

LAWS OF NORTH CAROLINA, Passed in 1828-29.

(BY AUTHORITY)

An act to change the time of holding the Supreme Court 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 after the close of the present term of the Supreme Court, said court shall be held on the second Monday in June, and on the last Monday in December annually.

An act amendatory of the law respecting Dower. 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 a man shall die seized of an equity of redemption, or other equitable or trust estate in fee, his wife shall be entitled to dower therein, subject to valid encumbrances, in the same manner as she is now entitled to be endowed of a real estate of inheritance.

An act to amend the ninth section of an act, passed in the year one thousand eight hundred and sixteen, chapter six hundred and ninety-three, entitled an act for the more convenient administration of justice within this State.

Whereas, by the ninth section of the above recited act, the County Courts are not obliged to summon jurors to attend the said courts oftener than twice in each and every year; and whereas three justices may rescind the order of a majority who may be disposed to dispense with the summoning of jurors as allowed by the above recited act; therefore,

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, a majority of the justices of said County Courts shall be requisite to make an order for dispensing with jurors as allowed by the above recited act, and that no order on the subject made by less than a majority of said justices in said county, shall be deemed to be of any force or effect.

II. And be it further enacted, That whenever a majority of the justices in any county shall concur in ordering that jurors be dispensed with in two of their said courts, then and in that case it shall not be in the power of a less number of said justices to rescind such order properly made by a majority as aforesaid.

III. And be it further enacted, That all laws and clauses flowing from within the meaning and purview of this act, be, and the same are hereby repealed.

An act to provide for the representation of the stock of this State in meetings of the Stockholders of the Banks 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 three commissioners shall be appointed by the Governor, Secretary of State and Comptroller, who shall attend any meeting of the Stockholders of the several Banks of this State, which may hereafter be held, and represent and vote for the State on all questions that may come before said meetings.

II. And be it further enacted, That neither of said commissioners shall be a Stockholder in any Bank of this State or of the United States.

III. Be it further enacted, That it shall be the duty of said commissioners to claim and exercise, on behalf of the State, the right to vote for the shares purchased by the State under the act of Assembly authorizing such purchase of stock, in like manner as if the State had originally owned all of said stock; and said commissioners are hereby instructed not to give their consent to any proposition or regulation for the too rapid reduction of the debts to said Banks, or to the too sudden winding up the affairs thereof.

IV. And be it further enacted, That the commissioners appointed by virtue of this act, shall, as a compensation for their services, receive three dollars per day whilst attending the meeting of Stockholders, and three dollars for every thirty miles travelling to and from the same.

V. Be it further enacted, That said commissioners be directed to open a communication with the Presidents and Directors of the several Banks in this State, to ascertain whether said Banks would agree to a consolidation of their several corporations, in the establishment of a new Bank, and if so, upon what terms; and that they make report to the next General Assembly.

An act to alter and amend an act, passed in the year one thousand eight hundred and twenty-seven, chapter one hundred and thirty-five, entitled an act concerning the Public Treasury.

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 monthly settlements of the accounts of the Treasury Department, as directed to be made by the said officers during the sitting of the Legislature in each and every year; and that the said officers bring up their accounts as settled monthly, bearing the date of the settlements; and that this act be in force from and after its passage.

An act to amend an act, passed in the year one thousand eight hundred, entitled an act concerning wrecks.

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 several commissioners of wrecks in this State shall, and they are hereby required to renew their several bonds for the faithful discharge of their duties in office, with good and sufficient securities, at the several and respective Courts wherein they have their appointments, which shall be after the first day of June next ensuing, and in each and every year thereafter, under the same rules, regulations and restrictions as are provided by the act of one thousand eight hundred, entitled an act concerning wrecks; Provided, that nothing herein contained shall be construed to extend to any of the said commissioners of wrecks, who shall have given bonds as aforesaid within twelve months preceding the first day of June next; but then and in that case, it shall be the duty of the said commissioners of wrecks to renew their respective bonds, at the expiration of one year from the time of their appointment, or the last renewal of their bonds, (as the case may be), and once in each and every year thereafter.

II. And be it further enacted, That from and after the passage of this act, it shall be the duty of each and every commissioner of wrecks in this State to reside within their several districts, unless separated by navigable waters, and then not to exceed three miles distance.

