

North State

VOL. IV.]

SALISBURY, N. C., AUGUST 6, 1869.

[NO. 31

EDUCATIONAL.

Patronise your own Institutions.

THE Exercises of the C. Good Female College, at Statesville, will be resumed the 1st of September next. Board, fuel, washing, \$15 per month. Tuition in regular classes from \$2.50 to \$5.00 per month. Music, Drawing, Painting, &c., extra at moderate rates; payment half in advance for term of four months, ending Dec. 23. For further particulars address E. F. ROCKWELL, Statesville, July 9-3m President.

University of N. Carolina.

THE FALL SESSION of this Institution will commence on the 18th day of August prox. and continue twenty weeks. Preparatory and Normal Departments, and a General Course of University Lectures, will be opened. Entrance expenses, including board, \$5 to \$100. All the benefits of the Institution are offered, free of charge, to a limited number of residents in the State. Apply to the President, SOLOMON POOL, Chapel Hill, July 6th, 1869. 37-6w

Statesville Male Academy.

J. H. Hill, A. M., H. T. Burke, A. M., PRINCIPALS. THE FALL TERM of this School will open on the 5th of September, and continue sixteen weeks. English Dept. (Primary) \$8 00 (Intermediate) 12 00 (Advanced) 16 00 Contingent Fee 1 00 Board in good families at \$12 per month. One half of the above charges is required in advance. For further particulars, address the Principals July 30, 1869. 30-2w

MISS AICE PEARSON'S SCHOOL will be opened on Monday, Sept. 13, 1869. Terms: \$20 per session. Latin and French each \$5. July 30-303w

Edgeworth Female Seminary.

THE NEXT SESSION WILL COMMENCE on the 11th day of September. The entire expense of Board and Tuition will be from \$100 to \$150 if paid in advance. Each boarder will furnish her own lights and towels and also a pair of sheets and pillow cases. For circular address J. M. M. CALDWELL, July 2, 1869-3m Greensboro, N. C.

Pleasant Grove Academy.

MALE and FEMALE. THE SEVENTH SESSION WILL COMMENCE on the 9th of August next. Course—English, Classical, Mathematical. Terms: Tuition from \$5 to \$10 per session. Board with the Principal \$9 per month. For particulars address the principal at P. O. Box 10, N. C. W. J. ELLIS, Principal. Pleasant Grove, N. C., 25-3m

BINGHAM SCHOOL.

MEBANEVILLE, N. C. Wm. Bingham, Robert Bingham, W. B. Lynch. THE SESSION OF 1869-70 BEGINS August 25th, and continues forty weeks. The course of instruction includes the ordinary English branches, the Ancient Languages, French, Mathematics, Book-Keeping, and the elements of Natural Science. Expenses, including tuition, board, fuel, washing, books and clothing, \$365. Circular sent on application. June 18, 1869. 24-6w

FRANKLIN ACADEMY.

THE first Session of this Academy will commence on the 1st day of September. Pupils can engage at any time and be charged from the rate of tuition. The rates of tuition will be as follows: \$7.50 for the first term, \$10.00 for the second, and \$12.50 for the third. No pupil will be spared to give pupils a thorough training in all the branches usually taught in a first class Academy. The Academy is located in a healthy and moral community in Franklin Township, five miles from Salisbury on the new road to Mocksville. Board and tuition as in respectable families from \$8 dollars per month. L. H. ROTHBOCK, June 25, 1869-25-3m Principal.

PROFESSIONAL.

M. H. PINNIX,

ATTORNEY AT LAW, LEXINGTON, N. C.

WILL PRACTICE in the courts of Davidson, Forsythe, Guilford, Alamance and Randolph counties.

Hon. R. M. Pearson, C. J. of N. C., Raleigh. E. G. Hoare, Associate Justice, " Thomas Settle, " R. P. Dick, " Bedford Brown, Yanceyville, N. C. " Hon. John Kerr, " J. E. McLean, Greensboro, N. C. " Thomas Ruffin, Jr., " J. M. Chapin, Dobson, N. C. " January 29, 1869. 4-1f

JOHN S. HENDERSON,

ATTORNEY & COUNSELLOR AT LAW, SALISBURY, N. C.

Will attend promptly to the Collection of Claims. feb26-1y

DR. C. A. HENDERSON,

HAVING resumed the practice of Medicine respectfully offers his professional services to the public. OFFICE: The one lately occupied by Whitehead & Henderson. Calls may be left either at his office, or at Ennis' Drug Store. Salisbury, Feb. 12, 1869. 6-6r

Dr. I. W. JONES,

HAVING located in Salisbury, offers his professional services to the public. Office on Council Street, opposite the Court House and next door to the Law office of Hon. Burton Craige. May 25, 1869. 1f

For Sale.

