

return shall be evidence of the service of the said notice as may be therein stated; and the said officers shall deliver respectively the said notice with his return to the party, his attorney or agent, at whose instance such notice issued, upon demand of the same.

Sec. 130. Any sheriff or coroner neglecting to execute and return such notice, or making a false return thereon, shall be subject to the same action and penalties as for neglecting to serve or falsely returning process directed to him from the Superior Courts of law of this State, to be prosecuted, recovered and applied as actions and penalties are directed to be prosecuted, recovered and applied for neglecting to serve, or falsely returning process issued from the Superior Courts of this State—*Provided that*.

Sec. 131. Nothing herein contained, shall prevent any person from giving notice and proving the same as heretofore directed.

Sec. 132. Where any scire facias shall issue to the sheriff of any county within this State, the return of the sheriff thereon, that the same has been executed, shall be deemed sufficient evidence of the service of such scire facias; and it shall not be held necessary that the same should be made known in the presence of witnesses.

Sec. 133. At the trial of all actions at law upon contract, it shall be competent for either of the defendants to shew in evidence, that he, she, or they, is, or are surety or sureties; and if it be satisfactorily shown, it shall be the duty of the jury in their verdict, or of the justice of the peace in his judgment, to discriminate the principal and surety, which shall be endorsed on the execution, by the clerk or justice of the peace issuing it.

Sec. 134. When any execution endorsed as aforesaid shall come into the hands of any officer for collection, it shall be his duty to levy the same on goods and chattels and lands and tenements of the principal, or so much thereof as shall be necessary to satisfy said execution; and for want of such sufficient property of the principal, also on the goods and chattels, lands and tenements of the surety or sureties, and make sale thereof as the law does or may direct: *Provided nevertheless*, that in all such levies, a sale shall first be had on all the property of the principal levied on before that of the surety or sureties.

Sec. 135. Whenever any suit shall be brought in any of said courts, in which security shall be given for the prosecution of the suit, or when any case shall be brought up to any of said courts by an appeal from the County Courts, or otherwise, in which a bond for the prosecution of the suit shall have been given in the court below, and judgment shall be given in the Superior Court against the plaintiff for the costs of the defendant or defendants, it shall be the duty of the court, upon motion of the defendant, also to give judgment against the surety for the prosecution for said costs; whereupon execution shall issue jointly against the plaintiff and his security.

Sec. 136. It shall and may be lawful for the defendant or defendants against whom any final judgment or decree for the payment of money, shall or may be rendered or made, by any court of record in this State, to pay the whole or any part of the judgment or decree to the clerk of the court in which said judgment or decree shall or may be rendered or made, at any time after the rendering of such judgment or the making of such decree, although no execution shall or may have issued to enforce the payment of such judgment or decree—and such payment of money shall be as good and available to the party making the same, as if made to the sheriff or other legal officer, under and by virtue of an execution issued or such judgment or decree.

Sec. 137. The clerks of courts of record to whom any money shall or may be paid to satisfy in whole or in part, any final judgment or decree, shall pay the same to the party or parties entitled to receive the same, under the same rules and penalties as if the same had been paid into his office, under and by virtue of an execution issued on such final judgment or decree.

Sec. 138. It shall not be lawful for any judge in delivering a charge to the petit jury, to give an opinion whether a fact is fully or sufficiently proved, such matter being the true office and province of the jury; but it is hereby declared to be the duty of the judge in such cases to state in a full and correct manner, the facts given in evidence, and to declare and explain the law arising thereon.

[Ratified 25d January, 1857.]

[Revised Statute.]

SUPREME COURT.

An Act concerning the Supreme Court.

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 there shall be appointed by joint vote of the two houses of the General Assembly, three Judges, being men of integrity and learning in the law, who shall be styled "Judges of the Supreme Court of North Carolina," shall be commissioned by the Governor, and shall hold their offices during good behavior.

Sec. 2. It shall be the duty of said Judges and of their successors in office to hold the Supreme Court of this State at the city of Raleigh twice in every year, viz: on the second Monday of June, and on the last Monday of December, in each and every year; and they shall continue to sit at each term until all the business on the docket shall be determined, or continued upon good cause shown; and said court shall bear the name and style of the Supreme Court of North Carolina, and shall be deemed a court of record, and the papers and records belonging to the clerk's office thereof shall be constantly kept within the city of Raleigh.

Sec. 3. The said judges, before they act as such, shall, before the Governor for the time being, or some judicial officer of the State, severally take the oath to support the constitution of the United States, the oath appointed for the qualification of public officers, and also an oath of office.

Sec. 4. When any one of the Judges of said court is disabled from attending from sickness or other inevitable cause, two of the Judges of the said court shall and may hold the said court, hear and determine causes, and possess and exercise every other authority which by law may appertain to said court, as fully to all intents and purposes, as if all the Judges of the said court were present.

