

American Legal History – Russell

Slaves and Free Persons of Color, ch. 107, §§ 26-77, in Revised Code of North Carolina, Enacted by the General Assembly at the Session of 1854 (Boston, Little Brown & Co. 1855).

26. No slave shall go armed with gun, sword, or other weapon, or shall keep any such weapon, or shall hunt or range with a gun in the woods, upon any pretence whatsoever; and if a slave shall be found offending herein, any person may seize and take to his own use such gun or other weapon, and may apprehend and bring such slave before a justice for trial and punishment, and send him home; and the master or owner shall pay the taker up of such armed slave, the same reward as is allowed for taking up runaways.

27. In case any slave who shall appear not to have been properly clothed and fed, shall be convicted of stealing any corn, cattle, hogs, or other goods whatsoever, from any person not the owner of such slave, such injured person may maintain an action on the case, against the possessor of such slave, for his damages.

28. No person under any pretence whatever, shall hire to his slave, or to a slave under his control, his time, on pain of forfeiting forty dollars for every offence. And it shall be the duty of all grand-juries to make presentment of any slave, who shall be permitted by his master to go at large, having hired his time; and, on indictment being found for the offence, a *capias* shall issue to take such slave and secure him in custody, or on sufficient recognizance of his master or others, so that he be before the next court to answer to the indictment. The master shall have notice of the trial, as in other cases is provided, and the court, at the return of the *capias*, shall impanel a jury to inquire and try the truth of the charge against the slave; and if he be found guilty, he shall be publicly hired out by the sheriff for one year, who shall take bond with security from the hirer for the price, and for furnishing all necessaries, and taking proper care of the slave; and the bond shall be for the use of the poor of the county. *Provided, always*, that if such slave be the property of a ward, he shall be hired out for the remainder only of the time for which he may belong to the person from whom he hired his time.

29. No slave shall go at large as a free man, exercising his own discretion in the employment of his time; nor shall any slave keep house to him or herself as a

free person, exercising the like discretion in the employment of his or her time; and in case the owner of slave consent to the same, or connive thereat, he shall be deemed guilty of a misdemeanor, and on conviction be fined not exceeding one hundred dollars. *Provided, however,* that any person may permit his slave to live or keep house upon his land, for the purpose of attending to the business of his master.

30. No person shall grant permission for any meeting of the slaves of others, at his house, or on his plantation, for the purpose of dancing, under the penalty of forfeiting twenty dollars, to any who will sue therefor, unless such slaves shall have a special permit in writing from their owners for that purpose; and the person so offending shall be deemed guilty of a misdemeanor.

31. It shall not be lawful for any slave to be insolent to a free white person; nor to utter mischievous and slanderous reports about any free white person, nor to wilfully trespass on his property or person; nor to intermarry or cohabit with any free person of color; nor for any male slave to have sexual intercourse, or indulge in any grossly indecent familiarities with a white female; nor to produce any forged free pass or certificate of freedom; nor to go from off the plantation or seat of land, where such slave may be appointed to live, without a certificate of leave in writing from his master, or manager; nor to raise any horses, cattle, hogs, or sheep; nor to teach, or attempt to teach, any other slave or free negro to read or write, the use of figures excepted; nor to sell any spirituous liquor or wine; nor to play at any game of cards, dice, or nine pins; nor to play at any game of chance, hazard, or skill, for any money, liquor, or any kind of property, whether the same be staked or not; nor to set fore to any woods, except in such manner as is allowed by statute; nor to preach or exhort in public, or in any manner officiate as a preacher or teacher, at any prayer-meeting or other association for worship, where slaves of different families are collected together; nor to traffic with another slave, by buying of, or selling to him, any articles of property, forbidden absolutely, or forbidden except by written permission, to be the subject of traffic between white persons and slaves; nor to traffic with any other person, by buying of, or selling to him, any article of property, unless such other person may lawfully buy of, or sell the same to, said slave.

32. All the offences mentioned in the foregoing section, and all other misdemeanors done by slaves, mentioned in this chapter, the prescribed punishment whereof is whipping; and all crimes by them committed,

whereunto, if done by a free person, extends the jurisdiction of the county court; and all petty offences forbidden by them to be done, shall be cognizable before a single justice of the peace of the county wherein the offence is committed, who shall have full power to issue summons for witnesses, and compel their attendance; and on conviction, the offending slave shall receive not exceeding thirty-nine lashes on his bare back; and in all such trials, as many justices as think proper may sit in judgment.

