

AN ACT
IN RELATION TO THE POWERS AND
DUTIES OF CLERKS OF SUPERIOR
COURTS.

The General Assembly of North Carolina do enact:
Section 1. That as this act will be incorporated in the general act respecting the practice and procedure of the courts, required to be reported to the General Assembly at its present session, by the commissioners appointed for that purpose, it will be printed in that general act and not elsewhere among the acts of this General Assembly, unless otherwise hereafter directed.

Section 2. The Secretary of State is required to have the third section of this act, and that portion relating to the Superior Court Clerks, printed at least weekly in four papers published in this State, and the sum necessary for that purpose, is hereby appropriated from any moneys in the Treasury not otherwise appropriated.

Section 3. The terms of the several Superior Courts of this State shall begin in each year at the times hereinafter stated, and shall continue to be held for two weeks (Sundays and legal holidays excepted), unless the business shall be sooner disposed of.

FIRST JUDICIAL DISTRICT.
Currituck county first Monday in March and October.
Hertford, third Monday in March and October.
Gates, fourth Monday after the first Monday in March and October.
Chowan, sixth Monday after the first Monday in March and October.
Perquimans, eighth Monday after the first Monday in March and October.
Pasquotank, tenth Monday after the first Monday in March and October.
Camden, twelfth Monday after the first Monday in March and October.
Currituck, fourteenth Monday after the first Monday in March and October.

SECOND JUDICIAL DISTRICT.
Tyrell county first Monday in September and February.
Washington, third Monday in September and February.
Martin, second Monday after the third Monday in September and February.
Hyde, fourth Monday after the third Monday in September and February.
Beaufort, sixth Monday after the third Monday in September and February.
Pitt, eighth Monday after the third Monday in September and February.
Edgecombe, tenth Monday after the third Monday in September and February.

THIRD JUDICIAL DISTRICT.
Wayne county first Monday in September and February.
Jones, third Monday in September and February.
Onslow, first Monday after the fourth Monday in September and February.
Craven, third Monday after the fourth Monday in September and February.
Lenoir, fifth Monday after the fourth Monday in September and February.
Greene, seventh Monday after the fourth Monday in September and February.
Carteret, ninth Monday after the fourth Monday in September and February.
Wilson, eleventh Monday after the fourth Monday in September and February.

FOURTH JUDICIAL DISTRICT.
Robeson county on the fourth Monday in August and February.
Bladen, second Monday after the fourth Monday in August and February.
Columbus, fourth Monday after the fourth Monday in August and February.
Brunswick, sixth Monday after the fourth Monday in August and February.
New Hanover, eighth Monday after the fourth Monday in August and February.
Sampson, tenth Monday after the fourth Monday in August and February.
Duplin, twelfth Monday after the fourth Monday in August and February.

FIFTH JUDICIAL DISTRICT.
Harnett county second Monday in August and February.
Moore, second Monday after the second Monday in August and February.
Montgomery, fourth Monday after the second Monday in August and February.
Stanly, sixth Monday after the second Monday in August and February.
Union, eighth Monday after the second Monday in August and February.
Anson, tenth Monday after the second Monday in August and February.
Richmond, twelfth Monday after the second Monday in August and February.

SIXTH JUDICIAL DISTRICT.
Granville county second Monday in August and February.
Warren, second Monday after the second Monday in August and February.
Franklin, fourth Monday after the second Monday in August and February.
Johnston, sixth Monday after the second Monday in August and February.
Wake, eighth Monday after the second Monday in August and February.
Nash, tenth Monday after the second Monday in August and February.
Halifax, twelfth Monday after the second Monday in August and February.

NORTHAMPTON JUDICIAL DISTRICT.
Northampton, fourteenth Monday after the second Monday in August and February.

SEVENTH JUDICIAL DISTRICT.
Guilford county, the first Monday in March and September.
Rockingham, the second Monday after the first Monday in March and September.
Caswell, fourth Monday after the first Monday in March and September.
Person, sixth Monday after the first Monday in March and September.
Orange, eighth Monday after the first Monday in March and September.
Chatham, tenth Monday after the first Monday in March and September.
Randolph, twelfth Monday after the first Monday in March and September.

