LAWS OF NORTH CAROLINA. Passed at the Session of 1836--'37.

Rebised Statute.]

No. XC.

An Act concerning Courts of Justice, Practice, Pieas and Process. [CONCLUBED.]

marrer filed, or a bill of exceptions to the evidence tendered, are summoned, time may be allowed, upon motion of either party, to the next term to argue the same.

In any matter or suit depending in any of said courts, either ness or witnesses therein named, plaintiff or defendant may enter his own pleas and detend his A copy of every subpoens issued. own cause; and no instrument of writing which contains the tion, in case the witness or witnesses therein named is or are ful deputy, ascertain by his or her oath or affirmation, the sum substance shall be lost or destroyed for want of form.

All jury causes shall be first tried.

recover against the defendant full costs to the time of over-ru-shall forfeit and pay the sum of eighty dollars, for the use of nefit of said party; any thing to the contrary notwithstanding: ling such plea, including the costs of court; and the plaintiff the State, unless upon notice issued and made known, sufficient Provided the party cast, shall not be obliged to pay for more in replevin or defendant in any other action may plead as many cause be shewn at the next court for such failure; in which several matters as may be necessary for his defence, so that he case his forfeiture shall be remitted, and he shall be discharged SEC. 77. The clerks of the several superior courts of law may not be permitted to plead and demur to the whole.

The entering a plea since the last continuance of a suit at law, shall in no case whatever be construed a relinquishment the civil suit depending, shall in the vacation be accommodated in the newspapers which have been ordered by the court, and like force and operation which it would have had, if such plea such witness was summoned, should neglect or omit to dis- nal or mesne process from one county to another. since the last continuance, had not been entered.

All issues whether general or special, shall be heard and or on affidavit showing sufficient cause.

praying a continuance, shall not obtain it without payment of costs, the whole of these costs shall be paid before the continuance is granted, and the party paying such costs shall not be entitled to recover them, a though the judgment of the court.

Sec. 67. And provided further, That if at the next succeed. shall finally be in his favor.

appearance is entered.

shall be empannelled to enquire of the truth of any one of state of health, upon oath thereof made, before any of the justice is hereby empowered to any action of trespass, assault and battery, false imprisonment or esastained thereby; which enquiry by the jury shall be order the clerk of the court where such cause is depending, to or ejectment, any one or more of them shall upon the trial made as in other cases of judgment by default; and in case the issue a commission to one or more persons to take the deposition of the same.

Sec. 84. When several persons are made deffendants to any action of trespass, assault and battery, false imprisonment or or ejectment, any one or more of them shall upon the trial made as in other cases of judgment by default; and in case the issue a commission to one or more persons to take the deposition of the same. said judgment shall be entered on record; or if by reason of any additional ten miles; which deposition, when returned, taken person or persons a defendant or defendants to such action or execution executed, the plaintiff or plaintiffs, or his or their execin manner aforesaid, shall be received as legal evidence. ntors or administrators shall be fully paid or satisfied, all such damages so to be assessed, with his or their costs of suit, and all ness in any of the said courts, or before any persons appoint—which the production of an original paper, lodged in any of the casonable charges and expenses for executing the said execution, ed to take depositions as aforesaid, shall refuse to give testiecurity to answer to the plaintiff or plaintiffs, and his or their manner as the law doth or may direct. executors and administrators, such damages as shall or may be sustained for further breach of any covenants in the same intention of any covenants of any cove sheriff or other officer shall serve or execute on such persons so the issue in cases, and under circumstances where they might attending, going to or returning from said court, any writ or be compelled to produce the same by the ordinary rules of proment; upon which there shall be the like proceedings as were in the action of debt upon the said band or obligation for assessing of damages, upon trial of issues joined upon such breach and void.