33. Whenever any slave shall be convicted before a justice of the peace, of any offence, the master, on behalf of the slave, may appeal to the next county or superior court, on entering into sufficient recognizance for the slave, and giving good security, as in other cases of appeals.

34. The superior court shall have exclusive original jurisdiction of all felonies and other offences committed by slaves, which, by section thirty-two, are not assigned for trial before a justice of the peace; and the trial shall be conducted in like manner as the trials of freemen for the same offence; and moreover, the jurors shall be slave-owners.

35. If any number of slaves shall, at any time, consult, advise, or conspire to rebel or make insurrection, or shall plot, or conspire to murder any person, every such consulting, plotting, or conspiring, shall be adjudged and deemed felony; and any slave convicted thereof, in the manner prescribed by law, shall suffer death, or be transported as hereinafter provided.

36. If any slave be found in a state of rebellion or insurrection, or shall agree to join any conspiracy or insurrection, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully aid, assist, or encourage any slave in a state of rebellion, or engaged in a conspiracy to make insurrection, every slave, so offending and being thereof convicted, shall suffer death, or be transported as hereinafter provided.

37. If a free person shall join, or agree to join, in any conspiracy, rebellion, or insurrection of slaves, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully aid, assist, or encourage any slave in a state of rebellion, or engage in a conspiracy to make insurrection, every free person so offending, and thereof convicted, shall suffer death.

38. In all cases, wherein a slave shall be prosecuted for the offences described in sections thirty-five and thirty-six of this chapter, the court may take for

evidence the oath or one or more witnesses, the confession of the offender freely given without any undue influence by terror or persuasion, or the testimony of a negro or other person of color, bond or free; but in all cases, where the testimony of one negro or person of color only, shall be admitted, the same shall not be deemed sufficient to convict the person charged; unless it shall be supported by such pregnant circumstances in the trial, as to the jury shall appear convincing proof, when taken with such testimony.

39. When any slave shall be convicted of either of the felonies created by the thirty-fifth and thirty-sixth sections of this chapter, he shall suffer death; or at the discretion of the court, shall be sentenced to be transported beyond the limits of the United States, under such restrictions and upon such conditions, as good policy and the public safety at the time shall require.

40. Whenever a slave shall be transported, in pursuance of the provisions of this chapter, by the owner, or by the State, and such slave shall ever thereafter voluntarily return to, and be found in the State, he shall suffer death, upon due conviction thereof. And if any slave so transported, shall be brought into any county in this State by his master, or, against his will, by any other person, such slave shall be forfeited (on proof thereof) to the county into which he may be brought; and the slave shall be again transported by order of the county court, and sold for the use of the county.

41. In all cases of insurrection or rebellion, or of conspiracy to make insurrection, or to murder, or to rebel, or any such contemplated conspiracy, insurrection, or rebellion, of any slave or slaves, upon the information and at the request of any five justices of the peace of the county in which such offences shall happen or may be contemplated, the governor may issue a commission of oyer and terminer, to any one of the judges of the superior courts of law; who shall hold said court forthwith, and be clothed with all the powers necessary for the trial of such slaves.

42. The officer prosecuting in behalf of the State, attending such court, shall be entitled to receive the same compensation, as for attending a term of a superior court.

* * *

44. Any slave, or free negro, or free person of color, convicted by due course of law, of an assault with intent to commit a rape, upon the body of a white female, shall suffer death.

45. Any inhabitant of this State, desirous to emancipate any slave, may file a petition in writing, in any of the superior courts, setting forth, as near as may be, the name, sex, and age of the slave, and praying permission to emancipate the same, and the court shall grant the prayer, on the following conditions, and not otherwise, namely: (1.) The petitioner shall show that he has given public notice of his intention to file the petition, at the court house of the county, and in the nearest gazette, for at least six weeks before the hearing of the petition; and (2) shall enter into bond, with two able sureties payable to the State of North Carolina, in the sum of one thousand dollars for each slave named in the petition, conditioned that he shall honestly and correctly demean himself, while he shall remain within the State; and that he will, within ninety days after granting the prayer for emancipation, leave the State, and never afterwards come within the same. *Provided, nevertheless,* that no such emancipation shall in any manner invalidate or affect the rights of the creditors of such petitioner.

