

ORDINANCE.]

IX.

[Sess. 1868.]

Ordered to be Printed.

A PLAN FOR THE ORGANIZATION OF THE JUDICIAL DEPARTMENT, PROPOSED BY A. W. TOURGEE, OF GUILFORD, AS A SECTION OF THE CONSTITUTION.

[The following plan is based upon the hypothesis that the distinction between actions at law and suits in equity should be abolished—a distinction accidental in its origin, cumbersome and artificial in its nature, tedious and expensive in practice and not unfrequently, mischievous and unjust in its results. The experience of seventeen States of the Union, extending over twenty years, has shown that whatever beneficent results were attainable by the separated systems, the same are far more readily, cheaply and surely attainable when the distinction is obliterated, and all equitable rights are made legal rights, and all equitable wrongs legal wrongs; all legal rights made equitable rights, and all legal wrongs equitable wrongs, to be enforced or redressed by one form of action, in one court and at the same time, making equity, law, and law, equity. And offering to the suitor in every instance, the remedy which the facts developed on the trial justify].

A. W. T.

JUDICIAL DEPARTMENT.

Section 1. The Judicial power of the State shall be vested in a Court for the trial of Impeachments, a Supreme Court, Superior Courts, Probate Courts, the Court of Justices of the Peace, and Special Courts.

THE COURT FOR THE TRIAL OF IMPEACHMENTS.

SECTION 2. The Court for the trial of Impeachments shall be the upper house of the General Assembly. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to hold, office in this State; but the party shall be liable to indictment and punishment according to law.

THE SUPREME COURT.

SECTION 3. The Supreme Court shall be composed of one Chief Justice and two Associate Justices, who shall be elected by the qualified voters of the State at any general election, and shall hold their offices for a term of twelve years, commencing on the first day of January next succeeding their election: *Provided*, That the Associate Justices first elected under this Constitution, shall hold office, the one for eight years and the other for four years; and they shall enter upon the duties of their office ten days after the approval of this Constitution by the Congress of the United States.

SEC. 4. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference; but no issue of fact shall be tried before this court, and its decisions shall be remitted to the courts below to be enforced: *Provided*, That the court shall have power to issue any remedial writs, necessary, to give it a general supervision and control of the inferior courts.

SEC. 5. There shall be two terms of the Supreme Court, held at the seat of government of the State in each year, commencing on the first Monday in January and first Monday in June, and continue as long as the public interests may require.

THE SUPERIOR COURTS.

SECTION 6. The State shall be divided into ten (10) Judicial Districts, in each of which a Judge shall be elected by the qualified voters thereof, at the first general election, and regularly thereafter, who shall reside therein, and hold the terms of the Superior Court in the different counties of the district. His term of office shall be eight years, beginning on the first day of January next succeeding his election: *Provided*, That the Judges of the Superior Courts, first elected under this Constitution, shall enter upon their duties within ten days after the approval of the same by the Congress of the United States, and shall hold their places for eight years, from and after January 1st, 1869.

SEC. 7. There shall be two terms of the Superior Court held in each county annually, as near as may be, half a year apart, and to continue for two weeks, should the public interests require.

SEC. 8. The Superior Courts shall have original jurisdiction of all civil and criminal actions, not otherwise provided for, and appellate jurisdiction, both as to law and fact, in all actions where the matter in controversy is more than five hundred and less than one thousand dollars, and upon questions of law only, in all other cases.

PROBATE COURTS.

SECTION 9. In each county there shall be elected, by the qualified voters thereof, at any general election, a Judge of Probate, who shall reside in the county, and whose term of office shall be four years from and after the first day of January next succeeding the day of his election.

SEC. 10. It shall be the duty of the Probate Judge to take probate of wills, grant letters testamentary, and perform the other usual duties of a surrogate, as may be prescribed

4 by law; and in addition thereto, the Judge of Probate
5 shall hold two terms in each year, as near as may be, equi-
6 distant from the term of the Superior Court, for the trial
7 of civil and criminal actions arising in the county. The
8 said terms to continue as long as the public interest may
9 require.

SEC. 11. The Probate Court shall have jurisdiction,
2 either original or appellate, in all civil actions where the
3 matter in controversy shall not exceed the value of
4 one thousand dollars (\$1000): *Provided*, That upon an
5 appeal from a Court of a Justice of the Peace no issue of
6 fact shall be tried by the Probate Court, unless the matter
7 in controversy exceeds the value of twenty-five dollars
8 (\$25.) The criminal jurisdiction of the Probate Courts
9 shall extend to all misdemeanors.

