



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 35 | Number 1

Article 22

12-1-1956

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Recommended Citation

John D. Eller Jr., *Legislation -- Control of Firearms*, 35 N.C. L. REV. 149 (1956).

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feasers being given the actual benefits of contribution. The commissioners were right in changing the act to encourage settlement, but in doing so they went too far and gave the plaintiff too big an advantage. The amended act allows the plaintiff to settle with one tort-feasor with no chance of suffering detriment by doing so. If it turns out that he settled with the tort-feasor for less than the tort-feasor's pro rata share, the nonsettling tort-feasor would have to pay the difference.⁴¹ It is true that this solution would encourage settlement, but it would also impose too great a burden on a tort-feasor who decided to take his chance in court.⁴²

WILBUR RITCHIE SMITH, JR.

Legislation—Control of Firearms

Commensurate with the greater regulation in all fields, firearms are becoming a subject of increasing legislative control as regards their purchase, sale, and possession. With very few exceptions,¹ the possession, sale and purchase of rifles and shotguns are not restricted by state legislation. The majority of restrictions are directed toward machine guns, presumably because of their capacity for rapid firing, and pistols,² because of their concealability and the ease with which they may be carried. The purpose of this note is to summarize the law of firearms in North Carolina as it pertains to machine guns and pistols, against the background of policies followed by other states.

A conviction of possessing a machine gun without permission was

⁴¹ If the settling tort-feasor were joined under our statute, he could still be credited with his pro rata share. Would the court give effect to an indemnity clause in the covenant and allow a settlor, forced to contribute, to collect indemnity from the plaintiff? Or would the court make a tort-feasor with such a "credit" with the plaintiff contribute at all? Is there any likelihood that such a clause might be construed by the court as changing a covenant not to sue into a general release?

⁴² The settler, it is thought, should not even be made a party to the action. By buying a covenant not to sue, he bought his peace and plaintiff, by giving the covenant, perhaps should be estopped from denying that the settler is a joint tort-feasor. See note 4 *supra*. North Carolina has actually reached the *result* of the rule applied in New Jersey. Although the employer covered by workmen's compensation and the beneficiary of the wrongful death proceeds are held not to be joint tort-feasors so that they may not be brought into the suit or be sued for contribution, the plaintiff's verdict in both cases may be reduced pro rata upon a contributory negligence theory. See Note, 42 VA. L. REV. 959, 967-69 (1956). The amount payable under workmen's compensation law is subtracted from the employee's verdict against a third person when the employer contributed to the injury. *Lovette v. Lloyd*, 236 N. C. 663, 73 S. E. 2d 886 (1953). And where a parent immune from suit negligently contributes to the child's injury, the parent's share of the wrongful death proceeds is credited against the verdict. *Pearson v. National Manufacture and Stores Corp.*, 219 N. C. 717, 14 S. E. 2d 811 (1941).

¹ FLA. STAT. ANN. § 790.05 (1943); W. VA. CODE § 6050 (1955).

² Due to common usage, the term "pistol" will be used in this note to apply to all types of firearms designed to be held in one hand when fired.

affirmed³ by the Supreme Judicial Court of Massachusetts, even though the defendant did not have in his possession a clip or magazine for the weapon. There was expert testimony that "the magazine or clip was a vital and characteristic part of the sub-machine gun for purpose of automatic, rapid and successive firing, that without the said magazine or clip it was incapable of firing more than one shot without reloading."⁴ From the above evidence, it was the defendant's contention that the absence of a clip or magazine caused the weapon to lose its character as a machine gun, in which contention he was unsuccessful. The court held that the weapon, by reason of the absence of a clip or magazine, did not lose its character as a machine gun any more than the absence of a bullet would destroy the character of a rifle. Emphasis was placed upon a prior Massachusetts case⁵ in which the same statute was involved,⁶ where convictions of two defendants for possession of a Thompson .45 caliber sub-machine gun were upheld, even though the weapon was incapable of being fired due to the absence of a firing pin.⁷

From these two cases it would seem that the attitude of Massachusetts is rather extreme against the possession of automatic weapons. From a reference to the laws of other states, this attitude does not seem unusual. Twenty-nine states,⁸ six of which have adopted the Uniform Machine Gun Act,⁹ have direct legislation against the possession of machine guns. Although in some of the states it is possible to possess a machine gun by means of a license,¹⁰ and in others possession of them is legal if the weapons are unservicable as such and are kept as mementos, souvenirs, or ornaments,¹¹ in many the mere possession of such a firearm constitutes a felony.¹²

³ Commonwealth v. Colton, — Mass. —, 132 N. E. 2d 398 (1956).

