

Laws of North-Carolina.

PASSED IN 1823.

(BY AUTHORITY.)

An Act to amend an Act, entitled "An Act to provide for Children born after the making of their parents' will," passed in the year 1808.

Whereas by the provisions of the above recited act, a child born after the making of his or her parents' will, and unprovided for thereby, is compelled to prefer his or her petition for a share or portion of such parents estate, within two years after the probate of such will, whereby manifest injustice may arise; 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 in case it shall happen that no petition shall be filed within the two years prescribed by the said act, it shall be the duty of the executor, executrix, or administrator with the will annexed, of the parent, before he shall pay or deliver the legacies in said will given, or before paying to the next of kin of the testator, any residue undisposed of by said will, to call upon the said legatees, devisees and next of kin, and the said after born child, either by bill in Equity or petition in the Superior or County Court, where the executor or devisees and legatees or next of kin, or any of them, may reside, to litigate their respective claims; and shall pray of the Court to ascertain, agreeable to the mode of proceeding prescribed by the before recited act, the share to which said child shall be entitled under the said act, and to apportion the shares or sums, which said legatees, devisees or next of kin, shall severally contribute toward the share to be allotted to said child, and the said Court shall adjudge and decree as by said act be legal and equitable.

II. And be it further enacted by the authority aforesaid, That in case said child shall have no guardian, the said Court shall appoint a special guardian to defend the interest and rights of said child.

III. And be it further enacted by the authority aforesaid, That the said petition, from the filing thereof in the clerks office, shall be a lien on the real estate devised in the hands of the devisees, for the share of such after born child, which may be decreed by the Court on the final hearing of the case.

An Act to secure the rights of Landlords against Tenants holding over after the expiration of their terms.

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 if the lessor of the plaintiff in any action of ejectment, his agent or attorney; or if any one of several lessors, or the agent or attorney of any one lessor, shall, at the return term of the declaration in ejectment, file his or her affidavit that the tenant in possession of the premises sued for, and to whom the notice of said suit is directed in the process issued, entered into said premises as his or her tenant, or as tenant of the person as whose agent or attorney said affiant deposes, that said tenants term therein has expired, and that said tenant refuses to surrender the possession of said premises to said lessors, or any one of them, said person in possession, or any other person made defendant, shall not be entitled to plead to said suit, and the lessors of the plaintiff shall be entitled to judgment final against the casual ejector at the said return term, unless the said person in possession, or other person applying to be made defendant, shall enter into bond in such sum as the Court shall direct, with surety to be approved by said Court, with condition that said defendant or defendants shall pay the said lessor or lessors, all such costs and damages as shall be recovered in said suit. And it shall be the duty of the jury, in such cases where issue may be joined, to find in their verdict whether the defendant entered into the possession of the premises as the tenant of the lessors, or of which of them, and whether he refused to surrender the premises after his term therein had expired; and if such finding shall be in favour of the lessors of the plaintiff, said jury shall assess the damages to which the lessors of the plaintiff shall be entitled, including the value of the occupation of the premises sued for, from the expiration of said tenants' term to the rendition of the verdict, and damages for waste and trespasses during the term of said holding over, and the Court shall render judgment against the defendant and his securities upon their said bond, to be discharged by the payment of the damages assessed as aforesaid, and the payment of all costs. Judgment upon which verdict shall bar the action for the mesne profits, or for the trespass by any of the lessors in said action. Provided nevertheless, That it shall be competent for the defendant or tenant in possession, to rebut, by his or her affidavit, the facts set forth in the affidavit offered on the part of the lessor of the plaintiff, and the Court, in such cases, shall decide thereon, and may, in its discretion, allow the affidavits on either side to be corroborated by other affidavits or evidence.

An Act to authorise the issuing of Treasury Notes.

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 Treasurer of the State be, and he is hereby authorised and directed, as soon as he can conveniently do the same, to issue the sum of one hundred thousand dollars in Treasury Notes, of the following denominations, to-wit: five cents, ten cents, twenty cents, twenty-five cents, thirty cents, forty cents, fifty cents, and seventy-five cents. The notes to have such margin and devices as the Treasurer may think proper to adopt, and shall be made payable and receivable at the Treasury of this State, and shall be dated and numbered and signed by the Treasurer, or by such person or persons as he may appoint or employ in assisting him in dating, numbering, and signing the same, under his immediate control, superintendance and inspection.

