

LAWS

OF THE

STATE OF NORTH CAROLINA.

PASSED BY THE GENERAL ASSEMBLY

AT THEIR SESSION, WHICH COMMENCED ON MONDAY, THE TWENTYSEVENTH OF NOVEMBER, ONE THOUSAND, EIGHT HUNDRED AND FORTY EIGHT, AND ENDED ON THE TWENTY-NINTH OF JANUARY, ONE THOUSAND, EIGHT HUNDRED AND FORTY-NINE.

[BY AUTHORITY.]

CHAPTER XXXVII.

AN ACT to provide for the payment of the debt of the State to the Bank of Cape Fear, to the Bank of the State, and other debts due on account of endorsements by the State, for the Raleigh and Gaston Rail Road.

WHEREAS the State of North Carolina is indebted to the Bank of Cape Fear in the sum of ninety thousand dollars, to the Bank of the State in the sum of twenty five thousand dollars, advanced upon a mortgage of the Raleigh and Gaston Rail Road, and is also indebted in the sum of one hundred and sixty-six thousand, five hundred dollars, on account of endorsements for the said Rail Road, made in the year one thousand, eight hundred and forty, in pursuance of an act, entitled "An Act to secure the State against any and every liability incurred for the Raleigh and Gaston Rail Road Company, and for the relief of the same." Therefore,

Sec. 1. 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 authorized and directed to issue certificates of debt, in proper form, in the name and in behalf of the State, and under his signature and seal of office, for a sum not exceeding two hundred thousand dollars, binding the State for the money purporting to be due thereon.

Sec. 2. And be it further enacted, That nothing in this act shall be considered as recognizing any authority in the Governor and council hereafter, under the act of the General Assembly, ratified the 6th day of January, 1845, entitled "An Act to authorize the foreclosure of the mortgage on the Raleigh and Gaston Rail Road," to borrow money for the repairs of said road, and to mortgage the road, or pledge the faith of the State for the repayment of the money borrowed.

Sec. 3. Be it further enacted, That said certificates of debt shall be issued at such time or times as the wants of the Treasury may require, to discharge the aforesaid debts, or any of them; and shall be issued in sums of not less than five hundred, nor more than one thousand dollars each, and shall bear interest at the rate of six per cent. per annum, payable semi-annually, at such places as the Treasurer may designate; which certificates of debt shall be severally redeemable at the end of ten years, from and after the day on which each of them is issued, and at such place or places as the Treasurer may appoint.

Sec. 4. Be it further enacted, That all certificates of debt by the State, issued under and by authority of this act, and signed as aforesaid by the Public Treasurer, shall be countersigned by the Comptroller of this State, and duly registered by him in a book prepared and kept for that purpose.

Sec. 5. Be it further enacted, That said certificates of debt shall be transferable by the holders thereof, or by his, her, or their attorney, in a book to be kept by the Public Treasurer for that purpose; and in every such transfer, the outstanding certificate shall be surrendered to or cancelled by the Public Treasurer, and a new certificate shall be issued for the same amount, to the person or persons entitled to the same.

Sec. 6. Be it further enacted, That the Public Treasurer, whenever required by the Governor of the State, shall negotiate the sale of the certificates of debt hereby authorized to be issued, and shall have power and authority to sell the same at not less than their par value, and shall apply the proceeds, together with any premium or profits that may be made by such sale, to the payment of any or all of the aforesaid debts of the State.

Sec. 7. Be it further enacted, That this act shall be in force from and after its ratification.

[Read three times and ratified in General Assembly this 17th day of January, 1849.]

CHAPTER XXXVIII.

AN ACT to amend and consolidate the several Acts heretofore passed in favor of Poor Debtors.

Sec. 1. 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 all executions, the wearing apparel, working tools, arms for muster, one wheel and cards, one loom, one bible and testament, one hymn book, one prayer book, and all necessary school books, the property of the defendant, shall be deemed and held exempt from seizure.

Sec. 2. That in addition to the foregoing articles there shall hereafter, in favor of every house keeper, on his or her complying with the provisions of this act, be exempt from seizure under execution, on debts contracted since the first day of July, 1845, the following property, and none other, to wit: one cow and calf, ten bushels of corn or wheat, fifty pounds of bacon, beef or pork, or one barrel of fish, all necessary farming tools for one laborer, one bed, bedstead and covering for every two members of the family, and such other property as the freeholders hereinafter directed to be appointed, for that purpose, may deem necessary for the comfort and support of such debtor's family: such other property not to exceed in value the sum of fifty dollars at cash valuation.

