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Statutory Changes in North Carolina Law in 1925

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STATUTORY CHANGES IN NORTH CAROLINA LAW IN 1925

(CONTINUED)

COURTS

Ch. 32 amends C. S. 1536, so that it is now possible for towns and cities in the State which have acquired a population of one thousand or over to establish a recorder's court. Before this change towns and cities of five thousand or over were the only ones entitled to a recorder's court. Another provision of the same chapter authorizes the governing body of the town or city establishing such a court to provide a schedule of fees to be charged by the recorder.

C. S. 1541 was amended so that the recorder's court has jurisdiction of all offenses committed outside the corporate limits of the municipality within a radius of five miles.

COUNTY COURTS—Chapters 135, 233, 242, 250 and 305. Ch. 135 makes possible the establishment of county courts, the purpose of which is to relieve the congestion of court dockets. It is made plain that this act does not affect any act now existing which establishes any inferior court, or that may be created under the existing law, but to be supplemental to the present law.

The act provides for the establishment of the county court by the Board of County Commissioners upon a petition of the majority of resident attorneys within the county. It can be discontinued in the same manner. When the Board of County Commissioners have established the court, the Governor appoints the judge whose term of office is four years, and whose salary is one hundred dollars for each week he is engaged in holding court. The Clerk of Superior Court or his deputies shall ex officio perform the duties of clerk and shall be paid a salary of not less than one thousand dollars annually.

The court shall have exclusive original jurisdiction of all civil actions founded on contract or tort wherein the Superior Court now has exclusive original jurisdiction. In all actions to try title to land, to prevent trespass and to restrain waste thereon, the court has concurrent jurisdiction with the Superior Court. It shall also have concurrent jurisdiction with the Superior Court in all actions pending in said court to issue and grant temporary injunctions and orders. In no action, however, can the amount involved be more than three thousand dollars.

Either party may demand and have a trial by jury as provided in the Superior Court; that a failure to demand a jury trial, at the proper time, shall be deemed a waiver of the right; that the judge, when in his opinion the ends of justice would be best served, may have a jury called in for the determination of the issues which he may deem material. In case either party demands a jury, it shall be composed of twelve members.

There is no essential difference in rules of practice, rules of procedure, number and causes of challenges, subpoening of witnesses, etc., than is the case in the Superior Court, since the purpose is to provide for the trial of causes which have heretofore been tried in the Superior Court.

The summons runs in the name of the State and is returnable as is provided by law for summons in the Superior Court; the plaintiff shall file complaint on or before the return day of such summons; and the defendant shall file a written answer or demurrer and shall make his motion in writing during the term to which the summons is returnable and that the case shall stand for trial at the next succeeding term.

Cases pending in the Superior Court and courts of the justices of peace may be tried in the established county court. Upon appeal from the county court the Superior Court may either affirm, modify and affirm the judgment of the county court or remand the cause for a new trial.

C. S. 1584 provides for the establishment of municipal-county courts and the election of the recorder. Ch. 233 amends this article and provides for the establishment of such courts without submission to a popular vote, and to confer civil jurisdiction thereon. The governing body of the municipality and the Board of County Commissioners by joint resolution shall establish these courts.

Ch. 216, Pub. Laws of 1923. The General Court Act, is amended by allowing the establishment of county courts in any county in which there are situated two or more cities each of which has a population of 20,000, without submitting the proposition to a vote of the people. Section 7 of this chapter is amended so as to provide the same rules of procedure, as nearly as possible, as is practiced in the Superior Court.

Ch. 85, Pub. Laws, extra session, 1924, is amended by Ch. 250 by adding a solicitor for the court. It also provides that summons may be issued against defendant outside the county. Section 12, Public Laws of 1923 is amended requiring defendant to file pleadings within twenty days after service of copy of complaint.

Ch. 305 provides that any county where there is now established a recorder's court or a county court which possesses criminal jurisdiction of misdemeanors, and to bind over to the Superior Court persons charged with a felony, may by resolution, confer upon such court civil jurisdiction. The county court or recorder's court, under this act, has concurrent jurisdiction with justices of peace in civil matters; concurrent jurisdiction with the Superior Court in civil actions founded on contract or tort, wherein the Superior Court now has exclusive original jurisdiction. These courts do not have jurisdiction of any case in which the sum involved is in excess of twenty-five hundred dollars.

There may be a written waiver of the jury trial by the parties in all civil causes where the recorder's court or county court has concurrent jurisdiction with justices of peace. In all other cases the selection of the jurors is the same as that which is followed in the Superior Court.

