

Laws of N. Carolina, passed in 1833-4.

(BY AUTHORITY.)

An act directing the sale of the lands remaining unsold, acquired by treaty from the Cherokee Indians.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Governor be, and he is hereby authorized to direct the sale of so much of the lands lately acquired by treaty from the Cherokee Indians as have been surveyed and remain unsold, at such time and place as he may deem proper, under the direction of a commissioner to be by him appointed for that purpose, after having advertised the same at least three months in the public newspapers of this city, the Western Carolinian of Salisbury, and such other papers as he may think proper; which sale shall be kept open one week, and no longer.

II. Be it further enacted, That if, during the sale, any section of land noticed to be of the first quality, shall not command in the market one dollar and fifty cents per acre, and in like manner, lands of the second quality not commanding seventy-five cents per acre, and lands of a third quality not commanding twenty-five cents per acre, the commissioner shall postpone the sale of such lands; and when the commissioner discovers that any section of land is likely to bring less than its value, either for want of competition or from combination among the bidders, he shall bid off the same for the State.

III. Be it further enacted, That the provisions of the second section of an act, passed in the year one thousand eight hundred and twenty-one, entitled "an act concerning the lands lately acquired by treaty from the Cherokee Indians;" and the provisions of the seventh, twelfth, thirteenth, sixteenth and eighteenth sections of an act, passed in the year 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," be, and the same are hereby continued in force.

IV. Be it further enacted, That the Governor be, and he is hereby authorized to cause twelve additional lots to be surveyed in the town of Franklin, out of the four hundred acres reserved to the State, which may, together with those already surveyed, be exposed to sale under like rules and regulations as is prescribed in the before recited acts: Provide always, that the said commissioner be authorized, if in his opinion the interest of the State require it, to purchase in the same for the State.

V. Be it further enacted, That nothing in this act shall be so construed as to authorize the sale of any lands, the title of the State to which may be regarded as doubtful.

VI. Be it further enacted, That in case the said lands should be sold, that nothing in this act shall be so construed as to prevent persons who may have crops growing on the said lands, from gathering the same.

An act to amend the nineteenth section of an act, passed in one thousand seven hundred and eighty three, entitled "an act for opening the land office for the redemption of specie and other certificates, and discharging the arrears due to the army."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That whenever any person shall suspend the issuing of a grant to another, the Secretary shall not issue a grant for the land in dispute to the person at whose instance such suspension was obtained, or to any other person, until a decision of the case is made according to the act aforesaid; the evidence of such decision shall be the certificate of the clerk of the court in which such trial shall be had.

An act to enforce the penalty incurred by entry-takers failing to make annual returns of entries made in their respective offices as required by law.

Whereas, by an act of the General Assembly of this State, passed in eighteen hundred and twenty-one, chapter thirty, it is made the duty of the entry-takers of the several counties in this State to make annual returns of the entries made with them to the office of Secretary of State, under a penalty of two hundred dollars; but it is not made the duty of any person to enforce said penalty: 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 it shall hereafter be the duty of the Secretary of State, and he is hereby required to furnish the Attorney General, at every fall term of the Superior Court of Wake county, with a certificate of failure in every case where any entry-taker has failed, or shall hereafter fail to make return agreeable to law; and it shall be the duty of the Attorney General to move for judgment against such entry-taker and his securities; and it shall be lawful for the court, in every such case, to cause judgment to be entered accordingly.

II. And be it further enacted, That it shall hereafter be the duty of the entry-takers to make their returns to the Secretary on or before the first day of December in each and every year.

III. And be it further enacted, That it shall be the duty of the entry-takers who have neglected to make the returns required by law for twelve months past, to make returns of all entries made with them since their last return up to the first day of October last, on or before the first day of October next, under the penalty of two hundred dollars, to be recovered at the ensuing spring term of Wake Superior Court, on the certificate of the Secretary of State that such return has not been made.

An act to amend an act, passed at the last session, entitled an act to repeal an act, passed in the year one thousand eight hundred and thirty, entitled "an act to repeal part of the second section of an act, passed in the year one thousand eight hundred and six, entitled an act to revise the militia laws of this State."

