

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 1210
HOUSE BILL 1217

AN ACT TO INCREASE THE CIVIL JURISDICTION OF THE HARNETT
COUNTY RECORDER'S COURT; TO PROVIDE FOR APPEALS TO SUPERIOR
COURT.

The General Assembly of North Carolina do enact:

Section 1. Section 16, Chapter 602, Public-Local Laws of North Carolina, 1913, is hereby amended to read as follows:

"Sec. 16. The said court shall have jurisdiction in civil matters as follows:

"(1) Jurisdiction concurrent with that of the Justice of the Peace of the county;

"(2) Jurisdiction concurrent with the Superior Court in all actions founded on contract wherein the amount demanded shall not exceed the sum of five thousand dollars (\$5,000.00), exclusive of interest and cost;

"(3) Jurisdiction concurrent with the Superior Court in all actions not founded on contract wherein the amount demanded shall not exceed the sum of five thousand dollars (\$5,000.00), exclusive of interest and cost;

"(4) Jurisdiction concurrent with the Superior Court in all actions to try title to lands, to prevent trespass thereon and to restrain waste thereof wherein the value of the land does not exceed the sum of five thousand dollars (\$5,000.00);

"(5) Jurisdiction concurrent with the Superior Court and all actions and proceedings for divorce and alimony, and to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper."

Sec. 2. In the trial of actions of the said court any party is entitled to the right of trial by jury as is provided and the trial of causes in the Superior Court, unless said right of trial by jury shall be waived as hereinafter provided.

Sec. 3. In those cases in which written pleadings are required to be filed, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the filing of the complaint or petition the plaintiff in writing, demands a jury trial; or at the time of the filing of the answer or other pleadings which raises an issue of fact, the defendant or other party filing such pleading demands, in writing, a jury trial.

Sec. 4. In those cases in which no written pleadings are required, the party shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the issuance of summons the plaintiff or petitioner in writing,

demands a jury trial; or the defendant, at the time before the commencement of the trial, in writing demands a jury trial.

Sec. 5. In those cases which were or may hereafter be instituted before a Justice of the Peace and removed or appealed to this court, or heretofore instituted in this court, and those cases which were or may hereafter be instituted in Superior Court and removed to this court, a jury trial will be conclusively presumed to have been expressly waived unless the party desiring a trial by jury shall make a demand therefor, in writing, at any time before the case is called for trial; in which event the number of the jury shall be as herein elsewhere provided.

Sec. 6. The jury of said court in all civil matters shall be a jury of twelve, and shall be drawn in the same manner as provided in Chapter 1051 of the Session Laws of 1959.

Sec. 7. The judge of said court, when in his opinion the ends of justice would be best served by submitting an issue or issues to the jury, may call a jury on his own motion and submit to it such issue or issues as may be deemed material. This Section shall apply to both civil and criminal actions in said court.

Sec. 8. The judge of the said Recorder's Court is hereby authorized to fix the terms of said court upon consulting with the clerk of the court and the members of the bar of the county.

Sec. 9. When the said Recorder's Court is exercising jurisdiction in civil matters concurrent with that of the Superior Court, the rules or processes, pleadings, procedure, practice, and procuring evidence and judgment shall conform as nearly as possible to those of the Superior Court. When the said court is exercising civil jurisdiction concurrent with that of Justices of the Peace, actions shall be commenced in the said court by summons issued and signed by the clerk or deputy; and orders to seize property and claim and delivery proceedings, warrants of attachment and subpoena may be issued by the clerk or deputy and order other rules of processes, pleadings, procedure, practice and procuring evidence and judgments shall conform as nearly as possible to those of the courts of the Justice of the Peace of the county.

Sec. 10. Appeals in actions may be taken from the said court within ten (10) days from date of rendition of judgment to the Superior Court of the county in term time, for errors assigned in matters of law or legal inference in the same manner as if provided for appeals from the Superior Court to the Supreme Court, except as follows:

(1) The appellant shall cause a copy of the statement of case on appeal to be served on the respondent within thirty days from the entry of the appeal taken, and the respondent, within fifteen (15) days after such service, shall return the copy with his approval or specific amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not provided with objections within the time prescribed, it shall be deemed approved, provided that the judge trying the case shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counter statement of case.