III. Be it further enacted, That whenever hereafter any property shall be found on board any vessel at sea, which has been wrecked or abandoned by the crew, which property is afterwards brought into this State, it shall be the duty of the person in whose possession the same may be, to deliver it to the wreck master of the district into which said property may be brought, to be disposed of as stranded property is now directed to be; and any person who shall hereafter embezzle or conceal any such property shall be liable to indictment, and, upon conviction, shall be whipped at the discretion of the Court, not exceeding thirty lashes.

An act concerning the lands formerly occupied by the Tuscarora tribe of Indians, lying in Bertie county, on the north side of Roanoke river.

Whereas the Tuscarora Indians have for more than a century been the firm and undeviating friends of the white people of this country, inasmuch that the State of North Carolina is disposed not only to render to them full and complete justice, but also to exercise towards them that spirit of generosity which their conduct has merited; Therefore,

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 R. Smith, of Halifax; Simmons J. Baker, of Martins; and William Brittain, of Bertie, be, and they are hereby appointed commissioners for the purpose of advertising and selling, in

manner hereinafter directed, the above named tract of land, lying in Bertie county, bounded and bounded as follows, to wit: Beginning at the mouth of Quincey Swamp running up the swamp 430 poles to a scrubby oak, near the head of said swamp by a great spring; thence north 16° east 850 poles, to a persimmon tree, on Raquis Swamp; thence along the swamp and across main course north 37° west 2640 poles, to a hickory on the east side of Falling Run or Deep Creek, and down the various courses of said run to Roanoke River; then down the river to the first station.

II. And be it further enacted, That the title so to be sold by said commissioners shall be understood to extend only to the reversion of the State in said lands after the expiration of the leases from the Indians under which they are now held; and that immediately after the ratification of this act, and notice thereof to the commissioners, it shall be their duty, to proceed forthwith to advertise in the newspaper most convenient to the premises, and also at five of the most public places in the counties of Bertie, Halifax and Martin, including the court houses in said counties, that a sale of said land, according to the provisions of this act, will take place on Tuesday of the ensuing March term of the Superior Court of Bertie county, that is, on the 17th day of March next; and it shall be the duty of the said commissioners to attend at the aforesaid time and place, and offer, in the court house yard, at public sale, to the highest bidder, the said lands, according to advertisement, subject however to the leases as aforesaid; and the commissioners shall have power to continue or postpone the sale from day to day until the end of that week; and should they, by unavoidable accident or otherwise, be prevented from selling all or any part of said lands during the said week, it shall be their duty to advertise in like manner, for two months next preceding the following September term of Bertie Court, and to sell at said term, as is heretofore directed, at March term; and said commissioners shall be empowered to put up said lands in such parcels as they may deem most advantageous for selling; and that they shall give the purchasers a credit of twelve months on one half the purchase money, and a credit of twenty four months on the other half; Provided always, that the purchasers shall deliver to the commissioners bonds, with good and sufficient security for the same, payable to the Governor of the State.

III. And be it further enacted, That should the commissioners, upon offering said lands as aforesaid, perceive that they were likely to be sacrificed or to sell for an amount greatly below their real value, it shall be their duty forthwith to discontinue the sale; and that it shall be the duty of the commissioners, after making sale, or if no sale be made, immediately after September next, to make report to the Public Treasurer of the State of all such proceedings as they may have had under this act, and also to hand over to him all such bonds as they may have taken from purchasers; and it shall be the duty of the Secretary of State, upon a certificate from the Treasurer of payment of the purchase money and a certificate from the commissioners of the boundaries of the land so purchased, to grant a title of release from the State of North Carolina to such persons as may be reported purchasers by said commissioners under this act of Assembly.

IV. And be it further enacted, That it shall be the duty of the Public Treasurer to collect the money on said bonds when they shall become due, and hold the same subject to the order of the Tuscarora tribe of Indians; and whenever such order shall be presented properly and duly authenticated by said tribe or nation of Indians, it shall be his duty to pay the same over accordingly; Provided always, that upon paying over such moneys, the Public Treasurer shall take from said Indians, or their properly authorized agent or agents, a full and complete release of all such claim or pretence of title, as they now make, or ever may have to the aforesaid tract of land.