Challenges, rules of procedure, rules of court, subpoening witnesses, costs, are all practically the same as prescribed for the causes tried in the Superior Court. Since the purpose of this Act is to relieve the congestion in court dockets and to provide for needed facilities for speedy trial of causes, there seems to be a very flexible method provided for carrying out this purpose. The machinery provides that the Board of County Commissioners shall, by resolution, fix, determine, and designate the terms of court for the trial of all causes as provided for in this Act. Furthermore, where it should appear that there would be no cases at any term of court designated by the commissioner's resolution, the recorder or judge may cancel

the term; and also, upon the presentation by the recorder or judge of the court of a statement to the county commissioners setting forth that an accumulation of civil causes exists, the Board of Commissioners may prescribe additional terms, but no such additional term for the trial of civil causes shall be called except upon thirty days notice to be posted at the courthouse door.

All civil causes pending at the time of the enactment of this act in the Superior Court are triable in the courts provided for in this Act, and it is the duty of the Clerk of the Superior Court to prepare the calendars and docket in order that the causes may be tried.

The Board of County Commissioners are to fix the date of the first session of court, but no session shall be held within less than the providing for the terms thereof.

C. H. D.

MORTGAGES AND LIENS

LIENS ON CROPS FOR ADVANCES—C. S. 2480 provided that a person making any advances of money or supplies to any person engaged in cultivating the soil was entitled to a lien on the crop or crops *made during the year*. Before any advance is made, an agreement in writing specifying the amount of the advance shall be made, and shall be registered within 30 days after date in the office of the register of the county in which the person making the advance resides. Such liens are to have preference to all others except the laborer's and landlord's lien.

Chapter 302 has amended the above provision as follows. The person making the advance is entitled to a lien on all crops *made within one year from the date of the agreement in writing*. Registration of the agreement is required as before except the words "within 30 days after date" have been struck from the Statute. A proviso was added to the effect that the lien so acquired *shall continue* as to any crops which may be *harvested* after the end of the said year, but shall be effective only to those *planted* within the period of 12 months after the execution of the said lien, and referred to therein.

It would seem that the above Statute as amended would bring about no change in the rule of the Courts that the land on which the crops are to be grown must be sufficiently identified at the time the

lien is executed, and that the land is sufficiently identified when described as "a field or farm in possession of the mortgagor or seller."[1]

It does, however, raise some question as to the following rule of law; "It is now settled that an unplanted crop is the subject of mortgage,[2] but the authorities do not warrant the conveyance of an indefinite prospective unplanted crop, and we think it should be limited to crops planted or about to be planted, as the crop next following the conveyance."[3] The Statute as it now stands seems to indicate that this rule is to be relaxed somewhat. What is the effect of the provision that the lien shall be effective only to *those crops planted within the calendar year after the execution of the said lien.* There might be some doubt as to the meaning of "calendar year" but presumably that means *within 12 months after the execution of the lien.* It is so written in the note setting forth the changes in the statute but when the changes were copied into the statute it was made to read "calendar year." Suppose then a person made an advance on a crop after it had been planted and the proceeds of the crop were insufficient to satisfy the advance, would a lien for the balance of the advance attach if another crop were planted within 12 months but not harvested within that time?

The holding that the lien would be good between the parties without registration would still apply as the purpose of registration is to make the lien effective as against bona fide purchasers and creditors.[4] However, the statute as amended fails to require registration within any specified time before the harvesting of the crop. What would be the effect of two persons making advances on the same crop, when the latter advance, in point of time, was the first registered? It has been held that a mortgage on a crop, not expressed to be for advances, and not registered within 30 days after execution, has no rights as an agricultural lien under Sec. 2480.[5] This would hardly give a basis for a decision in the case put above, as the thirty day provision is omitted by the present law, but the first lien registered should prevail. It would be a race for the register's office.

[1] *Weil* v. *Flowers,* 109 N. C. 212; *Gwathney* v. *Etheridge,* 99 N. C. 571.
[2] *Harris* v. *Jones,* 83 N. C. 317.
[3] *Wooten* v. *Hill,* 98 N. C. 49.
[4] *Reese* v. *Cole,* 95 N. C. 87.
[5] *Cooper* v. *Kimball,* 123 N. C. 120.

