

RALEIGH REGISTER.

AND NORTH CAROLINA GAZETTE.

"Ours are the plans of fair delightful peace, unwarp'd by party rage, to live like brothers."

VOL. XL.

MONDAY, FEBRUARY 25, 1839.

NO. 17.

(BY AUTHORITY.)

PUBLIC ACTS

OF THE

STATE OF NORTH-CAROLINA,

PASSED BY THE GENERAL ASSEMBLY,

AT THEIR SESSION WHICH COMMENCED ON MONDAY THE NINETEENTH OF NOVEMBER, ONE THOUSAND EIGHT HUNDRED AND THIRTY-EIGHT, AND ENDED ON TUESDAY THE EIGHTH OF JANUARY, ONE THOUSAND EIGHT HUNDRED AND THIRTY NINE.

CHAPTER IX.

AN ACT concerning the election and qualification of Constables, 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 the inhabitants of each Captain's district, in each county in this State, shall, within thirty days before the County Court of any county, which shall commence its session either on the fourth or last Monday in December, or first Monday in January, proceed to the election of Constables, under the same rules and regulations as are now prescribed by law for holding such elections before the first Court which shall be held after the first day of January in each and every year; and that it shall be the duty of the several County Courts, commencing their sessions as aforesaid, to qualify the persons elected as Constables, under the same rules, regulations and restrictions as are now in force.

II. *And be it further enacted by the authority aforesaid,* That nothing herein contained shall repeal any law concerning the election of Constables in any individual county in this State.

III. *And be it further enacted,* That this law shall be in force from and after the passage thereof.
[Ratified 22d December, 1838.]

CHAPTER X.

AN ACT to erect that Territory of this State lately acquired by Treaty from the Cherokee Indians, into a separate and distinct County, by the name of Cherokee.

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 all that part of Macon County bounded as follows, viz: beginning at the junction of the Tennessee and Tuckasee Rivers; thence down the main channel of the Tennessee River to the State line of Tennessee; thence with said Tennessee line, to where it intersects the Georgia line; thence with the line dividing this State from Georgia, Eastwardly, to the Mountain dividing the waters of Hiwassee and Valley Rivers, from those of the Nantahala River; thence along with the highest summit, and various courses of the said Mountain, to the point of beginning, be, and the same is hereby erected into a separate and distinct County, by the name of Cherokee, with all the rights, privileges, and immunities of the other Counties of this State.
[Ratified 4th January, 1839.]

CHAPTER XI.

AN ACT supplemental to the Act erecting the County of Cherokee.

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 first County Court of Cherokee shall be held in one of the houses of Fort Butler, on the first Monday before the fourth Monday in March and September, and the second Monday before the last Monday in January, and the third Monday before the last Monday in June; and for the purpose of organizing the first Court, it shall be lawful for any Justice of the Peace for the county of Macon to administer the oaths prescribed by law to such persons as may be appointed at the present session of the General Assembly Justices of the Peace for the county of Cherokee.

II. *Be it further enacted,* That the County Court of Cherokee shall have exclusive jurisdiction of all offences of which County Courts have jurisdiction, which may hereafter be committed in said county.

III. *Be it further enacted,* That all suits between citizens of Cherokee, in the Courts of Pleas and Quarter Sessions of Macon county, and indictments, wherein citizens of Cherokee are defendants, shall be transmitted by the Clerk of Macon to the Clerk of Cherokee, in the same manner as suits are now sent from one county to another.

IV. *Be it further enacted,* That all causes, civil and criminal, arising in the county of Cherokee, of which, by the laws of the State, the Superior Courts have original jurisdiction, and all appeals from the County Courts of Cherokee, may and shall come within the jurisdiction of the Superior Court of Macon.

V. *Be it further enacted,* That the Justices of the Peace of the county of Cherokee, at their first Court, shall proceed to appoint a Clerk, Sheriff, and other county Officers, (Entry Taker excepted,) in the same manner, and under the same rules as are prescribed by law for other counties in this State.

VI. *Be it further enacted,* That it shall be the duty of said Court, at its first session, to lay a tax, not less than fifty cents on the poll, and twelve and a half cents on the hundred dollars value of land, for the purpose of providing a fund to build a Court House in said county.

VII. *Be it further enacted,* That until a Court House and Jail shall be built in said county, any of the buildings put up by the Army at Fort Butler, on the four hundred acres of land on which the town of Murphey is situated, shall be for the use of the Courts of the county of Cherokee, until a Court House and Jail shall be built.

VIII. *Be it further enacted,* That all Militia Officers, within the bounds of the county of Cherokee, shall continue to exercise the same authority as they have heretofore done in the county of Macon, and shall be subject to the same penalties as like Officers in other counties.