⁴ *Id.* at —, 132 N. E. 2d at 399.

⁵ Commonwealth v. Bartholomew, 326 Mass. 218, 93 N. E. 2d 551 (1950).

⁶ MASS. LAWS ANN. c. 269, § 10 (1956).

⁷ The reason for the holding was that a firing pin could easily be machined from a piece of scrap metal, such as a nail.

⁸ ARK. STAT. ANN. § 41-4507 to 41-4517 (1947); CAL. PEN. CODE § 12220 (1956); DEL. CODE ANN. 11 § 465 (1953); GA. CODE ANN. § 26-5109 (1933); IND. STAT. ANN. § 10-4712 (1956); KAN. GEN. STAT. ANN. 21-2601 (1949); LA. REV. STAT. 40: 1752 (1950); MD. CODE ANN. art. 27 § 439 to 450 (1951); MASS. LAWS ANN. c. 269 § 10 (1956); MICH. STAT. ANN. § 28,422 (1938); MINN. STAT. ANN. § 616.45 (1945); MO. STAT. ANN. § 564.590 (1953); MONT. REV. CODES 94-3101 to -3111 (1947); NEB. REV. STAT. § 28-1010 (1948); N. J. STAT. ANN. 2A:151-50 (1952); N. Y. PENAL LAW § 1897 (1) (a) (1944); N. C. GEN. STAT. 14-409 (1953); N. D. REV. CODE 62-0206 (1943); OHIO REV. CODE ANN. § 2923.04 (1953); ORE. REV. STAT. § 166.250 (1955); PA. STAT. ANN. 18 § 4629 (1949); R. I. GEN. LAWS c. 404, § 4 (1938); S. C. CODE LAWS § 16-123 (1952); S. D. CODE 21.0201 to .0209 (1939); TEX. PENAL CODE ANN. art. 489b, § 2 (1952); VA. CODE 18-135 to -145 (1950); WASH. REV. CODE 9.41.190 (1951); W. VA. CODE § 6050 (1955); WIS. CRIM. CODE 164.01 to .20 (1955).

⁹ Arkansas, Maryland, Montana, South Dakota, Virginia, Wisconsin. See statutes cited note 5 *supra*.

¹⁰ Georgia, Massachusetts, New Jersey, Ohio. See statutes cited note 5 *supra*.

¹¹ MINN. STAT. ANN. § 616.45 (1945); OHIO REV. CODE ANN. § 2923.06 (1953).

¹² DEL. CODE ANN. 11 § 465 (1953); IND. STAT. ANN. § 10-4712 (1956); GEN.

In North Carolina it is a misdemeanor for an individual to own or sell a machine gun unless he is a resident of the state and owned, as a relic or souvenir, a machine gun used in former wars at the time of the passage of the statute.¹³ He must also report such ownership to the clerk of the superior court of his county of residence. Certain classes of officers in the performance of official duties are excepted, and businesses may secure a permit to possess such a weapon from the clerk of the superior court of the county in which the business is located.

Aside from the category of automatic weapons, most of the restrictions against firearms are directed at those which are easily concealable, hence the large amount of regulations concerning pistols. Unfortunate aspects of this type of regulation are the varying degrees of severity and the lack of uniformity among the several states, presenting a serious problem to the conscientious citizen who might wish to take a pistol from his home state to another, or to make a journey entailing travel through several states.

