tab. AND NORTH CAROLINA STATE CAZETTE

RALEIGH N. C. JANUARY 22, 1829

LAWS OF NORTH-CAROLINA. Passell 14 1828-29.

(BY AUTHORITY.)

NO. 4

disveting the manner in which acts of Congress and other public does it enacted by the General Assembly of the State of North-ur, un? it is hereby enacted by the authority of the same, furnice, and his other purps. entanholt be sincolored for the he it as of Congress which now are, or hereafter may be assistion of the State, be distributed by the Secretary of the following manne", viz Two copies to each of the in the State one of which shall be deposited in the office Jerks of the Superior and County Courts in each county, use of said Courts respectively; our copy to each and evere of the Supreme Court and Superior Courts of Law and y; one copy to the Attorney General; one copy to the Soliciaeral; and one copy to each and every Solicitor; one copy offices of Governor, Secretary of State, Treasurer and troller; three copies in the Public Library of the Universihis State; and three copies retained in the Public Labrary. use of Members of Assembly and other public functiona-

Re it further enacted. That all the other public documents file in the Governor's Office, and in the Library and ere which have been from time to time transmitted to this by the General Government, be divided under the direction Secretary of State into sixty-four parts, corresponding e number of counties, who shall assign to each county their tive parcels, regarding in such division and assignment the matter of said documents, and send the same accordingly. ed to the Clerk of the County Courts of the several counspectively by such conveyance as he may deem expedient And be it further enacted, That all documents bereafter ed as aforesaid, shall be divided, assigned, directed and did to the respective counties from year to year, rouforwith the provisions of this act.

And be it further concled, That said documents so deposi aforesaid in the offices of the Clerks of the County and for Courts respectively, shall be so distributed by said s within their respective counties, in such manner as they deem most expedient, to give them extensive circulation. Be it further coacted, That all the documents and pa transmitted to this General Assembly by the Honorable miel Macon be deposited in the State Library.

An act to regulate the damages on protested Bills of Exchange. it enacted by the General Assembly of the State of North ing, and it is hereby enacted by the authority of the same bills of Exchange which shall be hereafter drawn or endors this State, and which may be protested, shall carry interest on the date thereof, but from the times of payment therein tively mentioned.

And be it further enacted. That the damages on such probills shall be as follows, that is to say, where the bill shall awn or endorsed in this State upon any person or body cor te, in any other of the United States, or in any of the Ferris thereof, excepting the State of Louisiana, six per centum up he principal sum; where such bill shall be drawn or endorsed oresaid upon any person or body corporate in any other e or place in North America, or the Islands thereof, excepte North West course of America, or in any of the West Inor Bahama Islands, ten per cent, upon such principal sum: re such bill shall be drawn or endorsed as aforesaid upon any on or body corporate in the Island of Madeira, the Canaries Azores, the Cape de Verd Islands or in any other State or place arope, or South America, lifteen per cent, on such principal ; and where such bill shall be drawn or endorsed, as aforesaid py person or body corporate, in any other part of the World, ity per cent. on such principal sum.

t to authorise the payment of the purchase money on entries of land made it enacted by the General sistembly of the S ate of North

fled "an act to promote the administran r. of justice in this State thereof. by requiring the production of papers in certain coves " passed 11. Br if further enacted, That all bonds hereafter to be taken

tates of deceased persons, and the law in relation to the serving of excentions this at issuedby Indices of the Pener. Be it canceled by the General Assembly of the State of North next.

avolina, and it is hereby macted by the authority of the same, That if an executor or pilministrator be warranted for any ilemand against his restator or intestate, before the expiration of nine calender months from and after his taking upon himself the office of executor or administrator, it shall be the duty of the magistrate before whom said warrant is returned, to endorse there on a postponement of the ial thereof, until some day after the or dingly

11 And be it further engeled That whenever arrexecutor or ad ainistrator shall be warranted, and on the trial of the warrant, shall suggest that he has any defence to make, because of a deficiency of assets, the magistrate shall note such suggestion, and if he find the Pian ill's demand to be just, may give a judgment theref r; and shall return the said warrant with such suggestion and judgment, to the first term of the Court of Pleas and Quarter Sessions of his county, where the defendant shall be at liberty to head any plea relative to his assets which could be pleaded had the suit been instituted returnable to said term

111. And be it further enacted. That in all cases thus returned Court by a migistrate, no other or higher costs shall be allow ed than may be prescribed by law in cases of anneals.

