

Acts of the North Carolina General Assembly, 1754

North Carolina. General Assembly
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LAWS OF NORTH CAROLINA--1754.

CHAPTER II.

An Act, for the further and better Regulation of the Town called Wilmington, and for repealing the several Acts therein mentioned.

I. Whereas the Acts for erecting the Town of Wilmington and for the further and better regulating thereof, have not answered the End intended, but have occasioned much confusion and Disturbance: For Remedy Whereof,

II. We pray that it may be Enacted, And be it Enacted, by the Honourable Matthew Rowan, Esq; President, and Commander in Chief, by and with the Advice and Consent of his Majesty's Council, and the General Assembly of this Province, and by the Authority of the same, That the said Town called Wilmington, lying on the East side of the North East Branch of Cape Fear River, shall be bounded and circumscribed in Manner following; that is to say, To the North East, by the Lands of his late Excellency Gabriel Johnston, Esq; deceased, upwards; and below, by the Lands formerly belonging to Michael Dyer; to the Westward, by the North-East Branch of Cape-Fear River; and to the Eastward, by a Line drawn from the said Lands of his late Excellency Gabriel Johnston, Esq; and the Lands formerly belonging to Michael Dyer, One Hundred and Twenty Poles Distant from the River, as may more fully appear by a Plan of the said Town, annexed to an Act intituled, An Act, for the better regulating the Town of Wilmington, and for confirming and establishing the late Survey of the same, with the Plan annexed, passed at New Bern, the Twentieth Day of April, in the Year of our Lord One Thousand Seven Hundred and Forty-five, and now in the Secretary's Office; which Plan shall be for ever hereafter the true and exact Plan of the said Town, by a Reference to which, all Disputes in Regard to Streets, Squares, Lots, and their Boundaries, are to be determined for the future.

III. And be it further Enacted, by the Authority aforesaid, That the said Town of Wilmington shall have the Privilege of sending a Representative for the said Town, to sit and vote in General Assembly.

IV. And for the better ascertaining the Method of choosing such Representative, and the Qualification necessary for such a Representative, Be it Enacted, by the Authority aforesaid, That any Person who, on the Day of Election, and for three Months next before, was seized in Fee Simple, or for Term of Life, of a Brick, Stone, or framed House, with one or more Brick or Stone Chimneys, of the Dimensions of Twenty Feet long, and Sixteen Feet wide, within the Bounds of the said Town, shall have a Right to vote for such Representative, and be sufficiently qualified to be a Representative for the said Town.

V. And be it further Enacted, by the Authority aforesaid, That for ever after the passing of this Act, the Courts of the County of New Hanover, the Election of the Representatives to be sent to the General Assembly, the Election of Vestrymen of the Parish of St. James, and all other public Elections for the said County and Town, shall be made and held in the Town of Wilmington, and at no other Place; any Law, Usage, or Custom, to the contrary, notwithstanding.

VI. And be it further Enacted, by the Authority aforesaid, That the Sheriff of the County of New Hanover, the Clerk of the Court for the said

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County and the Register of Conveyances of the said County, for the Time being, shall for ever, hold and keep their respective Offices in the said Town of Wilmington, and that if any of the said Officers neglect or refuse so to do, each of them so neglecting or refusing, shall for every Week he shall be a Delinquent, forfeit and pay the Sum of Forty five Shillings, Proclamation Money, to be recovered by any person who shall sue for the same, in the County Court of New Hanover, by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, Injunction, Protection, Privilege, or Wager of Law, shall be allowed or admitted of; one Half to such Informer, the other Half for the Commissioners of the said Town for the Time being, to be applied for the Use and Benefit of the said Town.

VII. And whereas by the Unskillfulness of former Surveyors, and neglect of the Proprietors, the Course of the Streets, and Bounds of the Squares and Lots were never properly ascertained, by which many Houses are misplaced, some encroaching upon the Streets, and others upon the Lots of their Neighbours: For Remedy whereof,

VIII. Be it Enacted, by the Authority aforesaid, That all such Houses as are now built either wholly or in Part upon the Streets, shall be allowed to remain so, until they are no longer tenantable, and then the Owner shall be obliged to pull such House or Houses down, and clear the Street or Streets of all the Rubbish, and when they build, to build within his, her or their Lot or Lots, under the Penalty of Fifty Pounds, Proclamation Money; to be recovered as herein after is directed: And where any Person or Persons has the whole, or any Part of his or their House or Houses, not having a Brick Chimney, or Brick or Stone Cellar, on another Persons Ground, then it shall and may be lawful for the Party injured, to give Notice in Writing to the Owner or Owners of such House or Houses, to remove what Part of the same may be on such Person or Persons Lot or Ground, in Six Months after the Date of such Notice, which he or they shall be obliged to do, under the Penalty of Fifty Pounds, Proclamation Money, to be recovered in the General Court of this Province, by any Party so injured, and to be applied to his proper Use, and to no other purpose whatsoever.