Sec. 3. Whenever any poor debtor, or, if a married man, in his absence, his wife, may desire to apply for benefit of the second section of this act, such application shall be made to some justice of the peace for the county in which the applicant resides, who shall appoint three respectable freeholders, disinterested and unconnected with the parties, to lay off and assign to such poor debtor the property to which he or she may be entitled under the second section of this act, and they shall immediately make out a full and fair list thereof, and return the same to the clerk of the court of pleas and quarter sessions for that county, who shall receive such list and file the same among the records of his office.

Sec. 4. Whenever any poor debtor shall die, leaving a widow him surviving, who may not be entitled by law to her year's allowance out of the personal estate of her deceased husband by reason of any levy of any execution or otherwise, such widow shall be allowed the benefit of the second section of this act, in the same manner as her deceased husband would have been.

Sec. 5. All and every conveyance by sale, deed of trust, or otherwise, for the payment of any debt of demand whatsoever, of any of the property exempt from seizure under execution, shall be deemed and held null and void, and is hereby declared to be null and void, and of no effect.

Sec. 6. All laws or clauses of laws coming in conflict with the meaning and purview of this act, be, and the same, are hereby repealed.

CHAPTER XXXIX.

AN ACT making it the duty of Sheriffs and other officers, making sale of land or slaves to prepare and execute deeds for the same.

WHEREAS doubts have arisen whether it be the duty of Sheriffs after having sold property by execution to prepare a deed of sale for the same instead of the purchaser;

Section 1. 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 it shall be the duty of the sheriffs, constables or other officer, after having made sale of lands or slaves, by authority of any execution or decree of any court, to prepare and execute and deliver to every purchaser at such sale a deed or deeds for the property by them so purchased. Provided, that the purchaser of the land shall furnish the officer the description of the land sold.

Sec. 2. Be it further enacted, That this act shall be in force from and after its ratification.

[Ratified 29th day of January, 1849.]

CHAPTER XL.

AN ACT to provide for the settlement of estates in the hands of executors and administrators, and for the relief of the same.

Sec. 1. 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 executor or administrator, in this State, shall have in his, her or their hands, any money or other effects, belonging to the estate of the testator or intestate, or such estate shall be ascertained to be insolvent, it shall and may be lawful for such executor or administrator, at any time after two years from his, her or their qualification, to file his, her, or their petition against the legatees, distributees or others interested therein, in the superior court of law, court of equity, or court of pleas and quarter sessions, of the county wherein the will has been proved, or letters of administration granted, setting forth the facts and praying for an account and settlement of the estate in his, her or their hands; and upon its being made to appear to the court wherein such petition is filed that a copy of such petition has been duly served on each of the defendants at least ten days before the sitting of the court, or in case any of them are non residents, that due publication has been made according to the practice of the court, such court shall and may proceed to hear and determine the same, and may make any order, judgment or decree in the case, for or against the petitioner, and for or against the defendant, and each of them, that may now be made upon the filing of such petition by legatees or distributees, against an executor or administrator.

Sec. 2. Be it further enacted, That upon any balance ascertained, on the final settlement of the administration account, or other property being found in the administrator's or executor's hands, belonging to any absentee or infant without guardian, such court may direct such balance or other estate to be delivered into the hands of the clerk of said court, to be by him kept and managed, under the direction of the court, for the benefit of the parties interested, and to be delivered over on application of the parties entitled thereto.

Sec. 3. Be it further enacted, That the court, in cases arising under the second section, may require bonds with sufficient surety of such clerk, for the faithful keeping, managing and delivering of said property to the party entitled, under the direction of said court, and shall make a reasonable allowance to said clerk for and on account of his services thereon.

[Ratified 27th day of January, 1849.]

CHAPTER XLI.

AN ACT making better and more suitable provisions for femes covert.

the same. That from and after the passage of this act, whenever a marriage shall take place, all the lands or real estate owned by the feme covert, at the time of marriage, and all lands or real estate which she may subsequently acquire, by will, devise, inheritance, or otherwise, shall not be subject to be sold or leased by the husband for the term of his own life, or any less term of years, except by and with the consent of his wife, first had and obtained, to be ascertained and effectuated by privy examination, according to the rules now required by law for the sale of lands by deed belonging to femes covert.

Sec. 2. Be it further enacted, That no interest of the husband whatever, in such lands or real estate shall be subject to sale to satisfy any execution obtained against him; and all such sales are hereby declared to be null and void, both in law and equity.

Sec. 3. Be it further enacted, That all the lands or real estate which may be acquired on and after the first day of March next by femes covert already married, either by gift, devise or inheritance, shall be subject to the same conditions, limitations and exemptions, as the lands or real estate mentioned in the first and second sections of this act.

[Ratified 29th day of January, 1849.]

CHAPTER XLII.

AN ACT to amend the 48th Chapter of the Revised Statutes, entitled "An Act concerning fences," so far as relates to land on the Meherrin River, in the county of Hertford.

