

Laws of North Carolina,

PASSED IN 1823.

(BY AUTHORITY.)

An act to provide a revenue for the payment of the civil list and contingent charges of 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 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.

II. Be it further enacted, That each and every person, who shall peddle in any county in this state, and not on a navigable stream, goods, wares or merchandize, not of the growth or manufacture of this state, on any wooden clock, or the machinery or materials thereof, which shall not be of the manufacture of this state, or jewelry, which machinery or clock shall be manufactured of materials not of the growth, produce, or manufacture of this state, shall pay the sheriff of each and every county in which he, she or they shall so peddle goods, wares or merchandize or jewelry, the sum of twenty dollars on every cart, waggon, or other vehicle, employed in the transportation of said goods, wares or merchandize: Provided, that no license to peddle shall authorize such pedlar to sell goods at auction: Provided, that should two or more persons employ one cart, waggon, or other vehicle, to transport their goods, wares or merchandize, each and every of them shall pay the aforesaid tax on said cart, waggon, or other vehicle, by them employed: nor shall any thing in this act be construed to authorize two or more persons, under the pretence of being partners in trade, to peddle goods, wares or merchandize under the same license; which tax shall be accounted for by the sheriff in like manner as other 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 merchandize, 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, shall pay the sheriff of each and every county in which he shall so peddle, fifty 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 shew 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 sell books only: And provided, nothing herein contained shall exempt the person or persons thus licensed from being liable to the duties imposed on those who sell goods, wares and merchandize, or wooden clocks, or the machinery or materials thereof, which shall not be of the manufacture of this state, at auction.

III. Be it further enacted, That the Comptroller shall issue to the several sheriffs, blank licenses, to peddle goods within this state, who shall, upon application of any person or persons desirous to hawk and peddle goods, countersign and issue the same to the person so applying, upon his paying the taxes so imposed; and that all licenses 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 not issued and countersigned, which he shall return to the comptroller; and that 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 his settlement with the comptroller.

IV. Be it further enacted, That every merchant or jeweler, who shall sell goods, wares and merchandize, not the growth and 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,) and 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 the amount of his capital stock in trade, as aforesaid, shall be between five thousand and ten thousand dollars, a tax of twelve dollars; if the amount of his capital stock in trade, as aforesaid, shall be 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 jeweler, 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 shall have such store, and tender an affidavit, stating the amount of the capital stock which he has employed in trade, in such store, and shall pay the tax on the aforesaid store, and receive from the sheriff a license to keep such store. But any merchant unwilling to make such affidavit, may obtain such license on paying the tax of twenty dollars; and any 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 in the same manner as other 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 shall be granted by the sheriff, upon such applicant giving bond and security to the sheriff, to pay the tax required by this act, in 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 same manner as prescribed by law, in the case of pedlars.

V. Be it further enacted, That the owner or possessor of every billiard table, or other public table, constructed or erected for play-

ing games of chance, by whatever name called, shall give in such billiard table or other table, as aforesaid, in the same manner as other taxable property, and shall pay for each billiard table, or other table, as aforesaid, a tax of five hundred dollars; and, after the first day of April next, no billiard table, or other table, constructed or erected for playing games of chance, shall be kept up until such tax shall be paid to the sheriff of the county in which such billiard table, or other table is, or may be, so erected or kept up, and a license to erect or keep up the same shall be first granted by said sheriff; and if any billiard table, or other table, as aforesaid, is erected or kept up without such license first had and obtained, the sheriff of the county where such table is, or may be, so erected or kept up, shall seize and destroy the same, by burning; and the person or persons erecting or keeping up such billiard table, or other table, as aforesaid, shall be subject to indictment; and, on conviction in the superior court of law having jurisdiction thereof, shall be fined not less than fifty dollars, and be imprisoned at the discretion of the court.

VI. Be it further enacted, That 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, for a reward, shall, previously to exhibiting or performing in any county in this state, pay to the sheriff thereof thirty dollars; and every person 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 taxes; and, on paying such tax, the sheriff who receives the same, and it is hereby declared to be his duty, 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 authorized and permitted to perform or 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, 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 be applied, one half to the use of the state, and the other half to the use of the sheriff.