II. Be it further enacted, That the Treasurer shall exchange the said Treasury Notes with any persons or corporations, either for specie, or for bills of any of the Banks of this State, from time to time, as said notes shall be applied for. The money thus received, the Treasurer shall, from time to time, invest in the purchase for the State, of shares of any of the Banks incorporated by this State, at a rate not exceeding their par value.

III. Be it further enacted, That said notes shall be receivable in payment of debts and taxes due to the State, and they shall be redeemed by the Treasurer as presented for payment, from any money in the Treasury, and may by him be again issued.

IV. And be it further enacted, That the Public Treasurer shall be allowed the same compensation, according to the amount of the Treasury Notes issued in virtue of this act, that he was allowed by the General Assembly heretofore for the like services.

An Act to amend and extend the provisions of an Act, entitled "An Act to promote agriculture, and family domestic manufactures within 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 it shall be the duty of each and every Clerk of any County Court, Superior Court of Law, Clerk and Master in Equity, and Clerk of the Supreme Court within this State, at the first session of the Court of which he is Clerk, which shall be after the first day of August next, and after the first day of August in each and every year thereafter, to produce to said Court a statement, to be made on oath, of all monies remaining in his hands, and which were received by him officially three years or more previous thereto, specifying therein the amount of each separate claim, and the name of the person to whom the same is payable; and if there be no such monies in his hands, he shall make affidavit of the same, which return or affidavit, the Judge or Chairman of the Court before whom it is made, shall cause to be transmitted to the Public Treasurer of this State, on or before the first day of December, in the same year.

II. Be it further enacted, That the Clerks aforesaid, shall, on or before the first day of December in each and every year, after the foregoing statements are made, account with and pay over to the Public Treasurer, all the balances aforesaid; which shall be held by him in trust, for the legal claimants, but whilst unapplied for, shall constitute a part of the fund created by the aforesaid act.

III. And be it further enacted, That any Clerk as aforesaid, failing to comply with the duties required by this act, shall forfeit and pay to the State, one thousand dollars; to be sued for and recovered by the Public Treasurer in the Superior Court of Law of Wake County, and be moreover liable to pay all such monies as he may be chargeable with, under the provisions of this act.

IV. And be it further enacted, That if any Clerk, as aforesaid, shall fail to pay any money by him admitted to be due, as aforesaid, on or before the first day of December in each and every year, such Clerk may be proceeded against by the Public Treasurer in any Court of Record in this State, in the like manner as against defaulting revenue officers.

V. Be it further enacted, That all persons who have heretofore been Clerks of any Court of Record in this State, shall render to the Courts of which they may have been Clerks, a like statement of monies which have remained in their hands for three years or more, previous to the time of making such statements, under the penalty prescribed by this act; which statement shall be rendered at the first session of said Court, which shall be after the first day of August next, and shall be transmitted in like manner to the Public Treasurer, of the State, and the monies therein admitted to be and remain in his hands, shall be paid and accounted for, in the same manner as is herein directed with respect to the monies remaining in the hands of the present or future Clerks.

VI. And be it further enacted, That all Sheriffs now in office, shall, at the same time, render a like statement to the Court of the County of which he is Sheriff, and account with the Public Treasurer for all balances in his hands arising under the provisions of this act, in the same manner, and under the same penalties, as by this act is provided for Clerks.

VII. Be it further enacted, That if any person who has been Clerk of any Court of Record in this State, shall fail to comply with the provisions of this act, he shall incur the same penalty as is imposed by the preceding sections of this act on the Clerks now in office; and it shall be the duty of the Solicitor of the State for the Circuit in which such person shall reside, to cause a *sci. fa.* to be issued against the person so failing to make his return, and to account, as aforesaid, returnable to the Superior Court of the county in which such person resides; and the Court shall thereupon render judgment for the amount of the said penalty, unless such person shall render a sufficient excuse to be judged of by the Court for such failure.

An Act respecting the reservations of certain Indians in the lands lately acquired by treaty from the Cherokee Nation.