Sec. 1. 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 Meherrin River, within the county of Hertford, is hereby declared not to be a lawful fence, within the meaning of the act aforesaid, and that hereafter every planter shall have a sufficient fence about his cleared ground under cultivation, lying on the said river

and within the said county, at least five feet high, notwithstanding the same; and all persons neglecting to keep and repair their fences, during crop time as aforesaid, shall be subject to like penalties and proceedings as are provided in other cases of unlawful fences.

[Ratified 29th day of January, 1849.]

CHAPTER XLIII.

AN ACT to authorize the inspection of provisions.

Sec. 1. 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 courts of pleas and quarter sessions, of the different counties of this State, may, at such term of the said court, when a majority of the justices are required to be present, if the majority of the justices, holding such court, deem it necessary and expedient, proceed to appoint an inspector of provisions and forage, who shall hold his office for the term of five years after his appointment.

Sec. 2. Be it further enacted, That the inspector hereby authorized to be appointed, shall be compelled, when any article of provision or forage, imported from any other State or territory or foreign country, such as beef by the barrel, half barrel or keg; pork by the barrel, half barrel or keg; flour, whether made of wheat, buckwheat or rye, by the barrel, half barrel or keg; fish by the barrel, half barrel or keg; lard by the tub; cheese by the box; hay or fodder pressed in bales or bundles, be offered for sale, to proceed to inspect and examine the same, according to such rules and regulations as may be established by said court of pleas and quarter sessions: Provided, however, any article of provision which shall have been previously inspected by any lawful inspector of this State, shall not be subject to reinspection.

Sec. 3. Be it further enacted, That the inspector hereby authorized to be appointed, shall cause to be paid, in the sum of five hundred dollars, payable to the Governor of the State of North Carolina, and conditioned for the faithful performance of the duties of his office; which bond the courts aforesaid are hereby authorized and required to take; and the inspector hereby authorized and required to be appointed shall be entitled to receive such fees as may be fixed on by the said courts of pleas and quarter sessions.

Sec. 4. Be it further enacted, That the commissioners of any incorporated town and city in this State, shall have full power and authority to make all such laws and regulations in their respective towns and cities, as they may deem necessary to protect the citizens thereof from imposition and fraud in the manufacture and sale of baker's bread therein; so as to ensure that the bread so manufactured and sold shall be good and wholesome; and also prevent fraudulent mixtures of other substances with the flour of which such bread is made.

[Ratified 27th day of January, 1849.]

CHAPTER XLIV.

AN ACT to amend an act, entitled "An Act to amend the laws regulating the inspection of Turpentine," chapter 57, ratified 14th day of January, 1847.

Sec. 1. 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 each barrel of head turpentine shall bear the weight of two hundred and forty pounds; and each barrel of tar shall be of the weight of two hundred and eighty pounds, and the tar to be put in barrels of the same kind as are required for soft turpentine, by the act above cited.

[Ratified 27th day of January, 1849.]

CHAPTER XLV.

AN ACT to locate the Judges of the Superior Courts of law and equity in North Carolina.

Sec. 1. 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 all elections hereafter to be made for Judges of the Superior Courts of law and equity, the election shall be made for some one judicial circuit, in which there is no Judge resident; and it shall be the duty of the Judge so elected to reside in some one of the counties of the circuit for which he shall have been chosen, so long as he may hold the office: Provided, however, that this clause shall not be so construed, as to alter the law which now requires the Judges of said courts to allot the several circuits among themselves, and allows them to exchange courts: Provided further, that nothing in this act contained shall be so construed as to confine the election to any person residing in any particular circuit in this State.

[Ratified 27th day of January, 1849.]

CHAPTER XLVI.

AN ACT in relation to Justices of the Peace.

Sec. 1. 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, all justices of the peace in and for the several counties of this State, be, and they are hereby, exempted from working on the public roads of their respective counties.

[Ratified 29th day of January, 1849.]

CHAPTER XLVII.

AN ACT to empower single justices of the peace to tax prosecutors on State's warrants with the payment of costs in certain cases.

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 defendant or defendants shall be brought before a justice or justices of the peace, in any county in this State, by State's warrant, upon a charge of any offence of an inferior nature, or upon a craving of the peace, and it shall appear to the justice or justices aforesaid, that said prosecution is frivolous or malicious, the said justice or justices may, in his or their discretion, order the prosecutor to pay the costs, and may issue execution therefor.

[Ratified 27th day of January, 1849.]

CHAPTER XLVIII.

AN ACT to facilitate the collection of certain debts given for Cherokee lands, and for other purposes.