V. And be it further enacted, That the commissioners shall be allowed each the sum of three dollars for every day they shall necessarily be employed in examining said lands, or in attending to the sale of the same, to be paid out of the funds arising from the sales.

VI. Be it further enacted, That if it should appear at any time hereafter that the said Indians have parted with their claims, or contracted for the same, so that in fact the benefit of the sale would go to some stranger than the benefit of the sale shall, agreeable to the provisions of this act, enure to the State.

An act to amend an act, passed in the year one thousand eight hundred and twenty-five, entitled an act to amend the several acts of Assembly, passed to extend and improve the State road from Wilkesborough to the foot of Laurel Hill, by the way of Holman's Ford, in the county of Wilkes, and for other purposes; also to amend an act, passed in the year one thousand eight hundred and twenty-six, entitled an act to amend the several acts of the General Assembly now in force relative to the public roads in the county of Wilkes.

Whereas some of the commissioners appointed by the above recited acts are dead, and others refuse to act; for remedy whereof

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 Colonel William Horton and Big John Martin, be and they are hereby appointed commissioners, in addition to those already appointed by the above recited acts, with all the powers and authorities of those heretofore appointed by the several acts heretofore passed for regulating the said roads.

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

III. Be it further enacted, That nothing herein shall be construed to extend to affect in any manner any suit or suits which may have been already commenced under the before recited acts.

An act concerning certain lands purchased at the sales of the commissioners in Haywood county.

Whereas suits have been brought, and are now pending in the Federal Court, against sundry persons who were purchasers of lands in Haywood county at the sales of the commissioners appointed to conduct said sales; Therefore,

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 authorized and he shall be his duty to employ suitable counsel to appear in behalf of such purchasers or purchasers as now are or hereafter may be sued for any lands purchased at the sales of the commissioners aforesaid, and defend the title conveyed by the State.

An act to alter and amend the act of one thousand eight hundred and nineteen, entitled an act prescribing the mode of surveying and selling the lands lately acquired by treaty from the Cherokee Indians.

Whereas by the said act it is directed, that upon proof of the payment of the purchase money made to the Secretary of State by the Treasurer's receipts, it is made the duty of the Secretary of State to issue a grant to the purchaser; and in many instances, from the lapse of time between the first and last payment, the receipts that are given by the Treasurer have been lost or mislaid; for remedy whereof,

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 of the purchasers of the Cherokee lands shall have lost or mislaid the receipt or receipts that shall have been given by the Treasurer, if it shall appear from the books of the Treasury Office that the whole amount due from any purchaser has been paid, the Treasurer shall make out a certificate of such payment and upon the same being filed with the Secretary of State, together with the other certificates, as prescribed by the said act, the Secretary of State shall issue a grant to such purchaser, in the same manner as directed by said act.

An act to determine how surveys of land shall be made, to enable surveyors to obtain grants from the State, and to confirm grants heretofore made to surveyors and deputy surveyors in certain tracts.

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 a county surveyor shall wish to have lands

surveyed in the county, where he acts as principal surveyor, for the purpose of obtaining a grant to the use of himself from the State for the same, the County Court of said county shall appoint some person to make the survey, and the entry taker of lands shall direct his warrant of survey to the person by name authorized by this act to survey; and all surveys, certificates and plats of the same, done in pursuance of this act, shall be made under the same regulations as prescribe the mode of the county surveyor in similar cases; and no other survey than is hereby authorized shall be necessary to enable county surveyors to obtain a grant of land from the State.

II. And be it further enacted, That grants of land heretofore made by the State to surveyors and deputy surveyors upon surveys, plats and certificates of the same made by them for themselves respectively, without other allegiance and without fraud and without partiality, the certificates in all cases being signed by the principal surveyor, are hereby confirmed and declared to be good and valid; any law to the contrary notwithstanding.

An act for the taking of depositions.

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 passing of this act, where either party to a suit, in any court of record, except in criminal cases, shall require the testimony of the Governor, the Secretary of State, the Treasurer, the Comptroller, or any Judge of the Supreme or Superior Courts, or of the Attorney General, or any of the Solicitors of this State, in the trial of said suit, it shall and may be lawful for the court to authorize the taking of such testimony by depositions, to be read in evidence in said suit.