There seems to be no reason why the present statute should change the existing decisions in regard to a lien on a crop when the owner has contracted with a Coöperative Marketing Association. It has been held that the defendant can place a mortgage or lien on the crop for supplies with which to cultivate and produce the same, and that the contract with the Association contemplates such a mortgage. Also that the growers right to mortgage his crop for the bona fide purpose of raising the same is not to be in any way hindered or lightly interfered with.[6] This would give a person who was hostile to the association a chance to foreclose the lien and sell the crop under execution, and could not be prevented by the association. If the grower did not default and the association got the crop, it would be subject to the lien and the lienholder would have to be satisfied. A member might obtain advances in excess of his needs and thereby create a lien which would absorb the whole crop, the effect of which would be simply selling the crop to the lienholder or mortgagee before it was made. However, the association, in order to exist, must get the crops. The crops could be taken subject to the liens, and payments could be made to the grower according to his interest in the crop.

W. H. A.

CH. 287—Provides for the recording and cross-indexing in the lis pendens docket by the Clerk of Court of the notice of every petition in a suit for the registration of titles to land. Such notice is to be recorded in every county in which part of the land lies. The statute very properly gives to the bringing of proceedings under the Torrens Act, the status of pending litigation.

CH. 223—LAND MORTGAGE ASSOCIATIONS—The General Assembly has authorized and directed the State Department of Agriculture to establish a bureau for the conservation and development of land. This bureau is to function through Land Mortgage Associations with a capital stock of not less than $20,000. Any number of persons, not less than fifteen, may associate to establish such association which shall be a corporation, organized under the laws of this State, for the purpose of making loans on farm and forest lands and dwelling houses in the State and taking first mortgages therefor, not exceed-

[6] *Tobacco Growers' Marketing Assn. v. Patterson* (1924), 187 N. C. 251; 121 S. E. 631.

ing 65 per cent of the value of such realty. Each such mortgage is to be payable on the amortization plan maturing in not less than twenty years. The associations may issue bonds secured by the mortgages and notes so taken or purchased. The bonds shall be a "legal investment for savings associations, trust companies, or other financial institutions chartered under the laws of this State and shall also be a legal investment for trustees, executors, administrators, or custodians of public or private funds, or corporations, partnerships or associations." The State banking laws in so far as they are applicable and not in conflict with the provisions in this chapter shall apply to the land mortgage associations.

CH. 252—CANCELLATION OF MORTGAGES GIVEN IN LIEU OF BONDS—C. S. 348, as amended by Public Laws of 1921, ch. 29, relative to cancellation of mortgages given in lieu of official bonds has been re-written, adding that when such party as administrator, executor, guardian, collector, or receiver has filed his final account and the time required by statute for the bond given by any such party to remain in force for the purpose of action thereon has expired, or when such officer has fully complied with the trust and the time within which suit could be brought has expired, then such mortgage may be cancelled.

C. A. T.

MOTOR VEHICLES

The provisions of Chapter 50 of Public Laws of 1925 are significant for two particular reasons. In the first place they show the public reaction through legislative enactment against the "bus war" which raged in the state not many months ago. The competitive methods adopted by the bus owners during that hectic period no doubt had tremendous influence in causing the legislature to enact measures that would stabilize this growing public service in North Carolina. In the second place they well illustrate the now well-established and growing tendency for legislatures to delegate to commissions the power to regulate rates and other matters.[1]

The act applies to motor vehicle carriers engaged in the business of transporting persons and property for compensation over any improved public highway or streets in the State. The term "motor

[1] Cook, *Principles of Corporation Law*, p. 392; *Grand Trunk Ry.* v. *Michigan Ry. Comm.* (1913), 231 U. S. 457; Nichols, *Judicial Review of the North Carolina Corporation Commission.* 2 N. C. Law Review, 69.

vehicles" within the purview of this act, applies only to those operating a service between different towns and cities. The term "improved public highway" in the act means every improved highway in the State, or that may be declared to be a highway, or county highway, or streets of any city or town.

Such motor vehicle carriers are to be operated in strict accordance with the provisions of this act subject to control and regulation of the Corporation Commission; Provided, this act does not apply to vehicles used for transporting persons to and from schools, churches, picnics, or religious services of any kind, or to United States mail carriers operating star routes exclusively, to farmers' or dairymen's vehicles used in their businesses, or to vehicles engaged in carrying persons to places of historical and educational interest in the State.

The person or corporation proposing to operate such a line of transportation must apply to the Corporation Commission for license, and in the application specify (a) the name, address and postoffice of applicant, (b) the proposed route, (c) the kind of transportation, whether passenger or freight, and seating capacity and tonnage, size and weight of vehicles, (d) proposed schedule, (e) proposed rates, (f) length of time, if at all, of previous engagements in same business in the State, and schedule and rates maintained.