IX. *Be it further enacted,* That any person moving or in any way damaging any of the buildings at Fort Butler, or cutting any timber on any part of the four hundred acres of land set apart for the future disposition of the Legislature, shall be subject to indictment; and, on conviction, shall pay all damages, and be fined at the discretion of the Court.
[Ratified 8th January, 1839.]

CHAPTER XII.

AN ACT to lay off and establish a County by the name of Henderson.

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 all the Southern portion of Buncombe county, beginning on the top of Pisgah Mountain, on the Haywood line, and from thence taking the dividing ridge between Hominy Creek and Mills' River, to the dividing ridge between Mills' River and Avery's Creek; from thence, keeping said ridge, to the head of Israel's Branch; from thence, taking down said Branch, to French Broad River; from thence, up said River, opposite the mouth of Cane Creek; from thence, crossing the River, to the mouth of Cane Creek; from thence, taking up Cane Creek, to the Buncombe Turnpike Road; from thence, taking said Road, to the top of the ridge between Cane Creek and Mud Creek; from thence, taking the main dividing ridge, between Cane Creek and Clear Creek waters, to the top of the Bear Wallow Mountain, on the Rutherford line; from thence, with the Rutherford line, to the South-Carolina line; from thence, with the South-Carolina line, to the Macon line; from thence, with the Macon line, to the Haywood line; from thence, with the Haywood line, to Pisgah, the beginning, be, and the same is hereby erected into a separate and distinct County, by the name of Henderson.

Be it further enacted, That this Act shall be in force from and after its passage.
[Ratified 15th December, 1838.]

CHAPTER XIII.

AN ACT supplemental to an Act passed by the present General Assembly, entitled "An Act to lay off and establish a County by the name of Henderson."

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 county of Henderson shall be, and is hereby invested with all the rights, privileges and immunities of the other counties in this State, except as is hereafter provided.

II. *Be it further enacted,* That all the Justices of the Peace, and Officers of the Militia, who reside within the limits of the county of Henderson, shall continue to hold and exercise all the official powers and authorities, in and for said county, that they have hitherto held and exercised in and for the county of Buncombe.

III. *Be it further enacted,* That the Constables now residing in the county of Henderson shall continue to hold their offices and perform all duties appertaining thereto, until the first County Court to be held for said county, under the same rules, regulations and penalties, as Constables are subject to in other counties in this State.

IV. *Be it further enacted,* That the counties of Buncombe and Henderson shall continue to be represented in the General Assembly as one county, and in the name of the county of Buncombe, until a future Legislature shall otherwise provide and direct; and elections shall be held, until the first session of the General Assembly which shall be had after the year eighteen hundred and forty-one, for members of both Houses of the General Assembly, and of Congress, and for Electors for President and Vice President, by the Sheriff or other returning Officers of Buncombe county, in all the Territory heretofore comprehended in the limits of said county, at the times and places, and under the same rules, regulations and restrictions as have been appointed or may hereafter be appointed by law; and the certificate of said Sheriff or other returning Officer, to the result of said election or elections, shall be as valid and effectual to all intents and purposes, as if the Act laying off and establishing the county of Henderson had never been passed.

V. *Be it further enacted,* That a Court of Pleas and Quarter Sessions shall be, and the same is hereby established in and for the county of Henderson, to be held by the Justices of said county, on the third Monday in February and July, and the fifth Monday after the fourth Monday in March and September, in each and every year—the first session of which shall be held on the third Monday of February next, at the house of Hugh Johnson, when the Court aforesaid, a majority of the Justices of said county being present, shall elect a Clerk, a Sheriff, a Coroner, a Register, an Entry Taker, a Surveyor, Constable, and all other Officers for said county, who shall enter into bond as required by law, and shall hold and continue in said offices until successors to them are duly chosen and qualified, according to the Acts of the General Assembly, in such cases provided. And the said Court, at its first session aforesaid, may appoint the place of its future sessions, until a Court House shall be erected for said county.

VI. *Be it further enacted,* That the Court of Pleas and Quarter Sessions, established by this Act, shall possess and exercise the same power, authority and jurisdiction, as is possessed and exercised by other County Courts in this State, and shall have exclusive jurisdiction of all crimes committed within the limits of Henderson county, of which the County Courts have jurisdiction, until a Superior Court of Law is established for said county; and all suits at law, now pending in the County Court of Buncombe, wherein the citizens of Henderson county are both Plaintiffs and Defendants, and all indictments, in the County Court of Buncombe, against citizens of Henderson county, shall be transferred to the County Court of Henderson, in the manner now provided for transferring suits from one county to another; and all appeals from the County Court of Henderson shall be sent to the Superior Court of Buncombe.

VII. *Be it further enacted,* That all criminal offences which may be committed in the County of Henderson, which are cognizable only in the Superior Court of Law, shall be and continue under the jurisdiction of the Superior Court of Law, of the County of Buncombe, until a Superior Court shall be created for the County of Henderson.