Sec. 73. Each person who shall attend any Superior or the defendant, as in cases of non-suit. And it a defendant shall he allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for the said courts respectively, on motion, to give the like judgment for shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be allowed for each and every day's attendance, and for shall not satisfactorily account for such failure, it shall be every thirty miles he may travel going to and returning from lawful for the said courts respectively, on motion, to give the like judgment for shall be every thirty miles he may travel going to and returning from lawful for the said courts respectively, on motion as aforesaid, and so toties quoties, and the defendant, his body, lands and so toties quoties, and the defendant, his body, lands and so toties quotie

courts, the clerk, at the request of the party, shall issue a sub-poena directed to the sheriff, or other officer of the county, perior Court of any county to another, after the order of remov-where such witnesses are said to reside, mentioning al. depositions may be taken in the case, and subportas for the When a special verdict shall be found, a case agreed, a de-

are summoned.

Every subpoens made returnable immediately shall be issued only in term time, and shall be personally served on the wit-

all motions in arrest of judgment shall be argued within the of the said courts, in manner as herein before directed, either in summoning him or her, at such time as he or she may see prohiree last days of the term in which the issue shall be tried, the a civil suit or in a criminal prosecution or plea of the State, per, before any jurisdiction having cognizance thereof; and the Arguments on writs of error, special verdicts, cases agreed, demurrers, petitions for legacies and distributions of intestates continued in a civil discharged by the court, or the party at whose instance such witness shall be aumoned, or when summoned in a criminal prosecution or plea of the State, of the clerk or his lawful deputy shall be sufficient evidence of the clerk or his lawful deputy shall be sufficient term, until discharged; when summoned in a civil suit by the court, or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea of the State, until discharged; when summoned in a civil suit by the court, or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea of the State, until discharged; when summoned in a civil suit by the court, or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea of the State, until discharged; when summoned in a civil suit by the court, or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea of the State, until discharged; when summoned in a civil suit by the court, or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea or the perty of the debt: Provided always, that in any case where recovery may be had before a justice of the clerk or his lawful deputy shall be evidence of the debt: Provided always, that in any case where recovery may be had before a justice of the clerk or certificate of the clerk or his lawful deputy shall be sufficient to evidence of the debt: Provided always, that in any case where certificate of the clerk or certificate of the clerk or his lawful deputy shall be evidence of the debt: Provided always, that in any case where certificate of the clerk or certific Where a plea in abatement shall be pleaded, and upon argumony, who shall recover the same by seize facias, with costs; of witnesses in the clerk's office; the amount whereof shall be ment the same shall be adjudged insufficient, the plaintiff shall or if summoned in a criminal prosecution or plea of the State, taxed in the bill of costs, to be levied and recovered for the befrom all costs.

of any plea previously entered, but the same shall rakin the and settled between the parties, and the party at whose instance with the postage of all letters which cover the transfer of origicharge him or her from further attendance, and he or she, for want of such discharge, should attend at the next term, then tend any commissioners, referees, order of survey, or jury of

ploy in any matter or suit more than one attorney to speak in attend at the time and place mentioned in the subpoena, then statute. such matter or suit in court, and the courts in this State are no forfeiture or penalty shall be incurred by such failure; and SEC. 80. In all cases where there are or shall be mutual debts

by some person duly authorised in that behalf. Provided, That puble of attending to give his testimony in court, or shall be in justly due on either side.

when any attorney in any of said courts shall claim to enter an a dangerous state of health, or about to leave the state, oath | Sec. 81. In all civil cases whatsoever, the evidence of all it shall be the duty of the clerk to note to that effect upon the in the trial of said suit, the court wherein such suit is depend- the witnesses incompetent, except against each other. ing, shall and may, by commission, empower such and so many SEC. 82. In all actions upon the case for slanderous words, any bond or bonds, or on any penal sum for the non-perform- tions and restrictions as are observed by clerks and masters in same.

nants and agreements as he may think fit; upon which a jury even before such cause shall be at issue, or be in a dangerous the same.