The Commission will fix a time for public hearing of the application. Three days before the time set the applicant must cause notice of the hearing to be published in a newspaper of general circulation through the territory in which he proposes to do business. At the hearing, the Commission will take into consideration the past record of applicant in the business, his character, his court record and any other matter tending to show his qualifications.

The Corporation Commission shall observe the recommendations of the Highway Commission as to the size and weight of the motor vehicles and kinds of tires best adapted to the highways over which the applicant proposes to do business. No license shall be issued for any motor vehicle of greater width than 86 inches, and greater loaded weight than 15,000 pounds for passenger traffic, or greater width than 86 inches and greater loaded weight than 9 tons for freight. The Commission at all times has power to reduce the size and weight, and to suspend the operation of the vehicles, in accordance with the conditions of the highways at any particular time.

The operator of such motor vehicles shall file a bond, the amount of which shall be determined by the Commission. This bond shall

be for the benefit and subject to action thereon by any person sustaining actionable injury to his person or property by negligence of the operator.

Section 4 of the act gives to the Corporation Commission full power to alter, regulate, suspend, or in any other manner make the persons or corporations operating these lines conform to the regulations made by the Commission for the public interest. The Commission can prescribe a speed limit for these vehicles less than that prescribed by the statute law of the state, but cannot prescribe a greater speed.

The Commission may order a violator of these regulations before it for a hearing, and may suspend, revoke, alter, or amend its certificate, subject to appeal to Superior Court from the Commission's decision. Pending the appeal, the operator must suspend business altogether, unless the Commission gives its permission to continue.

The driver must be over 18 years of age, and he shall be examined to ascertain his general character, his skill, and knowledge of the rules of the road before license will issue.

The Secretary of State shall collect a privilege, or franchise, or license tax of 6% of the gross amount received from all fares and charges, in advance, payable quarterly. The persons shall keep their books and accounts as prescribed by the Secretary of State, and make a verified report monthly. In case the route is partly within and partly without the State, the privilege tax shall be collectible in proportion to the mileage in the State compared with the total mileage. If the carrier refuses to compute such mileage, the Secretary of State may do so, and certify the same to the sheriff through whose county the carrier operates, and the certificate shall have the force and effect of a judgment and execution, and the sheriff may levy on and sell the property of the carrier.

The moneys collected under this act shall, after deducting necessary expenses, be paid to the counties, cities and towns through which these vehicles operate, in proportion to the mileage therein compared with the total mileage in use by the vehicles.

Any one guilty of violating this act shall be fined not less than $50 and not more than $500, or imprisonment, or both, in the discretion of the court.

CH. 265—Makes it a misdemeanor, carrying a maximum fine of $50 or maximum imprisonment of 30 days, to drive a motor vehicle

on the public roads past a public school bus which is taking on or putting off school children, without first bringing such vehicle to a full stop not less than 50 feet from such bus.

CH. 272—Amending C. S. 2618, provides: that no party shall operate a motor vehicle on any road or highway or streets of the State in excess of:

1. 20 miles per hour in residential sections. The limit in C. S. 2618 (amended by Ex. Sess. 1921, ch. 98) was the same.

2. 12 miles per hour in the business section of any city. This is a change from 10 miles in C. S. 2618.

3. 15 miles per hour when passing any school or church when people are leaving or entering.

4. 15 miles per hour when traversing intersections of highways when the driver's view is obstructed. The driver's view is deemed obstructed when at all times within 100 feet of the intersection he does not have a clear view of all the highway for a distance of 200 feet from such intersection.

5. 15 miles per hour when traversing or going around corners of a highway.

6. 35 miles per hour beyond the residential section of incorporated cities. This is a change from 30 miles.

7. No person shall operate on the public highways or streets a motor vehicle with muffler cut-out open, or with exhaust whistle or other objectionable signal devices. C. S. 2618 forbade the muffler cut-out open *inside* the corporate limits.

CH. 283—Enlarges the scope of C. S. 4506, which makes it a misdemeanor to operate an automobile on the public highway, while intoxicated, by striking out the words "public highway" and adding "any public highway or cartway or other road over which the public has a right to travel." The amended act also permits the judge, in his discretion, to deny to a person guilty of violating this act the right to drive an automobile for not more than 12 months.

CH. 297—Makes it a misdemeanor, punishable by fine not exceeding $50, for a driver of a school bus carrying children to and from school to drive at a greater speed than 25 miles per hour along any public street or public highway in the State.