ALAMANCE JUDICIAL DISTRICT.
Alamance, fourteenth Monday after the first Monday in March and September.

EIGHTH JUDICIAL DISTRICT.
Davie county, the first Monday in April and September.
Rowan, third Monday in April and September.
Davidson, second Monday after the third Monday in April and September.
Forsythe, fourth Monday after the third Monday in April and September.
Stokes, sixth Monday after the third Monday in April and September.
Surry, eighth Monday after the third Monday in April and September.
Yadkin, tenth Monday after the third Monday in April and September.

Wilkes, fourth Monday after third Monday in March and September.
Caldwell, sixth Monday after third Monday in March and September.
Burlington, eighth Monday after third Monday in March and September.
McDowell, tenth Monday after third Monday in March and September.

ELEVENTH JUDICIAL DISTRICT.
Alleghany county, the first Monday in April and September.
Ash, third Monday in April and September.
Watauga, second Monday after third Monday in April and September.
Mitchell, fourth Monday after third Monday in April and September.
Yancey, sixth Monday after third Monday in April and September.
Madison, eighth Monday after third Monday in April and September.
Buncombe, tenth Monday after third Monday in April and September.

TWELFTH JUDICIAL DISTRICT.
Clay county, the first Monday in April and September.
Cherokee, third Monday in April and September.
Macon, second Monday after third Monday in April and September.
Jackson, fourth Monday after third Monday in April and September.
Waywood, sixth Monday after third Monday in April and September.
Transylvania, eighth Monday after third Monday in April and September.
Henderson, tenth Monday after third Monday in April and September.

OF THE QUALIFICATIONS AND GENERAL DUTIES OF CLERKS OF THE SUPERIOR COURTS.
Section 1. At the first meeting of the county commissioners of each county after the election or appointment of any Clerk of a Superior Court, it shall be the duty of the clerk to deliver to such commissioners a bond, with sufficient securities, to be approved by them, as is now required by the law, payable to the State of North Carolina, and with a condition to be void if he shall account for any [and] pay over according to law all moneys and effects which have or may come into his hands by virtue or color of his office, and shall diligently preserve and take care of all books, records, papers and property which have come or may come into his possession, by virtue or color of his office, and shall in all things faithfully perform the duties of his office, as they are or hereafter may be prescribed by law.

BONDS HOW APPROVED, &c.
Section 2. The approval of said bonds by the commissioners, or a majority of them, shall be recorded by their clerk, any commissioner dissenting may cause his dissent to be entered on record. Any commissioner approving a bond which he knows or believes to be insufficient, shall personally be liable as if he was a surety thereon. The said bond acknowledged by the parties thereto, or proved by subscribing witness, before the clerk of said commissioners, as their presiding officer, registered in the office of the register of the county, in a separate book to be kept by him for the registration of official bonds, and the original with the approval thereof endorsed deposited with the register for safe keeping. The like remedies shall be had upon said bonds as are or may be given by law on official bonds.

QUALIFICATION OF CLERKS.
Section 3. Every clerk of the Superior Court, before entering on the duties of his office, shall take and subscribe before some officer authorized by law to administer an oath, the oath prescribed by law, and file the same with the Register of Deeds for the county.

FAILURE TO GIVE BOND.
Section 4. In case any clerk shall fail to give bond and qualify as aforesaid, the clerk of the county shall immediately inform the Judge of the judicial district thereof, who shall thereupon declare the office vacant, and fill the same, and the appointee shall give bond and qualify as above directed.

OFFICES—WHERE TO BE KEPT.
Section 5. He shall have an office in the courthouse, or other place provided by the county commissioners, in the county town of his county. He shall give due attendance, in person or by deputy, at his office, daily, (Sundays and legal holidays excepted), from 9 o'clock A. M., to three o'clock P. M., and longer when necessary for the dispatch of business.