SEC. 64. In taking the testimony of witnesses in all causes out the county. Provided, that in counties where witnesses which may be depending in the Superior or county courts, the following rules shall be observed and put in practice, to wit:

In all suits where witnesses are to appear at any of the said by the suit of the suit of the said by the suit of the suit of the said by the suit of the said by the suit of the said by the suit of the suit of the suit of the said by the suit of the suit

the time and place for his, her or their appearance, the names attendance of witnesses, and commissions to take depositions,

as a witness in any suit, (those wherein the state is a party ex-A copy of every subpoena issued by the clerks in the vaca- cepted,) shall at each court, before the clerk thereof or his lawnot to be found, may be left at their usual place of residence; due for travelling to and from court, attendance and ferriage, For the better preservation of the records of the courts when and such copy, certified by the sheriff or other officer, left as any cause is finally determined, the clerk of each court shall aforesaid, shall be deemed a legal summons; and the person on failure of the party at whose instance such witness was sumenter all the proceedings therein in a book well bound, and an or persons therein named shall be bound to appear in the same moned, to pay off and discharge the same previous to the demander and perfect record made thereof. Sec. 65. Every witness being summoned to appear in any such witness to sue for and recover the same from the party

and equity, and clerks of the county courts, shall tax the party SEC. 66. Provided always. That if it shall so happen that bound to pay the costs of the suit, with the costs of publication

tried the next succeeding term after the issue shall be made and in that case the witness, upon oath made of the facts, shall view, a summon shall be issued by the clerk of the court at the up, unless by consent of parties, or on sufficient cause shown be entitled to a ticket from the clerk, in the same manner as request of either party or their agent, expressing the day and to the court by affidavit filed, such cause should be continued; other witnesses, and shall recover from the party at whose in- place where they are to appear, the names of the parties to the nor shall any cause be continued at any term, but by consent stance he was summoned, the same allowance which by this act suit, and in whose behalf summoned; and all witnesses sumis given to witnesses for their attendance at said court, with moned in pursuance of this section, shall be entitled to the Whenever it shall be the opinion of the court, that the party costs. Provided also, That if any witness shall swear falsely same privileges, and receive the same pay for their attendance,

ing term of said court, sufficient cause be shown by the person mission or discontinuance, the defendant shall be entitled to It shall not be lawful for either plaintiff or defendant to em- so summoned, and failing to appear of his or her incapacity to full costs, unless when it is or may be otherwise directed by

hereby directed, not to suder more than one attorney as afore- said witness, so exonerated, shall not be subject to any costs subsisting between the plaintiff and defendant, or if either party said, in any matters whatever to plead for either plaintiff or which may have accrued; but if on notice given by the court, sue or be sued as executor or administrator, where there are defendant to any suit, under penalty of a violation of this act. sufficient cause be not shown at the next succeeding term after mutual debts subsisting between the testator or intestate and Every attorney in any of the courts of law and equity in this such failure, it shall and may be lawful for such court, on mostitude party, one debt may be set against the other, either by State, who shall claim to enter an appearance for any person tion, to grant judgment and award execution for the forfeiture being pleased in bar or given in evidence on the general issue, or persons in any of said courts, shall upon being required so before mentioned against the person so summoned, and failing to do, produce and file in the clerk's office of the court in which he shall so claim to enter an appearance, a power or authority to that effect, signed by the person or persons, or some one of them, for whom he is about to enter an appearance, or shall by reason of age, bodily infirmity or other cause be inca-

appearance by virtue of a letter to him directed, whether such thereof being made, or the truth of the matter otherwise appear- negroes, Indians, mulattoes, and of all persons of mixed blood. letter purport a general or particular employment, and it shall ing, or when either party to a civil suit shall require the testi- descended from negro or Indian ancestors to the fourth generabe necessary for said attorney to retain said letters in his own mony of the Governor, the Secretary of State, the Treasurer, tion inclusive, (though one ancestor of each generation may possession, he shall on the production of said letters, setting Comptroller, or any Judge of the Superior or Supreme Courts, have been a white person,) whether the person or persons whose forth such employment, be allowed to enter ms appearance; and or of the Attorney General, or any of the Solicitors of the State evidence is offered be bond or free, shall be inadmissible, and