A Fine New Buggy. Apply to WILLIAM H. BAILEY, Salisbury, N. C. July 15 1f

LEGAL NOTICES.

State of North Carolina,

MONTGOMERY COUNTY.

Superior Court, Spring Term, 1869. James Haywood, administrator of James Haywood, Sr., deceased, against Benjamin Haywood, Richard Haywood, James D. Haywood and wife Dicy, W. R. Haywood, Sr., Benjamin F. Haywood and Malinda Haywood. Petition to make Real Estate Assets.

IT appearing to the satisfaction of the court that Benjamin Haywood and Richard Haywood, cannot after due diligence be found within the limits of this State: It is ordered that service (be made) by publication for six weeks, successively, in the Old North State a newspaper published in the town of Salisbury, N. C., notifying the said non-resident defendants to appear at the next term of said court to be held for said county at the Court House in Troy, on the fourth Monday after the second Monday in August next, and answer the petition of said Administrator or the same will be taken pro confesso and heard ex parte as to them.

Witness, C. C. Wade, Clerk of our said court at office, in the town of Troy, the 4th Monday after the second Monday in February, 1869. 26-6w per fee \$10. C. C. WADE, C. S. C.

State of North Carolina,

MONTGOMERY COUNTY.

Superior Court Spring Term, A. D. 1869.

C. C. Wade, administrator of Jonathan Richardson, deceased, against John Richardson, David Richardson, Martin Morgan and wife Laney, William Jordan and wife Lania, William Fuller and wife Elizabeth, Spinks Richardson, Hiram Richardson, Mary J. Richardson, Albert Richardson and Elizabeth Richardson. Petition to make Real Estate Assets.

IT appearing to the satisfaction of the Court that all the above named defendants cannot after due diligence be found within the limits of this State: It is ordered that service be made by publication for six weeks successively, in the Old North State, a newspaper published in the town of Salisbury, notifying the said non-resident defendants to appear at the next Term of this Court to be held for said county at the Court House in Troy, on the 4th Monday after the 2nd Monday in August next, and answer the petition of the said administrator or the same will be taken pro confesso and heard ex parte as to them.

Witness, C. C. Wade, clerk of our said Court at office in Troy, the 4th Monday after the 2d Monday in February next. C. C. WADE, C. S. C. This June 22, 1869. 26-6w per fee \$10

STATE OF NORTH CAROLINA,

MONTGOMERY COUNTY.

In the Superior Court.

Henry W. Leubetter, Plaintiff, against Daniel McRae, Defendant.

Whereas the above named plaintiff has instituted his action against Daniel McRae the above named defendant in the Superior Court of said county to recover the possession of real property held by the said defendant.

And whereas the said defendant being a resident of this State, has neglected to answer the writ of summons and to appear before the court to defend himself therein with a like intent: It is ordered that service of summons be made by publication in the Old North State once a week for at least six weeks successively, notifying the said defendant to appear before the said Superior Court at the court house in Troy, on the 4th Monday after the 2d Monday in August next, and there to answer the complaint of the Plaintiff in the above entitled cause, or the plaintiff will take judgment for the relief demanded in the complaint.

Given under my hand and seal of said Court, the 24th day of July 1869. C. C. WADE, Clerk Superior Court for Montgomery County, N. C.

SUMMONS.

E. Nye Hutchison & T. J. Sumner, Plaintiffs, against

John E. Brown, Wm. J. Brown, Z. B. Vance and Robert F. Hoke, Defendants.

STATE OF NORTH CAROLINA.

To the Sheriff of Rowan County—Greeting.

You are hereby commanded to summon John E. Brown, W. J. Brown, Z. B. Vance and Robert F. Hoke, if to be found in your County, personally to be and appear before his Honor, the Judge of our Superior Court, to be held for the County of Rowan, at the Court House in Salisbury, on the third Monday in September next, then and there to answer the complaint, a copy of which is served with this summons, and let them take notice, that if they fail to answer said complaint during the next term of said court for the relief demanded in the complaint. Herein fail not, and have you them and there this writ.

Given under my hand and the seal of the said Court at Salisbury, the 24th day of July, A. D. 1869. A. JUDSON MASON, Clerk of the Superior Court for Rowan County.

Duplicate of this summons issued to Buncombe for William J. Brown; to Mecklenburg for Z. B. Vance, and to Mitchell for Robert F. Hoke. A. JUDSON MASON, C. S. C.

North Carolina,

In the Superior Court

Rowan County.

E. Nye Hutchison & T. J. Sumner, Plaintiffs, against

John E. Brown, William J. Brown, Z. B. Vance and Robert F. Hoke, Defendants.

IT appearing to the satisfaction of the Court, that two questions preliminary to the consideration of the main questions in this case.