Sec. 5. The Judges of said court shall appoint one of their number to preside therein, who shall thenceforth be styled Chief Justice of the Supreme Court of North Carolina, and that the said Chief Justice and each and every of the other Judges of the Supreme Court aforesaid shall have use, exercise and enjoy the same powers and authorities, rights, privileges and pre-eminence, in every respect, as are now had, exercised, used and enjoyed by the Judges respectively, of the Superior Courts of law and Equity within this State, except that no Judge of the Supreme Court shall be authorized to hold a Superior Court; and that for the purpose of carrying such powers and authorities into execution, each of the said Chief Justices and Judges of the Supreme Court may make any fiat, may order or issue any process and perform any act which it is lawful for any Judge of the Superior Courts to make, order, issue or perform.

Sec. 6. The Court shall have power to hear and determine all questions at law brought before it by appeal from a Superior Court of law, and to hear and determine all cases in Equity brought before it by appeal from a Court of Equity or removed there by the parties thereto; and in every case such court may render such sentence, judgment, and decree as on an inspection of the whole record it shall appear to them ought in law to be rendered thereon; and shall have original and exclusive jurisdiction in repealing letters patent, and shall also have power to

issue writs of certiorari, scire facias, habeas corpus, mandamus, and all other writs which may be proper and necessary for the exercise of its jurisdiction and agreeable to the principles and usages of laws; and that it may at its discretion, make the writs of execution which it may issue returnable either to the said court or to the Superior Court from which the same may have been removed: *Provided always*, that when an execution shall be made returnable as last mentioned, a certificate of the final judgment of the Supreme Court shall always be transmitted to the Superior Court aforesaid and there be recorded. And provided further, that the said Superior Court may enforce obedience to the said execution; and in the event of its not being executed, may issue any new or further execution or process thereon, in the same manner as though the first execution had issued from the said Superior Court; and provided further, that in criminal cases the decision of the Supreme Court shall be certified to the Superior Court from which the case was transmitted to the Supreme Court which said Superior Court shall proceed to judgment and sentence, agreeably to the decision of the Supreme Court and the laws of the State.

Sec. 7. The Judges of the Supreme Court aforesaid shall have power to appoint a clerk of the said court, who shall hold his office for four years, and who, before entering on the duties of his office, shall enter into bond with sufficient security, payable to the State of North Carolina, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties, and for the safe keeping of all records committed to his custody; which bond shall be lodged with the Secretary of State; and who shall also before said Judges, or one of them, take the same oath as is prescribed by law to be taken by the clerks of the Superior Courts, and shall keep his office in the City of Raleigh, in one of the rooms of the State House; and the Judges are authorized to hold the court in the State House.

Sec. 8. It shall be the duty of said clerk in all cases in equity now pending in that court or which may hereafter be in said court to record all bills, answers, pleas, replications and demurrers with all decrees, whether interlocutory or final, made therein, together with the opinions of the Chief Justice and Judges of said court; and the said clerk shall only record other parts of the proceedings in equity cases, when for sufficient reasons he may be specially ordered by said court: *Provided* that no account, deposition, or commission to take the same shall be ordered to be recorded, except at the expense of the party or parties requiring it to be done.

Sec. 9. In estimating the allowance to the clerk for making the record as directed, the Judge shall not exceed the sum of thirty cents for each page recorded.

Sec. 10. The Judges of the Supreme Court shall prescribe and establish from time to time, rules of practice for the Superior Courts; which rules the clerk of the Supreme Court shall certify to the Judges of the Superior Courts, who shall cause the same to be entered on the records of the said courts.

Sec. 11. When an appeal shall be taken to the Supreme Court, from any interlocutory judgment at law of a Superior Court, or any interlocutory order, or decree of any Court of Equity, the Supreme Court shall not enter any judgment, reversing, affirming, or modifying the judgment, order or decree so appealed from, but shall cause their opinion to be certified to the court below with instructions to proceed upon such order, judgment or decree, or to reverse or modify the same according to said opinion; and it shall be the duty of the court below to enter upon its records the said opinion at length, and to proceed in the said cause according to said instructions.

Sec. 12. All exhibits or other documents relating to cases in Equity now pending or which may be hereafter pending in the Supreme Court, may be proved by the parol testimony of a witness or witnesses to be examined in said court, in the same manner and under the same rules as such exhibits or documents may be proved in the Superior Courts; and suitors in said court shall have subpoenas to enforce the attendance of witnesses, who shall be liable to the same penalties and actions for non-attendance, and be entitled to the same compensation for travelling, ferrage and attendance as witnesses in the Superior Courts: *Provided always*, that the witnesses attending the Supreme Court shall be taxed in the bills of costs and paid by the party on whose behalf they may be summoned.