IX. Provided nevertheless, That in case such House or Houses has one or more Brick or Stone Chimney, or Brick or Stone Cellar, then the Owner or Proprietor of such House or Houses, shall not be obliged to move the same, but may be at Liberty, and is hereby allowed to pay a Ground Rent, for what Part he encroaches upon his Neighbour, where Notice or Warning was not, before the building such Chimney or Cellar, given of such Encroachment; which Rent and all Disputes arising about Encroachments and Damages upon Lots, shall be ascertained and determined by the Commissioners of the Town, or the Majority of them: And that the said Commissioners may be better enabled to discharge their Trust, they are hereby required, at the Expence of the Town, to get a Copy of the Plan of the said Town, from the original Survey made by Mr. Jeremiah Vail, and lodged in the Secretary's Office; and in Case any Disputes should hereafter arise, to lay out the Streets or Lots according thereto, beginning at the South-East Corner of Capt. John Du Bois's House, on Market street, near the Court-house; from which Corner all future Surveys of the said Town shall be commenced.

X. And be it further Enacted, by the Authority aforesaid, That the said Commissioners or the Majority of them, shall determine all Complaints of Nuisances, by Lumber or Rubbish lying upon the Streets or Wharfs, Dangers of Fire arising from Wooden Chimneys, or any such hazardous Buildings, and

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pass such orders as they shall think necessary for the Removal of the same.

XI. And whereas, the Inhabitants have been at a great Expence in Building a Public Wharf, where Boats may come to, and discharge; Be it further Enacted, by the Authority aforesaid, That no Vessel or Vessels, shall lie at the said Wharf, or at any other Public Wharf to be built in the future, without License first obtained from the Commissioners; and if any Person or Persons shall incumber any of the said Wharfs with Naval Stores, Lumber, or any other thing whatsoever, such Person or Persons shall be obliged to remove such Incumbrances within Twenty four Hours after Notice thereof given by the Commissioners, or the Majority of them, under the Penalty of Forty Shillings, Proclamation Money; to be recovered by a Warrant from the Commissioners of the said Town.

XII. And That the said Town of Wilmington may be under better Regulation, Be it Enacted, by the Authority aforesaid, That Wednesdays and Saturdays in every Week, are hereby appointed Market-Days, for all Kinds of Provisions and Goods whatsoever; and the Commissioners of the said Town, for the Time being, or the Majority of them, are hereby empowered to pass such Orders, as they may judge proper, for the better regulating the said Market, for preventing tainted or unwholesome Provisions being sold; for regulating the Price of Bread, baked in the said Town, in Proportion to the Price Flour may, from Time to Time, be sold at, for the better bringing to Justice, or prosecuting according to Law, all Fore-Stallers of Markets, private marketting, buying or dealing with Negroes, bringing Provisions, or other Goods, without proper Tickets from their Masters, Mistresses, or Overseers, for preventing all irregular Mobbs or Cabals of Negroes, or others; for the more effectually bringing to Justice all Criminals and Offenders against the Laws of this Province; and also, for preserving the Peace and Safety of the said Town, to appoint proper Guards or Watches in the said Town, as often as occasion may require, to be ready on all occasions of Riot and Disturbances, or to prevent Malefactors breaking the Prison or Gaol: Provided, that one of the Commissioners be of the Number of the said Watch to give necessary Orders.

XIII. And whereas, it is found to be a great Nuisance to the Inhabitants, the allowing of Hogs to run at large in the said Town; Be it Enacted, by the Authority aforesaid, That none of the Inhabitants of the said Town shall, on any Pretence

whatsoever, suffer any Hog or Hogs to run at large within the Bounds of the said Town; and Such Hog or Hogs so running at large, shall be forfeited to any Person who shall seize or kill the same.