The main questions are:

1. As to the constitutionality of the act of Assembly in reference to S. 5, Art. V. of the Constitution.

2. Whether the act is unconstitutional in reference to S. 1, Art. V. of the Constitution.

The preliminary questions are:

1. The constitutionality of the appointment of the Directors by the Governor without confirmation by the Senate.

2. Whether the act of which it is sought to enforce the performance, is a mere ministerial one, or one in which the Governor has a discretion; in which last case it is admitted mandamus will not lie.

As to the first preliminary question:

The Constitution, Art. III, Sec. 10, says: "The Governor shall nominate, and by the advice of a majority of the Senators elected, appoint all officers whose offices are established by this Constitution, or which shall be

The Old North State

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SIX MONTHS, " " " 1.50

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From the Retail Standard.

SUPREME COURT.

In the case of the University Railroad Company vs. W. H. Holder, Opinion by Justice Rodman—Bonds for Building new Railroads declared unconstitutional.

Mandamus dismissed. Power of taxation discussed. Held that the equation in Art. 1, Sec. 5, does not apply to the old debt, or to debts contracted in aid of unfinished roads. No power to build new roads without submitting the question to the people. No limit to power of Counties to levy taxes for necessary expenses, designated in Art. 7, Sec. 2, provided they obtain special law of the General Assembly, and they need not be submitted to a vote of the people.

OPINION OF JUSTICE RODMAN.

The petition is filed by the University Railroad Company, claiming to be a corporation to compel the Governor and Public Treasurer to issue to it certain bonds of the State as required by an act of Assembly, ratified 30th January 1869, amended by an act ratified 1st April 1869. The Judge below granted a peremptory mandamus and the respondents appealed.

The first question is: Who is the petitioner and has it a legal capacity to possess the right to demand relief of the nature of that prayed for?

Section 1 of the act of 30th January 1869 enacts: "That there shall be a body corporate and politic, known as the University Railroad Company, with corporate powers and franchises to the same extent as are possessed by the North Carolina Railroad Company."

Section 2 requires the Company to build a Railroad from some point on the North Carolina Railroad to Chapel Hill.

Section 3 "The affairs of said University Railroad Company shall be managed by a Board of five Directors, to be appointed by the Governor of the State, which board shall out of their number, choose a President," &c.

Sec. 4. "The Board of Directors shall appoint their officers and fix their compensation, and the salary of the President, subject to the approval of the Governor."

Section 5 provides for the issuing, by the Treasurer of the State, to the President of the Company, of bonds to the amount of \$300,000, to be signed by the Governor and countersigned by the Treasurer.

Section 6 authorizes the Board to make certain contracts for building the road, and for the use of the rolling stock of the North Carolina Railroad Company.

Section 7 levies a tax of one hundredth of one per cent. all the property in the State to pay the interest on the bonds. The amendment of 1st April only changes the number of Directors to seven.

Without any minute criticism on this Act, it may be conceded to the petitioners that its effect was to create an indebted corporation to consist of certain persons to be named by the Governor, to act as Agents, and for the exclusive benefit of the State in building the Railroad, and that on the appointment of these persons, the corporation became perfect. This collection, however, is made subject to the consideration whether the persons thus to be appointed by the Governor were not public officers, and if so, whether such appointment was invalid for want of confirmation by the Senate under Art. III, Sec. 10 of the State Constitution.

I concede also to the petitioners, for the sake of the argument, that public agents of this sort (if rightfully appointed) may maintain mandamus against the Governor, to compel him to perform a mere ministerial act necessary to enable them to perform their public duties.

With these concessions there will remain but two questions preliminary to the consideration of the main questions in this case. The main questions are:

1. As to the constitutionality of the act of Assembly in reference to S. 5, Art. V. of the Constitution.

2. Whether the act is unconstitutional in reference to S. 1, Art. V. of the Constitution.

The preliminary questions are:

1. The constitutionality of the appointment of the Directors by the Governor without confirmation by the Senate.

2. Whether the act of which it is sought to enforce the performance, is a mere ministerial one, or one in which the Governor has a discretion; in which last case it is admitted mandamus will not lie.

As to the first preliminary question:

The Constitution, Art. III, Sec. 10, says: "The Governor shall nominate, and by the advice of a majority of the Senators elected, appoint all officers whose offices are established by this Constitution, or which shall be

created by law, and whose appointments are not otherwise provided for, and no such officer shall be appointed or elected by the General Assembly." Were the Directors "officers" in the sense of this section of the Constitution? If they were it is clear they were created by law subsequent to the Constitution, and then the only question remaining for consideration under this head would be whether the words "whose appointments are otherwise provided for" mean, otherwise provided for by the Constitution, or otherwise provided for by the law creating them, were those Directors "officers" in the sense of the Constitution? 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