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 two commissioners be appointed by the Governor of the State, whose duty it shall be, at some time before the next session of the General Assembly, to meet at some convenient place in the county of Haywood, and enquire into the titles of certain tracts of land claimed by individuals of the Cherokee Nation of Indians, under certain provisions made in the treaties concluded between the United States and the said Nation, in the years one thousand eight hundred and seventeen, and one thousand eight hundred and nineteen; and that said commissioners be, and they are hereby authorised to contract with any of the said Indians, or with any agent or agents duly authorised by them, for the purchase of the tract or tracts to which the said commissioners shall believe the said Indians, or any of them, shall have a good and valid title under the provisions of the said treaties; such contract to be made subject to the further ratification of the General Assembly.

II. And be it further enacted, That it shall be the duty of the said commissioners to ascertain the fact, if practicable, whether the said Indians, or any of them, have sold their titles to individuals, and the names of those individuals, and report the same to the next General Assembly.

III. Be it further enacted, That it shall be the duty of the said commissioners to report to the General Assembly, at their next session, their proceedings under the foregoing section, and whether the said Indians will consent to sell the said lands; if so, an account of each contract they may enter into with the said Indians, and such contract, when ratified by the General Assembly, shall be binding on the State, and not otherwise.

IV. Be it further enacted, That the said commissioners shall be allowed the sum of four dollars for every day they shall be necessarily employed in the discharge of the duties hereby imposed, estimating every thirty miles they shall travel to and from said place of meeting, as one day.

V. Be it further enacted, That whenever the commissioners appointed under this act, shall adjudge that the title claimed by any Indian to a reservation under the above mentioned treaty is not a good and valid title, where the land so claimed has been sold under the authority of the State, and the purchaser has been sued or shall be sued for the same; it shall be the duty of the Governor to employ some able attorney to appear in behalf of such purchaser, and defend the title conveyed by the State. Provided, that nothing herein contained, shall have the effect, or be construed to validate or confirm the title of the purchaser from the commissioners of this State, nor of any persons holding under such purchasers.

Eighteenth Congress.

SENATE.

TUESDAY, FEB. 10.

Mr. Van Buren presented the memorial of several thousand persons, residents in New York, praying an alteration in the Alien Laws. Referred to the Committee on the Judiciary.

The bill authorising the building of an additional number of sloops of war, for the naval service of the United States, was read the third time and PASSED.

The Senate, as in committee of the whole, proceeded to consider the bill better to secure the accountability of public officers and others; which was introduced under leave obtained by Mr. Holmes, of Maine, and reported by the Committee on Finance.

The first section of the bill provides, that no salary, compensation, or emolument, shall be paid to any person who is, or shall be, indebted to the United States, until such person has accounted for, and paid into the Treasury, all sums for which he may be so indebted.

The second section makes it the duty of every accountable officer who, in making payment to the United States, is, by law, authorized to retain his fees, or salary, out of the money for which he is accountable, and who is indebted to the United States, to pay over, at the time required by law for his payments and accountability, all his fees and emoluments, until he shall have discharged the sums for which he is indebted; and makes it the duty of the Treasury Department, to a certain time in each year, to give notice to such officers, of the sums due from them; and makes it the duty of Collectors, and other officers, to withhold the pay of the persons employed by them, until their debts to the Government are discharged.

The third section provides that no person shall be appointed to any office, which entitles him, in any way, to receive, and makes it his duty to account for, public monies, who shall, at the time of such appointment, be indebted to the United States.

The fourth section makes it the duty of the President of the United States to communicate to Congress, in the first week of each session, the names of persons, whose pay is withheld under the provisions of this act, with the amount due, &c. with a proviso, that in all cases where the pay of any person is withheld, it shall be the duty of the Accounting Officers of the Treasury, if demanded by the person, to report, forthwith, to the Agent of the Treasury Department, the balance; and it shall be the duty of such agent, within sixty days thereafter, to order suit to be commenced against such delinquent and his sureties.

Mr. Holmes, of Maine, briefly recapitulated the provisions of the bill, with the remark, that its principles were such as, he conceived, ought to be adopted into the government of the country.

Mr. Mills objected to the third section of the bill—he was willing to go as far as any man, to secure the accountability of those who are entrusted with the public money—but he knew very well, that, in a variety of instances, balances were reputed to be due, when, in truth, on a fair adjustment of accounts, nothing at all was found to be due. But perhaps this third section of the bill might extend, in its operation, further than the gentleman who proposed it had contemplated. It would apply to every officer who was a receiver of public money. In case of a foreign Minister, for instance, who had received his money for outfits, and was charged therewith. It would not be in the power of government to exchange him to another Court, if it should become necessary, until he had accounted for the monies paid to him—previous to his nomination to the Senate, his account must be settled up, or his appointment could not take place.

