing Creek, from the mouth thereof to Biggs' mill; and it shall be the duty of all persons who now have, or may hereafter erect any dam, weir, fish-trap or other contrivance to take fish, on said creek, to open and keep open from the first day of February to the first day of June, in each and every year, at least one fourth part of said creek, in the deepest part of the channel thereof, for the free passage of fish.

SEC. 2 *And be it further enacted* That every person violating the true intent and meaning of this act, shall be liable, on conviction thereof, to pay a fine of twenty dollars, for each and every offence, recoverable, by warrant, before any justice of the peace for the county in which the offence shall have been committed, having cognizance of the same, one half to the use of the informer, and the other half to the use of the poor of said county: *Provided always*, that the rights of appeal shall be granted to the aggrieved party as in other cases.

(Ratified 20 h January, 1837.)

CHAP. LXXII.

An Act making compensation to the Jurors of Ashe County.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in future, each and every person who shall be appointed and summoned, and shall attend the County and Superior Courts of Ashe county as jurors, shall be allowed the sum of seventy-five cents for each and every day's attendance, and the sum of two and a half cents per mile for each mile he may travel to and from said court.

SEC. 2. *Be it farther enacted*, That the county court aforesaid, twelve justices being present, shall, and they are hereby authorised and required to lay, from year to year, a tax sufficient, on all polls and other taxable property in said county, to pay the jurors aforesaid; and that each juror shall obtain a certificate from the clerk.

SEC. 3. *Be it further enacted*, That the tax so laid shall be kept separate and distinct for the purposes expressed in this act, and promptly paid by the county trustee to each and every juror, at the expiration of the courts for which he has served.

[Ratified 19th December, 1836.]

CHAP. LXXIII.

An Act for the relief of John Timson, a native Cherokee Indian, and his family.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That John Timson, a native Cherokee Indian, now residing in the county of Macon, his wife Lucy, their children, John C. Timson, Henry C. Timson, Sarah Ann Elza Timson, Margaret Jane Timson, and such other children as may hereafter be born to the said John Timson, of the body of his present wife Lucy, be, and they are hereby invested with full power and authority to enter, purchase and hold land and personal property in this State, and to take the same by gift, devise or descent: *Provided*, that before any of the aforesaid Indians shall be allowed to acquire lands, or shall be considered and recognized as freeholders, he or she shall first take the oaths of allegiance to the State of North Carolina and the United States of America, in open court, before the Court of Pleas and Quarter Sessions of Macon county.

SEC. 2. *Be it further enacted*, That the said John Timson and his family aforesaid, shall be, and they are hereby allowed to prosecute and defend suits, and to give evidence, in any court of justice in this State, in all causes, whether civil or criminal, which may be pending therein, under the same rules, regulations and restrictions which now apply to white persons; any law, usage or custom to the contrary notwithstanding.

[Ratified 30th December, 1836.]

RESOLUTIONS.

Resolution directing the public Treasurer to receive, in payment for Cherokee Lands, certain notes of the Banks of Virginia, Georgia and South Carolina.

Resolved, That the Public Treasurer be, and he is hereby instructed to receive, from the commissioner appointed by a resolution of the last Legislature to sell Cherokee lands, the notes on either of the solvent specie paying banks of the States of Virginia, South Carolina and Georgia, and already received, not under the denomination of five dollars; and that any remaining payments to be made hereafter, upon the sale of said lands, or for all the bonds now due, may be made in notes on either of the before recited banks, and received by the Public Treasurer.

And that the Public Treasurer be authorised to commence suits upon the bonds now due, when the one fourth of them remains unpaid on the first day of December, eighteen hundred and thirty seven; and to commence suits when the remaining fourth is not paid by the first day of December, eighteen hundred and thirty eight, and the balance on the first day of December, eighteen hundred and thirty nine. And nothing in this resolution is to be so construed as to affect the resolution of the last Legislature, directing the collection of one fourth of said bonds.