TO RECEIVE OFFICIAL PAPERS, &c.
Section 6. Immediately after he shall have given bond and qualified as aforesaid, he shall receive from the late Clerk of the County and Superior Courts, and Clerk and Master of the Court of Equity of the county all records, books, papers, money and property of their respective offices, and give receipts for the same; and if any such late clerk, or clerks and master, shall refuse or fail within a reasonable time after demand to deliver such records, books, papers, money and property, they shall be respectively liable on their official bonds for the value thereof, and be held guilty of a misdemeanor.

TO KEEP RECORDS, &c.
Section 7. He shall keep in bound volumes a complete and faithful record of all his official acts, and give copies thereof to all persons desiring them, on payment of the legal fees.

BOOKS TO BE KEPT BY THE CLERK.
Section 8. The clerk shall keep the following books:
1. A docket of all writs of summons, or other original process issued by him, or returned to his office, and the date of their return, in a brief and concise proceeding whatever, in each action, up to the final judgment inclusive.
2. An Execution Docket, in which the substance of the judgment shall be recorded, and every proceeding subsequent thereto, noted, with an alphabetical index.
3. A Docket of all issues of fact joined upon the pleadings and other matters, tried before a jury, and of all other matters for hearing before the judges, at a regular term of the Court, a copy of which shall be furnished to the judge at the commencement of each term.
4. An alphabetical index according to the names of the plaintiffs and defendants in judgments in civil action, rendered in the court, with the dates and numbers thereof.
5. A Docket of all criminal actions, containing a note of every proceeding in each.

BY WHOM THE BOOKS ARE TO BE FURNISHED.
Section 9. The books specified in the above section shall be supplied to the clerk of the several counties by the Secretary of State, at the expense of the State, and the Secretary shall, as soon as possible, transmit an account thereof to the chairman of the County Commissioners, in order that the price may be levied in the county taxes, and also the Auditor of public accounts, who shall add the same to the taxes of the respective counties, and receive and account for it as for other taxes. The commissioners of any county failing to cause such sum to be levied with the other county taxes, shall be guilty of a misdemeanor.

PAPERS IN EACH ACTION TO BE KEPT SEPARATE.
Section 10. The clerk shall keep the papers in each action in a separate roll or bundle, and at its termination attach together, properly labeled, and file them in order of the date of the final judgment.
SOLICITORS TO EXAMINE RECORDS, &c.
Section 11. At every regular term of a Superior Court, the Solicitor for the Judicial District shall inspect the office of the clerk and report to the court in writing. If any clerk, after being furnished with the necessary books, shall fail to keep them up as required by law, he shall be guilty of a misdemeanor, and the Solicitor shall cause him to be prosecuted for the same. If the Solicitor shall fail or neglect to perform the duty hereby imposed on him, he shall be liable to a penalty of five hundred dollars to any person who shall sue for the same.

EXISTING SUITS.
The following sections, numbered 1, 2, 3, 4, 5, relate exclusively to actions which have been commenced, and in which no final judgment has been rendered prior to the ratification of this act, as a part of the Code of Practice and Procedure.

CLERKS TO DOCKET EXISTING SUITS.
Section 7. The clerks of the Superior Courts at the regular term, within six months from the ratification of a general act respecting the practice and procedure of the Superior Courts of this State, and on the payment of a fee of one dollar, shall enter on a separate docket, all suits, which, at the ratification aforesaid, shall have been commenced, or in which final judgment has not been rendered in the late Code of Practice and Procedure of the Superior Courts of law, and Courts of Equity, of their respective counties.

HOW SUCH SUITS PROCEEDED WITH.
Section 8. And every suit not so transferred within the time aforesaid, shall be abated and the Clerk of the Superior Court shall tax costs against the parties liable, and collect the same by the proper process.
Section 9. The said suits shall be proceeded in, and tried under the existing laws and rules applicable thereto. After final judgments shall be rendered therein, the Clerk shall enter such judgments on the execution docket required to be kept by him, and the subsequent proceedings shall be as provided for action hereafter to be commenced.

