

## LAWS OF NORTH-CAROLINA,

Passed in 1826-27.

(BY AUTHORITY)

An act to allow further time for the payment of the purchase money on entries for vacant land, made in the year one thousand eight hundred and twenty-four, which lapsed on the fifteenth day of December, one thousand eight hundred and twenty-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 a further time, until the rise of the present session of the General Assembly, be allowed for the payment of the purchase money to the State, on all entries for vacant land made in the year one thousand eight hundred and twenty-four; and that when the purchase money aforesaid shall have been paid, it shall vest in the persons who shall have entered their lands in the said year, the same rights as if they had paid the purchase money before the fifteenth day of December, one thousand eight hundred and twenty-six: *Provided, nevertheless*, that all entries made since the fifteenth day of December aforesaid, shall in no wise be affected by the provisions of this act; and that the Public Treasurer be, and he is hereby authorized to receive the purchase money on all such entries until the rise of the present session of the General Assembly; and that the Secretary of State be, and he is hereby authorized and directed to issue grants on all such entries in every case, where it shall appear by the Comptroller's certificate, that the purchase money to the State has been paid within the time prescribed by this act.

II. *And be it further enacted*, That this act shall be in force from and after the ratification thereof.

An act concerning Executors, Administrators and Guardians.

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 suit shall hereafter 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 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 or 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 said 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.

An act to revive and continue in force an act, passed in the year one thousand eight hundred and twenty-four, to alter and amend an act, for the relief of such persons as become purchasers of the Cherokee lands, sold under the authority 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 an act "to alter and amend the act of the General Assembly of one thousand eight hundred and twenty-three," which was passed in the year one thousand eight hundred and twenty-four, be, and the same is hereby revived and continued in force until the next meeting of the General Assembly of this State; and that this act shall be in force from and after the ratification thereof.

An act to alter the time of the annual meeting of the General Assembly.

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 meeting of the General Assembly of this State shall be annually, hereafter, on the third Monday in November.

II. *And be it further enacted*, That an act, entitled "An act to alter the time of the annual meeting of the General Assembly," passed at the last session, be, and the same is hereby repealed.

An act to amend an act, passed in one thousand eight hundred and twenty-three, entitled "An act to amend an act, passed at the last session of the General Assembly, entitled '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 any person, who shall peddle goods, wares or merchandize, not 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 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 public taxes.

II. *Be it further enacted*, That all laws, and clauses of laws, coming within the meaning and purview of this act, so far as relates to the waters mentioned in the above clause, be, and the same are hereby repealed.

An act concerning the entry of land 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 from and after the passage of this act, it shall not be lawful for any entry taker, in the several counties of this State, to receive any entry or entries of vacant and unappropriated marsh and swamp lands in this State, except in cases where the quantity of land does not exceed fifty acres in one body, and that situate between the lines of tracts heretofore granted; and every entry made contrary to the intent and meaning of this act, shall be null and void; and that this act shall be in force immediately from and after its ratification.

An act to make private acts printed by the Printer of the State, evidence in the Courts 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 private acts, which have been or may hereafter be passed by the General Assembly, and printed by the Printer of the State, shall and may be read in evidence in all cases, and in all Courts of this State, from the printed statute book.

II. *And be it further enacted*, That any of the private acts heretofore passed, and published by Francis X. Martin in his collection of private acts, shall and may be read in evidence from said collection; or a copy of any private act certified by the Secretary of State, shall likewise be received in evidence in any of the Courts aforesaid; any law or usage to the contrary notwithstanding.

An act to prevent litigation, by regulating costs in actions of assault and battery.

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 actions of assault and battery, which shall hereafter

be commenced, and prosecuted in any of the Superior or County Courts of this State, if the jury, upon the trial of the issues, or the assessment of damages upon a writ of inquiry, do find or assess the damages under four dollars, the plaintiff shall recover and have judgment for no more costs than damages; any law, usage or custom to the contrary notwithstanding.