[Ratified 30th December, 1836.]

Resolution concerning the Treasury.

Whereas it may so happen, that there will be a necessity for money to meet the demands on the Public Treasurer for the wages of members, and the other current expenses of the Government, before the funds already appropriated to this purpose are actually received into the Treasury:

Therefore, resolved, That the Treasurer be, and he is hereby authorised, to apply any of the money of the President and Directors of the Literary Fund in the treasury, which may be needed to defray the expenses of the State, but the same shall be replaced as soon as the revenues of the State are received sufficient for that purpose.

Resolved further, That (if it shall become necessary) the Treasurer of the State may borrow from either of the banks of this State such sums as may be required to meet the current demands on the treasury, not otherwise provided for, at a rate of interest not exceeding six per cent. per annum: *Provided*, he shall not borrow more than fifty thousand dollars.

[Ratified 21st January, 1837.]

Resolution authorising the Governor to make provision for receiving the surplus revenue.

Resolved, That the Governor of this State be, and he is hereby authorised to transmit to the treasury department of the United States, a certified copy of the act passed at the present session of the General Assembly, entitled "an act to receive the proportion of surplus revenue to which the State of North Carolina is entitled, under the act of Congress to regulate the deposits of the public money." And that he may authorise and commission Samuel F. Patterson, Esq. the present Treasurer of this State, to receive the same, now payable; and to sign, on behalf of the State, the certificates and obligations required from this State, before receiving the same; and the Governor may take any other and further proceedings, and appoint and commission any other agent or agents for the State, which may be necessary for carrying the said act of the present General Assembly into full effect.

[Ratified 11th January, 1837.]

Resolution, authorising the Public Treasurer to receive the purchase money of late sales of the Cherokee Lands.

Whereas, by an act of the General Assembly, passed in one thousand eight hundred and thirty-three, entitled "an act directing the sale of the lands remaining unsold, acquired by treaty from the Cherokee Indians," no provision is made prescribing upon

what evidence the Public Treasurer shall be authorised to receive the purchase money for lands sold under the authority of said act, in cases when the whole of the purchase money may have been paid at the time of the sale:

Be it therefore resolved, That the Public Treasurer be authorised to receive the purchase money for any tracts of land, that may have been paid for in full at the late sales of the Cherokee lands, upon the commissioner who superintended the same filing in his office, a certified list, setting forth the names of the purchasers, with the number of the district and section, together with the number of acres in each tract sold, and the amount for which the same was sold.

[Ratified 10th December, 1836.]

Resolution in favor of the Oconolufy Turnpike Company.

Resolved, that whenever the stockholders of the Oconolufy Turnpike Company shall have completed their road, agreeably to the act of Assembly in that case made and provide^d, That the Public Treasurer is hereby directed to transfer in payment of the stock belonging to the State to the said company the bonds of Margaret Weleh, Henry Wikle, Joseph Sherrill, and Temperance Thomas: Provided said bonds, together with the interest thereon, when the said road shall have been completed agreeably to the provisions of the aforesaid acts of Assembly, do not exceed the amount then due to the said stockholders from the State, for stock subscribed, on the part of the State, by the Public Treasurer; and that said bonds be set apart for that purpose.

[Ratified 16th January, 1837.]

Resolution concerning the office of Public Treasurer.

Whereas, Samuel F. Patterson, Esq. was appointed Treasurer of this State, by his Excellency the Governor, with the advice of the Council of State, in the month of January last, during the recess of the General Assembly; and whereas, doubts are entertained as to the duration of said appointment by reason of the provisions of the ordinance to carry into effect the amended constitution:

1. *Be it therefore resolved by the General Assembly of the State of North Carolina*, That the said Samuel F. Patterson doth, and shall continue to hold the said office of Treasurer of this State, until the end of the present session of the General Assembly.

2. Resolved further, That Daniel W. Courts, the Treasurer elected to succeed the said Samuel F. Patterson, be, and he is hereby allowed the space of twenty-one days from the time of his election, to execute and deliver the official bonds required of him by the acts of the General Assembly; any law to the contrary notwithstanding.

