

to Protect them in the Peaceable Possession of those Lands which are necessary for their actual Subsistance.

As the Law which gave the appointment of the County Clerks, to the Clerk of the Pleas, at the Separation of that office from the office of Secretary of the Province, is near expiring, in case any Inconvenience has arisen from the change, I should imagine that the Council and Assembly of the Province can have no objection to the Appointment of County Clerks reverting to the Secretary at the Renewal of that Law.

His Majesty has been graciously pleased to accept of your Panther.

I am &c^a

SHELBURNE.

Letter from Governor Tryon to the Earl of Shelburne.

BRUNSWICK 29th June 1767.

I have the honor to transmit to your Lordship a few sheets of paper, under the title of "A Sketch of the Polity of the Province of North Carolina," as no diligence nor pains have been spared to make this work as accurate as it is impartial and just, and no assistance been wanting in describing the powers and jurisdiction of the Courts of law and of the officers that compose them, I hope his Majesty will find nothing materially omitted in the attempt to delineate the civil constitution of this province.

I am, my Lord, with real esteem.

The polity referred to follows.

A VIEW OF THE POLITY OF THE PROVINCE OF NORTH CAROLINA, IN THE YEAR 1767.

In a paper of this nature it is sufficient to observe that the Legislative power is vested in the Governor, Council and Representatives of the people.

The Governor is the King's lieutenant, and in him is lodged all the prerogative of the Crown, with certain other powers and authorities extrinsic of the prerogative and more immediately relative to the administration of Justice, and will be treated of under that head.

The members of his Majesty's Council have always claimed and in fact have been in the exercise of a negative in the making of

laws, and no bills have passed into laws in this province without their assent.

The House of Assembly or of Burgesses is composed of five persons as representatives for each of the counties of Chowan, Perquimans, Pasquotank, Currituck and Tyrrel, three from the county of Bertie, two from each of the other twenty three counties in the province and one from each of the towns of Wilmington, Brunswick, Newbern, Halifax, Bath, Edenton, Salisbury and Campbelton.

The several towns in this province are created by act of Assembly but have no right upon their creation to send members to the Assembly, nor doth that right by law commence until there be sixty families residing in the town, at which time they may apply, and are entitled to a writ for electing a representative in the Assembly

It is generally understood that the person of members of Council and Assembly are exempted from arrests in civil actions during their attendance on the publick service going to and returning from that service only, but what shall be construed a reasonable time for going to and returning from the service of the house has not yet been ascertained or perhaps thought of.

The power of his Majesty in Council to repeal the laws of the province is universally considered as part of the Constitution, these laws being no longer in force than until such repeal is notified, and it hath also been indisputably held that the statutes of the British Parliament extending to America are in full force in this province and have in the courts of judicature been always liberally construed. It must be owned indeed that the Stamp Act made many of the People skeptical on that head and taught some to make a distinction between keeping money out of their pockets and taking it out without their consent where it was then lodged.

As to the administration of justice the first court of judicature to be mentioned is that of the Court of Chancery or more properly the Court of Equity and Conscience since it hath no plea sides neither have there at any time issued any original writs from this court. It is not established by any positive statute nor hath the province been so long in existance as to give it any establishment by prescription. However several laws of the province have taken notice of it as a Court of Judicature by establishing certain fees to the officers upon the different motions and orders in process and by saving clauses reserving to this court all the jurisdiction they had

before passing the several Acts in which these saving clauses are contained, and in fact this court is in the exercise and enjoyment of all the jurisdiction and authority in this province that the Court of Chancery in England hath on the equity side. The Governor and members of his Majesty's Council are the judges of this court and among them have the judicative power of the Chancellor and master of the rolls in England so far as extends to the equity side. The presence of the governor is essentially necessary to constitute a court and it is understood that there must be at least five members of his Majesty's Council likewise present, and in this court the governor is supposed to be no more than the presiding judge, every member present having an equal voice with him and the majority determine. The secretary of the province commonly by a deputy executes the office of clerk and register in this court and there are no other officers properly belonging to the court. The sheriffs of the several counties do execute the compulsory orders of the court and the attorneys of the superior courts act both as solicitors and counsel. The governor may hold court when and where he pleases although it is seldom held oftener than twice a year, notice being previously given by advertisements put up in different parts of the province and commonly inserted in the newspapers. Except a fee of forty shillings currency to the governor and some other fees to him and the secretary established by act of Assembly passed in April 1748, the judges and officers of this court have no pecuniary appointment either in the way of fee or salary. The governor for the time being of himself and without the consent of the Council hath always been in use so far to execute the power of Chancellor as to issue injunctions to stay the execution of proceedings at common law when to him there appeared sufficient equity in the bill sworn to by the party applying for the injunction and such injunctions are seldom or ever dissolved until an answer is filed in the Court of Chancery and motion then made and parties heard. The truth is that a Court of Equity to take cognizance of all frauds, trusts, accidents brought before them is almost absolutely necessary in this province and perhaps it is [no] less so that a few plain rules easily executed and calculated for the situation and circumstances of the province be made for carrying on the business of this court. It may be observed that if the power of chancellor was altogether vested in the governor for the time being it would have the sole merit of every equitable decree or order of the court and the sole