46. Any person may, by last will and testament, direct and authorize his executors to cause to be emancipated any of his slaves, which shall justify the executor in doing the same; who, to that end, is hereby directed to file a petition according to the preceding section, in the same manner as if he were absolute owner of the slaves; and such slaves shall be emancipated on the same terms and conditions, and under the same liabilities, as are prescribed in the said section. *Provided always,* that no such emancipation shall, in any manner, exempt the slaves from the claims of creditors. *And provided further,* that permission to emancipate any slave, under the directions of any last will and testament, shall not be granted within two years after probate of the same, unless the executor will enter into bond with good security, payable to the State of North Carolina, in double the value of each slave emancipated, conditioned to be responsible to the creditors of his testator for the value of said slaves.

47. Whenever it may be directed by a testator, that any of his slaves shall be emancipated and carried to any State, territory, or country, and it may not be convenient to carry them to the place specially appointed, the court shall

designate and prescribe to what other place the slaves shall be carried after, or for emancipation.

48. Whenever a female slave shall by will be directed to be emancipated, all her issue, born after the date of the will, shall be deemed to have been likewise intended by the testator to be emancipated; and the court shall so declare, unless a contrary intent appear by the will, or by some disposition of the slave so born, inconsistent with such presumed intent.

49. It may be lawful to emancipate, upon petition, and under the order of any superior court of law, any slave over the age of fifty years, if his owner shall prove, by his own oath, or otherwise, that said slave has performed meritorious services, (which shall be more than mere general duties); and the petitioner will swear that he has not received in money or otherwise, the price or value, or any part thereof, of said slave; or been induced to petition for his emancipation in consideration of any price paid, or to be paid therefor.

Provided, that, before such slave shall be emancipated, the petitioner shall give bond and good security, in the sum of five hundred dollars, payable to the State of North Carolina, that said slave shall honestly and correctly demean himself, so long as he shall remain in the State, and shall not become a county charge: which bond may be sued upon, in the name of the State, to the use of the poor, or of any person injured by the misconduct of such slave, as often as it may be broken.

50. Every emancipation granted to any slave, in pursuance of, and according to, the directions prescribed in this chapter, other than emancipation for meritorious services, shall be upon the express condition that such slave, within ninety days from the time of granting the same, shall leave the State, and never thereafter return into it. And, if any such slave shall refuse or neglect to leave the State, within that time, or shall ever come within the State, after having left it, any justice of the peace of the county wherein such emancipated slave may be found, shall issue a warrant to arrest him; and, upon proper proof made of his having violated the provisions of this chapter, the justice shall commit him to the jail of the county, there to remain until the next ensuing term of the county court, where, on indictment found against him for the causes aforesaid, or any of them, the trial shall be by jury; and if found guilty, the offender shall be sentenced to be publicly sold, and the purchaser shall hold him forever thereafter as a slave, and the proceeds of sale by divided equally between the informer, and the poor of the county.

Provided, however, that the accused may appeal from the judgment of the court to the superior court of the county.

51. If any emancipated slave refuse or neglect to leave the State, as is required of him, or shall ever come within the same after having left it, any person may bring suit in the name of the State, for the joint use of himself and the wardens of the poor, of the county, upon the bond given pursuant to the provisions of this chapter.

52. All grand-juries shall present every emancipated slave, who may violate the provisions of this chapter; and the prosecuting officer shall prosecute such slave as hereinbefore provided.

53. No slave shall be set free, but according to the provisions of this chapter.

54. It shall not be lawful for any free negro to migrate into this State; and if one shall do so, he shall be deemed guilty of a misdemeanor during all the time of his stay, and may be indicted from time to time, until he removes out of the State; and on every conviction shall be fined five hundred dollars, for the payment of which he may be hired out as hereinafter directed. *Provided, however,* that such free negro shall not be indicted within thirty days after payment of the fine, or the expiration of the time of service, adjudged and suffered on a previous conviction.

55. Any person who shall bring into this State, by water or land, any free negro, shall forfeit and pay, for every person so brought in, five hundred dollars, to be recovered in the name of the State, for the use of the county wherein the offence shall be committed. *Provided,* that this section shall not extend to masters of vessels, bringing into this State any free negro, employed on board and belonging to such vessels, and who shall therewith depart; nor to any person, travelling in or through this State, having any free negro as a servant, who shall, with such person, depart out of the State.

56. Free negroes, not now lawful residents and inhabitants of the State, shall never hereafter become so by any length of time, neither they nor their issue; and in all cases where such free negroes are under the age of sixteen, it shall be the duty of the county court of the county in which they reside, to remove them at the expense of the county; and all such as remain to that age, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined five hundred dollars.