Whereas, by the provisions of an act of the General Assembly, passed at the last session thereof, the oath or affirmation of those who from religious scruples are averse to bearing arms is required to be taken before the company court martial; and it being found that many good citizens have on that account declined taking the benefit intended by the law:

Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the oath or affirmation, required by the before recited act to be taken before the company court martial, may hereafter be taken before any justice of the peace; and the certificate of said justice shall be received and have the same effect as the certificate of the company court martial in the before recited act; any law to the contrary notwithstanding.

An act concerning official and other public bonds.

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 fourth day of July, one thousand eight hundred and thirty four, all official and other public bonds, which are now required by law to be taken and made payable to the Governor for the time being and his successors in office, or to the chairman of the county court and his successors in office, or to the justices of the county, shall be taken and made payable to the State of North Carolina, with the like securities and conditions, and under the same rules, regulations and restrictions as are now required by law; and that any person or persons or body politic injured may and shall, at his, her, their or its costs and charges, commence and prosecute a suit on said bonds in the name of the said State against the obligor or obligors in said bonds and their securities, and against the heirs, executors and administrators of each and every one of them and of each and every one of their securities, and shall and may recover all damages which he, she, they or it may have sustained by reason of the breach of the condition of said bonds or any of them.

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

An act to prevent the conveying of slaves out of this State and to prevent injuries being done to live stock upon rail roads.

Whereas from attempts made there is reason to apprehend facilities may be given to slaves, by rail road conveyance, to leave the State, and their owners be thereby deprived of their services for a time or altogether: 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 from and after the passage of this act, if any agent or manager of any rail road engine or car, or any other person, shall convey or conceal on or about any rail road engine or car any negro or mulatto slave or slaves, the property of any citizen or citizens of this State, without the consent, in writing, of the owner or manager of such slave or slaves previously obtained; or shall take and receive on any such rail road engine or car any such slave or slaves, or permit or suffer the same to be done, with the intent and for the purpose of carrying such slave or slaves out of this State; or shall wickedly and willingly conceal or permit to be concealed in or about any rail road engine or car, any negro or mulatto slave or slaves, who shall or may hereafter abscond from his or their master or mistress, being citizens of this State, with the intent and for the purpose of enabling such slave or slaves to effect his, her or their escape out of this State, every such agent or manager or other person or persons so taking, receiving or concealing such slave or slaves, or causing or permitting the same to be done, with the intent as aforesaid, shall be deemed to be guilty of felony, and shall suffer death without benefit of clergy.

II. Be it further enacted, That if any negro or mulatto slave or slaves shall be found concealed on or about any rail road engine or car in this State, without the consent or knowledge of the master or mistress or other person having the management of such slave or slaves, after the engine or car shall have left any depot or point, the agent or manager of such rail road engine or car shall forfeit and pay to the owner or owners of such slaves the sum of five hundred dollars, to be recovered by action of debt in any of the courts of this State having jurisdiction of the same.

And whereas the killing of cattle and other live stock by rail road engines and cars, from the negligence of the managers thereof, has become a grievance to the citizens of this State: For remedy of the same,

III. Be it further enacted, That hereafter when any cattle or other live stock shall be killed or otherwise injured by the engines or cars running upon any rail road in this State, it shall and may be lawful for the owner or owners of such live stock to sue out a warrant from any justice of the peace, and have the same served on the president or any director, stockholder or acting agent for such rail road company, and upon return thereof it shall be the duty of such justice to cause two freeholders to be summoned, who, after being duly sworn, which oath said justice may administer, they shall hear evidence, and upon proof of such injury so complained of they shall assess the amount of damages which the owner or owners of such live stock have sustained, and the justice shall enter up judgment for the same against the said rail road company and issue execution thereon as in other cases: Provided, however, That such judgment shall be subject to the right of appeal by either party.

An act more effectually to prohibit the trading with slaves.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That no person or persons shall hereafter buy of, traffick with or receive from any slave or slaves, any mutton, cloth, cotton or woollen yarn, wearing apparel, gold or silver bullion, under the same rules, regulations, restrictions, prohibitions and penalties as are contained in the act of one thousand eight hundred and twenty six, entitled an act to prohibit the trading with slaves except in the manner herein prescribed.