blame of every bad one. The council would neither control him in the first instance, neither could he screen himself from censure by any influence he could have over a majority of that body in the last instance so that his reputation as an equitable judge would stand or fall by his own act only, and any defects in point of knowledge in matters of law or form might with ease be supplied by taking the opinion of such of the council or of any others whose knowledge and probity he could rely on, still weighing such opinion in the scales of his own good sense. Another improvement might probably be the appointment of two or three gentlemen tolerably versed in the law of England and well known to figures and accounts who should have the powers and trusts of the matters in chancery in England and to whom all references for auditing accounts all exceptions to answers and other matters incident to that office should be made, but as the fees arising from their offices would for some time at least be altogether insufficient to support them with decency, an annual salary to each would be necessary, which is not to be thought of, without the grace of the crown or the aid of the legislature.

The Governor is also in some measure in place of the Ordinary in England and issues all letters of Administration and letters testamentary. He may and often doth issue these by direct and immediate application to himself, but the most common way is, that the nearest of kin, the greatest creditor or the executor as the case may be, do apply in the first instance by motion to the superior or inferior court who grants an order for such letters, of course unless some other person having an interest in the matter do oppose it, in this event parties are heard and the court of law determines to whom the right of preference belongs and grants the order accordingly, but the party dissatisfied with such order may enter a caveat and in that case the order and caveat is transmitted to the secretary's office and a rehearing and a debate is had before the governor and council as a Court Ordinary where the right is determined by plurality of voices as in Chancery formerly described. For the ease of the subject the clerks of the superior and inferior courts of law are often trusted from time to time according to the demand with a few of these letters signed by the governor and countersigned by the secretary with the province seal annexed with the names of the persons left blank to be filled up and delivered to the party agreeable to the order of Court, and immediately upon

such order and the party finding surety, at the sight of the court, but this can only be when no caveat is entered.

The Court of Claims is the next to be mentioned, if with propriety it can be called a court, being in fact no more than a meeting twice a year or oftener if occasion require of the governor and council as trustees for granting out in fee farms the King's lands in the province. This being a trust immediately flowing from the crown, *Jure Corona*, their proceedings are subject to no control, except what is dictated by his Majesty's instructions, and whenever such instructions don't interfere, they are supposed to act according to what appears to them *pulchrum* and *honestum*. Their method of proceeding is plain and easy and fully answers the purpose intended, for when any of his Majesty's subjects come to a resolution to take a grant or patent for any part of the crown lands he maketh an entry in the nature of a proposal in the secretary's office and pays a small fee for such entry. As the first entry is prior *in tempore* so it is supposed to be first in law and a warrant to the Surveyor General signed by the governor goes out of course requiring him to make a survey of the lands proposed to be granted, this survey with a sketch of the plan annexed is returned to the secretary's office and a patent or grant not exceeding 640 acres is made out, signed by the governor countersigned by the secretary and has the seal of the province annexed. Although this be the common method of proceeding yet it is well understood that any person may enter a caveat against obtaining a grant or patent upon such entry at any time before the patent is executed, which caveat is also entered briefly in the secretary's office and effectually stops the issuing of the patent for such reasonable time as gives the parties opportunity of being heard upon their several pretensions, and after hearing the equitable right of preference in the contending parties is determined by the governor and council as in a court of equity. The officers belonging to this court are the Surveyor General and his deputies whereof he appoints one or more in each county as occasion requires, the Secretary and the Auditor.