XIV. And be it further Enacted, by the Authority aforesaid, That the Commissioners, or the Majority of them, are hereby directed to issue their Warrants, at least Twice Year, to the Constables of the said Town, to warn all the Male Taxables, to clear, repair, and pave the Streets, Lanes, or Alleys, make or mend the public Wharfs, Docks, or Slips, make Water-Courses within the Streets, that there may remain no standing Water; and also to appoint Overseers, and any Person refusing or neglecting to work as directed in the Warrant, or to furnish a good and sufficient Hand in his or their Place, with proper Tools, shall forfeit and pay Two Shillings and Eight Pence, Proclamation Money, per Day, for every such Refusal or Neglect; and if any Person so appointed Overseer, shall refuse or neglect to serve as such, he or they shall forfeit and pay Twenty Shillings, Proclamation Money, per Day, for every Day he shall so refuse or neglect, to be recovered in the same Manner as the fines and Forfeitures are to be recovered by the Commissioners of the Roads; and the Money to be recovered, shall be applied

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towards hiring Labourers in their Stead and Place to clear, repair, and pave the Streets in the said Town, and to no other Purpose whatsoever.

XV. Provided always, That no Person exempted by Law from working on Public Roads, shall be themselves compelled to work on the said Streets, Lanes, Alleys, Wharfs, Docks, or Slips, upon any Pretence whatsoever: nor shall any Person be compelled to work above Twelve Days in the Year.

XVI. And be it further Enacted, by the Authority aforesaid, That the Inhabitants of the said Town shall be, and they are hereby exempt, and forever hereafter excused from working on the Country Public Roads, during such Time as they live in the said Town, and no longer.

XVII. And as there are many Lots in the said Town not yet cleared, nor proper Drains nor Runs made through them, to let the Waters have a free Course, to the manifest Injury and Unhealthiness of the Inhabitants of the said Town, Be it further Enacted, by the Authority aforesaid, That the Commissioners for the Time being, or the Majority of them, shall and they are hereby directed to order the Proprietor or Proprietors of the Lot or Lots, to clear all, or any Part of them, and to make proper Drains or Water-Courses through them, within Six Months from the Time of the Date of Such Order, in writing, signed by the Commissioners of the said Town, for the Time being, or the Majority of them; and any persons refusing or neglecting, shall forfeit and pay the sum of Twenty Shillings, Proclamation Money, for every Month they shall refuse or neglect to obey such Order.

XVIII. And whereas the Damages that may arise from Fire in the said Town will be very great, and a Necessity appears for providing one or more Water Engines, Be it Enacted, by the Authority aforesaid, That the Commissioners, or the Majority of them, shall, within Twelve Months after the passing of this Act, value every House within the Bounds of the said Town, and lay a Tax not exceeding Two per Cent of such Value, upon every Owner or Owners of such House or Houses; which Monies so laid, shall by Order of the said Commissioners, or the Majority of them, be collected and applied towards purchasing Water-Engines, Buckets, Ladders, and other Instruments for the extinguishing of Fire; and if any Person shall neglect or refuse to pay such Tax, the same shall be levied, by a Warrant under the Hands of the Commissioners, on the Effects of such Delinquent or Delinquents.

XIX. And be it further Enacted, by the Authority aforesaid, That the Commissioners for the Time being, or the Majority of them, shall, and are hereby impowered to pass any Orders they may judge proper for preventing the building of Necessary Houses on any Stream of Water running through the Town, or having Drains from such Houses into any of the said Streams, to remove such Houses already built; for preventing of Cattle being Kept up in a Pen above Three Days, without being sufficiently fed and watered; for preventing Mortar, Clay or Wooden Chimneys being built, and for pulling down such as are already built; for making people keep their Chimneys clean, and raising them to a proper Height, not under Four Feet above the Ridge of the Roof; for preventing the Keeping of Naval Stores or Lumber in any Houses, whereby Damages may arise to Neighbours; for obliging all Persons to clear the Streets before their Doors, and for all other Things for the Good and Safety of the said Town, and the proper Government of it; consistent with the Laws of this Province; and to enforce such Orders by laying a Fine not exceeding Two Pounds, Proclamation Money, on all Persons neglecting or refusing to comply therewith.