No afterney shall be permitted to enter an appearance for persons as may be thought necessary to take and receive the and in all actions of assault and battery, if the jury upon the his client or clients, without producing to the court when redeposition of such witness; which being duly taken and retrial of the issue in such action, or the jury that shall enquire quired, such power or letters; and upon his failure to do so, the turned as herein after is directed, shall be received as legal of the damages, do find or assess the damages under four dolame proceedings shall be had thereon, as in cases where no testimony. And in all cases where depositions are taken in a lars, then the plaintiff or plaintiffs in such action or actions shall specarance is entered.

Sec. 63. In all actions brought in any of said courts, on to pass upon such depositions, under the same rules, regula- or assessed shall amount unto, without further increase of the

ance of any covenants or agreements, in any indenture, deed chancery, in passing on depositions to be read in chancery.

SEC. 83. In all actions of trespass quase clausum fregit, or writing contained, the plaintiff or plaintiffs may assign as

SEC. 69. Provided always, that the party praying such wherein the defendant or defend at shall disclaim, in his or many breaches as he or they shall think fit; and the jury on the commission, shall give such notice to the adverse party of the their plea, to make any tiffe or claims to the lands in which trial of such action or actions shall and may assess not only time and place, when and where such commission is to be ex- the trespass is, by the declaration, supposed to be done, and such damages and costs as have heretofore been usually done in ecuted, as the court shall think proper; and the adverse party the trespass be by negligence or involuntary, the defendant or such cases, but also damages for such of the said breaches so shall have power to cross examine any witness whose deposi defendants shall be permitted to plead a disclaimer and that to be assigned, as the plaintiff upon the trial of the issues shall tion shall be so taken; and all depositions otherwise taken than the trespass was by negligence or involuntary, and a tender or prove to have been broken, and the like judgment shall be en- as herein is directed, unless by consent of parties, shall be void offer of sufficient amends for such trespass brought, whereupon to all intents and purposes. such like actions; and if judgment shall be given for the plainSEC. 70. If any person who may be a witness in any cause ed to join issue, and the said issue be found for the defendants,
on a demurrer, or by confession or nihil dicit, the plaintiff shall be clearupon the record, may suggest as many breaches of the cove- sity of leaving the state before such cause is to be tried, or ly barred from the said action and all other suits concerning

lesendant or desendants after such judgment entered, and be- tion of such witness, notice being first given to the adverse par- acquitted shall have and recover his costs of suit in like manore execution executed, shall pay into the court where the ac- ty of the time and place, when and where such deposition is to ner as if a verdict had been given against the plaintiff or plaintion shall be brought, to the use of the plaintiff or plaintiffs, or be taken, as follows, to wit: Where the party to be notified tiffs and acquitted all the defendants, unless the Judge before does not reside, or is not more than ten miles from the place whom such cause shall be tried shall immediately after the where the deposition is to be taken, three days previous notice trial thereof, in open court, certify upon the record, under his nants, together with the costs of suit, a stay of execution of of the time and place; in all other cases one day more for every hand, that there was a reasonable cause for the making such

the body, lands or goods of the defendant shall be thereupon mony on oath, such person so refusing shall by the court or by or Supreme Court, shall become necessary, the said court shall the commissioners before whom he shall be summoned, be com- have power to issue the process of subporta duces tecum, requimited to the common prison, there to remain without bail or ring such persons as hold said offices respectively to attend the mainprize, until he shall be willing to give testimony in such court from whence said process issued, with such original paragraphs to answer to the plaintiff and the state of the shall be willing to give testimony in such court from whence said process issued, with such original paragraphs. per, in like manner and under the same penalties as witnesses