1V And he if further enarted. That when a suit shall be brough n any Court against the executor or administrator, before the expiration of nine calenders months as afore-aid, the said exists tor or administrator shall not be compelled to plead thereto antifree the excitation thereof.

V. And be it forther enocted, That it shall not be lawful to levy an execution issued by a justice, on any warrant hereafter issued out against an executor or administrator upon the lands of the heirs or devisees of the testator or intestate.

VI. And be it further enacted That when an officer shall been after levy an execution issued by a justice on the land of the defendant, such officer shall serve the defendant with such notice in writing, at least five days before the term, to which everation is returned of the levy aforesaid, and of the term to where it will be returned; and if it do not appear to the Court, when an order Court shall order a notice to issue to the defendant, and shall not proceed to make any order of sale until such notice be served on the defendant at least five days previous to the term of said Court: Provided always, that upon affidavit made that such defendant has absconded, or conceats innself, or has removed out of the county, or is an inhabitant of another State, so that the notice cannot be personally served, the Court may order such notice as it shall deem reasonable to be given by a publica tion in some newspaper, and may upon proof of such publication. make the order of sale as though the notice had been scenally served.

VII. And he it further enorted. That when at any term of Court, there shall be several judgments obtained against an adadministrator or executor has not assets hable to the indoments and the plain iffs shall pray for write of state, facias against the heirs or devisees of the testator or intestate, that the Cie k for ssuing, and the officer for serving each stire facias shall be en titled to charge but half the fees usually allowed by law for scire facias; and that no attorney's fee shall be taxed, to be inserted on any such seire facias.

VIII. And be it further enacted. That whenever a indemen shall be obtained on a scire facias as aforestid, against an infant heir, or devisee, if such infinit has a regular and general guardian, it shall be the duty of such guardian, of the interest of the esate of the infant shall require it, to obtain an order of sale, and to sell so much of the infant's estate as shall be sufficient to dis- And in another clause, where it is said, ... no state shall lay the reason of the solitary one in our own. charge such judgment; and the court shall order proceedings a any imposts or duties, &c." the terms imposts and duties are The example alluded to, is the prohibition of gainst said infant or his guardia, upon such judgment, to be synonomous. Pleobasms, tautologies, and the promis- a tax on exports, which resulted from the stayed for eighteen months, in order to enable the guardian to cuous use of terms and phrases, differing in their shades of apparent impossibility of raising, in that collect the proceeds of such sales; and if the infant has no such meaning, always to be expounded with reference to the con- mode, a revenue from thestates, proportioned reneral guardian, the court shall order all proceedings upon said judgment as aforesaid to be stand until such guardian shall be appointed, and for eighteen months thereafter, or until a year shall have elapsed after such infant attaining full age. 1X. And be it further enacted, That the commencement of suit against, or the service of a writ on an administrator or exeentor shall not create any hen on the goods of the deceased; but that the executor or administrator shall be at liberty to sell general power to regulate trade might incluse a power to which, being invisible and intangible, would the goods of his restater or intestate in the same manner as if such writ had not been served on him, or such suit commenced. X And be it further enacted. That this act shall be in force from and after the first day of June next.

manalties which are given to the Superior Courts by the art enti- by and from the lavy of such execution, and not from the teste known to have been the protection and

by requiring the production of papers in certain cases of panel in the production of papers in certain cases of panel in the production of papers in certain cases of panel in the production of papers in certain cases of panel in the production of papers in certain cases of panel in the production of papers in certain cases of panel in the production of papers in certain cases of panel in the this act shall be in force from and after the first day of July.

LETTERS OF MR. MADISON,

publish, is briefly as follows:

These letters were not originally written for the press, turing members of the could racy. Hear but are now authorised to be published, on the earnest rep- the Longinge held in the convention of Masvpiration of the time aforesaul, when the same may be tried ac- resentations of some of the friends of Mr. Madison, to whom sar busetts, the publication appeared to be of great interest, and of deep importance to the nation.