VIII. *Be it further enacted,* That all persons who may be liable to imprisonment under any process, either civil or criminal in Henderson County, before the completion of the Jail therein, may be committed to the Jail of Buncombe.

IX. *Be it further enacted,* That all process issued from the Superior Court of Buncombe against the citizens of Henderson, shall be valid without the seal of office being affixed thereto, until a Superior Court is created for the County of Henderson, and all process so issued, after the third Monday of February next, shall be directed to the Sheriff of Henderson County, and be executed by him.

X. *Be it further enacted,* That Asa Edney, Capt. Robert Jones, Richard Allen, John Miller, Benjamin Wilson, Epaphroditus Hightower, John Clayton, Esq., Col. Samuel Chunn, Reuben Deaver, John Jarret, Senr. and John Young, are hereby appointed Commissioners, to select and determine upon a site for a permanent seat of justice in said County, who shall locate the same as near the centre of said County as practicable, by taking into consideration, both the extent of territory and population, and nine of the Commissioners hereby appointed shall have power to act.

XI. *Be it further enacted,* That seven of the above appointed Commissioners first named, shall have power to purchase or receive, by donation, for the use of the County of Henderson, a tract of land consisting of not less than twenty five acres, to be conveyed to the Chairman of the County Court and his successors in office, upon which a town shall be laid off, and shall be called Hendersonville, where the Court House and Jail shall be erected, and where, after the completion of the Court House, the Courts of said County shall be held, and the Clerk and Register shall keep their offices.

XII. *Be it further enacted,* That the County Court of Henderson, at its first session, shall appoint five Commissioners, to lay off the lots of said Town, and, after designating such as shall be retained for public uses, shall expose, after advertisement for thirty days, the residue to sale at public auction, upon a credit of twelve and eighteen months, and shall take from the purchaser bonds, with security for the purchase money, payable to the Chairman of the County Court and his successor in office, and upon payment of the purchase money, the Chairman, or his successor in office, shall execute titles therefor, which money shall be appropriated to the building of the Court House and Jail.

XIII. *Be it further enacted,* That nothing in this Act contained, shall be so construed, as to prohibit the Sheriff of Buncombe County, from collecting such sum or sums of money as are due, or may become due on any judgment, before the first Court of Pleas and Quarter Sessions of the County of Henderson.

XIV. *Be it further enacted,* That nothing in this Act shall be so construed as to prevent the Sheriff of Buncombe from collecting all arrears of taxes in the same manner, as he could have done previous to the division of the County: *Provided,* nevertheless, that the Sheriff of Buncombe County shall not collect any taxes in the County of Henderson, or of the citizens of said County, imposed by the County Court of Buncombe, and which are collected in the year one thousand eight hundred and thirty-nine, but that the same may be collected by the Sheriff of Henderson, to the use of Buncombe County.

XV. *Be it further enacted,* That the Court of Pleas and Quarter Sessions of Buncombe shall have power, until a Superior Court is created for Henderson, to draw Jurors from said County, not exceeding sixteen, to serve at each term of Buncombe Superior Court, and the Jurors so drawn shall be summoned by the Sheriff of Henderson, and for non-attendance, shall be subject to the same penalties, imposed by the Statute Laws of this State, and the Jurors as aforesaid, after the year one thousand eight hundred and thirty-nine, shall not be paid by the County of Buncombe.

XVI. *Be it further enacted,* That all paupers in Buncombe County, originally from Henderson, after the year one thousand eight hundred and thirty-nine, shall be transferred to the Wardens of the County of Henderson.

XVII. *Be it further enacted,* That the citizens of the County of Henderson shall pass the Buncombe Turnpike Road free of toll, and be liable to work on said Road, under the same rules and regulations, as the citizens of Buncombe.

XVIII. *And be it further enacted,* That this Act shall be in force from and after its ratification.
[Ratified 28th December, 1838.]

CHAPTER XIV.

AN ACT to amend the thirty-ninth section of the Revised Statute entitled "An Act concerning Courts of Justice, Practice, Pleas and Process."

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 no action of debt, other than on penal Statute, no action of detinue or replevin, no action of account, assault and battery, or for the unlawful taking of goods, no action upon the case, no suit for legacies, or for distributive shares of intestates' estates, shall be brought to any Court of Pleas and Quarter Sessions, other than the Court of the County in which the defendant resides; and if any such action or suit shall be brought in any other Court of Pleas and Quarter Sessions, the same may be abated on the plea of the defendant: *Provided,* that nothing herein contained shall be construed to repeal the forty-eighth section of said Act.
[Ratified 28th December, 1838.]

CHAPTER XV.

AN ACT to amend the twenty-seventh section of an Act, entitled "An Act concerning Courts of Justice, Practice, Pleas and Process."