As to the administration of justice according to the course of the common law, it falls to be observed, that the province is divided into five different districts in the following manner: The district of Edenton contains seven counties being Chowan, Perquimans, Pasquotank, Currituck, Tyrrell and Hertford. The district of Halifax contains the same number of counties, to wit, Granville, Bute,

Halifax, Edgecomb, Orange, Johnston, and Northampton. The district of Salisbury contains three counties namely, Mecklenburgh, Anson, and Rowan. The district of Wilmington six counties, Viz. Cumberland, Bladen, New Hanover, Duplin, Brunswick and Onslow, and the district of Newbern contains the counties of Craven and Dobbs, Pitt, Beaufort and Hyde. In each of these districts there is twice in every year held a court by the chief justice of the province for the time being, and the associate judge of the district jointly, or by either of these judges in the absence of the other. The associate judge for Salisbury district must be a lawyer by profession. He has a salary from the province of one hundred pounds current money of the province for every court he holds in the district, and has all the power and authority of the chief justice in that district and in the absence of that Magistrate. It is not necessary that the other four associate justices be lawyers, their offices are purely honorary attended with no profits worth mentioning and though they have an equal voice with the chief justice in all cases whatever when present, yet in his absence their power is much limited, for in that event they must not give judgment in any cause where matter of law arises. The jurisdiction of each associate is confined to the district for which he is appointed.

The chief justice is in this province an officer of dignity, trust and importance, for he is the great judge at common law of all causes, civil and criminal, above the value of twenty pounds currency in civil actions and those that extend to a life or member in criminal cases, and in fact in this province there is lodged in him all the powers and authorities vested in both the courts of Kings Bench and Common Pleas in England. When sickness or other extraordinary accidents don't intervene he sits judge in all of these districts, Salisbury only excepted, where he may also preside when he pleases, although that don't often happen on account of its remote situation: and in the absence of the associate for the district is sole judge. Besides the powers and authorities which this court hath in common with the courts of law in Westminster, it has some other peculiar to itself, for Writs of Error and of *Certiorari* not only lye from this court to the inferiour courts of the different counties within the respective districts but likewise the persons dissatisfied with the judgements and verdicts in these inferiour courts may on motion immediately after such judgments or verdicts have an appeal to the superiour courts of the district and by transmitting a copy

of the records from the inferiour to the superiour courts have a new tryal there. This court also upon motion grants orders for Letters of Administration to issue to the nearest of kin to the intestate or to the greatest creditor, and may compel an exhibition of Wills in order to a legal probate, and take the probate of Wills and order these to be recorded, but in all of these cases the person having a right to administer on the estate or to execute the Will thinking himself injured may enter a caveat against the person obtaining the order which stays the issuing of Letters of Administration or Testamentary until the matter in controversy is reheard and determined by the governor and council. The judges of this court hath likewise an equitable jurisdiction in common with the Court of Chancery by bill in equity for recovery of legacies, filial portions, distributive shares of intestates estates, sums of money or other estate due by guardians, executors or administrators. The law for establishing this court is not older than the year 1762, and was temporary to continue for two years only, but from experience of the utility thereof the time has been prolonged and the law is now in force and continues to the end of the next session of Assembly. The Chief Justice and his associates hold their offices during pleasure and besides the oaths to the government do each take an oath of fidelity in office. The Chief Justice hath the power of appointing the clerks in civil causes in all the different districts who hold during his pleasure, and at entering upon their office must take the oaths to the government, and an oath of fidelity in office, and at the same time swear that neither they or any in their behalf hath paid or undertaken to pay any gratuity or consideration for their offices. There is likewise belonging to every district a Clerk of the Crown for each court in the appointment of the Secretary, this clerk holds during the pleasure of his constituents. The other officers of the court are the sheriffs of the several counties within each district who execute the orders of the court, and the Sheriff and Cryer. The Attorney General and the other attorneys at law will be afterwards mentioned. Parties who think themselves injured by the judgments of this court apply for redress by a bill in equity filed in the Court of Chancery, and at the same time to the governor, who according as there is equity suggested and sworn to grants or refuses an injunction to stay proceedings at common law until further hearing in Chancery. Of this enough hath been said already only that on intimation of this writ to the

party or his attorney effectually stops execution until the injunction is dissolved. An appeal to his Majesty in Council doth likewise lye from the decrees of this court as well as from decrees in chancery, but from this Court not directly or immediately for the mode prescribed for obtaining this redress against the judgments at common law is supposed to be by application to the governor and council who of course order a transcript of the proceedings in the court of law to be transmitted to them and appoint a day for hearing the cause after which hearing, they affirm or reverse the judgment given at law and upon praying grant an appeal to his Majesty in Council upon good surety found by the appellant to fulfill the order of council and pay all costs awarded. The salary paid to the Chief Justice from the crown is seventy pounds sterling per annum paid at its value in the currency of the country by his Majesty's Receiver General out of the quit rents. There hath likewise hitherto been paid to him twenty six pounds currency out of the publick treasury by Act of Assembly for every court he attended to defray the charges of his journeys, but the act of Assembly for this establishment having been temporary is now expired. But much the greater part of the revenue of this officer arises from the fees of court which he is intitled to upon the different motions orders, and proceedings of the court from four pence to five shillings and four pence at the highest, and by custom none of these fees are paid until the suit is determined either by abatement, discontinuance or judgment and then the clerk makes out a bill of costs due to the Chief Justice and to himself, and for these fees issue execution against the party who is cast and the clerks of courts of the several districts collect the Chief Justices fee with their own from the sheriff who returns the execution and accompts with the Chief Justice twice every year. These trifling fees are established by act of assembly and altogether may be justly computed at one thousand pounds currency annually which at the present rate of exchange may be equal to five hundred and fifty pounds sterling, but the Chief Justice is obliged annually to travel above twelve hundred miles in the discharge of his office, exclusive of the district of Salisbury, which adds about seven hundred to this account.