VII. Be it further enacted, That a tax of five dollars be, and the same is hereby laid, on all turnpike roads, where toll is received; and gates, which have been, or which hereafter may be, at any time, erected across any public road in this state; and the owner of such gates or turnpike roads, shall give in the same at the same time they give in their taxable property; and the tax shall be levied, collected, and accounted for in the same manner as other taxes.

VIII. Be it further enacted, That all persons who shall bring negro slaves from 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, and their deputies, 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, 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 and his deputy, of each county in 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, bought in evasion or elusion of the revenue laws of this state. And every 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 or his deputy, 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.

IX. Be it further enacted, That an annual tax of twenty cents on each and every free poll, and a tax of twenty cents on each and every black poll shall be levied, collected and accounted for under the same rules, regulations and restrictions, as poll taxes heretofore have been collected and accounted for.

X. Be it further enacted, That all free males, between the ages of twenty-one and forty-five years, and all slaves between the ages of twelve and fifty years, shall pay a poll tax, and all slaves shall be listed in the county wherein they reside.

XI. And be it further enacted, That every person using the profession of a Broker, or opening an Exchange or Lottery office, 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, or in the sale or purchase of tickets in any Lottery not authorized by this State, shall be subject to an annual tax of two hundred 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 therefor; and if any person after the first day of February next, shall pursue or exercise such profession, not having paid such tax, he shall be subject to indictment in any Court of Record of this State, and, on conviction, shall be fined not less than two hundred dollars, and be imprisoned at the discretion of the court.

XII. Be it further enacted, That each sheriff, upon settling his accounts with the comptroller, county trustee, and county wardens, within their respective counties for the preceding year, shall make and subscribe an affidavit, that he has duly accounted in his settlement for all taxes, received by him under this act, upon any occupation, article or thing not included in the list of taxable property, furnished by the clerk of his county; and shall append to said affidavit, a list of all such taxes so by him received, and the names of the persons from whom he received the same, and set forth opposite to each item, the occupation, article or thing for which the said taxes were received.

XIII. And be it further enacted, That in addition to the oath required to be taken by the sheriff, on settling with the comptroller, 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.

XIV. And be it further enacted, by the authority aforesaid, That it shall be the duty of the several clerks in this State, in making out the lists of taxable property for the sheriffs, to designate in such lists, the separate amount of taxes due and accruing from each species of property; and in addition thereto, to extend the aggregate amount due from each individual, as heretofore required by law.

XV. And be it further enacted, by the authority aforesaid, That 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 said sheriffs to deposit with the clerks of the respective counties for public inspection.

XVI. And be it further enacted, That it shall be the duty of the several sheriffs of this state, to collect and enforce the payment of the taxes by this act imposed upon pedlars, notwithstanding the said pedlars may rent or procure houses for the purpose of carrying on a temporary sale of goods.

An act to amend an act, passed in 1821, entitled "an act to protect the administration of justice."

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 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.

II. And be it further enacted, That hereafter, on the trial of any slave or slaves for capital offences, if it shall appear to the presiding judge, by affidavit or otherwise, that such slave or slaves cannot have a fair trial in the county wherein the offence is charged to have been committed, it shall, and may be lawful for such judge to order the removal of such cause to an adjacent county for trial, notwithstanding the master or owner of such slave or slaves may neglect or refuse to make an application to the court for that purpose.

LEGISLATURE OF NORTH-CAROLINA.

REMARKS OF MR. MILLER,

(IN THE SENATE)

In committee of the whole, on the bill "to establish Courts of Equity separate from the Courts of Law, in this State."

MR. CHAIRMAN—I concur with the gentlemen who advocate the bill now before the committee, that there exists a necessity for some change by which suits in equity may be tried. All that has been advanced by them must be evident to any man the least acquainted with the state of our dockets; and when a plan, less objectionable than the one proposed by the bill now before the committee, shall be brought forward, I promise them I will, most cheerfully, give to it my individual support.