[Ratified 7th January, 1837.]

Resolution relative to the Governor's House.

Resolved, That the sum of five thousand dollars be paid by the Public Treasurer for the repairs of the Government House and out buildings, and enclosures, and for furniture to furnish the same, to be drawn by warrant from the Governor, and expended by his directions.

[Ratified 21st January, 1837.]

A Resolution in favor of the Public Treasurer.

Resolved, That the Public Treasurer be allowed a credit of the sum of one hundred and eighty-four dollars and eighty cents, the amount of treasury notes burnt, in the settlement of his public accounts.

[Ratified 19th January, 1837.]

A Resolution directing the Governor to commence suit against the Cape Fear Navigation Company.

Resolved, That the Governor be instructed to submit to the Attorney General the question at issue between the Board of Internal Improvement and the Cape Fear Navigation Company—to enquire whether the company have rightfully retained the sum of one thousand three hundred and seventy-five dollars and fifty three cents, on dividends due to the State; and if deemed advisable, to institute suit or suits for the recovery of the same, in a court of law or equity.

[Ratified 23rd January, 1837.]

Resolution concerning common schools.

Resolved, by the General Assembly, That the President and Directors of the Literary Fund of North Carolina, be instructed to digest a plan for common schools, suited to the condition and resources of this State, and report the same to the next General Assembly.

[Ratified 20th January, 1837.]

Resolution relative to the Journals of the Convention.

Resolved, That the Governor of the State be authorized to procure, at the expense of the State, twelve copies of the Debates in Convention, to be deposited in the Public Library, and one copy for each State and Territory of the Union, and transmit the same to the respective Governors thereof.

[Ratified 21st January, 1837.]

Resolution directing the burning of Treasury Notes.

Resolved, That the committee of Finance be directed to burn the Treasury Bills now in the Treasury Office; and that the Treasurer be allowed the same in the settlement of his account.

[Ratified 5th December, 1836.]

Resolution authorising His Excellency the Governor to draw for the payment of expenses of Cherokee Land Sales.

Resolved, That His Excellency the Governor be authorised to draw on the Public Treasurer of this State a sum of money not exceeding one hundred and eighty-eight dollars, to defray the contingent expenses of the Cherokee land sales, made in pursuance of the resolution of the last session of the General Assembly.

[Ratified 10th December, 1836.]

Resolution relative to the employment of additional Engrossing Clerks.

Resolved, That the principal clerks of the two Houses be, and they are hereby authorised to employ two additional engrossing clerks: *Provided*, that the pay of such additional clerks shall not exceed four dollars per diem, each.

[Ratified 16th January, 1837.]

Resolution relative to New River.

Resolved, That the Board of Internal Improvement be directed to ascertain the practicability of removing the shoal at the mouth of New River, in the county of Onslow, and make report thereon to the next General Assembly.

[Ratified 21st January, 1837.]

Resolution concerning the postage of the Speakers of the two Houses.

Resolved, That the Public Treasurer pay to Thomas G. Scott, postmaster in the city of Raleigh, the amount of postage incurred by the Speakers of the two Houses of this General Assembly, in their official capacity; and that he be allowed a credit for the same in the settlement of his public accounts.

[Ratified 19th January, 1837.]

Resolution concerning old Record Books in the Secretary's Office.

Resolved, That the Secretary of State have rebound such old record books, in his office, as require it; and that the Public Treasurer pay for the same, on the Secretary's certificate.

[Ratified 21st January, 1837.]

Resolution concerning old Land Warrants.

Resolved, That the Secretary of State be, and he is hereby authorized to deliver to the owners, their heirs, representatives or assigns, such old warrants, for western lands, as remain on file in his office, on which no grants have issued, taking receipts for the same.

[Ratified 6th January, 1837.]

Resolutions directing an inquiry into the affairs of the Cape Fear Navigation Company.