XX. And be it further Enacted, by the Authority aforesaid, That the Commissioners for the Time being, shall hire a Town-Clerk, and shall keep a Town-Book, in which shall be entered all the Orders they may make, the

Defaulters on the Streets, and the Accounts of the Monies they may have received, the Manner they have applied such Monies, and what Sums may remain in their Hands, under a Penalty of Fifty Pounds, Proclamation Money; to be recovered by any Person who shall or may sue for the same, in the General Court of this Province, wherein no Essoign, Injunction, Protection, or Wager of Law, shall be allowed or admitted of.

XXI. And be it further Enacted, by the Authority aforesaid, That the Commissioners, on going out of Office, shall pay into the Hands of their Successors, Sum or Sums of Money as they have in their Hands; and in Case they should neglect or refuse so to do they shall forfeit and pay Fifty Pounds, Proclamation Money, to be recovered by such succeeding Commissioners, by Action of Debt, in the General Court of this Province, wherein no Essoign, Protection, Injunction, or Wager of Law, shall be allowed or admitted of.

XXII. And whereas oftentimes during Divine Service, there are great Disturbances by People walking and talking near the Place where the same is performed; Be it Enacted, by the Authority aforesaid, That the Constables of the Town, each in their Turn, shall be obliged to walk the Streets during the Time of Divine Service, to prevent all such Disturbances, and to apprehend all Delinquents, who shall be punished as Breakers of the Sabbath.

XXIII. And whereas it may be necessary to lay a Tax on all the Male Taxables in the said Town, Yearly, towards defraying the necessary Charges that may accrue; Be it Enacted by the Authority aforesaid, That the Commissioners, or the Majority of them, for the Time being, are hereby impowered, within Twenty Days after their being chosen, to call the Freeholders of the said Town together, at the Court House, by ringing of the Bell, and there, with the Consent of the Majority then present, lay such Tax as may be agreed on, provided the same does not exceed Two Shillings, Proclamation Money, per Head; such Tax to be collected by Warrant under the Hands and Seals of the Commissioners, or the Majority of them, directed to the Constables of the Town, or either of them, returnable in such Time as therein mentioned.

XXIV. And whereas little Regard has been had to such Orders as the Commissioners of the Town, or the Majority of them, have heretofore made; Be it Enacted, by the Authority aforesaid, That the said Commissioners, or the Majority of them, shall lay such Fines on all who refuse or neglect to obey any of their lawful Orders, after being made public, as they may judge necessary, not exceeding Two Pounds, Proclamation Money, for each Default; to be levied by Warrant under the Hands and Seals of the said Commissioners, or the Majority of them, directed to either of the Constables of the said Town, who are hereby obliged to execute the same; which Fines recovered as aforesaid, shall be applied to the public Fund or Stock of the said Town.

XXV. Provided always, That it shall and may be lawful for any Person or Persons, who shall think himself or themselves injured by such Fine, to appeal to the Justices of the County Court, who are hereby impowered to determine the same in a summary way.

XXVI. And be it Enacted, further, by the Authority aforesaid, That all Fines or Forfeitures not before applied or directed, shall, if above Two Pounds, Proclamation Money, be recovered in any Court of Record within this Province, Respect being had to their Jurisdiction, by the Commissioners for the Time being, or the Majority of them, by Action of Debt, Bill, Plaint, or information wherein no Essoign, Injunction, or Wager of Law, shall be allowed or admitted of: And all Fines and Forfeitures mentioned in this Act, not exceeding Two Pounds, Proclamation Money, shall be recovered

by a Warrant under the Hands and Seals of the Commissioners, or the Majority of them, directed to the Constable or Constables of the Town, or either of them, against Body or Goods, as in Actions of Debt, and in all Things subject to the same Rule: All which Fines or Forfeitures recovered in any of the before mentioned Ways shall be applied and paid into the Stock of the said Town.

XXVII. And be it further Enacted, by the Authority aforesaid, That the Commissioners and the Inhabitants shall have free Liberty to hold all their public Meetings, on all Occasions, in the Court-house, and have the Liberty of a Key to the same.

XXVIII. And that Commissioners be regularly chosen, Be it Enacted by the Authority aforesaid, That the Election of Commissioners shall be Yearly and every Year, by the Freeholders of the said Town, qualified to vote for a

Representative, by Ballot; and that the Number of Five such as are qualified to be a Representative for the said Town, shall annually, on the First Tuesday in January, be chosen Commissioners, and Two Persons, to be chosen by the Majority of the aforesaid Freeholders, as Inspectors of the Ballot, shall attend and declare who are duly elected Commissioners, in the same Manner as in the Law for regulating Elections of the Members of the General Assembly; and upon the said Five Commissioners being chosen, and their Names properly entered in the Town Book, they shall, before they enter upon their Office, take the following Oath, viz.