Mr. Branch believed the objection of the gentleman from Massachusetts, in regard to the application of the third section of the bill, to foreign ministers, would not hold good, because the outfit of the Minister became due him instantly on his appointment, and was not an item of charge to him, nor one for the expenditure of which he was bound to account to the government.

Mr. Holmes, of Maine, read the act already existing, in regard to the disbursement of public money, a law which prescribes rules, in order to ascertain who is indebted to the government. He said, that an officer who received money, to be paid out on account of the government, was not considered as being indebted to the government, at the time at which he was bound to account for that money. The law allowed him ample time to settle his account; the officer is entitled to hold his money till a certain period, and he is not considered as being indebted until that time arrives.

Mr. Mills believed, after hearing the statements of the gentleman from Maine, and the law he had read, that there had already been enough of legislation on this subject. He considered that law a very salutary one, but the provision in the third section of this bill was going to impose restraint on the power of the Senate, to appoint officers, which ought not to be imposed. Cases might occur, in which the President was satisfied that the person ought to be re-appointed to his office, and yet he could not be appointed, in consequence of this section in the bill. The most honorable public officer might become a defaulter, by loss of documents, or from other causes. The Department might tell him, that his account could not be settled, for want of his vouchers; his term of service might expire, before he could apply to Congress for relief. The President could not nominate him, although perfectly satisfied that he was not indebted to the government; and, by this means, although best qualified for it, the person might lose his chance for re-appointment.

Mr. Johnson, of Louisiana, said it had often happened, it might again, that the vouchers of persons residing in a remote part of the government, may be lost or mislaid, in transmission by mail. If the third section of this bill is agreed to, it will prevent the appointment of any person in arrears to the government, from whatever cause, from appointment to office. He had known an instance of a gentleman, who was reported as a defaulter to the government, to the amount of \$30,000, who did not, in fact, owe the government one cent. He had known several other instances of a similar nature. Those men, of course, from no fault of their own, would be prevented from being candidates for office, if this bill were passed, in its present shape.

Mr. Lowrie thought the arguments which had been urged against the 3d section of this bill would apply equally well to the first and second sections. If it is imperative to withhold the appointment to office of those who are in arrears to the government, it is also imperative to withhold their salaries while they are in the offices. He did not think the supposed cases of hardships could often occur. He was, therefore, decidedly in favor of the bill as it now stood.

Mr. Lanman appreciated, as much as any could do, the principle of this section of the bill, so far as it went to the protection of the Treasury. He was in favor of every provision which would go to preserve the purity of the modes in which money was to pass from the Treasury, and to prescribe accountability to public agents. He was willing to consent to the third section of this bill, if it went no further than the provision of which he had spoken. But he feared it involved something more than that—that it contained a disfranchisement of a great part of our fellow-citizens from office. A man might have been indebted to the government, fifteen years ago, to the amount of a thousand dollars; and, being unable, from want of evidence, to prove his having paid the money for the purpose to which he ought to have applied it, he would be thus disfranchised from holding any office under the government. He asked if this could be done under the constitution? It would operate in a criminal and penal point of view. Upon these grounds, he would be compelled to vote against it, although he was willing to vote for any fair provision for the protection of the Treasury.

Mr. Holmes, of Maine, said he really had not expected a constitutional objection to the disqualification of a public defaulter from being any longer a receiver of public monies. He thought Congress had a right to prescribe qualifications for the officers appointed under the laws. Is there no right to prescribe that the Judges of the Supreme Court shall consist of persons learned in the law? Or that no foreigner shall be employed in any department of the government? Have we a right to prescribe these qualifications, and yet no right to prevent delinquents from holding offices of trust? If a collector becomes a delinquent, not from his own fault, his appointment can always be suspended until he has time to correct the evil. If the collector denied, the bill provides that it shall be the duty of the agents of the government to institute a suit, to try the case. In the present mode of appointment, the persons who hold the offices do not know what rules the Senate prescribes in acting upon Executive nominations; but, if the provisions of this law are adopted, the rule will be known, and provided.