Resolved, That the board of Internal Improvement be directed to inquire into the proceedings and operations of the Cape Fear Navigation Company, generally and particularly, if the said company have used proper efforts, and honestly applied their funds to the improvement of the Navigation of said Cape Fear river, and whether they exact any tolls not authorised by their charter.

Resolved, That the said board inquire if it would be more advantageous to this State to buy out the said charter, to ascertain on what terms it can be done; and that they inquire if the said company will not voluntarily surrender so much of their privilege as extends above Fayetteville; and if the State ought to accept it, and on what terms.

Resolved, That the said board further enquire if it is not the duty of said company to expend the tolls collected by them in the improvement of the navigation of said river, instead of dividing them as profits among the stockholders.

Resolved, That the said board report on the foregoing, to the next General Assembly, during the first week of their session.

(Ratified 21st January, 1837.)

Resolution concerning contingent expenses.

Resolved, That the Public Treasurer be directed to pay to Isaac Truitt the sum of twelve dollars and sixty-five cents, for certain contingent expenses of the Legislature.

[Ratified.]

Resolution in favor of Daniel Bryson.

Resolved, That the commissioner who is or may be appointed to superintend the survey and sale of the lands lately acquired by treaty from the Cherokee Indians, be authorised and empowered to have surveyed and laid off one hundred acres of land, on Valley River, including as near as may be a noted mound and large spring, above James Whitaker's, for the use of Daniel Bryson, of Macon county; *provided*, that the survey shall be so made as not to destroy the value of the adjacent tracts, shall not be more than twice as long as it is wide, and shall include at least forty acres of mountain or timbered land; and that the Secretary of State be, and he is hereby authorised and directed to issue to said Daniel Bryson a grant for the said land during his natural life, with remainder to his present wife for her life, and that the same shall then revert to the State, to be sold as the other lands in said Cherokee Territory.

Resolved further, that the said tract of land shall be incapable of alienation by the said Daniel Bryson, or his said wife; nor shall the same be liable to be taken in execution and sold for any debt of him or her, during the continuance of said grant.

[Ratified 28th December, 1836.]

Resolution in favor of John and Thomas Webb.

Whereas John and Thomas Webb of the county of Yancy, through their agent Thomas Baker, have overpaid into the Treasury of this State, in their purchase money for the entry of land, the sum of seven dollars and fifty cents:

Therefore resolved, That the public Treasurer refund to the said Thomas Baker, agent as aforesaid, the sum of seven dollars and fifty cents, overpaid as aforesaid.

(Ratified 19th January, 1837.)

Resolution in favor of Eliakin Cox and Tilman Vestal.

Resolved, That the Public Treasurer pay to Eliakin Cox and Tilman Vestal the sum of two hundred dollars, out of any moneys in the Treasury not otherwise appropriated, for the apprehension of James Meadows.

[Ratified 2nd December, 1836.]

Resolution in favor of Leander Truit.

Resolved, That the Public Treasurer be authorised and directed to pay to Leander Truit one dollar per day, for his services as messenger to the Senate, and assistant door keeper the present session; and that he be allowed the same in the settlement of his public accounts.

[Ratified 19th January, 1837.]

Resolution in favor of George Williamson, late sheriff of Caswell county.

Resolved, That the Public Treasurer pay George Williamson, late sheriff of Caswell county, one hundred and twenty-two dollars and twenty cents, for insolvent polls for the years eighteen hundred and twenty-six, eighteen hundred and twenty-seven, eighteen hundred and twenty-eight, eighteen hundred and twenty-nine, eighteen hundred and thirty, and eighteen hundred and thirty-one, out of any money remaining in the Treasury; and that he be allowed the same in the settlement of his public accounts.

[Ratified 28th December, 1836.]

Resolution in favor of John B. Jasper.