II. Be it further enacted, That the provisions of the before recited act shall be extended and made applicable to the articles mentioned in this act, in the same manner and to the same extent as if the said articles had been contained in the said recited act of one thousand eight hundred and twenty six.

An act to amend the law in relation to the crime of larceny.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That hereafter when any person shall be convicted of the crime of grand larceny, he, she or they shall be infamous and deprived of his, her or their free law, in the same manner as persons now are who are convicted of petit larceny.

CHAPTER VII.

An act to authorize the clerks of the courts of record of this State, and those holding the office of clerk and master in equity, to act as notaries public.

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 be lawful for each of the clerks of the courts of record in this state, and for the clerks and masters in equity, now in office, or who may hereafter be elected or appointed to hold these offices, to act as notaries public in their several counties, by virtue of their said office of clerk or clerk and master.

II. Be it further enacted, That they shall certify their acts as notaries public, whenever the same are to be used out of their county, under the seal of the court of which they may be clerk or clerk and master.

III. Be it further enacted, That their fees as notaries shall be the same as are now fixed by law for the service of a notary public; and for services where the law fixes no fee, they shall not demand a larger fee than twenty cents for every ninety words.

IV. Be it further enacted, That nothing in this act shall have the effect of preventing the appointment of notaries public, in the manner now provided for by law; and that all notaries so appointed, or hereafter to be so appointed, shall still possess the authority to act as such, according to the provisions of the law now authorizing their appointment.

An act to amend an act, passed in the year of our Lord one thousand seven hundred and eighty two, entitled "an act for giving an equity jurisdiction to the Superior Courts;" so far as relates to the liability of sheriffs as bail.

Whereas doubts have been entertained whether, by the third section of the above recited act, the sheriff or other officer is liable, as special bail, for failing or neglecting to take bond with two sufficient securities from the defendant in double the sum for which the defendant shall be held in arrest: 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 from and after the passage of this act, when any writ shall issue from any court of Equity in this State, whereby any sheriff or other officer shall be commanded to take the body of any person or persons, to answer to any suit in any of the said courts, such sheriff or other officer shall not only be liable as special bail for taking an insufficient bond, on exception taken and entered the same term to which such process shall be returnable, the sheriff or other officer having due notice thereof, but such sheriff or other officer shall also be liable as special bail for failing or neglecting to take from such person or persons, arrested by virtue of such writ, a bond with two sufficient securities in double the sum for which such person or persons shall be arrested; and proceedings shall be had against him, under the same rules, regulations and restrictions, as in such cases in actions at law; any law, usage or custom to the contrary notwithstanding.

An act to repeal in part an act laying duties on sales at auction of merchandise, passed in the year 1818.

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 auctioneers appointed by virtue of said act, shall not be required, in making their returns as specified in said act, to make out or return a detailed account of all articles or parcels by them sold; but it shall be deemed sufficient for auctioneers to return the gross amount of sales by them made for each particular person or company at any one time; the date of each sale, the names of the owner or owners of the merchandise so sold, and the amount of tax due thereon; which shall be authenticated agreeable to the provisions of said act.

II. Be it further enacted, That so much of the second section of said act, passed in the year 1818, as comes within the meaning and purview of this act, be, and the same is hereby repealed; and all clerks of courts are hereby required to frame the bonds, which auctioneers are by said act of 1818 required to enter into, agreeable to the provisions of this act.

An act making appropriations for carrying on and completing the Capitol in the city of Raleigh.

Be it enacted by the General Assembly of State of North Carolina, and it is hereby enacted by the authority of the same, That the commissioners appointed by an act, passed in the year of our Lord one thousand eight hundred and thirty-two, entitled "an act making an appropriation and appointing commissioners for the rebuilding of the Capitol in the city of Raleigh," or a majority of them, shall have power, and are hereby authorized from time to time, to draw by warrants from the Public Treasury such sums as may be necessary to carry on and complete the Capitol now being erected upon Union Square, in the city of Raleigh; and the said warrants shall be a sufficient authority to the Public Treasurer for the payment of the sums from time to time so drawn: Provided, however, That the amount hereby authorized to be drawn by the said commissioners from the Public Treasury, shall not exceed the sum of seventy-five thousand dollars.