In one form or another, it is forbidden to carry concealed weapons in forty-five of the states,¹⁴ with some states having provisions for citizens to obtain licenses upon a showing of good character or cause.¹⁵ Provisions are frequently found which make possession of pistols illegal by aliens¹⁶ and persons previously convicted of crimes of violence¹⁷ or

STAT. KAN. ANN. 21-2602 (1949); MASS. LAWS ANN. c. 269, s. 10 (1956); MICH. STAT. ANN. § 28.422 (1948); MINN. STAT. ANN. § 616.45 (1945); MO. STAT. ANN. § 564.590 (1953); NEB. REV. STAT. § 28-1010 (1948); N. Y. PENAL LAW § 1897 (1) (a) (1944); N. D. REV. CODE 62-0206 (1943); OHIO REV. CODE ANN. § 2923.04 (1953); S. C. CODE LAWS § 16-127 (1952); WASH. REV. CODE 9.41.210 (1951).

¹³ N. C. GEN. STAT. 14-409 (1953), N. C. Pub. Laws 1933, c. 261, § 1. This statute applies to weapons capable of firing sixteen shots or more automatically.

¹⁴ ALA. CODE t. 14, § 175 (1940); ARIZ. CODE ANN. § 43-2205 (1939); ARK. STAT. ANN. § 41-450 (1947); CAL. PEN. CODE § 12025 (1956); COLO. REV. STAT. § 40-11-1 (1953); CONN. GEN. STAT. § 4166 (1949); DEL. CODE ANN. 11 § 461 (1953); FLA. STAT. ANN. § 790.01 (1943); GA. CODE ANN. § 26-5101 (1933); IDAHO CODE § 18-3302 (1947); ILL. STAT. ANN. c. 38, § 155 (1935); IND. STAT. ANN. § 10-4706 (1956); IOWA CODE ANN. § 695.2 (1951); KAN. GEN. STAT. ANN. 21-2411 (1949); KY. REV. STAT. § 435.230 (1953); LA. REV. STAT. 14:95 (1950); ME. REV. STAT. c. 137, § 19 (1954); MD. CODE ANN. a. 27, § 44 (1951); MASS. LAWS ANN. c. 269, § 10 (1956); MICH. STAT. ANN. § 28.424 (1938); MISS. CODE ANN. § 2079 (1942); MO. STAT. ANN. § 564.610 (1953); MONT. REV. CODES 94-3525, -3526 (1947); NEB. REV. STAT. § 28-1001 (1948); N. H. REV. STAT. ANN. 159:4 (1955); N. J. STAT. ANN. 2A:151-41 (1952); N. M. STAT. 40-17-1 (1953); N. Y. PENAL LAW § 1897 (4), (5) (1944); N. C. GEN. STAT. 14-269 (1953); N. D. REV. CODE 62-0301, -0105 (1943); OHIO REV. CODE ANN. § 2923.01 (1953); OKLA. STAT. ANN. 21 § 1271, 1272 (1937); ORE. REV. STAT. § 166.240 (1955); PA. STAT. ANN. act 443, H. B. 96 (1955); R. I. GEN. LAWS c. 404, § 4 (1938); S. C. CODE LAWS § 16-145 (1952); S. D. CODE 13.1613, 21.0105 (1939); TENN. CODE ANN. 39-4901 (1956); TEX. PEN. CODE ANN. art. 483 (1952); UTAH CODE ANN. 76-23-4 (1953); VA. CODE § 18-146 (1950); WASH. REV. CODE 9.41.050 (1951); W. VA. CODE § 6043 (1955); WIS. CRIM. CODE 941.23 (1955); WYO. COMP. STAT. ANN. 9-1203 (1945).

¹⁵ See UTAH CODE ANN. 76-23-4 (1953).

¹⁶ See NEV. COMP. LAWS § 2302 (1929).