I, A. B. do swear, that I will execute the Office of a Commissioner for the Town of Wilmington, faithfully and truly, without Favour or Prejudice, and in all Things act for the Good of the said Town, and the well governing thereof, to the best of my Skill and Judgment, according to Law. So help me God.

XXIX. And be it further Enacted, by the Authority aforesaid, That in Case of Refusal, Removal, or Death of any of the Commissioners, either before or after their being qualified as aforesaid, the other Commissioners, or the Majority of them, shall chuse another in the Room of him or them so dying, refusing or removing as aforesaid, who shall be qualified in Manner as before directed.

XXX. And be it further Enacted, by the Authority aforesaid, That the Commissioners chosen on the First Day of January last, by Virtue of an Act, intituled, An Act, for the better regulating the Town of Wilmington, and for confirming and establishing the late Survey of the same, with the Plan thereof annexed, shall be and continue in Office, until the first Tuesday of January next, and shall have the same Power and Authority as the Commissioners to be chosen by this Act shall or may have, and be subject to the same Penalties.

XXXI. And be it further Enacted, by the Authority aforesaid, That if at any Time any Tavern Keeper, Retailer of Liquors, or Keeper of Public-Houses, in the said Town, shall suffer any Persons or Persons whatsoever, to sit tipling or drinking in his House, in Time of Divine Service on the Sabbath Day, or shall suffer any Person or Persons to get drunk in his House on the Sabbath Day, such Person or Persons so offending, shall forfeit and pay Twenty Shillings, Proclamation Money, for every such Offence; to be recovered by Warrant under the Hand of any Justice of the Peace for the County of New Hanover, and be paid into the public Stock of the said Town.

XXXII. And be it further Enacted, by the Authority aforesaid, That if any Person or Persons whatsoever in the said Town, shall, on any Pretence

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whatever, give any Credit, Loan, or Trust, to any Mariner or Seaman belonging to, or under the Command of any Master of a Vessel, that now is, or shall at any time hereafter be lying in the River of Cape Fear, exceeding the Sum of Two Shillings and Eight Pence, Proclamation Money, except by the Leave or License of the Master or Commander of the Vessel he belongs to, or where such Sailor or Mariner shall have left the Vessel to apply to either of the Courts of Justice, in any Disputes or Controversies with the Captain or Commander of such Vessel, that then, and in such case, he, she, or they, shall for every such Default, lose all the Monies or Goods so trusted or credited.

XXXIII. And be it further Enacted, by the Authority aforesaid, That if any Person or Persons whatsoever in the said Town, shall willingly or wilfully entertain, harbour, or keep, or suffer to be entertained, harboured, or kept, directly or indirectly, any Seaman belonging to any Vessel as aforesaid in his, her, or their, House or Houses, exceeding the Space of Six Hours, without the Privy or Consent of his Commander, (except in the case before excepted;) he, she, or they so offending, shall forfeit the Sum of Forty Shillings, Proclamation Money, for every such Offence; to be recovered by Warrant under the Hands of any Two Justices of the Peace, for the County of New Hanover, and paid into the public Stock or Fund of the said Town.

XXXIV. And be it further Enacted, by the Authority aforesaid, That an Act, intituled, An Act, for erecting the Village called Newton, in New Hanover County, into a Town and Township, by the Name of Wilmington, and regulating and ascertaining the Bounds thereof, passed at New Bern, the Twenty-Fifth Day of February, in the Year of our Lord One Thousand Seven Hundred and Thirty Nine; another Act, intituled, An Act, for the further and better regulating of the Town called Wilmington, in New Hanover County, and to establish the Church of the Parish of St. James, to be built in the said Town, passed at Edenton, the Twenty-first Day of August, in the Year of our Lord One Thousand Seven Hundred and Forty, and another Act, intituled, An Act, for the better regulating the Town of Wilmington, and for confirming and establishing the late Survey of the same, with the Plan annexed, passed at New Bern, the Twentieth Day of April, in the Year of Our Lord One Thousand Seven Hundred and Forty-five; and every Clause and Clauses Article and Articles of them, shall be, and are hereby severally from henceforth, repealed.