Another court both of law and equity is the inferiour Courts of Pleas and quarter sessions held four times a year in every county in the province. The justices of peace of each county are judges of these courts in their respective counties. Their jurisdiction in

civil actions is restricted to twenty pounds currency and in criminal actions to such crimes as amount to fine and imprisonment, the fine not exceeding twenty pounds, and they often inflict corporal punishment, such as pillory whipping and others that don't extend to life or member. Although the jurisdiction of this court both in civil and criminal cases is so much restricted, yet the powers, authorities and trusts belonging to it are many and important, they grant orders for administration of intestates estates in common with the superiour courts (and from thence these orders most generally issue) of whatever value the estate be, and to them the inventories of these estates are returned, and they give orders to sell the estates of intestates as they see proper and to take bond and security from the administrator for the faithful discharge of his duty. They take the probate of wills and grant the same orders for Letters Testamentary and upon these orders letters issue of cause, unless a caveat is entered, in which event the right of the contending parties is tried by the governor and council as a court ordinary. They take charge of the persons and estates of orphans in their counties and assign them guardians making such guardians find surety and calling them to account at discretion. Deeds of real and personal estate for the most part are proved and acknowledged before them in this court and orders are there issued for recording them, and registering them in the register's office. In causes under five pounds they determine summarily without a jury *secundum bonum &c*—This court annually recommends to the governor three persons out of whom he is to choose one to be sheriff of the county. The duty of this officer will be mentioned in its place. This court likewise appoints the Inspectors of the several counties, a description of the duty of this officer will also be attempted in its place. They likewise annually audit and pass the Sheriffs accounts of the publick money and give a certificate to the treasurer of the district for the number of taxables he is to account for, the presence of five justices is necessary for this last purpose and three in all other cases to do business as a court. Besides the publick taxes imposed by Act of the Legislature this court hath power to tax the several counties at pleasure for the contingent charges of the county, that is for building and repairing bridges, making and repairing high roads, repairing court houses, goals and other publick works in their several counties. Application is in the first instance made to this court by all parties who intend to build publick grist mills to intitle them to

take toll but in this case the party dissatisfied with the order of the inferiour may appeal to the superiour court. This court grants orders for licences to keep tavern, and for retailing spirituous liquors and revokes such licenses, and also licenses to keep publick ferries and regulates the ferriages. They appoint from time to time at discretion the overseers of high roads and the constables of the country. Their jurisdiction is extensive and their proceedings summary in all questions which regard servants and slaves and touching their complaints of ill usage. At the inferiour court of the county preceding the superiour court of their district they appoint the persons who must serve on the grand jury and petit jury for that county in the superiour court and those only the sheriff is to summon. Every justice of the peace who accepts and qualifies under the commission is *ipso facto* a judge of that court in the county where he qualifys and besides the oaths to the government which these justices in common with all officers civil and military are obliged to take previous to their entering upon the offices, they also take an oath of fidelity among other things importing they shall accept of no fee or reward whatever for doing their duty in that office. These judges hold their offices in virtue of the commissions of the peace issued from time to time by the Governor in council as occasion requires and are commonly named in consequence of a recommendation from the members of Assembly from the different counties. Their offices as may be observed from the form of the oath by them taken are attended with no profit whatever but are notwithstanding thereof much desired on account of the many trusts reposed in them by the laws of the country which indeed gives them very great influence in their several counties, and the House of Burgesses is to a trifle made up of these justices from the several counties. Their offices as Justices or Conservators of the Peace (extrinsick from their meeting in the inferiour court just now described) is pretty much the same with that of the Justices in England, exclusive of the powers given them by statute in revenue matters, with this difference that in all matters of debts or demand a single justice in this province may judge to the amount of forty shillings currency, but an appeal lyes from his decree to the inferiour court of the county. It may be reasonably conjectured that there are five hundred and sixteen acting justices in the province which consists only of twenty nine counties

