

STATE OF NORTH CAROLINA,

OFFICE CODE COMMISSIONERS,

Raleigh, 1869.

W. B. Redmon,
V. C. Kurringer,
A. W. Foy,
Commissioners.

Handwritten notes:
The Report & a judgment thereon
in the case supposed by you, should make
entirely to the benefit of the creditor therein
if there be any surplus, it will be paid
pro rata to other creditors, at least, to such
as may be ascertained - It cannot be difficult
to ascertain that fact by every auditor, who has
long been in office. When the administration
has been recently before the 1st July, I would
advise the notice to be given under the new Act.
But upon the point suggested by you, I do not
see how the creditor can be deprived of the
benefit of his action, or how other creditors
can be invited in to share the fruits of
his payment, which will fully protect the
debtor. You will see that I think the present
law applies to all cases. I do not understand

Council - Aug. 4.

Dear Judge:

The Report & a judgment thereon, in the case supposed by you, should make entirely to the benefit of the creditor therein if there be any surplus, it will be paid pro rata to other creditors, at least, to such as may be ascertained - It cannot be difficult to ascertain that fact by every auditor, who has long been in office. When the administration has been recently before the 1st July, I would advise the notice to be given under the new Act. But upon the point suggested by you, I do not see how the creditor can be deprived of the benefit of his action, or how other creditors can be invited in to share the fruits of his payment, which will fully protect the debtor. You will see that I think the present law applies to all cases. I do not understand

how it can be otherwise, since the Act of July
1st. repeals all other provisions on the subject,
without a saving clause. It is the only case of
abrogation the law - But this, when
there is no other provision contravened, there
is much room for the play of judicial
construction with a view to equity between
parties - and it seems to me, that when a
suit had advanced so far before the Act
went into effect, as in your case, the
rule which I have indicated would be
just. I confess, however, that I have not
had much to say in practice & I am,
therefore, writing without careful study to
the point. It was a misfortune, perhaps,
to make the Act retrospective.

I would like to see you, but can't say
whether we can meet this month. I
want to go to Washington next week to
attend the Federal Court, & being up
there I wish to spend a little while
in the Mountains.