EXISTING JUDGMENTS NOT DORMANT.
Section 4. Existing judgments and decrees not dormant may in like manner be entered on the execution docket, and the subsequent proceedings shall be as is prescribed for actions hereafter to be commenced, as far as shall be compatible with the previous proceedings, and no lien acquired before the ratification aforesaid shall be lost by any change of process, occasioned by this act.

DORMANT JUDGMENTS.
Section 5. Judgments or decrees which are dormant at the ratification of this act, may be revived or enforced in the manner herein provided.

ACTION COMMENCED AFTER THE RATIFICATION TO SECOND JUDICIAL DISTRICT, &c.
Section 6. In all actions hereafter commenced, founded on such contracts as are provided for in an ordinance of the Convention of this State, entitled "An Ordinance respecting the jurisdiction of the Courts of this State," ratified on the 14th day of March, 1868, the summons shall be made returnable to the term of the Superior Court therein designated, and the subsequent proceedings shall be in accordance with the provisions of said act.

EXECUTIONS LEVIED ON PERSONAL PROPERTY.
Section 7. The late Sheriff of any County having in his hands any *res fieri facias*, which has been levied on personal property of the defendants, which is unsold shall proceed to sell the same as now required by law, he shall pay over the proceeds after deducting his fees, and shall also make return of the writ to the Clerk of the Superior Court, of the county to which the writ is returnable, the proceeds to be paid by the Clerk to the parties entitled thereto.

EXECUTIONS NOT LEVIED AT ALL, OR LEVIED ON REAL PROPERTY.
Section 9. As soon as the successors of the said late Sheriffs shall have qualified and given bonds as required by law, the said late Sheriffs shall deliver to such successors, all writs of executions in their hands which have not been satisfied, and have not been levied at all, or which have been levied on property which has been sold, and a residue remains unsatisfied, or have been levied on real property which in whole or in part remains unsold, with a return stating any receipt of money by them, and their action under the writ. The new Sheriffs shall proceed to act under such writs as if the same had been addressed and issued to them, and shall make return thereof to the next term of the Superior Court of the county, (or) to any Court of which the writ is returnable.

EXECUTIONS TO BE DOCKETED.
Section 10. The clerk of any Superior Court to which any execution shall be returned as is above prescribed shall at the request of any person interested therein, and on the payment of one dollar, enter such execution on his execution docket, and the like process may be thereafter had thereon as is provided in similar cases on judgments recovered after the ratification of this act.

JUDGMENT NOT DORMANT, WHEN—
Section 12. No judgment shall be held to have become dormant by reason of any stay or suspension thereof, or by reason of any general or special orders issued by the General Assembly commanding the military District of which the State of North Carolina formed a part, and the time during which execution was so stayed, shall not be counted in determining any question respecting a judgment being dormant.

ORDINANCE OF 14TH OF MARCH 1868, NOT AFFECTED.
Section 13. Nothing in this act contained shall affect or impair any right given by an ordinance of the Convention of this State, entitled "An Ordinance respecting the jurisdiction of the Courts of this State," ratified the 14th day of March 1868, in the cases to which it is applicable.
Ratified the 14th day of August, A. D. 1868.
(Signed,) JOS. W. HOLDEN,
Speaker House of Representatives.
(Signed,) T. O. CALDWELL,
President of the Senate.

STATE OF NORTH CAROLINA,
OFFICE SECRETARY OF STATE,
Raleigh, August 22d, 1868.
I, Henry S. Jennings, Secretary of State, hereby certify that the foregoing is a true copy of the original act on file in this office.
H. J. MENNINGER,
Secretary of State.

Important Article in the
New Constitution.

ARTICLE IV.
JUDICIAL DEPARTMENT.