Resolved, That the Public Treasurer pay to John B. Jasper the sum of seventy-two dollars, it being the amount to which he is entitled by law for twenty-four days he was detained by sickness after the adjournment of the Legislature, in one thousand eight hundred and thirty-four; and that the same be allowed him in his settlement of public accounts.

[Ratified 20th January, 1837.]

Resolution in favor of the late Governor.

Resolved, That the Public Treasurer be, and he is hereby authorised to pay to the Hon. Richard D. Spaight, late Governor of this State, the sum of four hundred dollars, in payment of the balance of salary due him for the additional time he was compelled to perform the duties of Governor, according to the ordinance of the late convention, and for the use of the Government House, by the General Assembly.

[Ratified 19th January, 1837.]

Resolution in favor of James C. Torrentine.

Resolved, That the Public Treasurer be, and he is hereby directed to pay to James C. Torrentine, sheriff of Orange county, the sum of thirty-two dollars and forty cents, the amount of insolvent taxables, for whom he paid in his late settlement at the treasury, and for whom he has been allowed in his late settlement with the Court of Pleas and Quarter Sessions of Orange.

[Ratified 10th January, 1837.]

Resolution in favor of the heirs at law of James McIntyre, deceased, or their legal assigns.

Resolved, That the Secretary of State be authorised to issue to the heirs at law of James McIntyre, deceased, of Duplin county, or their legal assigns, a military land warrant, for six hundred and forty acres of land, for services performed in the revolution.

[Ratified 13th January, 1837.]

A Resolution in favor of Simon Smithwick, of Martin county.

Resolved, That the Public Treasurer be authorised to refund to Simon Smithwick, sheriff of Martin county, the sum of thirty-eight dollars and forty cents, for insolvents for the years one thousand eight hundred and thirty four, and one thousand eight hundred and thirty-five; and that he be allowed the same in settlement of his public account.

(Ratified 10th December, 1836.)

Resolution in favor of Samuel S. Gedney.

Resolved, That a grant for one hundred and twenty-eight acres of land, in Rutherford county, founded on his entry, dated the 10th day of July, one thousand eight hundred and thirty-three, and surveyed by warrant, number fourteen hundred and forty-five, date of survey June nineteenth, one thousand eight hundred and thirty-six, issue to Samuel S. Gedney, he paying the purchase money and fees thereon.

[Ratified 10th December, 1836.]

Resolution in favor of James Harte, of Carteret county.

Resolved, That the Secretary of State be, and he is hereby authorised and directed to issue to Capt. William Williams or his legal Representatives, or the assignees of him or them, a duplicate of his warrant No. 1860, the original not having been appropriated by the laws of this State, or of the State of Tennessee.

(Ratified 10th December, 1836.)

Resolution in favor of Kenneth Rayner.

Resolved, That the Public Treasurer pay to Kenneth Rayner, one of the members of the House of Commons of the last General Assembly, the sum of twenty-seven dollars, as a compensation for his detention by sickness, nine days immediately after the adjournment thereof in the city of Raleigh.

[Ratified 20th January, 1837.]

A Resolution in favor of the Door-Keepers.

Resolved, That the Public Treasurer pay to each of the Door Keepers of both Houses of the General Assembly twenty five dollars, their usual extra allowance, and that they be compelled to pay out of said allowance the hands necessarily employed to bring wood and water to the state house during the present session.

[Ratified 19th January, 1837.]

Resolution in favor of Turner & Hughes.

Resolved, That the Treasurer pay to Turner & Hughes eighty-four dollars, for books and pamphlets furnished the Senate, on their late order.

[Ratified 10th December, 1836.]

Resolution in favor of Green Hill.

Resolved, That the Public Treasurer pay to Green Hill the sum of thirty dollars and eleven cents, for sundry articles furnished for the use of the Legislature; and that he be allowed the same in the settlement of his public accounts.

[Ratified 14th January, 1837.]

Resolution in favor of William D. Alexander.