WHEREAS at the different sales of the Cherokee lands,

several tracts or parcels of land were sold separately to the same purchaser, and a bond for the whole amount of the purchase money, instead of separate bonds for each tract, was given; and whereas the original purchasers of such lands have, in many cases, sold and assigned the said lands to different persons; and whereas said assignees cannot pay for the tract or tracts so assigned to them and procure grants for the same, without first paying off the whole bond of the original purchaser, and therefore will not, and, in many cases, cannot pay off said bonds; and whereas the original purchasers have, in many cases, become insolvent, and the amount of their bonds cannot be collected; and whereas in some instances the sureties to the bonds of the original purchasers have satisfied said bonds, and have the agent's receipt in full for the same: Therefore,

Sec. 1. 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 all cases where the original purchasers of their surety or sureties, of Cherokee lands, have failed to pay for the same, it should be the duty of the agent of the State for the collection of debts due for said Cherokee lands, to receive payment from any assignee of said original purchaser or purchasers, his heir, devisee or assignee, for any tract so assigned, and to give said assignee, his heir, devisee or assignee a receipt for the same, particularly specifying and describing the tract or parcel so assigned and paid for. And it shall be the duty of the Secretary of State, upon presentation of said agent's receipt, to issue a grant for the tract or tracts of land, specified in said receipt, to the person or persons so paying for the same.

Sec. 2. Be it further enacted, That whenever in any case, the purchase money for Cherokee lands has been paid by or collected from the sureties to the original purchaser to the full amount of the bond or bonds given by them, it shall be the duty of the Secretary of State, whenever the fact of such payment has been satisfactorily certified to him by the said agent of the State, to issue a grant or grants for the lands so paid for to the person or persons paying for the same.

Sec. 3. Be it further enacted, That nothing in this act contained shall authorize the agent to receipt for, or the Secretary of State to issue grants for any tract of land to the original purchasers or their sureties, unless the whole amount of the bond in which the price of said tract is included shall have been fully satisfied and paid off.

Sec. 4. Be it further enacted, That this act shall be in force from and after its ratification.

[Ratified 29th day of January, 1849.]

CHAPTER XLIX.

AN ACT to amend an act, passed at the last session, entitled "An Act to provide for the sale of certain lands in Cherokee and Macon Counties, which have been surrendered to the State."

WHEREAS no provision was made by the above recited act to require the agent of the State to return to the Comptroller's office an account of the lands sold under the provisions of said act: Therefore,

Sec. 1. 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 Cherokee land agent shall, on or before the first day of May next, return to the Comptroller's office a full and complete statement of all the surrendered lands, valued and resold under the above recited act, setting forth the names of the purchasers, the amount of each purchase, the amount paid, and the amount due, and when due. And in all cases where the bonds of the original purchasers have been cancelled, he shall return a statement thereof to the Comptroller, who shall credit the respective accounts of said purchasers, with the amount of said bonds.

Sec. 2. Be it further enacted, That upon the return of the statement of the agent to the Comptroller's office, showing the account of sales as aforesaid, the Comptroller shall charge the obligors respectively in his books with the amount of each bond; and when payments are made thereon, either to the Public Treasurer or the agent aforesaid, the Comptroller, on being furnished with the evidence of such payment, shall enter the proper credit for the same.

[Ratified 29th day of January, 1849.]

CHAPTER L.

AN ACT for the relief of James Stewart of Cherokee county.

WHEREAS Andrew J. Russell became the purchaser of two lots of Cherokee lands, at the land sale in 1838, number (112) one hundred and twelve, and (113) one hundred and thirteen, in district number six, lying in Cherokee county; and whereas the said Andrew J. Russell sold and assigned his interest in said lots to E. R. Scott, and the said E. R. Scott sold and assigned his interest in said lots to James Stewart, of Cherokee county; and whereas the said James Stewart has paid the purchase money for said lots into the Treasury of North Carolina, and the Secretary of State has issued grants for said lots in the name of the said E. R. Scott, and said Scott has removed from the county, and resides in parts unknown: Therefore,

Sec. 1. 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 Secretary of State be, and he is hereby directed to cancel the grants issued in the name of E. R. Scott for lots numbered 112 and 113, in district number (6) six, of Cherokee lands, lying in Cherokee county, and issue grants to, and in the name of James Stewart for said lots of lands, any law to the contrary notwithstanding; and that this act shall take effect from and after the ratification thereof.

[Ratified 27th day of January, 1849.]

CHAPTER LI.

AN ACT to amend an act passed in the year 1846-7, entitled "An Act to provide for a re-assessment of the lands of this State, and a more accurate enlistment of taxable polls."

WHEREAS, by the said act, the board of valuation, in valuing lands and improvements, worked as gold or silver mines, or lands supposed to contain gold, or silver, or other mineral, are required to take into consideration the increased value of all such lands, arising from the circumstance of their containing such gold or silver ore or other mineral as aforesaid; and whereas the real value of all such lands and improvements is very uncertain and fluctuating:

[See fourth page.]