> In the present state of our country, these papers cannot tures are another great subject which has but be highly acceptable to the public. The opinions of the received no encouragement by national duties. distinguished author, one of the brackers of the constitution, if our foreign manufactures, as they never can be not the father of it, cannot had carry with them ereat weight. They are of the greater authority, from his howing been appealed to by those who sustain the transcripte ine to these whethe munifactures, to preserve our own commerce, be avows and defends. He stands, in this respect, as the toraise the value of our own lands, we must achiter between contending parties; and at is hourd that his give rongress the powers in question." heid expositions will gu for to converse many who have heretofore screwsly questioned the power of congress we hear is, that the merchant and farmer which he in but dres,

> In the optimation of his refirement from the furmoil of the world, the judgment which he has deillarately reativ, if the constitution goes down." formed, and now accountilatively sustains, cannot be sus pected of being toff new cillow any political bias or casual ex- only one in New England whose debates ritement. His is the wordom of ago-the fruit of experi- have been preserved. out it cannot be ence, plucked from the tree of knowledge.

LEFTER L

ation on the constitutionality of the power in Congress to throughts most turned to the subject of manuimpose a taudi tor the encouragement of manefactures, and factures. A like inference may be coufiof my promise to sketch the grounds of the confident opin- dently applied to New Jersey, whose debates ion I and expressed, that it was among the powers vested in convention have not been preserved. In of sale is prayed for, that such notice has been given, the said in that body. I had not forgotten my promise, and had c- the populous land manufacturing state of ven begun the task of fulfithing it, but frequent interrup- Pennsylvania, a partial account only of the tions, from other causes, being followed by a bilious indis- debates having been published, nothing cerposition, I have not been able sooner to comply with your tain is known of what passed in her convenrequest. The subjoined view of the subject might have tion on this point. But ample evidence may been advantageously expanded; but I leave that improve- he found elsewhere that regulations of trade, ment to your own reflections and researches.

> er to lay and collect taxes, duties, imposts, and excises." and "the power to regulate trade "

That the former power, if not particularly expressed. would have been included in the latter as one of the objects in whose conventions the debates have been of a general power to regulate trade, is not necessarily im ministrator or an executor, with an admission or finding hat said pugned by its being so expressed. Examples of this sort cannot sometimes be easily avoided, and are to be seen be drawn. Nor is there the slightiest indielsewhere in the constitution. Thus the power - to define cation that either of the two states farthest and purish offences against the law of nations includes the south, whose debates in convention, if prepower, alterwards particularly expressed, .. to make rule served, have not been made public, viewed concerning captures, &c. from offending neutrals." So al the encouragement of manufacures, as not so a power "to coin money" would doubtles include that o within the general power over trade to be "regulating its value," had not the latter power been ex- transferred to the government of the Unipressly inserted. The term taxes, if standing above, would ted States.

certainly have included duties, imposts and excises. In 6. If congress have not the power, it is ananother chanse it is said. " no tax or duties shall be laid on nihilated for the nation; a policy without ex-

couragement ofher um nischers.

4. Such was understand to be a proper

72(4) (b) (b) (b)

5 Such a use of the power by congress, accords with the intention and expectation of the states, in transferring the power over trade from themselves to the government of The history of the two letters which we are about to the United States. This was emphatically the case in the easters, the more manufac-

> Ev Mr. Dawes, an advorate for the constitution, it was observed, ... Our manufacany authority in the old confederation." Again. .. if we wish to encourage our onen

By Mr. Widgery, an opponent: + All will flourish, and that the mechanic and tead-sman are to make their fortunes di-

The convention in Massachusetts was the doubted that the sentiment there expressed was common to the other states in that quarter, more especially in Connecticut and Montpelier, Sept. 18, 1928. Rho le Island, the most thickly peopled of all Dr xn Sin-Your late letter remine's me of our convert the states, and having of course, their for the encouragement of manufactures. The constitution vests in congress, expressly, " the pow- were considered as within the power to be

granted to the new congress, as well as within the scope of the national policy. Of the states south of Pennsylvania, the only two preserved are Virginia and North Carolina, and from these no adverse inferences can

exports, &c." Here the two terns are used as synonomous, ample in any other nation, and not within the consumers, whencesoever derived, was

ina, and it is hereby enacted by the authority of the same, it shall be lawful for the Public. Treasurer to receive the hase money on all entries of vacant land made in the year one sand eight handred and eventy six, until the thirty first of hary, in the year one thousand eight hundred and twenty ; and the Secretary of State is hereby authorised and requirb issue grants, and the same shall be as valid to all intents purposes as if the said purchase had been paid before the fif th day of December, one thousand eight hundred and twenty-