57. If any free negro, who may be a resident of this State, shall migrate and go into any other State, and shall be absent for the space of ninety days or more, he shall cease to be a resident and an inhabitant of this State, and it shall not be lawful for him to return, to the State; and if any free negro shall return, he shall be deemed and held to have migrated to the State. *Provided*, that no persons shall incur the penalties or disabilities prescribed in this section, if he shall have been prevented from returning to this State by sickness, or other unavoidable occurrence.

58. It shall be the duty of the county solicitors to give in charge to the grand-jury, the law relating to the migration of free negroes into the State: and it is hereby made the duty of the grand-jury to present all cases of that kind in their county, arising under this chapter, within the knowledge of any of them; and the said solicitors shall, in all such cases, prosecute for, and in behalf of the State.

59. If any free person of color shall preach or exhort in public, or in any manner officiate as a preacher or teacher in any prayer-meeting, or other association for worship, where slaves of different families are collected together, he shall be deemed guilty of a misdemeanor; and on conviction, shall, for each offence, receive not exceeding thirty-nine lashes on his bare back.

60. If a free negro who is able to labor, shall be found in any county spending his time in idleness and dissipation, or having no regular or honest employment or occupation, which he is accustomed to follow, any citizen may apply to a justice of the peace of said county, and upon affidavit, obtain a warrant to arrest such person and bring him before some justice of the county; and if, upon examination of the case, it shall appear that the free negro comes within the provisions of this section, the justice shall bind him with reasonable security, to appear at the next county court of the county; and in case he shall fail to give security, he shall be committed to the jail of the county, until the next county court thereafter; and it shall be the duty of the court, if, upon examination of the case, it shall come within the meaning of this section, to require such free negro to enter into bond, with sufficient security in a reasonable sum, payable to the State of North Carolina, conditioned for his good behavior, and industrious, peaceable deportment, for one year. And in case he shall fail to give such security, or shall not pay the costs and charges of the prosecution, the court shall hire out such free negro to service and labor,

for a term of time which to them may seem reasonable and just, and calculated to reform him to habits of industry and morality, not exceeding three years for any one offence. And all sums of money which may arise under the provisions of this section, shall be paid to the county trustee.

61. It shall not be lawful for a free negro to intermarry, or cohabit and live together as man and wife, with any slave; and any free negro offending herein, shall be liable to indictment, and, upon conviction, shall be fined and imprisoned, or whipped at the discretion of the court; the whipping not to exceed thirty-nine lashes. *Provided*, that this section shall not extend to any case where an intermarriage, or cohabiting, or living together took place, by and with the consent of the master or mistress, before the first day of November, a.d. one thousand eight hundred and forty-four.

62. No free negro shall play at all with any slave at any game of cards, dice, or nine pins; nor shall he play with any slave at any game of chance, hazard, or skill, for money, liquor, or any thing of value; and any free negro offending herein shall be deemed guilty of a misdemeanor, and, on conviction, shall receive a whipping, not exceeding thirty-nine lashes, on his bare back.

63. If any free negro, or person of mixed blood, shall knowingly suffer any slave to play at any game of cards, dice, nine pins, or any game of chance, hazard, or skill, whether for money, liquor, or any kind of property, or not, in his house, or in the yard, field, or garden attached or belonging to his house, he shall be deemed guilty of a misdemeanor; and, on conviction, shall receive not exceeding thirty-nine lashes on his bare back.

64. If a free negro shall entertain any slave in his house, during Sunday, or in the night between sunset and sunrise, he shall forfeit and pay two dollars for every offence, for the use of the county in which the offence shall be committed.

65. No free negro shall hawk or peddle in any county, without first obtaining a license from the court of pleas and quarter-sessions of that county; which license shall be granted for but one year, and only when seven or more justices are present, and upon satisfactory evidence of the good character of the applicant. And if any free negro shall offend against this section, he shall be deemed guilty of a misdemeanor.

66. If any free negro shall wear or carry about his person, or keep in his house, any shot-gun, musket, rifle, pistol, sword, dagger, or bowie-knife, unless he shall have obtained a license therefor from the court of pleas and quarter-sessions of his county, within one year next preceding the time of the wearing, keeping, or carrying thereof, he shall be guilty of a misdemeanor.

67. If any negro shall, directly or indirectly, sell or give to any person, bond or free, any spirituous liquor, he shall be deemed guilty of a misdemeanor.