To each court belongs a clerk of the civil causes and a clerk of the crown. Until about the year 1761 these officers were in the gift of the secretary of the province who granted them during pleasure and had a small annuity paid him out of the profits of the several offices. About this time a new office was erected out of the Secretary's and called Clerk of the Pleas. The nature of his commission was appointing him clerk in civil cases of all the courts of law in the province and giving him power to appoint deputies. In the year 1762 this new officer was recognized by act of Assembly with these restrictions that the Chief Justice should have the appointment of the clerks in the Superiour courts and that the deputies of the Clerk of the Pleas should hold their offices during good behaviour. These clerks of the inferiour courts therefore although no more than deputies (and that the common law of England lays it down as a maxim, that it is essential to the being of a deputy that he can only hold during the pleasure of his constituent) yet hold during good behaviour while their principal and constituent holds during pleasure only and yet is accountable for the acts of his deputy. The business of these clerks in the several counties gives them so thorough a knowledge of the people and makes them so necessary in all transactions in these counties that with common discretion they acquire great influence so that if these twenty nine offices with about one hundred pounds sterling annually one with another were all in the disposal of the Crown during pleasure it would thereby acquire great additional weight and ballance in the scale of legislation. The clerk of the crown in each county holds his office from the Secretary and during pleasure, the emolument of this office is so trifling that for want of another to execute it he commonly confers it upon the clerk of the county court who with ease discharges the duty of both offices. It may justly be observed that the secretary being absent acts by a deputy, who is the same person that enjoys the office of principal clerk of the Pleas so that the office of clerk of the pleas and clerk of the crown in the several counties are in the disposal of the same person, with this distinction that he appoints the first during good behaviour the last during pleasure only.

The only other court of judicature known in this province is that of the Admiralty. The jurisdiction of this court is limited to transactions on the high seas, to the tryal of seizures made by the officers of the customs for breach of the acts of trade and to suits brought

by mariners for their wages and therefore although the court is always open yet it seldom meets, as grievances of that nature don't often occur. The officers of the court consist of a Judge appointed by the Governor, a Register and Marshal appointed by the judge and all hold during pleasure. The commission of judge doth generally extend over the province and he appoints surrogates for those ports which are situated remote from his place of residence to whom are delegated all his powers within the limits of these ports. The judge or any other of the officers of this court have no other establishment except their fees of court regulated by Act of Assembly in April 1748.

There are no spiritual courts of judicature nor is there any exchequer recognized in this province, although there is a Baron of the Exchequer appointed conformable to his Majesty's order in council of the 18th day of September 1733 with a salary of forty pounds sterling annexed per annum.

Something more remains to be said concerning the officers upon the civil establishment, who will be mentioned as they occur without regard to their precedence. A short description has already been attempted of the power and authority vested in the governor, what remains on that head relates to the emoluments arising to him in the province.

By an Act passed in April 1748, (which is the general law for the regulating officers fees in the province) the Governor hath a certain fee upon all patents or grants of the King's lands, for letters of administration, probates of wills, registers of shipping, testimonials under the colony seal, commissions for civil offices, letters patent of denization together with his fees in chancery.

By an Act passed in December 1758 he is entitled to twenty shillings currency for every license to keep tavern, to retail wine or spirituous liquors. By an Act passed in November 1766 all marriage licenses are to be issued under the hand and seal of the governor for each of which he is intitled to a fee of twenty shillings currency which the clerks of the county courts collect at the time of taking the marriage bond and is accountable for to the governor.

By the act passed in April 1748 certain small fees are given to the governor's secretary for drawing certificates of the probates of wills, testimonials to which the colony seal is affixed, warrants for lands and affixing the great and small seal.

The members of his Majesty's Council as such have no salary or fees whatever paid them from the province except an allowance of seven shillings and six pence currency per diem to defray their traveling expences to and from and for their attendance at the general assemblies. The same allowance is also made to the members of the Assembly.

There are two publick Treasurers in the province one for the southern, another for the northern part of the province, both of whom are commonly appointed by Act of Assembly, their business is to receive from the sheriffs and the other collectors of the revenue of the province the poll tax and the other taxes imposed by the legislature and to apply the monies arising from those taxes to the purposes prescribed by the several statutes that impose them, to call the sheriffs and other collectors to account for their publick monies, to settle accompts with them and to account with the Assembly for the monies they receive, and have five per cent upon all monies by them received.