An act relating to the exercise of the right of challenge 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 in all State prosecutions for capital felonies, and other inferior offences, the defendant or defendants shall have the aid and assistance of counsel in selecting a jury by whom he, she or they are to be tried; any law, usage or custom to the contrary notwithstanding.

An act to prevent frauds and perjuries 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 from and after the first day of January, one thousand eight hundred and twenty-eight, no action shall be brought whereby to charge any executor or administrator upon any special promise, which may be made after the first day of January, one thousand eight hundred and twenty-eight, to answer damages out of his own estate, or to charge the defendant upon any special promise to answer the debt, default, or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party charged therewith, or some other person thereunto by him lawfully authorized; any law or usage to the contrary notwithstanding.

An act limiting the time within which certain offences shall be prosecuted and prescribing the duties of Grand Jurors relative thereto.

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 trespasses and other misdemeanors, except the offences of perjury, forgery, malicious mischief, and deceit, the prosecution shall commence within three years after the commission of the said trespasses and misdemeanors, and not after; and no bill of indictment shall be found, or presentment made by the Grand Jury of any county in this State, where the offences aforesaid shall have been committed three years next before the finding of the said indictment, or making the said presentment; *Provided*, that in case any person or persons committing any of the said offences or misdemeanors shall abscond from without the county, in which the offence was committed, or conceals him or herself, or the said offences shall have been committed in a secret manner, then the said trespasses and misdemeanors shall and may be prosecuted within three years after the return or apprehension of the offender, or discovery of the offence; *Provided always*, that when any prosecution shall be commenced within the time prescribed by this act, and judgment shall be arrested for any defect in the indictment, or a nolle prosequi shall be entered, that the computation of time in such cases shall be made from the time such prosecution shall have terminated, and not otherwise.

An act to repeal part of the third section of an act, entitled "An act to extend the jurisdiction of a Justice of the Peace," passed in the year one thousand eight hundred and twenty.

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 requires the defendant to plead in abatement, is hereby repealed; and that all actions commenced in this State, in the County or Superior Courts, on bonds, promissory notes, or liquidated accounts, under the sum of one hundred dollars, shall be dismissed by said Court.

An act to prohibit the trading with Slaves, except in the manner therein prescribed.

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 May next, if any person or persons shall buy of, traffic with, or receive from any slave or slaves, any cotton, tobacco, wheat, rice, oats, corn, rye, pork, bacon, beef, leather, raw hides, iron, castings, farming utensils, nails, flour, spirituous liquor or wine, peas, salt fish, flax, flaxseed, hogs, cattle, sheep, wool, lumber, staves, tar, pitch, turpentine, fodder, shingles, hoops, white oak heading, and potatoes; or if any person or persons shall sell, barter with, or deliver to any slave or slaves, any goods, wares, and merchandize, or other article of personal property, every person so offending, shall for each offence, forfeit and pay the sum of one hundred dollars, to be recovered by warrant, before any Justice of the Peace, and applied, one half to the use of the party suing for the same; the other half to the wardens of the poor of the county; *Provided, however*, that it shall and may be lawful for any person or persons, in the day time only, Sundays excepted, viz. between the rising of the sun and the setting thereof, to buy of, traffic with, or receive from any slave or slaves any such article or articles as aforesaid, for which he, she, or they may have a permission in writing, from his, her, or their owner or manager, to dispose of the same; and further, it shall and may be lawful for any person or persons, in the day time as aforesaid, to sell and deliver to any slave or slaves, any goods, wares, or merchandize, or other thing (spirituous liquors always excepted) in exchange for, or payment of the money, or article, or articles, which the said slave or slaves may have been, by the written permission aforesaid, authorized to sell.

II. *Be it further enacted*, That the foregoing offences shall moreover be indictable in the County or Superior Courts of Law, and the defendant, on conviction, shall be fined, or imprisoned at the discretion of the Court; the fine, however, not to exceed fifty dollars, or the imprisonment, three months; and if it shall appear on the trial, that the defendant is a licensed retailer of spirituous liquor, by the small measure, he or she shall also forfeit his or her retailing license, and shall be incapable of taking a new license, for the space of two years, from and after the date of his or her conviction.