¹⁷ See MD. CODE ANN. a. 27 § 541 (1951).

of felonies,¹⁸ sales and purchases are controlled,¹⁹ and one state requires a written license to *possess* a firearm capable of being concealed on the person.²⁰

In most instances the restricting legislation has stood the test of constitutionality. The Supreme Court of the United States has held that Amendment II of the United States Constitution, declaring that the right to keep and bear arms shall not be infringed, applies only to infringement on the part of the federal government, and state legislation must be tested in the light of state constitutions.²¹

The comparable section of the North Carolina Constitution, article I, section 24, was construed and interpreted in *State v. Kerner*,²² where the defendant was indicted under a local statute which prohibited the carrying of a pistol by anyone in Forsyth County off his own premises, concealed or *otherwise*, unless a permit therefor had previously been obtained.²³ The facts of the case were that the defendant, after being accosted, procured a pistol in his store and carried it openly onto the streets of Kernersville in defense of his person, for which he was indicted. Upon a special verdict, the trial court declared the defendant not guilty upon the ground of unconstitutionality, which result was affirmed upon appeal by the State. The court held that the statute was void because as a regulation it was an unreasonable one, and further, for all practical purposes it was a prohibition of the constitutional right to bear arms.

Article I, section 24 of the North Carolina Constitution has two parts. The first declares that the right of the citizens to keep and bear arms shall not be infringed, the second, added by the Constitutional Convention of 1875, declares that nothing therein contained shall justify the practice of carrying concealed weapons, or prevent the legislature from enacting penal statutes against said practice. This last clause, it was pointed out by Chief Justice Clark,²⁴ is an exception to the first and indicates the extent to which the right to bear arms can be restricted; i.e., the legislature can prohibit the carrying of concealed weapons, but no further. It was stated in the case of *State v. Speller*²⁵ that even without this constitutional provision the legislature may regulate the right to

¹⁸ See MICH. STAT. ANN. § 28.92 (Supp. 1955).

¹⁹ See VT. STAT. 8277 (1947).

²⁰ N. Y. PENAL LAW § 1897 (4) (1944).

²¹ *United States v. Cruikshank*, 92 U. S. 542 (1875).

²² 181 N. C. 574, 107 S. E. 222 (1921).

²³ N. C. Public-Local Laws 1919, c. 317, § 3. The statute required that in order to obtain a permit, the applicant apply to a municipal court if a resident of a town, and to the superior court if not residing in a town, describe the weapon, give the time and purpose for which the weapon was to be taken off his premises, pay the clerk of the court the sum of \$5 for each permit, and file a bond in the penalty of \$500 that he would not carry the weapon except as so authorized.

²⁴ *State v. Kerner*, 181 N.C. 574, 575, 107 S. E. 222, 223 (1921).

²⁵ 86 N. C. 697 (1882).

bear arms in a manner conducive to the public peace. Thus, as is intimated in the *Kerner* case, any reasonable regulation will be upheld.

North Carolina's concealed weapons law²⁶ has been in force since shortly after the Constitutional Amendment of 1875 declared the power of the legislature to control the practice of carrying concealed weapons.²⁷ The elements of the offense are: (1) the defendant must be off his own premises, (2) carrying a deadly weapon, and (3) the weapon must be concealed about his person.²⁸ Inasmuch as the area constituting a person's premises is fairly well an adjudicated matter in North Carolina, and the list of deadly weapons enumerated in the statute is extensive, the two principal questions raised by the statute become: (1) what constitutes the concealment prohibited by the statute, and (2) what location of a weapon will bring it within the statutory language, "about the person."

One of the first cases to arise was that of *State v. Woodfin*,²⁹ where the court approved a charge to the jury that the purpose for which the defendant carried a pistol is immaterial, yet if he carried it off his own premises concealed about his person, he is guilty. Strangely enough, in *State v. Gilbert*,³⁰ the case immediately following the *Woodfin* case in the Reports, this holding was modified. The jury found that the defendant was off his own premises, had a pistol in his overcoat pocket concealed from view, but had no *criminal intent* in carrying the pistol concealed, as he was a merchant, and was carrying it from the store where he purchased it to another for the purpose of having it packed with other goods. The question of guilt or innocence was submitted to the court, which found that the defendant was guilty. In reversing the judgment the supreme court based its decision squarely upon the ground of *intent*, saying, "*To conceal a weapon*, means something more than the mere act of having it where it may not be seen. It implies an assent of the mind, and a *purpose* to so carry it, that it may not be seen."³¹

Soon after the decision of the *Gilbert* case, it was used as precedent in reversing convictions in two cases, one in which the defendant was carrying a pistol in his pocket for the purpose of delivering it to the owner who had sent him for it,³² the other in which the pistol was carried concealed solely for the purpose of trading.³³ However, the *Gilbert* case was expressly overruled by *State v. Dixon*,³⁴ where the defendant

²⁶ N. C. GEN. STAT. 14-269 (1953).