68. Every slave or free person of color, who shall hereafter be convicted of any felony, for which no specific punishment is prescribed by statute, and which is now allowed the benefit of clergy, shall be imprisoned at the discretion of the court, not exceeding two years; and, in addition to such imprisonment, the court may sentence the convict to receive one or more public whippings, or to stand in the pillory, or (if a free negro) to pay a fine, regard being had to the circumstances of each case.

69. When a slave shall be apprehended or indicted for any offence, whereof the superior court has original jurisdiction, his owner, if known, shall have ten days' notice of the trial, in order that he may have an opportunity of defending his slave; the cost of which notice, and all other costs, attending the trial of the slave, shall be paid by the owner, if such slave, being a free man, would be liable to the payment thereof. And if the owner refuse to pay the same, execution in the name of the State may issue against such owner.

70. When the owner of any slave who may be tried in virtue of this chapter, shall not be known, or cannot be ascertained, or shall reside out of the State, the court shall appoint counsel to appear for the prisoner, who shall be allowed the same fees as the attorney for the State is allowed for such criminal prosecutions; after which, the trial may proceed in the same manner, as if the owner had been notified agreeable to the directions of this chapter; and the fees for the counsel, clerk, and sheriff, shall be paid by the county having cognizance of the offence, as other county charges.

71. Negroes, Indians, and persons of mixed blood, descended from negro and Indian ancestors, to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether bond or free, shall be deemed and taken in law to be incapable to be witnesses in any case whatever, except against each other. In all pleas of the State, where the defendant may be a negro, Indian, or person of mixed blood, descended from

negro or Indian ancestors, to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether such defendant be bond or free, the evidence of a negro, Indian, and of all persons of mixed blood, descended from negro or Indian ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether the person whose evidence is offered be bond or free, shall be admissible, and the witnesses competent, subject, nevertheless, to be excluded upon any grounds of incompetency which may exist.

72. On the trial of any slave, free person of color, or Indian, the judge or presiding magistrate, before the examination of any slave, free negro, or Indian, shall charge such to declare the truth.

73. If any slave, free negro, or Indian, upon any trial where he may be examined as a witness, shall commit wilful and corrupt perjury, he shall, upon conviction, be punished as a freeman convicted of a like offence.

74. In every case where the whole, or part of the punishment prescribed by statute for any offence, shall be imprisonment for a time so long as thirty days at least, and there shall be provided by the statute no difference in the punishment between a white person and a free negro, the court may sentence the free negro to be both whipped and imprisoned; but in such case the time of imprisonment, within the limit prescribed, shall be in the discretion of the court.

75. When a free negro shall be convicted of any offence against the criminal laws of the State, and sentenced to pay a fine, and it shall appear to the satisfaction of the court, that he is unable to pay the fine imposed, (which shall in all cases be equal to the costs,) the court shall direct the sheriff to hire out such free negro publicly at the court house door, during the term of court, to any person who will pay the fine, or the greatest part thereof, for the services of the free negro for the shortest space of time, not exceeding five years; and the hirer shall have all such power and authority over, and the same rights to control the services of, such free negro, as masters have over free negro apprentices.

76. Whenever a free negro shall be charged with the maintenance of any bastard child, and he shall be unable to give the bond required in such case, the court may order him to be hired out, in the same manner and under the

same rules as are prescribed in the preceding section, for such sum as the court shall adjudge to be proper for the maintenance of the child.

77. When any free negro, for any fine imposed on him for an offence, or for a sum of money adjudged against him in case of bastardy, shall be hired out for the space of five years, the whole fine or sum of money shall be discharged; and the sheriff, after deducting five per centum on the sums collected for any hiring, shall account for the residue, as for other fines; and in these cases, the officers shall have full fees. *Provided always*, that if any free negro, who may be hired out for his fine, or in pursuance of section seventy-five of this chapter, shall abscond or leave the service of his hirer, before the expiration of his time of hiring, such free negro shall be bound to serve double the deficient time. *And provided, further*, that the person hiring such free negro shall, in open court, enter into recognizance to the State, with two able sureties, in such sum as the court shall direct, that the free negro, during the time of service, shall be furnished with good and sufficient lodging, clothing, medicine, and food; shall be treated with humanity, and be employed in some useful and industrious occupation; shall not be removed from the county, during the term of service, and shall be produced to the county court at the expiration thereof, or whenever, and as often as, the court may order. On breach of the recognizance, the prosecuting officer of the court, which may have directed the hiring, shall enforce and collect the recognizance for the benefit of the free negro, who, on such breach thereof being established, shall be discharged of all further service. And if any hirer shall fail to comply with any of the duties hereby