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 in each County of this State, may, when they deem it necessary, cause to be drawn the names of forty-two persons, to serve as Jurors at the next succeeding Court, any law to the contrary notwithstanding.
[Ratified 7th January, 1839.]

CHAPTER XVI.

AN ACT concerning infant children whose parents shall be divorced.

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 Superior Court of Law, or any Superior Court of Equity in this State, shall grant a divorce, whether from the bonds of matrimony, or from bed and board, if the parties divorced have any child or children under the age of twenty-one years, the said Courts may commit the custody and tuition of such child or children, either to the father or mother, as the Court may think the interest of the child or children shall require; and, if any such child or children shall have any estate, real or personal, or be entitled to any such estate, the said Court shall and may ap-

point a fit and proper person or persons to take the care and management of such estate or estates, and the person or persons so appointed, shall enter into bond with security, as required of Guardians of Orphans, and shall have the same authority as Guardians, and be regulated in all respects by the law relative to Guardians of Orphans, so far as respects the property and rights of Orphans; but shall not have any care of, or authority over the person of such child or children, unless the person appointed to take the care and management of the estates of such child or children, be either the father or mother to whom the custody and tuition of the said child or children have been committed by the Court.

II. *And be it further enacted,* That the Court granting a divorce, may commit the custody of the infant child or children of the parties, in the first place, to one of the parties for a time, to be limited by the Court, and after the expiration of that time, to the other party.
[Ratified 7th January, 1839.]

CHAPTER XVII.

AN ACT to explain and amend the eighty-sixth section of an Act passed at the session of eighteen hundred and thirty-six, one of the Revised Statutes, entitled "An Act concerning crimes and punishments."

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 is hereby declared and enacted to have been, and to be, the true intent and meaning of the section recited in the title of this Act, to refer to and include Notes or Due Bills, issued by individuals or by corporate bodies, for sums under one dollar, intended to pass as the representative, or as a substitute for money, and that the said Act shall be construed accordingly.

II. *Be it further enacted,* That this Act shall be in force from and after its ratification.
[Ratified 8th January, 1839.]

CHAPTER XVIII.

AN ACT to prevent frauds in voting at Elections, &c.

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 voter shall be required to have the names of all the persons for whom he votes in the Commons Box, on the same scrip of paper or ticket, so that there shall not be more tickets than voters.
[Ratified 8th January, 1839.]

CHAPTER XIX.

AN ACT to extend the time for paying in Entry Money.

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 all entries of lands, the purchase money for which may become due and payable, on or before the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, may be paid in, and the payment is hereby extended to the fifteenth day of December, in the year of our Lord one thousand eight hundred and forty, and on that day shall be punctually paid, any law to the contrary notwithstanding: *Provided,* that nothing in this Act shall be so construed as to prejudice the priority of the entry of lands by any person, the payment of the purchase money for which is hereby extended, but that all such entries shall have and possess all the privileges and benefits of the existing laws, as if the purchase money had been paid at the time it became due, and this Act had not been passed: *Provided,* also, that nothing in this Act contained shall be construed so as to interfere with any other person who has made entries before the passage of this Act.
[Ratified 22d December, 1838.]

CHAPTER XX.

AN ACT to amend and supply the defects of an Act passed at the present General Assembly, entitled an Act to extend the time for paying Entry Money.

Whereas, the above recited Act in its provisions, only extends or allows a longer time for paying on Entries the purchase money which is not yet due, and makes no provision for Entries, the time for paying in which has past—

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 all entries of vacant lands who have made such entries since the first day of January one thousand eight hundred and thirty-four, and failed to pay the purchase money within the time limited by law, and all entries hereafter made, shall have until the fifteenth day of December one thousand eight hundred and forty-one, to pay for the same: *Provided,* that nothing herein contained shall extend to the Swamp Lands in this State, which has been forbidden to be entered by the Laws of this State.

II. *Be it further enacted,* That this Act shall be in force from the date of its ratification.
[Ratified 3d January, 1839.]

CHAPTER XXI.

AN ACT limiting the time in which title to lands heretofore entered and paid for, may be perfected.

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 all persons who have made entries of vacant lands lying in the counties of Wilkes, Ashe, Burke, Rutherford, Buncombe, Yancey, Haywood, Macon, Stokes and Surry, who have paid the purchase money for the same, since the first day of January one thousand eight hundred and thirty, shall have until the first day of January one thousand eight hundred and forty-one, to perfect title.

II. *And be it further enacted,* That nothing herein contained shall be so construed, as to prejudice the interests of claimants on junior entries, who have complied with the Laws of the State, nor to authorise any individual or company of individuals, to perfect title to more than two hundred acres on entries made in any one year. That this Act shall be in force from and after its ratification.
[Ratified 7th January, 1839.]