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

t for the limitation of writs of error for matters of flot, and hills of review. it chacted by the General Assembly of the State of North ling, and it is hereby enacted by the authority of the same, t no writ of error for any matter of fact shall be allowed, ght, or prosecuted, upon any judgment rendered in any of courts of this State, but within five years next after render ach judgisent, and not after; and that no writ of error for matter of fact, upon any judgment existing at this time be allowed, brought, or prosecuted, but within five years the passage of this act.

Be it further enacted; That no bill of review or a petition rehearing shall lie or be allowed upon a final decree, in any e Courts of Equity within this State, but within five years after such decree shall have been made, and not after; and It of review or petition for a re-hearing upon any final deexisting at this time, shall lie or be allowed, but within five after the passage of this act; saving nevertheless the rights ants, feme coverts and persons non compos mentis, so that avail themselves of the benefit of the writ of error or bill of w within three years after their disabilities shall have been ved.

An set to regulate the payment of Salaries to the Officers of State it enacted by the General Assembly of the Suie of Nort' na, and it is hereby enacted by the authority of the same, the Governor, the Judges of the Supreme Court, the Secre-State, the Public Treasurer, the Comptroller, the Govs Private Secretary, the Clerk of the Treasury Department, fate Librarian, and Keeper of the Public Buildings, shall titled in receive their Salaries quarterly; that is, on the first of April, first day of July, the first day of October, and est day of January, in each and every year; and the Public urer is hereby authorised to pay the said Officers, on warrem the Governor, at the different times as before stated.

to extend the provisions of an act, passed in the year one thousand eight red null twenty-two, entitled "an act granting further time to perfect ti-

it enacted by the General Assembly of the State of North ina, and it is hereby enacted by the mithority of the same, the provisions of the above recited act be extended to the day of January one thousand eight hundred and thirty one; aw, usage, or custom to the contrary notwithstanding:

to amend an act, passed in the year of our Lord one thousand eight ed and twenty-one, entitled "an act to promote the administration o e in this State by requiring the production of papers in certain cases. it enacted by the General Assembly of the State of North ina, and it is hereby enacted by the authority of the same, the several Courts of Pleas and Quarter Sessions in North na shall have the same power to require parties to produce or writings in their possession or power, which contain exi pertinent to the issue in the trial of any and all actions said Courts, and upon the same notice and under the same

An act to amend an act, passed in the year one thousand eight hundred and twenty, chapter one thousand and lorty-five, entitled "an act to extend the jurisdiction of justices of the peace."

Be it enacted by the General Assembly of the State of North-Carolina, and it is hereby enacted by the authority of the same Faat from and after the passage of this act, justices of the peace shall have jurisdiction of all sums, due on bonds, notes and inquidated accounts, where the principal shall not exceed one hundred dollars, although the principal and interest may together exceed that sum.

the several conducts of this State in granting licenses to retail spiritous he 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 sawful for the justices of the Courts of Pleas and Quarter Sessions of the several counties of this State to grant a license to retail spiritous liquors by the small measure to any but free white persons, Court by at least two witnesses of known respectability, to whom the character of the applicant has been known for at least one vear.

An act empowering the County Courts to regulate the fees of jailors. WHEREAS doubts are entertained whether, under the existing law, the County Courts have power to regulate the fees of jailors

except to increase the same; and whereas in many of the coun ties the present fees are higher than times will justify; therefore Be it enacted by the General Assembly of the State of North Ca

roling, and it is hereby enacted by the authority of the same, That the Court of illeas and Quarter Sessions of the several counties be; and they are hereby empowered, a majority of the acting justices being present, to regulate the fees of the jailors of their respective counties, by lessening or increasing the same, as they shall deem necessary: Provided, that the same do not exceed erations :-the sum or sums heretofore allowed by law as a daily allowance. II. And be it further enacted, That whenever any County Court shall lessen or increase the Jailor's fees of said county, they shall cause the same to be recorded, which sum shall not be altered within one year thereafter; any law to the contrary notwithstanding.

An act in relation to Justices' Executions.