Resolved, That the Public Treasurer be authorised to pay William D. Alexander, of the county of Buncombe, four dollars and fifty cents, overpaid the Treasurer by the sheriff of Buncombe, in the land tax of William D. Alexander, in the year one thousand eight hundred and thirty-five.

[Ratified 10th December, 1836.]

Resolution in favor of the heirs of Finlay McDonald.

Resolved, That the Secretary of State issue a military land warrant, for six hundred and forty acres of land, to Daniel McDonald, Sarah McDonald, Malcom McDonald and Margaret McDonald, they being the heirs at law and legal representatives of Finlay McDonald, for the services of said Finlay, as a continental soldier in the revolutionary war.

[Ratified 18th January, 1837.]

Resolution in favor of Edward Stanly, Solicitor.

Resolved, That Edward Stanly, Solicitor of the second Judicial Circuit, be allowed the sum of twenty dollars, and that the Treasurer pay the same out of any moneys in the Treasury not otherwise appropriated.

(Ratified 12th January, 1837.)

Resolution in favor of William Thompson.

Resolved, That the Public Treasurer be directed to pay William Thompson the sum of sixty-seven dollars and sixty cents, being the amount of an account rendered by him against the State, for funeral expenses attending the burial of George W. Montgomery, late a member of this body; and that he be allowed the same in the settlement of his public accounts.

(Ratified 18th January, 1837.)

Resolution in favor of the legal representatives of the late George W. Montgomery.

Resolved, That the Treasurer be authorised and directed to pay to Kenneth Rayner, agent of the legal representatives of George W. Montgomery, late a member of this Legislature, the sum of one hundred and forty-eight dollars, for his services and mileage as a member of this General Assembly; and that he be allowed the same in the settlement of his public accounts.

(Ratified 18th January, 1837.)

A Resolution in favor of the widow of William Gilliam, deceased.

Resolved, That the Public Treasurer pay to the widow of the late William Gilliam, of Surry county, or to William P. Dobson, her agent, the sum of seven dollars and eighty-four cents, the sum having been allowed her by resolution of the last session, and by mistake omitted to be paid her.

(Ratified 20th January, 1837.)

Resolution in favor of William Merry, sheriff of Camden county.

Resolved, That the Public Treasurer pay to William Merry, sheriff of Camden county, eleven dollars and forty cents, for fifty-seven insolvent polls; and that he be allowed the same in the settlement of his account.

(Ratified 13th January, 1837.)

Resolution in favor of John H. Hill.

Resolved, That the Public Treasurer pay to John H. Hill forty-four dollars, for carrying and delivering to the sheriff of Pasquotank county, a writ of election to supply the vacancy occasioned by the resignation of John B. Muse, a member of the House of Commons; and that he be allowed the same in the settlement of his public accounts.

(Ratified 15th December, 1836.)

Resolution in favor of George Hoover, Sheriff of Randolph county.

Resolved, That the Treasurer pay George Hoover, Sheriff of Randolph county, four dollars and eighty cents, for twenty-four insolvent polls, for which he was not allowed in his settlement with the Comptroller.

(Ratified 12th January, 1837.)

Resolution in favor of Mary Sloan.

Resolved, That the Treasurer pay to Mary Sloan, widow of Capt. John Sloan, eighty dollars, it being the amount allowed her for pension for the year eighteen hundred and thirty-six; and that he be allowed the same in the settlement of his public accounts.

(Ratified 16th of December, 1836.)

Resolution in favor of John Miller.

Resolved, That the Secretary of State be authorised to issue a grant of one hundred and fifty acres of land to John Miller, upon the Treasurer's receipt, number three hundred and thirty-seven.

(Ratified 23rd December, 1836.)

Resolution in favor of Samuel F. Patterson.

Resolved, That Samuel F. Patterson, Public Treasurer, be allowed the sum of two hundred dollars for extra services in taking Cherokee bonds.

(Ratified 19th January, 1837.)

NORTH CAROLINA.

Secretary of State's Office, April. 1837.