(2) The appellant shall file one typewritten copy of the statement of case on appeal, as settled, containing the exceptions and assignments of error, which together

with the original record shall be transmitted by the clerk of the said court to the Superior Court as the complete record on appeal in said court.

(3) The record in the case on appeal to the Superior Court must be docketed in the Superior Court within ten (10) days after the date of settling the case on appeal. If the appellant shall fail to perfect his appeal within the prescribed time, the appellee may file with the Clerk of the Superior Court a certificate of the clerk of the said Recorder's Court showing the names of the parties thereto, the time when the judgment and appeal were taken, the name of the appellant, and the date of the settling of the case on appeal, if any has been settled, with his motion to docket and dismiss said appeal at appellant's cost, which motion shall be allowed at the first regular term or in the succeeding regular term of the Superior Court.

(4) Appellant shall file one typewritten brief with the Clerk of the Superior Court, and shall immediately mail or deliver to appellee's counsel a carbon typewritten copy thereof. If appellant's brief has not been filed with the Clerk of the Superior Court, and no copy has been delivered to the appellee's counsel within three (3) weeks from the date of settling the case on appeal, the appeal will be dismissed on motion of appellee at the regular term of any succeeding regular term of the Superior Court, unless for good cause shown, the court shall give appellant further time to file his brief.

(5) Appellee shall file one typewritten brief and a carbon copy thereof with the Clerk of the Superior Court within five (5) weeks from date of settling the case on appeal; a copy of same will be furnished counsel for appellant by the Clerk of Superior Court, on application. On failure of the appellee to file his brief by the time required, the case will be heard and determined at the next regular term or succeeding regular term of Superior Court without argument from appellee, unless for good cause shown the court will give appellee further time to file his brief.

(6) It shall be the duty of any Judge of the Superior Court holding court in any county where a court is established under the provisions of this Article, to allot sufficient and adequate time during each regular term of the Superior Court held in such county for the hearing of appeals from the said court; provided, no such appeal shall be heard until five (5) days have expired since the filing of appellee's brief or since the time appellee's brief should have been filed.

(7) Upon such appeal, the Superior Court may either affirm or modify the judgment of the said Recorder's Court, or remand the case for a new trial.

(8) From the judgment of the Superior Court an appeal may be taken to the Superior Court as is now provided by law.

Sec. 11. Orders to stay executions on judgments in the said court shall be the same as in appeals from the Superior Court to the Supreme Court. Judgments of the said court shall be docketed in the judgment docket of the Superior Court as is provided for judgments of the Superior Court, and the judgment when docketed, shall in all respects be a judgment of the Superior Court in the same manner and to the same extent as if rendered by the Superior Court, and shall be subject to the same statute of limitations and the statutes relating to the revival of judgments in the Superior Court in issuing executions thereon.

Sec. 12. There shall be an official stenographer of the court, appointed by the judge, whose duties and fees shall be the same and taxed as those of the official stenographer of the Superior Court. The said stenographer may use mechanical recording machines for the recording and transcribing of the evidence offered at the trial of any case in said court.

Sec. 13. The salary of the Judge of the Harnett County Recorder's Court shall be sixty-five hundred dollars (\$6500.00) per year and the salary of the Judge of the Dunn Recorder's Court shall be fifty-four hundred dollars (\$5400.00) per year.

Sec. 14. The said court shall have civil jurisdiction over all matters arising in Harnett County or where either of the parties reside in Harnett County, provided, however, nothing herein shall deprive the Dunn Recorder's Court of concurrent jurisdiction over matters within the present jurisdiction of said court.

Sec. 15. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 16. This Act shall become effective July 1, 1961.

In the General Assembly read three times and ratified, this the 22nd day of June, 1961.