The duty of the Receiver General is that himself and his deputies collect from the tenants of the Kings lands the fee farms or quitrents reserved to the crown in the grants of these lands, and to account for or disburse the same according to the instructions from the Sovereign. His profits arise from the commissions allowed upon his receipts of these rents. He appoints deputies one or more as occasion requires in every county within the limits of the king's part of the province.

The Secretary of the province is an office of trust and importance. This officer hath the power of appointing the clerks of the crown both in the superiour and inferiour courts and receives from these clerks such a share of their annual profits as he and they can agree for. He likewise appoints the clerk in chancery, and is principal keeper of the records in the province. In his office are made out and recorded all patents and grants flowing from the crown, all commissions of the peace and all military commissions for all which and for coppies from the records certain fees are allowed him by Act of Assembly in April 1748.

The office of Auditor in this province is executed by deputy. His business chiefly consists in auditing the accounts of the Receiver General of the quitrents and giving debentures for payment of the salaries to the officers upon the crown establishment, in certifying and entering the warrants for survey of lands granted by the crown

and auditing the patents of these lands, for certifying and auditing of which warrant and patent he hath certain fees allowed him by the Act of Assembly in April 1748.

The office of Surveyor General is another that relates only to the Land Office or Court of Claims. His business being also to certify and enter all warrants for survey and to make the surveys previous to the issuing the grant, this last and most troublesome part of the business is performed by deputy whereof there is one or more (as needful) in every county within the King's limits. The fees of this officer is regulated by the Act of Assembly passed in 1748.

And with respect to all these officers already named it may be observed in general that none of them have any annual salary or establishment paid them by the province, all their profits and emoluments arising from the fees for the most part if not altogether regulated by statute and particularly by the Act of Assembly in April 1748 for regulating the fees of the officers in the province and to that statute reference is had.

There is in this province no other class or distinction of lawyers than that of attorney at law, the same person issues the writ, draws and files declarations, pleas &c and pleads the cause at the bar, so that he is at the same time attorney and counsell for his client. None are entitled to act as lawyers in the province unless they have taken the degree of outer barrister at least in some of the inns of court in England or have license from the Governor here, and in fact the last is the most general qualification under which the attorneys in this province act, although there have been some instances to the contrary, yet the general rule in obtaining such license is that the man who intends to apply for it shall have the Chief Justices recommendation testifying the knowledge and probity of the candidate and before obtaining such recommendation the Chief Justice did commonly examine the candidates. The recommendation and license obtained in consequence of it doth often restrict the candidates practice to the inferiour courts only and such must obtain new recommendations and license before they are allowed to practise in the higher courts of judicature. The other or higher kind of license is without limitation and the party obtaining it may act as attorney and counsel in all the courts of law and as solicitor and counsel in the courts of equity in the province. These licenses have been often granted during pleasure of the governor only but notwithstanding of this clause it has been

determined in our superiour court upon good deliberation that they ought not to be deprived of the exercise of their profession unless good cause is assigned and proved, since with no propriety it can be called an office, being no more than a license to follow a profession in which every man is at liberty to imploy him or not according to the opinion he entertained of the knowledge and honesty of his lawyer. It is computed that there is about forty five lawyers who practice in the several courts of judicature in this province. Out of this body the Attorney General is taken commonly, and this officer, within the province has all the powers authorities and trusts that the Attorney and Solicitor General of England have in that kingdom, He hath a yearly salary of eighty pounds sterling per annum from the crown but none from the province, indeed this officer has been in use hitherto to receive twelve pounds current money of the province for every superiour court where he attended either by himself or deputy to defray the charges of his journeys, but the Act of Assembly whereby this was given is now expired so that at present neither this officer or the Chief Justice have any establishment but their fees from the province. His fees upon the different services by him performed are settled by the Act of Assembly so often mentioned. He may and does act by deputy in those courts where it is inconvenient for him to attend in person, the most distant courts are therefore generally those which he thinks himself priviledged to decline, and it is not to be expected that any but the younger practicers will act as his deputies, it may be therefore feared that in those courts criminals may often evade the justice of the law. The danger might perhaps be avoided by the appointment of a Solicitor General, the circuit would be divided between the attorney and him, the crown business be always the immediate attention of one of them, and the other alternately wait the governor's commands. To the office of Solicitor General no country fees are annexed under the present laws, but as the duties will be equal to the attorneys the propriety of a proper salary may be found expedient. The Attorney General at the time of the establishment of his eighty pounds sterling salary had only Wilmington, Newbern and Edenton courts to attend and the erection of the two back country courts has sufficiently increased the circuit to give equal employment to the Solicitor General and still leave the Attorney his original duty. He has a deputy in every inferiour

court of the province who prosecutes or defends on behalf of the crown in such actions civil or criminal as come before these courts when the crown is concerned.