I hereby certify that the Acts and Resolutions contained in this pamphlet are true copies of the original Acts and Resolutions passed by the Legislature at its last session.

WILLIAM HILL,
Sec'y of State.

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TO THE LAWS,

PASSED AT

THE SESSION OF 1836-37.

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REPORT OF THE COMMITTEE OF FINANCE.

The Committee of Finance respectfully Report, that Daniel W. Courts, the Treasurer elect, having executed the bonds required by law, took the prescribed oaths on the eighteenth day of January, one thousand eight hundred and thirty seven, and, in the morning of the nineteenth of the same month, commenced the duties of his office.

He received from Samuel F. Patterson, late Public Treasurer, all the books, papers, furniture and effects of every description belonging to the office of the Public Treasurer, together with all the public moneys on hand on said day, amounting to the sum of fifty-five thousand one hundred and thirteen dollars and six cents, and which consisted of the following items, to wit:

Amount in deposite to the credit of the Public Treasurer, in the Bank of the State,	\$31,518 44
Amount in deposite to the credit of ditto, in the Bank of Cape Fear,	21 25 85
Cash in the Treasury,	2 343 77
	<u>\$55 113 06</u>

The bonds for the purchase of the Cherokee Lands, prior to the sale of one thousand eight hundred and thirty-six, amounting to the sum of twenty-four thousand three hundred and ninety dollars and sixteen cents, principal; as also those given for the purchase of lands at the sale in October, one thousand eight hundred and thirty-six, amounting to the sum of twenty-three thousand one hundred and forty-two dollars and ninety-two cents, principal, together with sundry other bonds, given for advances made by the State, and for the purchase of property from the same; amounting to the sum of eight thousand four hundred and seventy-five dollars, principal; forming an aggregate amount of bonds, exclusive of interest, of fifty-six thousand and eight dollars and eight cents; all of which were delivered over to and received by D. W. Courts, aforesaid.

The following statement exhibits the transactions of the Treasury Department since the 31st of December, 1836, the date of the last settlement with the Comptroller:	
The balance against the Public Fund, on the 1st day of January, 1837, was	\$26,071 17
The amount received on account of this fund since that period, being for dividends of Bank Stock, is	16 232 00

	<u>\$9,839 17</u>
The disbursements from this Fund for the same period amount to	16 787 42

Balance against this fund, 19th January, 1837,	\$26 626 59
--	-------------

The balance in favor of the Literary Fund on the 1st January, 1837, was	\$16,981 74
The amount received on account of this fund since that period, being for Bank dividends and entries of vacant land is,	8,210 30

Amount of Literary Fund 19th January, 1837,	<u>\$25,192 04</u>
---	--------------------

The balance in favor of the Internal Improvement Fund on the 1st January, 1837, was,	\$55,091 60
The amount received on account of this Fund since that period, being payments for Cherokee Lands, is,	1,606 01

	<u>\$56 697 61</u>
The disbursements from this fund for the same period amount to	150 00

Nominal amount of Internal Improvement Fund, 19th January, 1837,	\$56,547 61
From which deduct the amount applied to the payment of claims against the public fund, being the balance against that fund as above stated,	26 626 59

Real balance of Internal Improvement Fund in the hands of Public Treasurer, 19th January, 1837,	<u>\$29,921 02</u>
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RECAPITULATION.

The foregoing statement shews balance of Literary Fund in the hands of the Public Treasurer 19th January, 1837, of	\$25 192 04
Ditto, ditto, of Internal Improvement Funds in hands of ditto, same day,	29 921 02

Aggregate balance on hand 19th January, 1837,	\$55 113 06
---	-------------

Which has been transferred to D. W. Courts, Treasurer elect, as above stated, and for which Samuel F. Patterson late Public Treasurer, is entitled to a credit on the books of the Treasurer's and Comptroller's Departments.

All which is respectfully submitted,

THOS. G. POLK, *Chairman of the Committee of Finance.*

January 19th, 1837.

*transferring
208 + 113 06*