An act to repeal an act, passed at the last General Assembly, entitled "an act to create one additional wreck district in the county of Hyde, and for other purposes."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That an act, passed at the last session of the General Assembly, entitled "an act to create one additional wreck district in the county of Hyde, and for other purposes," be, and the same is hereby repealed.

II. Be it further enacted, That the first wreck district shall extend from New inlet to the Bald beach near Keneket; the second district from said Bald beach to the south side of the cape Point; and the third district from the cape Point to the Carteret county line, as heretofore has been.

An act to regulate the times of holding the Superior Courts in the Sixth Judicial Circuit.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Superior Courts of the counties herein named, comprising the sixth judicial circuit, shall be held at the following times, viz. Cabarrus, on the second Monday in February, and the Monday preceding the last Monday in August in each and every year; Mecklenburg, the third and fourth Mondays in February, and the last Monday in August in every year; Surry, the first Monday in March and September; Wilkes, the second Monday in March and September; Ashe, the third Monday in March and September; Burke, the fourth Monday in March and September; Yancey, the first Monday after the fourth in March and September; Macon, the second Monday after the fourth in March and September; Haywood, the third Monday after the fourth in March and September; Buncombe, the fourth Monday after the fourth in March and September; Rutherford, the fifth Monday after the fourth in March, and the fifth and sixth Mondays after the fourth in September; Lincoln, the sixth Monday after the fourth in March, and the seventh Monday after the fourth in September; Iredell, the seventh Monday after the fourth in March, and the eighth Monday after the fourth in September.

II. Be it further enacted, That this act shall go into operation from and after the first day of August next; and that all laws and clauses of laws coming within the meaning and purview of this act, be, and the same are hereby repealed; and that all process pending in or returnable to the courts as directed to be held by this act, when the same goes into operation, shall be returnable to the same as directed by this act to be held, and shall be as valid as returned to courts as formerly established by law.

SPEECH OF MR. CALHOUN

IN SENATE.

Monday, January 13, 1834.

The Special Order now came up. The question being on Mr. Clay's resolutions in regard to the removal of the Public Deposites—

Mr. Calhoun then rose, and said, that the statement of this case might be given in a very few words. The 16th section of the act incorporating the bank provides that wherever there is a bank or branch of the U. States Bank, the public moneys should be deposited therein, unless otherwise ordered by the Secretary of the Treasury, and that, in that case, he should report to Congress, in his session, immediately and if not, in the commencement of the next session. The Secretary, acting under the provision of this section, has ordered the deposits to be withheld from the bank, and has reported his reasons, in conformity to the provisions of the section. The Senate is now called upon to consider his reasons, in order to determine whether the Secretary is justified or not. I have examined them with care and deliberation without the slightest bias, as far as I am conscious, personal or political. I have but a slight acquaintance with the Secretary, and that little is not unfavorable to him. I stand wholly disconnected with the two great parties now contending for ascendancy. My political connections are with that small and denounced party which has voluntarily wholly retired from the party strifes of the day, with a view of saving, if possible, the liberty and the Constitution of the country, in this great crisis of our affairs.

Having maturely considered, with these impartial feelings, the reasons of the Secretary, I am constrained to say, that he has entirely failed to make out his justification. At the very commencement he has placed his right to remove the deposits on an assumption resting on a misconception of the case. In the progress of his argument he has entirely abandoned the first; and assumed a new and greatly enlarged ground, utterly inconsistent with the first and equally untenable; and yet, as broad as his assumptions are, there is an important part of the transaction which he does not attempt to vindicate, and to which he has not even alluded. I shall, said Mr. Calhoun, now proceed without further remark to make good these assertions.