In every county in the province there is a Sheriff who is an officer of trust and importance in the country. This officer is furnished with a list of all the taxable persons in his county, that is all the white males above sixteen years of age and all molattoes, masters and slaves male and female above the age of twelve, and by this list he collects all the publick or provincial poll, i. e. The poll tax imposed by act of Assembly together with the county tax being that imposed by the justices of the peace in the inferiour court upon their several counties for contingent charges within the county and the parish tax being that imposed by the Vestry for the behoof of the minister and other parish charges. This officer has the power vested in him of distraining for all these taxes and a fee of two shillings and eight pence currency for every distress. He must be a freeholder residing in the county of sufficient circumstances and must find surety for one thousand pounds sterling that he shall faithfully discharge the duties of this office and account for and pay all publick and private monies by him received as sheriff. This officer executes and serves all writs issued in the Kings name of whatever nature they are against persons lands and goods in the county and makes returns of these writs. He it is who exposes to sale all goods and chattels, lands and tenements sold in his county by order or decree of any court of law or equity. For serving and executing all writs he has certain fees allowed him by Act of Assembly in April 1748 and for all sales he has a commission not exceeding two and one half per cent or six pence in the pound of the price of the goods sold, and for all publick monies by him received he has a commission of eight per cent allowed him. He is chosen or appointed in the manner already described annually, but the same person may be elected and continued in office for an indefinite number of years with this limitation that he can only continue in office two years unless at the expiration of that time he shew certificates or receipts from the treasurer by which it may appear that he hath settled with that officer for the publick taxes by him collected in his county.

The publick Register is an officer established by an Act of Assembly passed in the year 1715. By this act of Assembly all conveyances of land or other real estate (mortgages excepted) in

whatever form they are drawn shall within one year from the date either be proved by one or more evidences upon oath or acknowledged by the grantor in a court of judicature or before the Chief Justice of the province for the time being or one of the associate justices, and the court or justice before whom such probate or acknowledgment is made shall certify it, after which the deed and certificate which is commonly wrote at the foot or on the back of the deed is carried to the register of the county in which the lands or other real estate do lye and by him registered in a book kept for that purpose and then given back to the party with a certificate endorsed upon it, importing that on such a day, such a deed was by him registered in such a page of such a volume or book of the county register. This is the method prescribed for registering deeds of real estate, and is the only mode in practice at this day. Such therefore is the business of this office in every county. As to mortgages of real estates there is no necessity for registering them but it is eligible to do it, since the first recorded will be preferable to any other although these others should be prior in date unless the eldest in date is registered within fifty days of its date. At the first institution of this useful officer by the Act of Assembly last mentioned, three persons were elected by the freeholders of each county in the province and sent to the Governor for the time being and out of the three he made choice of one for the office, who found surety for his faithful discharge of it and continued in office for an indefinite time, probably during good behaviour. This manner of appointing the Register soon fell into disuse and by the failure of the freeholders to elect agreeable to the Act of Assembly, the power of appointing devolved upon the Governor who in fact for these many years past hath appointed this officer in every county of the province to hold his office during pleasure and by that tenure the office is held. The fees of this officer was ascertained for the first time in April 1748, although the office itself is as old as the year 1715. There is no regular register of births, burials or marriages kept in any county in the province although prescribed by some of our acts of Assembly and a fee established for it. The reason of this neglect is chiefly owing to the extensive residence of most of the parishioners from the parish clerks or readers in their respective parishes or counties many of which are from forty to fifty miles square and upwards, besides most families having a private burying place on their plantations.

The office of Coroner here is exactly the same as in England with this difference that he is appointed by the governor during pleasure. His fees are regulated by the Act of Assembly in *anno* 1748 and he serves all process against the sheriff.

The publick roads are immediately under the care of the justices of peace and of those inhabitants of a county living nearest to a publick road a company is formed whose business it is to keep that road in repair for such a certain distance and over this company an overseer is appointed so that every county may be said to be divided into companies for keeping the several high roads in repair. For making new roads each company consists of a greater or lesser number according to the task assigned them and every company has an overseer whose business it is to call them out or summon them twice a year or oftener as may be necessary to work upon the road, and he attends when at work and whoever neglects to attend the overseer when summoned or to work on the road when by him called on, forfeits two shillings and eight pence for every days absence to be recovered upon complaint to a justice. These officers are annually chosen by the justices of peace and while they are in office, are exempted from all other publick service, such as attending as jurors &c but have no reward for their services.