Sec. 13. It shall be the duty of the Judges of said court to deliver their opinions or judgments in writing, with the reasons at full length upon which they are founded; and it shall not be lawful for the clerk of the said court to make any entry upon the records of the said court, that any cause depending therein is decided, nor to give to any person or persons whatever any certificates of such decision, nor to issue execution for the costs in such suit, until after the Chief Justice or some Judge or Judges, members of the said court, shall have delivered publicly and in open court the opinion of the said court, stating at length the ground and argument upon which such opinion shall be founded and supported, and shall have also delivered a written copy of the same opinion to the clerk, which shall afterwards be filed among the records of the said court and published in the reports herein directed by law to be published of the decisions made by the said court.

Sec. 14. The Supreme Court shall have power to make any amendments in any case pending before it, by making the parties thereto which said court may deem necessary and proper for the purposes of justice, and upon such terms as said court shall prescribe; and also whenever it shall appear to them necessary for the purposes of justice to allow and direct the taking of further testimony in any case in equity which may be removed to the said court for trial, under such rules and restrictions as the said court may in its discretion prescribe.

Sec. 15. The clerk of the said court shall immediately after the rise of each term thereof, transmit to the clerks of the Superior Courts of law and Courts of Equity, certificates of the decisions of the Supreme Court in cases sent from said courts, and thereupon the said clerks respectively shall issue execution for the costs incurred in said cases in the courts from which the same was sent; and the clerk of the Supreme Court shall issue execution for the costs incurred in said court, including all publications in newspapers made in the progress of the cause in that court and by order of the same, and all postage of letters which concern the transfer of original papers.

Sec. 16. The Judges of the Supreme Court shall annually appoint a reporter of the decisions thereof, whose duty it shall be, within five months after the close of each term, to prepare the decisions of said court for the press, and shall contract with some printer to print one hundred and one copies at the expense of the State, which copies shall be distributed as follows, viz: to the Secretary of the Governor one copy, to retain one copy himself, which copies shall remain in their respective offices, and six copies to be deposited in the public library; and the said reporter shall deliver sixty-five copies of said reports, to be deposited, one in the office of the clerk of the Court of Pleas and Quarter Sessions of each county in this State, and twenty-eight copies by him to be deposited in the Executive office of the State, to be transmitted by the Governor to the Executive department of each of the States and Territories, at the expense of the State; and said reporter shall receive, as a compensation for his services, a salary of three hundred dollars, and shall be authorized, on his own account and at his own expense, to print, publish, and vend, and to obtain under this grant, and in conformity with the act of Congress the copyright of said reports of cases determined by said court; which salary shall be paid to him, upon satisfactory evidence to the Treasurer that the aforesaid copies have been deposited and distributed within the time aforesaid, and not otherwise.

Sec. 17. Should the office of Reporter become vacant and no suitable person should offer to fill the same, the Judges of the Supreme Court or either of them shall notify the clerk of said court of such vacancy, and it shall then be the duty of said clerk to prepare the decisions for the press, and at his option either to publish the same on his own account, as the Reporter is authorized to publish them, or as agent for the State to contract with some printer in this State or any other State to print

the same; and the said clerk, for his own services in preparing the decisions of one year for the press and a compensation to the printer to be paid by him for publishing the same, shall be entitled to receive the salary of the Reporter; and the clerk, upon depositing with the Secretary of State, the copies reserved by law for the State, within six months after the term of decision, shall, upon the certificate of the Secretary of State to that effect, be entitled to receive the compensation by law allowed to the Reporter.

Sec. 18. It shall be the duty of the sheriff of Wake, by himself or deputy, to attend the said court; and shall be allowed for each term thereof he may attend, the sum of two dollars per day for every day said court shall be in session, to be paid by the Treasurer upon the certificate of the clerk of said court that the said Sheriff had performed said duty.

[Ratified 17th January, 1857.]

[Revised Statute.]

No. LXVII.

COURTS OF EQUITY.

An Act concerning Courts of Equity.

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 Superior Court of Law within this State shall also be and act as a Court of Equity for the same county, and possess all the powers and authorities within the same, that the Court of Chancery which was formerly held in this State, under the Colonial Government used and exercised, and that are properly and rightfully incident to such a court, agreeable to the laws in force in this State.

Sec. 2. Such courts in all equity proceedings shall be styled and called the Court of Equity for the county in which it is held.

Sec. 3. The Judges of the said Courts of Equity shall appoint some person of skill and probity to act as Clerk and Master in Equity to each of said courts.