The Secretary, at the commencement of his argument, assumes the position that, in the absence of all legal provision, he, as the head of the financial department, had the right, in virtue of his office, to designate the agent and place for the safe keeping of the public deposits. He then contends that the 16th section does not restrict his power, which stands, he says, on the same ground that it did before the passing of the act incorporating the bank. It is unnecessary to inquire into the correctness of this position assumed by the Secretary; but, if it were, it would not be difficult to show that when an agent,

with general powers, assumes, in the execution of his agency, a power not delegated, the assumption rests on the necessity of the case; and that no power in such case, can be lawfully exercised, which was not necessary to effect the object intended. Nor would it be difficult to show that, in this case, the power assumed by the Secretary would belong, not to him, but to the Treasurer, who, under the act organizing the Treasury Department, is expressly charged with the safe keeping of the public funds; for which he is responsible under bond, in heavy penalties. But, as strongly and directly as these considerations bear on the question of the power of the Secretary, I do not think it necessary to pursue them, for the plain reason that the Secretary has entirely mistaken the case. It is not a case, as he supposes, where there is no legal provision in relation to the safe keeping of the public funds, but one of precisely the opposite character.

The 16th section expressly provides that the deposits shall be made in the bank and its branches, and of course it is perfectly clear that all powers which the secretary has derived from the general & inherent powers of his office, in the absence of such provision, are wholly inapplicable to this case. Nor is it less clear, that if the section had terminated with the provision directing the deposits to be made in the bank, the secretary would have had no more control over the subject, than myself or any other Senator; and it follows of course that he must derive his power, not from any general reasons connected with the nature of his office, but from some express provision contained in the section, or some other part of the act. It has not been attempted to be shown, that there is any such provision in any other section or part of the act. The only control, then, which the secretary can rightfully claim over the deposits, is contained in the provision which directs that the deposits shall be made in the bank, unless otherwise ordered by the Secretary of the Treasury; which brings the whole question, in reference to the deposits, to the extent of the power which Congress intended to confer upon the secretary, in these few words—"unless otherwise ordered."

In ascertaining the intention of Congress I lay it down as a rule, which I suppose will not be controverted, that all political powers under our free institutions are trust powers, and not rights, liberties or immunities, belonging personally to the officer. I also lay it down as a rule, not less incontrovertible, that trust powers are necessarily limited (unless there be some express provision to the contrary,) to the subject matter and object of the trust. This brings us to the question—what is the subject and object of the trust, in this case? The whole section relates to deposits—to the safe and faithful keeping of the public funds. With this view they are directed to be made in the bank. With the same view, and in order to increase the security, power was conferred on the Secretary to withhold the deposits; and with the same view he is directed to report his reasons for the removal, to Congress. All have one common object—the security of the public funds. To this point the whole section converges. The language of Congress, fairly understood, is—we have selected the bank because we confide in it as a safe and faithful agent to keep the public moneys; out to prevent the abuse of so important a trust, we invest the Secretary with power to remove the deposits, with a view to their increased security. And lest the Secretary, on his part, should abuse so important a trust—and in order still further to increase that security, we direct, in case of removal, that he shall report his reasons. It is obvious, under this view of the subject, that the Secretary has no right to act in relation to the deposits but with a view to their increased security. That he has no right to order them to be withheld from the bank so long as the funds are in safety, and the bank has faithfully performed the duties imposed in relation to them; and not even then, unless the deposits can be placed in safer and more faithful hands. That such was the opinion of the Executive, in the first instance, we have demonstrative proof, in the message of the President to Congress at the close of the last session, which placed the subject of the removal of the deposits exclusively on the question of their safety; and that such was also the opinion of the House of Representatives then, we have equally conclusive proof, from the vote of that body, that the public funds in the bank were safe, which was understood at that time on all sides by friends and foes, as deciding the question of the removal of the deposits.

The extent of the power intended to be conferred being established, the question now arises, has the Secretary transcended its limit? It can scarcely be necessary to argue this point. It is not even pretended that the public deposits were in danger, or that the Bank had not faithfully performed all the duties imposed on it in relation to them; nor that the Secretary had placed the money in a safer or in more faithful hands. So far otherwise, there is not a man who hears me, who will not admit that the public moneys are now less safe than they were in the Bank of the United States. And I will venture to assert, that not a capitalist can be found who would not ask a considerably higher percentage to insure them in their present, than in the place of deposit designated by law. If these views are correct, and I hold them to be unquestionable, the question is decided. The Secretary has no right to withhold the deposits from the Bank. There has been, and can be, but one argument advanced in favour of his right; which has even the appearance of being tenable; that the power to withhold is given in general terms, and without qualification, "unless the Secretary otherwise direct." Those who resort to this argument, must assume the position—that the