Re 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 passing of this act, where any execution

text and under the control of the general character and to the ability to pay it-the ability of some manifest scope of the instrument in which they are found.) being derived, in a great measure, not from are to be ascribed, sometimes to the purpose of greater their exports, but from their fisheries, from, caution, sometimes to the imperfections of language, and their freights, and from commerce at large, sometimes to the imperfection of man himself. In this view in some of its branches altogether external of the subject, it was quite natural, however certain the to the United States; the profits from all impose duties on it, not to omit in a clause en merating the escape a tax, on exports. A tax on imports? several modes of revenue, authorised by the constitution. on the other hand, being a tax on consump-In few cases could the ex majori cautela" occur with tion, which is in proportion to the ability of more claim to respect.

Nor can it be inferred, that a power to regulate trade does free from that inequality. not involve a power to tax it, from the distinction made in the original controversey with Great Brittain, between mate impost, and the encouragement of doa power to regulate trade with the colonies, and a power mestic articles be not within the power of to tax them. A power to regulate trade be ween diff regulating trade, it would follow that no ferent parts of the empire was confessedly necessarry- monopolizing or unequal regulations of forand was admitted to lie, as far as that was the cas , in the eign nations, could be counteracted; that British parliament; the taxing part being at the same time meither the staple articles of subsistence, nor denied to the parliament, and asserted to be necessarily in the essential implements for public safety. bereat in the colonial legislatures, as sufficient, and the un could, under any circumstances, be insured An act to restrain the justices of the Courts of Pleas and Quarter Sessions of ly safe depositories of the taxing power. So difficult was it. or fostered at home, by regulations of comnevertheless, to maintain the distinction in practice, that merce, the usual and most convenient mode the ingredient of revenue was occasionally overlooked or of providing for both; and that the American i-regarded in the British regulations, as in the duty on sugar mavigation, though the source of naval deand molasses imported into the colonies. And it was ortunate fence, of a cheapening competiton in carrying that the attempt at an internal & direct tax, in the case of the our valuable and bulky articles to market, Stamp Act, produced a radical examination of the subject and of an independent carriage of them duwhose good moral character shall be satisfactorily shown to the before a regulation of trade with a view to revenue, had ring foreign wars, when a foreign navigagrown into an established authority. One thing at least is tion might be withdrawn, must be at once acertain, that the main and admitted object of the parliamenta- bandoned, or speedily destroyed; it being ry regulations of trade with the colonies, was the encour- evident that a tonnage duty in foreign ports ment of manufactures in Great Britain.

But the present question is unconnected with the former re- such a duty in our ports, in favor of foreign lations between Great Britain and her colonies, which vessels, must have the inevitable effect of were of a peculiar, a complicated, and in several respects, banishing ours from the ocean. d an undefined character. It is a simple question under the constitution of the United States, whether .. the power tion, and the cultivation and fabrication of to regulate trade with foreign nations," as a distinct and all articles requisite for the public safety, substantive item in the enumerated powers, embraces the as incident to the war power, would be a more object of encouraging by duties, restrictions and prohibi- latitudinary construction of the text of the contions, the manufactures and products of the country? And stitution, than to cousider it as embraced by the affirmative must be inferred from the following consid-

be sought in the general use of it; in other words in the objects to which the power was generally understood to be applicable, when the phrase was inserted in the constitution.

2. The power has been understood and used by all commercial and manufacturing nations, as embracing the ob is necessary and proper." by considering ject of encouraging manufactures. It is believed that not the power as an incidental power. a single exception can be named.

shall be issued by a justice of the peace, and levied on personal tain, whose commercial vocabulary is the parent of ours, trade, is proved by the use made of the power property, such property shall be, and the same is hereby bound A primary object of her commercial regulations is well, for that object, in the first session of the First

7. If revenue be the sole object of a legitiagainst our ressels, and an exemption from

The same power to protect our naviga the specified power to regulate trade; a power which has been exercised by all nations 1. The meaning of the phrase to regulate trade,' must for those purposes, and which effects those purposes with less of interference with the authority and conveniency of the states than might result from internal and direct modes of encouraging the articles, any of which modes would be authorised, as far as deemed

8. That the encouragement of manufac-3. This has been particularly the case with Great Bri- tures was an object of the power to regulate