III. *Be it further enacted*, That if any person shall fraudulently give, or cause to be given in any slave, the property of another, a permission in writing, to sell, trade, or traffic in any article of personal property, without the consent or authority of the master, owner, or the person having the management of such slave, he, she, or they so offending, shall, upon conviction before any Justice of the Peace in the county where such offence is committed, forfeit and pay the sum of one hundred dollars; one half to the use of the person suing for the same, and the other half to the use of the wardens of the poor of said county.

IV. *Be it further enacted*, That if any slave or slaves shall buy or receive any of the aforesaid prohibited property from any slave or slaves, or shall sell or deliver any of the same to a slave or slaves, contrary to the true meaning of this act, he, she or they, on conviction thereof before any Justice of the Peace, shall receive on his, her or their bare backs, not exceeding thirty-nine lashes, to be well laid on, by any constable of the said county, or other person appointed for that purpose.

V. *Be it further enacted*, That if any free negro or mulatto shall trade with any slave or slaves, either by buying from, or selling to him, her or them, any article or articles of property contrary to the true meaning of this act, he or she may be prosecuted by indictment in the County or Superior Court, and, on conviction, shall receive not exceeding thirty-nine lashes on his or her bare back.

VI. *Be it further enacted*, That if any slave or slaves shall be found in any store house, ware house, tipping shop, or other place fitted up for trading, unless sent by his, her or their owner, overseer or employer, after the hour of nine o'clock at night, or before daybreak in the morning, or on the Sabbath day; or if any slave or slaves shall be found, at any time, in any of the aforesaid places, unless sent as aforesaid, where he, she or they shall have been permitted to remain for the space of fifteen minutes, with the door of the aforesaid places closed; or if any slave or slaves shall be seen to carry into any of the aforesaid places any article or articles supposed for sale, and not bring the same out; or if he, she or they shall bring out of the said places any article or articles, which may have been purchased therein, shall be taken and received as presumptive evidence against the person or persons owning or keeping the store house, ware house, tipping shop, or other place fitted up for trading, of a violation of this act, to be rebutted, however, like other presumptions, by other circumstances in favor of the accused.

VII. *And be it further enacted*, That either of the parties or master of the slave, being dissatisfied with the judgment of the justice or the verdict of the jury, may pray an appeal therefrom as in other cases; *Provided*, that no suit or indictment shall be prosecuted for any violation of this act, unless such suit or indictment be commenced within twelve months after such violation.

VIII. *And be it further enacted*, That the act, passed in the year one thousand eight hundred and nineteen, entitled "An act to prevent fraudulent trading with slaves," be, and the same is hereby repealed, saving the rights of the wardens of the poor, and of individuals, which may have accrued under said act.

## LETTER OF MR. McDUFFIE,

Paper accompanying the Report of the Committee on the application of the Vice President.

To the Hon. JOHN FLOYD

SIR: The Committee of Investigation, over which you preside, having announced to me, as the friend and representative of Mr. Calhoun, that they have closed the examination of all the witnesses they deem it necessary or proper to summon before them: I should be equally insensible to the claims of private friendship, and the obligations of public duty, were I not to enter my solemn protest against the extraordinary course, and not less extraordinary conclusion of a proceeding, singularly destitute of almost every attribute of a legal investigation. Even if it should be considered that this Committee was instituted, not for the exclusive purpose of sitting in judgment on the specific charge submitted to their examination, but for the additional purpose of exercising, to a certain extent, the functions of an inquisitorial commission, I cannot conceive that there would be any thing in the character of such a commission, that would authorize it to depart from the fundamental principles of judicial investigation, and the established rules of judicial evidence, and after wandering at large, through the perplexing mazes of suspicion and conjecture, guided only by the bewildering lights of incompetent and inadmissible testimony, to select the precise point where suspicion ends and legal evidence begins, as the conclusion of the House that this committee should assume the character of a judicial tribunal, and that the facts and opinions which they may report to the House, will be consequently regarded by the public as having the stamp of judicial authority, I feel impelled, by a profound sense of the duty which I owe to Mr. Calhoun, to the country, and even to the committee themselves, to state, briefly and distinctly, my objections to the course pursued, before it shall be too late to correct or to palliate its injustice. And, in the very outset of my remarks, I cannot but advert to the fact, as strikingly illustrative of the anomalous character of this proceeding, that, with the exception of the solitary question as to the fact of Mr. Calhoun's participation, which every witness has promptly and unequivocally answered in the negative, there is not one tittle of all the incumbering mass of documentary and oral testimony which has occupied the incessant labors of the committee for more than twenty days, that has the slightest pretension to the character of legal evidence, whether we regard it as applicable to the present accusation, or to any other accusation against the private integrity or official purity of Mr. Calhoun. In order to demonstrate this proposition, I beg leave to present for the reconsideration of the committee, a descriptive and analytical review of the recorded testimony.