Sec. 4. The rules and methods of proceeding in said courts shall be as follows, to wit:—

The Plaintiff may file his bill in the clerk's office either during term time or in the vacation; and thereupon the clerk shall issue a writ of subpoena as is usual in cases of Chancery; and when the plaintiff shall specially state his debt or damages, and make oath or affirmation thereof, either before one of the judges of the Superior Courts, of Law and Equity, or before one of the judges of the Supreme Court, or before the Clerk and Master in Equity, the said clerk shall together with the subpoena issue a writ directed to the sheriff of the county where the defendant is supposed to be a resident as follows, to wit:—

*The State of North Carolina. To the Sheriff of \_\_\_\_\_ County. Greeting.*  
You are hereby commanded to take the body of \_\_\_\_\_ late of your county (if to be found in your county) and him safely keep, so that you have him before the Judges of the Superior Court of Law and Equity for the county of \_\_\_\_\_ at the town of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, or till he shall give you good and sufficient security in the sum of \$ \_\_\_\_\_ (which sum is hereby directed to be double the damages suggested on oath in the bill) to appear and answer at the said court on the day aforesaid, to a bill in equity filed against him by and this you shall in no wise omit to do. Witness \_\_\_\_\_ clerk and master of the said court at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the independence of the State.

Which writ the sheriff is hereby directed and required to obey; and when any such writ shall issue to any sheriff or other officer, such sheriff or other officer shall not only be liable as special bail for taking an insufficient bond, on exception taken and entered the same term to which such process shall be returnable, the sheriff or other officer having due notice thereof, but such sheriff or other officer, shall also be liable as special bail for failing or neglecting to take from such person or persons arrested by virtue of such writ, a bond with two sufficient securities in double the sum for which such person or persons shall be arrested; and proceedings shall be had against him under the same rules, regulations and restrictions as in such cases in actions at law: *Provided*, that no such writ shall issue against an executor, administrator, or heir at law, who is sued as such; but the process against them and each of them, shall be by a writ of subpoena as usual in other cases of chancery; and the penalty for not attending shall be two hundred dollars—but the said penalty shall not be levied, nor final judgment given, until the term ensuing that to which the suit is returnable, nor without a scire facias having been duly served, and proof thereof made, to the satisfaction of the court, as in cases at law where scire facias is required—and where any other person is made a defendant, together with such executor, administrator, or heir at law as aforesaid, a capias may issue as above against such other person, and a writ of subpoena against such executor, administrator or heir at law. And, if all cases where there are two or more defendants, the plaintiff may issue subpoenas directed to the sheriff or coroner of each of the counties where the defendants are most likely to be found, noting on each process, that they are issued in the same suit; and when the same are returned, they shall be docketed, as if only one had issued; and in case any defendant should not be served with such process, the same proceedings shall be had as in cases of other similar process which has not been executed.

No writ shall be served by the sheriff unless he has a copy of the bill ready to deliver to the defendant, and he is hereby required to deliver the said copy immediately after the service of the said writ; nor shall any service be valid unless it be made at least ten days before the term at which the defendant is required to appear; and where the service is by subpoena, the defendant shall be served with a copy of the bill at least ten days before such term; on failure of any of which requisitions, the defendant may plead the matter in abatement, and the bill shall be dismissed.

Upon such writ or subpoena being duly served, and a copy of the bill delivered in proper time, (proof being made to the satisfaction of the court by the return of the sheriff or by affidavit,) the defendant shall appear and put in his answer or plea agreeable to the practice in chancery, or demur; or on failure thereof, the plaintiff's bill shall be taken pro confesso, and appointed to be heard ex parte at the ensuing term: *Provided*, that if within the three first days of the ensuing term, the defendant shall offer any satisfactory reason to the court, for his not appearing at the first term, the order for the bill being taken pro confesso and heard ex parte, may be discharged, and the defendant then admitted to plead, answer or demur; and such time shall be allowed in this as well as in all other cases for the pleadings on both sides, and such day appointed for the hearing as the court shall direct; and if any defendant or defendants, against whom any subpoena or other process shall issue, shall not cause his, her or their appearance to be entered, on such process, within such time and in such manner as according to the rules of the court the same ought to have been entered, in case such process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of the court, that such defendant or defendants reside or resides beyond the limits of the State, or that upon inquiry at his, her, or their usual place of abode, he, she or they could not be found, so as to be served with such process, and that there is just ground to believe that such defendant or defendants is or are gone without the limits of the State, or otherwise absconded to avoid being served with the process of such court, then and in such cases the court out of which such process issued may make an order, directing and appointing such defendant or defendants to appear at a certain day therein to be named; and in cases where such defendant or defendants reside or resides without the limits of the State, a copy of such order shall, within sixty days after such order made, be inserted in some Gazette regularly published within the State, for such length of time as the court may order and direct; and may, when they shall think necessary, direct such order to be inserted in any Gazette of the United States; and in cases where such defendant or defendants shall have withdrawn him, her, or themselves beyond the limits of the State, or otherwise absconded to avoid the service of such process, a copy of such order shall, within sixty days after such order made, be inserted in some Gazette

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