II. And be it further enacted, That where depositions are to be taken in any suit at law, it shall be lawful for the court to direct the clerk to pass upon such deposition, under the same rules, regulations and restrictions as are observed by clerks and masters in chancery, in passing upon depositions to be read in courts of chancery.

An act to regulate costs in petitions for dower and partition.

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, in all petitions for dower and partition, hereafter brought, the Court before whom the same may be tried may at their discretion decree by whom, and in what manner the cost accrued thereon shall be paid.

III. And be it further enacted, That it shall not be lawful for the clerk of any County Court to tax in the bill of costs on any petition for dower a larger attorney's fee than four dollars.

An act for the inspection of Steam Mill Timber.

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 all steam mill timber, showing heart one half of the length, shall be merchantable, and it shall be inspected by the wharf inspectors; and that no inspector having a stated salary from the proprietors of the steam mills shall inspect any timber brought to said steam mills, unless by the consent of the seller, under a penalty of fifty dollars, one half to the use of the informer, and the other half to the use of the county.

An act to amend an act, passed in the year one thousand eight hundred and twenty-three, chapter one hundred and thirty-five, entitled an act to amend an act passed in the year one thousand eight hundred and sixteen, to create a fund for Internal Improvement, and to establish a board for the government thereof.

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 second section of the above recited act, as authorizes the Board of Internal Improvement to employ a civil engineer, be, and the same is hereby repealed.

An act concerning the action of replevin.

Whereas slaves are frequently seduced from the possession of their owners, under a pretence of right by persons who are insolvent, and intend to convey the same beyond the jurisdiction of the Courts of this State, whereby great injury is produced to the bona fide holder of slaves; and whereas the writ of sequestration issuing from Courts of Equity in such cases, is a tedious, expensive, and frequently ineffectual remedy;

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 from and after the passage of this act, writs of replevin for slaves shall be held and deemed to be sustainable, against persons in possession of such slaves in all cases, where actions of detinue or trover are now proper; Provided, that the plaintiff, his or her agent or attorney, in such action of replevin, shall make oath before the clerk issuing such writ, that he or she has been in the lawful possession of such slave within two years next preceding the issuing of said writ, and that he or she has been deprived of such possession, without his or her permission or consent.

II. Be it further enacted, That whenever any person shall hereafter apply to any Clerk of any Court in this State to obtain a writ of replevin for any slave, it shall be the duty of such Clerk before he issues the same, to take an affidavit from the plaintiff in such writ, or from his or her agent or attorney of the value of such slave; and also to take a bond with approved security, in double the alleged value of such slave, payable to the defendant, and conditioned to perform the final judgment on such writ.

III. Be it further enacted, That in issuing writs of replevin, the clerk shall, as nearly as may be convenient, describe every slave therein demanded, and shall annex to such description a value, which shall be equal to double the sworn value of such slave.

IV. Be it further enacted, That the Sheriff, to whose hands any writ of replevin for any slave or slaves shall hereafter come shall forthwith take into his custody all such slaves, and deliver them to the plaintiff in such writ, or his or her agent or attorney; Provided always, that if the defendant in such writ shall execute and deliver to the Sheriff a bond with approved security, in double the amount of the sworn value of the slave or slaves described in said writ, payable to the plaintiff therein, with a condition to perform the final judgment, which shall be rendered thereon, it shall not be lawful for said sheriff to take such slaves from his or her possession; but he shall return the bond so given, with the writ, to the Court from which it issued.

V. Be it further enacted, That if upon the trial of such action, the plaintiff or plaintiffs shall recover, final judgment shall be rendered against the defendant and his security, in case he shall have given a bond as required by the fourth section of this act, for such value as shall be assessed by the jury upon such slave or slaves, with a condition to be discharged by the surrender of such slave or slaves demanded by the writ, and the payment of such damages, as may have been assessed by the jury, for the taking and detention of such slaves, which damages for the taking and detention of such slaves, shall be assessed by the jury, at double the real value.