It will be recollected that the first three or four days of this inquiry were devoted to the examination of witnesses, professedly produced for the purpose of exculpating the present Secretary of War from the imputation of having any agency, either in bringing forward the charge of peculation against Mr. Calhoun, or in the infamous publication of the equally infamous letter of the yet more infamous instrument of this dark and nefarious conspiracy. It is not my purpose to complain of the course pursued by the committee in this respect, although it might seem to indicate a more anxious desire to exonerate one against whom no imputation had been made, than to administer speedy justice to the second officer of the Government, when actually on his trial upon a charge of official delinquency, calculated, if true, to stamp his reputation with indelible infamy. But, as the committee have thought proper to make the conduct of Mr. Barbour, in this transaction, a distinct subject of inquiry, I feel constrained to remark, that, although I readily exonerate him from any intentional participation in this most heinous attempt at moral and political assassination, yet it is a circumstance much to be regretted, that, in the editorial commentaries by which the publication of the letter of Elijah Mix, in the Phoenix Gazette was accompanied, the name, and office, and official decision of the Secretary of War, were so carefully associated with the charge against Mr. Calhoun, as to give it additional solemnity and importance; and that no measures were taken to have this injurious association disclaimed, through the same channel. It is a fact, equally to be regretted, that the Secretary should have retained in his possession, officially, for three days, the letter containing the charge against Mr. Calhoun, without giving him the slightest intimation of it. And even the verbal declaration made by the Secretary to Col. Johnson, that he believed the charge against Mr. Calhoun to be an atrocious calumny, was not made until a day had elapsed after the publication in the Phoenix Gazette, and was only communicated to Mr. Calhoun after he had prepared and sealed his letter to the House of Representatives, and placed it in the hands of a friend. And I must also state, as a fact worthy of notice, that, neither in the Phoenix Gazette, which assumed a semi-official attitude in stating the proceedings of the Secretary of War in relation to the letter of Mix, nor in the notice taken of the publication in that Gazette by the National Intelligencer the next day, was the fact stated, that the Secretary regarded the charge against Mr. Calhoun as an atrocious calumny.

But to resume the analysis of the testimony, with a view to its immediate bearing upon my opening proposition. After submitting the obvious remark, that all the evidence produced to exculpate Mr. Barbour, was not only irrelevant, but immaterial to the pending issue, I will proceed to the examination of that part of the testimony which is intended, as I presume, to bear, directly or indirectly, upon the official character and integrity of Mr. Calhoun. The great mass of the evidence that has so long engaged the attention of the committee, consists of the private letters of Major Vandevanter to Elijah Mix, with the explanations to which they have given rise. It is hardly necessary that I should enter in a course of argument before a committee, of which six out of seven are lawyers by profession, to show that these letters ought to have been promptly rejected, as incompetent and improper testimony. Even if it be granted that Mr. Calhoun is now on his trial for every act of his life, official or private, and not merely upon the specific charge referred to the committee, it is perfectly clear that, according to those great principles of evidence, which have been devised by the wisdom, and consecrated by the experience of ages, the letters or declarations of another person cannot be given

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