A description of the powers and authorities of the Justices of Peace has been given in the account of the inferiour court and the Constables to every purpose are of the same nature as those in England.

The Produce of this colony has been with some justice thought of a worse quality when exported than that of its neighbors, entirely occasioned by the slovenly way of coopering, dressing, pickling and filling the commodity for exportation and to the fraud and deceit of those who make the goods. A remedy to this great evil has been attempted by a law passed in *anno* 1764 whereby it was enacted that all hemp, flax, flaxseed, pork, beef, rice, flower, butter, tar, pitch, turpentine, staves, heading, shingles, lumber, tanned leather, deer skins, and indigo exported out of the province shall previous to such exportation be inspected by an officer for that purpose created and called an Inspector. This officer at his entering upon his office is sworn to be diligent and faithful in the execution of it and gives bond and surety to the amount of five hundred pounds currency that he will be so. His business is to inspect all commodities offered for exportation, to receive such as are fit, and if in cask to brand such cask with his brand and if not fit for exportation to reject them

as insufficient, and by the Act of Assembly he has a moderate fee upon all goods inspected and by it effectual care is taken that none be exported that is not in the first place inspected. In some of the counties there are two, three or more of these inspectors and in those counties at a great distance from the ports there are none at all. These officers are appointed every year (or oftener in case of vacancy) by the justices of peace of the several counties and if complaint is made against any of them for bad behaviour, such may be removed every three months by the inferiour court held at that time. These judges themselves in their counties make a great part of this produce for exportation or buy it in the first instance from the planter who makes it, by which means the salutary effects of this law are in a great measure frustrated since the most probable method an Inspector can take to lose his office is by being faithful and diligent in the execution of it. The truth is an Inspector may reasonably expect to lose his office at the next inferiour court if the produce of a popular justice is rejected as insufficient or if the Inspector prove so untractable as to refuse the use of his brand to the justice to inspect his own commodity.

The Clergy had never any regular and certain establishment till the Act of Assembly in May 1765. This act entitled the ministers to receive one hundred and thirty three pounds six shillings and eight pence per annum and obliged the vestry to supply them with a glebe of two hundred acres of good land and to build a mansion house and convenient out houses for the residence of the minister, or for want thereof to pay him twenty pounds annually in lieu of them. By the said act the ministers are intitled to certain fees mentioned therein for marriages and giving certificates thereof and for funeral sermons. As no provision is made by the act for the presentation of the minister it devolves to the crown and is delegated to the governor for the time being by his Majesty's instructions. There are thirteen ministers now in the province seven of whom have received letters of presentation and induction from the present governor.

All military provincial and militia officers are appointed by the governor under the great seal of the province and hold their commissions during pleasure: The militia is appointed by Act of Assembly in 1764. This act constitutes a regiment of militia for each county: The number and strength of each company is determined by the number of free men and servants within the

county between the ages of sixteen and sixty, who are not particularly exempted from mustering by the said Act of Assembly.

The several articles of duty or service from which fees become due to the officers before mentioned together with the fees annexed to those articles of duty are in general omitted, reference being had to the acts of Assembly for establishing these fees particularly the Act passed in April 1748 for regulating the officers fees in the province.

Whenever money is mentioned in the foregoing paper, unless sterling money is expressed, must be supposed to be the currency of the country which is legally 33 & $\frac{1}{3}$ in value below sterling, but in fact is eighty according to the course of exchange, that is one hundred pounds sterling is legally no more than one hundred and thirty three pounds six shillings and eight pence currency, but in fact is worth one hundred and eighty pounds according to the present course of exchange.

It only remains to observe that a naval officer is established who appoints a deputy at each of the ports of Brunswick, Beaufort, Bath, Currituck and Edenton, a Collector at each of the ports of Brunswick, Beaufort, Bath, Edenton and Currituck, and a Comptroller at the ports of Brunswick and Edenton only the duties of these officers are purposely omitted here, as they are governed in the execution of their several offices by the several acts of trade, and the instructions they receive from time to time from their respective Boards, to whom they transmit quarterly accounts of their entries, clearances and all occurrences which happen in their several departments,

NORTH CAROLINA 1767:

[B. P. R. O. NORTH CAROLINA. B. T. VOL. 15.]

Letter from Governor Tryon to the Board of Trade.

NORTH CAROLINA
BRUNSWICK 30th June 1767

MY LORDS

In a Decree in the Court of Vice Admiralty of this Province condemning the Sloop *Lucy* seized by Captain Morgan of His Majesty's Sloop the *Hermit*, having foreign Rum on Board, it was ordered among other Things, that the Collector for the Port of Beaufort