²⁷ N. C. Public Laws 1879, c. 127.

²⁸ *State v. Williamson*, 238 N. C. 652, 78 S. E. 2d 763 (1953).

²⁹ 87 N. C. 526 (1882).

³⁰ 87 N. C. 527 (1882).

³¹ *Id.* at 528.

³² *State v. Brodnax*, 91 N. C. 543 (1884).

³³ *State v. Harrison*, 93 N. C. 605 (1885).

³⁴ 114 N. C. 850, 19 S. E. 364 (1894).

had carried a pistol concealed for the purpose of selling it. The court attempted to draw a line beyond which a person would be guilty by saying that the presumption of concealment raised by the statute may be rebutted by an express finding of absence of guilty intent, as where a pistol is carried from one store to another without intent to conceal it, or where, under some circumstances, it is carried by a messenger to be delivered to the owner. "But matter of excuse can be extended no further with safety and a due regard to the integrity of the statute."³⁵ The requisite guilty intent necessary for conviction was explained in *State v. Brown*³⁶ as not the intent to use the concealed weapon, but the intent to carry it concealed, the question being as to the manner of carrying, and not to the purpose. Thus it was held in *State v. Woodliff*³⁷ that carrying a pistol concealed for the purpose of self-defense was the very practice intended to be prohibited by the statute, and, instead of being an element in mitigation, as contended by counsel for the defendant, was in aggravation of the offense, since it tended to show an anticipation of use.³⁸

Aside from the question of intent, where is the line drawn as to what is actually concealment and what is permissible under the statute? Possession of a deadly weapon by a person *off his own premises* will raise a presumption that the weapon is concealed, and the burden of showing that the weapon was not actually concealed must be borne by the accused.³⁹ However, a charge in the following terms, ". . . and if you find beyond a reasonable doubt that he had a pistol concealed on his person, or if you find beyond a reasonable doubt that he was in possession of a pistol on that occasion and find it beyond a reasonable doubt, then it would be your duty to convict," would entitle a defendant to a new trial, since the bare possession of a pistol by a person not on his own premises does not necessarily constitute a breach of the statute.⁴⁰ Similarly, a showing that two pistols were worn by the defendant buckled around him without scabbards and naked on a belt is sufficient to rebut the presumption of concealment.⁴¹ Where a pistol was worn on the person under an overcoat, and it was not shown whether the overcoat was worn open or buttoned, but there was evidence that the pistol could be seen, it was held that the jury should determine whether the statutory presumption of concealment had been rebutted.⁴² In *State v. Reams*⁴³ a pistol ten or eleven inches long was placed in an

³⁵ *Id.* at 854, 19 S. E. at 365. ³⁶ 125 N. C. 704, 34 S. E. 549 (1899).

³⁷ 172 N. C. 885, 90 S. E. 137 (1916).

³⁸ See also *State v. Speller*, 86 N. C. 697 (1882).

³⁹ N. C. GEN. STAT. 14-269 (1953).

⁴⁰ *State v. Vanderburg*, 200 N. C. 713, 158 S. E. 248 (1931).

⁴¹ *State v. Roten*, 86 N. C. 701 (1882).

⁴² *State v. Lilly*, 116 N. C. 1049, 21 S. E. 563 (1895).

⁴³ 121 N. C. 556, 27 S. E. 1004 (1897).

upper outside coat pocket so that the handle and two inches of the breech were exposed to view. The charge that if the jury believed from the evidence that *any part* of the pistol was concealed they should find the defendant guilty was disapproved. The supreme court stated that if the weapon is partly exposed to public view, it would be difficult and unreasonable to say, as a legal conclusion, that it is concealed.⁴⁴ In *State v. Mangum*,⁴⁵ upon evidence tending to show that when arrested the defendant had a pistol which protruded about an inch or so from his pocket, a conviction was not disturbed, the question of concealment being held a proper subject for the jury's determination.