Section 1. The distinction between actions at law and suits in equity, and the forms of all such actions and suits shall be abolished, and there shall be in this State but one mode of proceeding for the enforcement of protection of private rights or the redress of private wrongs which shall be denominated a civil action; and every action presented by the people of the State as a party, against a person charged with a public offence, for the punishment of the same, shall be termed a criminal action. Felony issues shall also be abolished, and the fact issue tried by order of court before a jury.

Section 2. Three Commissioners shall be appointed by this convention, to report to the General Assembly, a code of law for North Carolina. The Governor shall have power to fill the vacancies occurring in the office of the Commissioner. The judicial power of the State shall be vested in a court for the trial of impeachments a Supreme Court, Superior courts, court of justices of the Peace and special courts.

Section 3. The court for the trial of impeachments shall be the Senate; a majority of the members shall be constituted a quorum, and the judgment shall not extend beyond removal from office and disqualification to hold office in this State, but the party shall be liable to indictment and conviction according to law.

Section 4. The House of Representatives shall have the power of impeaching. No person shall be convicted of treason or attainder shall work corruption of blood or forfeiture.

Section 5. The Supreme Court shall consist of a Chief Justice and four Associate Justices.

Section 6. The Supreme Court shall have original jurisdiction in cases against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the same shall be reported to the next session of the General Assembly for its action.

Section 7. The Supreme Court shall have jurisdiction to review upon a writ of error, any judgment rendered in any matter of law or legal inference; but no issue of fact shall be tried before this court; and the court shall have power to issue any writ which may be necessary, to give it a general supervision and control of the inferior courts.

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brought before a justice, he shall make a record of the proceedings, and like the same with the Clerk of the Superior Court of his county.
Section 14. When the office of Justice of the Peace shall be vacant, and otherwise than by the expiration of the term, and in case of the failure of the voters of any district to elect the clerk of the superior court for the county, shall appoint to fill the vacancy, until an election can be regularly held.

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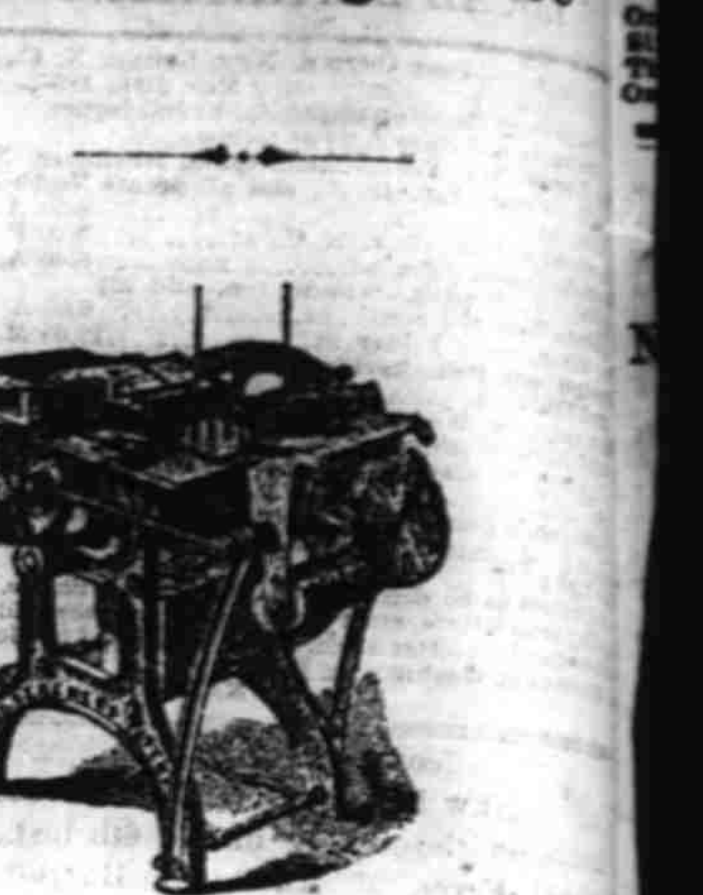
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