The objections which I have to the plan proposed by the bill now before the committee, not being constitutional, (though I have some constitutional scruples which are not, as yet, matured to certainty in my mind) I shall only, upon the present occasion, trespass upon the time of the committee so far as to urge those which I have to it on the score of expediency. I trust I shall be pardoned by the committee for the little time I shall endeavor to occupy their attention, as the gentlemen have invited, or I might rather say challenged discussion. The opponents to this bill (and a favorite one too) of the judiciary committee, as it would seem from the complacency with which gentlemen view it, are invited, in one breath, to state their objections, with a view to a candid discussion of the merits of the bill; and in the next moment, are called on, either to give their support, or to submit some better plan. We are called upon, too, to produce one which will remedy the evils complained of, without making any further encroachments upon the treasury. As I, Mr. Chairman, have not the honor of being a member of the committee, whose peculiar province it is to devise ways and means to remedy the defects of our judiciary system, I must be excused for not having devoted so much of my attention to subjects of this nature as the gentlemen who have preceded me in this debate. The gentlemen themselves seem to admit that there is a better one; but express their fears that any which requires aids from the treasury cannot be carried through the house. Mr. Chairman, I, for my part, have too good an opinion of the good sense, independence and intelligence of a majority of this house, to believe, for a moment, that, in the discharge of their representative duties, they can be operated upon by fears such as are alluded to by the gentlemen. I, for one, Sir, object to the bill on the score of its parsimony. It proposes that each of the judges of the supreme court shall, in addition to the duties assigned them by the act of 1812, hold the courts in two of the present judicial circuits, twice in each and every year; and that each court shall be held open fifteen judicial days, at each term. In 1812 it was urged upon the Legislature, by some of the most distinguished legal gentlemen of the state, that the establishment of supreme courts, to be held by judges separate and distinct from the judges of the superior court, was called for by the best interest of the state; and, to induce gentlemen of the first legal acquirements to accept of seats upon this bench, the then Legislature fixed the salary at \$2,500, and assigned to them certain duties. The bill now before the committee requires of each of them, I think I may at least say, services as arduous and of as long continuance as the act of 1812, without one cent of additional salary.

Mr. Chairman, if \$2,500 was, in 1812, only an adequate compensation for the services then required, how, I would ask, comes it to pass that these same judges are now only entitled to \$1250? For pass the bill on your table, and it amounts to a reduction of salary in the proportion to the increase of labor. Does this, Sir, comport with the dignity and good faith of the state? Does it, Sir, comport with sound policy? What has been the consequence of this policy? What, Sir, are the suggestions of experience? In 1777 the state was divided into six districts, and the courts held by six judges. Equity jurisdiction was imposed upon them in 1782. In 1799 it was made the duty of the judges to hold the court of conference for the purpose of producing uniformity in legal decisions. In 1805 the present superior court system was adopted, by which it was made the duty of six judges to hold a court twice a year in each county of the state. In 1807 concurrent jurisdiction with county courts was given to the superior courts, in all prosecutions by the state, and in actions of slander. In 1808 a like jurisdiction was given to the superior courts, in all civil cases, except where the defendant lived out of the county. In 1814 concurrent jurisdiction was given in all petitions for amendments of grants and meane conveyances for land; and in this same session the subject of divorces was likewise imposed. In 1815 the cognizance of certain fines and forfeitures, incurred under certain acts of Congress, in 1816 exclusive jurisdiction in the trial of slaves, where the punishment extended to life. In 1818 exclusive power in emancipating slaves; and, in the same year, exclusive power in trying mothers for the death of bastard children.

Though, Sir, all the duties were imposed under the specious garb of granting power, yet they appear to me to be nothing more than an addition of labor, and that without any additional compensation. What has been the consequence of this pack-horse policy? A few years ago there was a vacancy on the bench, when the office went, literally, a begging. "Is there some gentleman of respectable standing at the bar did accept the appointment; but how long did they hold it? Like honorable and conscientious men they declined the holding of an office, the duties of which they found it impossible to discharge; and those who now occupy seats on the bench of the superior court, must do it more from patriotism than from a prospect of gain. What, Mr. Chairman, has been the effect of a similar policy in a neighboring state? I mean Virginia. Previous to the year 1787 the judiciary of that state consisted of a general court of common-law, a court of equity, separate and distinct from the courts of common-law, and a court of admiralty. The Legislature, finding the business of the general court accumulated to such a degree, that it could not be disposed of, passed an act in 1783, constituting a court of appeals, and making it the duty of the judges of the general court of equity and admiralty to hold this court. And what was the conduct of the judges of that state upon this occasion? They declared the law to be unconstitutional; and, in their decisions of this question, use the following language, which I will take