The only North Carolina case found which deals with the corollary question of how close the weapon must be to a person in order to be "about the person" is *State v. McManus*.⁴⁶ The defendant in this case was in his wagon, and had a pistol in the dinner basket he was carrying, on top of the cloth which covered his dinner, and the basket was carried in his lap so that, he contended, it was clearly visible. The jury found that the defendant had and carried concealed about his person a pistol, off his own premises, as charged in the indictment. On appeal, it was the argument of the defense that the pistol, if in the basket and concealed, was not about the person of the defendant, though on his lap. In disallowing this contention, weight was given to the fact that the pistol was under the direct control of the defendant, within easy reach, so that he could promptly have used it. "It makes no difference how it is concealed, so it is on or near to and within the reach and control of the person charged."⁴⁷ This ruling, placing emphasis upon the "control" element, raises the interesting and important question as to the status of pistols carried in automobiles: are they concealed within the meaning of the statute or not? Under the reasoning of the *McManus* case it would seem to be clear that the statute would not be applicable to a pistol carried in the trunk of an automobile, but what of a pistol carried in the glove compartment of the dashboard; would a person have sufficient control over the weapon so as to make it "about the person?"⁴⁸

Aside from two amendments⁴⁹ and the provision for licenses to deal in pistols,⁵⁰ the remainder of the legislation regarding firearms in North Carolina, G. S. 14-402 to -408,⁵¹ was passed in 1919. These statutes

⁴⁴ *Id.* at 558, 27 S. E. at 1006.

⁴⁵ 187 N. C. 477, 121 S. E. 765 (1924).

⁴⁶ 89 N. C. 555 (1883).

⁴⁷ *Id.* at 559.

⁴⁸ See *Elza v. Commonwealth*, — Ky. —, 269 S. W. 2d 275 (1954), where a conviction of carrying a concealed deadly weapon (pistol in glove compartment of automobile) was reversed. *Contra*, *Hudspeth v. State*, — Tex. Crim. —, 254 S. W. 2d 130 (1954).

⁴⁹ N. C. GEN. STAT. 14-402 (1953) was amended by N. C. Public Laws 1923, c. 106; N. C. Session Laws 1947, c. 781 (19).

⁵⁰ N. C. GEN. STAT. 105-80 (1950).

⁵¹ N. C. GEN. STAT. 14-402 to -408 (1953).

control sales,⁵² permits of sale and the description of their form issued by the clerk of the superior court,⁵³ conditions under and purposes for which the permits are issued,⁵⁴ record of permits issued kept by the clerk,⁵⁵ record of sales kept by dealers,⁵⁶ the listing of weapons for taxes,⁵⁷ and penalties.⁵⁸ From a study of these provisions, a general perception of the intention of the legislature may be obtained, but a literal interpretation of some of them proves confusing.

By G. S. 14-402 it is declared unlawful for any person, firm, or corporation to sell, give away, or dispose of, or to purchase or receive the weapons enumerated, including pistols, without first obtaining a permit from the clerk of the superior court of the county where the transaction is to take place. The question arises: must one who holds a dealer's license, authorizing him to sell pistols, obtain a permit to do so, and if one were desirous of selling a pistol, must he likewise obtain a permit, if the intended vendee were a *dealer*?⁵⁹ Further, by the second paragraph of the statute, which is the 1923 Amendment, it is declared unlawful to receive through the mails or by express the proscribed weapons, including pistols, without exhibiting at the time of delivery and to the person delivering the same, the permit from the clerk of the court. To the writer's knowledge, the following situation arises: an owner of a pistol sends it to the maker for repairs. Upon completion of the repairs it is sent back to the owner by express, and at delivery, the owner must show to the express agent a permit to "purchase" his own pistol.

The form of the permit to be issued by the clerk of the court for the purchase of a pistol is set forth in G. S. 14-403, in which the clerk certifies that the weapon is necessary for *self-defense* or the *protection of the home*. G. S. 14-404 requires the clerk to first satisfy himself as to the good moral character of the applicant, and that the possession of the weapon is required for "protection of the home," excluding any mention of self-defense. Assuming that this section, when considered together with the one preceding it, will be construed to apply equally to self-defense, should these two reasons be the *only* ones for which a person will be permitted to purchase a pistol?⁶⁰ Again using a literal

⁵² N. C. GEN. STAT. 14-402 (1953).