VI. Be it further enacted, That in case the slave demanded in any writ of replevin, shall have been taken by the sheriff and delivered to the plaintiff in such writ, agreeably to the fourth section of this act, then if the plaintiff recovers in such action, he shall recover judgment for his costs, and double the real damage sustained by the taking and detention of such slave or slaves; but if the plaintiff in such action shall fail to recover, and a verdict be rendered, establishing the property to be in the defendant, it shall be the duty of the court rendering judgment thereon, forthwith to direct an issue to be tried, in which the damages the defendant has sustained from being deprived of his property shall be ascertained, and judgment shall be rendered against the plaintiff and his securities for the amount of the bond given by them, agreeably to the second section of this act, with a condition to be discharged upon payment of the amount of damages thus assessed, and all costs, for which the defendant is entitled to judgment.

LETTERS OF MR. MADISON.

LETTER II.

Monday, Oct. 30, 1828.

Dear Sir, - In my letter to you of the 15th, I stated, briefly, the grounds on which I rested my opinion, that a power to impose duties and restrictions on imports, with a view to encourage domestic productions, was constitutionally lodged in Congress. In the observations then made was involved the opinion, also, that the power was properly there lodged. As this last opinion necessarily implies that there are cases in which the power may be usefully exercised by Congress, the only body within our political system capable of exercising it with effect, you may think it incumbent on me to point out cases of that description.

I will premise that I concur in the opinion, that as a general rule, individuals ought to be deemed the best judges of the best application of their industry and resources.

I am ready to admit, also, that there is no country in which the application may with more safety, be left to the intelligence and enterprise of individuals, than the United States.

Finally, I shall not deny, that, in all doubtful cases, it becomes every Government to lean rather to a confidence in the judgment of individuals, than to interpositions controlling the free exercise of it.

With all these concessions, I think it can be satisfactorily shown, that there are exceptions to the general rule, now expressed by the phrase "Let us alone," forming cases which call for interpositions of the competent authority, and which are not inconsistent with the generality of the rule.

1. The Theory of "Let us alone" supposes that all nations concur in a perfect freedom of commercial intercourse. - Were this the case, they would in a commercial view, be but the nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former as to the latter. But this golden age of free trade has not yet arrived; nor is there a single nation that has set the example. No nation can, indeed, safely do so, until a reciprocity at least, be ensured to it. Take for proof, the familiar case of the navigation employed in a foreign commerce. If a nation, adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own vessels are subject to a duty in foreign ports, the ruinous effect is so obvious, that the warmest advocate for the theory in question must shrink from a universal application of it.

A nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated by other nations, into a subserviency to a foreign interest. In the interval between the peace of 1783 and the establishment of the United States, the want of a general authority to regulate trade is known to have had this consequence. - And have not the pretensions and policy lately exhibited by Great Britain given warning of a like result from a renunciation of all countervailing regulations on the part of the United States? Were she permitted, by conferring on certain portions of her domain the name of Colonies, to open from these a trade for herself to foreign countries, and to exclude at the same time, a reciprocal trade to such Colonies by foreign countries, the use to be made of the monopoly need not be traced. Its character will be placed in a just relief by supposing that one of the Colonial Islands, instead of its present distance, happened to be in that vicinity, should receive the name and be regarded in the light of a Colony, with the peculiar privileges claimed for Colonies. Is it not manifest, that in this case, the favored Island might be made the sole medium of the commercial intercourse with foreign nations, and the parent country thence enjoy every essential advantage, as to the terms of it, which would flow from an unreciprocal trade from her other ports, with other nations?

Fortunately, the British claims, however speciously colored or ably managed, were repelled at the commencement of our commercial career as an independent People, and at successive epochs under the existing Constitution, both in legislative discussions and in diplomatic negotiations. These claims were repelled on the solid ground, that the Colonial trade, as a right monopoly, was limited to the intercourse between the parent country and its colonies; and between the one colony and another, the whole being, strictly, in the nature of a coasting trade from one to another port of the same nation; a trade with which no other nation has a right to interfere. It follows, of necessity, that the parent country, whenever it opens a colonial port for a direct trade to a foreign country, departs itself, from the principle of colonial monopoly, and unfittes the foreign country to the same reciprocity, in every respect, as in its intercourse with any other ports of the nation.