SEC. 12. The Probate Courts shall be always open for the
2 transaction of the business of surrogate, the trial of issues
3 of law, by agreement of parties, and all judicial business,
4 for which no notice is required to be given to the opposing
5 party.

SEC. 13. There shall be elected by the qualified voters
2 of each township (or district) two Justice of the Peace
3 whose term of office shall be two years, who shall have
4 jurisdiction in all civil actions, except those involving the
5 title of real estate, within said township (or district) where
6 the matter in controversy shall not exceed one hundred
7 dollars (\$100) in value, and final jurisdiction, subject to
8 appeal upon matter of law only, when the same shall not
9 exceed twenty-five (\$25) in value.

SEC. 14. In case the same shall be demanded by either
2 party, the Justice of the Peace shall summon a jury of six
3 for the trial of issues of fact.

SEC. 15. The Legislature may provide for the establish-
2 ment of special Courts, for the trial of misdemeanors in
3 cities and towns where the same may be necessary.

SEC. 16. In all actions issues of fact, shall be tried by a
2 Jury unless the same be waived by the parties, in a civil
3 action, or by the accused in trials for misdemeanors.

OFFICERS OF THE COURTS.

SECTION 17. The Attorney General shall be the legal ad-
2 viser of the executive department, shall represent the
3 State before the Supreme Court in all actions where the
4 same shall be a party and have a general supervision of
5 criminal proceedings throughout the State. He shall be
6 elected by the qualified voters of the State, at any general
7 election and his term of office shall be two years.

CLERK OF THE SUPREME COURT.

SECTION 18. The Clerk of the Supreme Court shall be
2 elected by the qualified voters of the State at a gene-
3 ral election for State executive officers and his term of of-
4 fice shall be four years.

PROSECUTING ATTORNEYS.

SECTION 19. In each county a Prosecuting Attorney
2 shall be elected by the people, whose term of office shall
3 be two years, and whose duty it shall be to represent the
4 State in all criminal cases arising within the county, in
5 whatever court the same shall be tried except upon appeal
6 before the Supreme Court.

CLERKS.

SECTION 20. The County Clerk in each County shall be
2 *ex officio* Clerk of the Probate and Superior Courts held in
3 said County.

FEEES AND SALARIES.

SECTION 21. The Legislature shall have power to fix and regulate the fees, salaries and emoluments of all judicial officers and to prescribe and regulate their powers and duties except as in this Constitution provided, as the public interests shall require.

CRIMES.

SECTION 22. All crimes which may be made punishable with death or imprisonment in a State Prison, shall be felonies and all other crimes, misdemeanors.

ACTIONS.

SECTION 23. The distinction between actions at law and suits in equity, and the forms of all such actions and suits shall be abolished, and there shall be in this State but one form of action, for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party, against a person charged with a public offence, for the punishment of the same, shall be termed a criminal action. Feigned issues shall also be abolished and the fact at issue tried by order of Court before a jury.

CAUSES NOW PENDING.

SECTION 24. Actions at law and suits in Equity now pending in the several provisional courts, shall be transferred to the courts which are given jurisdiction of the same by this article, without prejudice by reason of the change of procedure.

VACANCIES.

SECTION 25. In case of the death resignation or removal of

any Judge Prosecuting Attorney, the Governor shall appoint some person who shall fill the vacancy until the next general election, when one shall be chosen for the unexpired term.

SEC. 26. All process shall run in the name of the State of North-Carolina and in all indictments the people of the State of North-Carolina shall be prosecutor. Indictments shall conclude "against the peace and dignity of the State."

SEC. 27. This Convention shall make provision for the appointment of a commission to classify and arrange the whole body of the law, common and statutory, in force in North-Carolina previous to May 1st 1861, so far as may be applicable under this Constitution, and to suggest proper amendment of the same; and also to revise, modify, reform and abridge the rules of practice, pleading, forms and proceeding in all actions in this State.

SEC. 28. All the officers first elected under the provisions of this article shall enter upon the duties of their respective offices ten days after the approval of this constitution by the Congress of the United States, and shall hold the same for the respective terms of their offices, from and after the first day of January 1869.

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