⁵³ N. C. GEN. STAT. 14-403 (1953).

⁵⁴ N. C. GEN. STAT. 14-404 (1953).

⁵⁵ N. C. GEN. STAT. 14-405 (1953).

⁵⁶ N. C. GEN. STAT. 14-406 (1953).

⁵⁷ N. C. GEN. STAT. 14-407 (1953).

⁵⁸ N. C. GEN. STAT. 14-408 (1953).

⁵⁹ Many of the uncertainties in this area are probably due to the fact that G. S. 105-80, relating to dealers in pistols, was originally enacted in 1939, N. C. Public Laws 1939, c. 158, § 145, whereas G. S. 14-402 to -408, relating to purchases and sales, were originally enacted in 1919, N. C. Public Laws 1919, c. 197, §§ 1-7.

⁶⁰ A number of jurisdictions have excepted antique pistols from their provisions concerning purchase, possession, and sale if they are kept as ornaments or curios. See MD. CODE ANN. art. 27 § 543 (1951). The Internal Revenue Code of 1954 excepts weapons not firing "fixed ammunition," *i.e.*, metallic cartridges. INT. REV. CODE OF 1954, § 5848.

interpretation of the statutes, it would appear impossible for a citizen to go to the clerk of the superior court and obtain a permit to purchase a target pistol of .22 caliber.

It is suggested that the laws concerning firearms in North Carolina should be re-examined and clarified, with an underlying policy designed to resolve the conflict between the need for regulation and the prohibition of infringement of the right to keep and bear arms.

JOHN D. ELLER, JR.

Military Jurisdiction—Ex-Servicemen—Civilian Dependents

The United States Supreme Court in the greatly controverted *Quarles v. Toth* case¹ declared that ex-servicemen are not subject to military jurisdiction for crimes committed in the service where charges are not preferred prior to discharge.

In stating that Article 3(a)² of the Uniform Code of Military Justice,³ which provided for such jurisdiction was unconstitutional, the Court held that Congress had no power to give military courts such jurisdiction either under its powers "To raise and support Armies,"⁴ "To declare War,"⁵ "To provide for organizing, arming, and disciplining, the militia,"⁶ or "To punish . . . (offenses) . . . against the Law of Nations";⁷ nor could such power be derived from the President's power as Commander-in-Chief or on any theory of martial law.

The Court further expressed its belief that "any expansion of court-martial jurisdiction like that in the 1950 Act necessarily encroaches on the jurisdiction of the federal courts set up under Article III of the Constitution. . . ."⁸ (Emphasis added.)

Possibly the most dominant reason which led to the *Toth* decision was the effect of Article 3(a) on the constitutional safeguard of trial by jury. This appraisal is certainly apparent from Justice Black's statement, "We find nothing in the history or constitutional treatment of military tribunals which entitles them to rank along with Article III courts as adjudicators of the guilt or innocence of people [i.e., civilians]

¹ United States *ex rel* Toth v. Quarles, 350 U. S. 11 (1955). This case has been the subject of many comments; see: 67 HARV. L. REV. 479 (1954); 21 U. CHI. L. REV. 426 (1954); 41 CORNELL L. Q. 498 (1956); 33 TEX. L. REV. 932 (1955).

² "Subject to the provisions of Article 43, any person charged with having committed, while in a status in which he was subject to this Code, an offense against this Code, punishable by confinement of five years or more and for which the person cannot be tried in the courts of the United States or any State or Territory thereof or of the District of Columbia, shall not be relieved from amenability to trial by courts-martial by reason of the termination of said status." 64 STAT. 109 (1950), 50 U. S. C. § 553(a) (1952).

³ Hereinafter: U. C. M. J.

⁴ U. S. CONST. art. I, § 8, cl. 11.

⁵ U. S. CONST. art. I, § 8, cl. 10.

⁶ U. S. CONST. art. I, § 8, cl. 12.

⁷ U. S. CONST. art. I, § 8, cl. 16.

⁸ 350 U. S. 11, 15.