S. E. V

MUNICIPAL CORPORATIONS

MUNICIPAL AID AND PUBLIC BENEFIT—In a note in the NORTH CAROLINA LAW REVIEW, the question of municipal aid to railroad enterprises, as in building a passenger station, was discussed, and incidentally certain other similar questions were mentioned, like maintaining a moving picture theatre, building a hotel, and furnishing money to chambers of commerce and boards of trade.[1] One of the special acts mentioned was chapter 268, Private Acts of 1923, authorizing the city of High Point to appropriate a certain per cent of taxation, to be expended by the Chamber of Commerce in promoting the establishment of industrial enterprises and for such other purposes as, in their discretion, would advance the interests of the city.

About the time the note was written, this statute was before the Supreme Court upon the question of its validity, and it was held that this was not a necessary expense, and that the act could not authorize such expenditure without the popular vote.[2]

Ch. 33, Pub. Laws of 1925, provides that the governing body of any county, city or town may appropriate from the general taxes a fund not less than one-fortieth of one per cent, nor more than one-tenth of one per cent of the assessed valuation of property, to be expended under the direction of such governing body, or through such agencies as they shall prescribe, for the purpose of aiding and encouraging the location of railroads, manufacturing and other industrial enterprises in the county or in or near the city or town, and for such other purposes as will, in the discretion of the governing body, increase the population, taxable property, agricultural industries and business prospects of the county, city or town. The act further provides that no money shall be raised or appropriated for such purposes until the act shall have been approved by a majority of the qualified voters in an election held for that purpose.[3]

This last requirement brings the act within the rule laid down by the Supreme Court, and it applies to counties as well as to cities and towns. It would seem to be the intention of the act to declare the particular purposes mentioned to be public purposes, and to justify the expenditure of money, with the popular vote, although they do not come under the class of necessary expense. Whether the further provision that the governing body may expend the money for such

[1] 2 N. C. Law Rev., 38.

[2] *Ketchie* v. *Hedrick* (1923), 186 N. C. 392, 119 S. E. 767.

other purposes as will, in their discretion, promote the best interests of the community, gives an unlimited discretion in determining the purpose for which the money may be appropriated, might be open to question.

The act further provides that in any incorporated town of less than three thousand inhabitants, instead of a popular election, the will of the voters may be determined by a petition in writing, signed by at least three-fourths of all the registered voters whose names appear upon the registration books for the previous municipal election, and provided that such three-fourths signing the petition shall be the owners of three-fourths of the total taxable property appearing upon the tax lists last prepared by the municipality.

This would seem to be a new regulation, applying in some respects the rule laid down for Local Improvements in municipal corporations.[4] The latter statute, however, refers to the improvements of streets and sidewalks, which would come under the head of necessary expense, and also contemplates the levying of assessments upon the adjoining property for special benefits. The Constitution provides that no debt may be contracted nor tax levied for other than necessary expense, "unless by a vote of the majority of the qualified voters."[5] Whether a petition signed by three-fourths of the qualified voters is a compliance with the requirement of "vote of a majority of the qualified voters," might be questioned. So far as the persons who are to pay the tax are concerned, it is a much more responsible and satisfactory authority, but the popular vote contemplates a public election under the ordinary machinery, with the right in every qualified voter to express his will by his vote. This is not intended as captious criticism of the statute, but to raise the serious question whether in any case a petition by any number or all of the registered voters can take the place of the constitutional requirement of a popular vote.[6] It is rather a dangerous proposition both for the persons paying and the persons receiving the public money, for other than a necessary expense, unless it has been legally authorized, as has been recently decided in the case of *Brown* v. *R. R.*[7]

[3] A similar statute was passed for the city of Statesville in 1923, ch. 257.

[4] C. S. 2703, et seq.

[5] Const., Art. 7, s. 7; C. S. 2691.

[6] *Long* v. *Comrs.* (1921), 181 N. C. 146, 150, 106 S. E. 481; *Cotton Mills* v. *Comrs.* (1891), 108 N. C. 678, 684, 13 S. E. 271.

[7] (1924) 188 N. C. 52, 123 S. E. 633.

In this case, the town of S wished to induce a railroad company to make that town a starting point for its road rather than the neighboring town of D. A mass-meeting of the citizens was held, at which the mayor and board of aldermen and representatives of the railroad were present. The mass-meeting recommended that the town appropriate $5,000 to buy the right of way and give it to the railroad to secure the location of the road. The representatives of the railroad consented to this; the mayor and aldermen immediately held a meeting and made the appropriation; the money was paid and the road was built. About two years later, a citizen who had been in the meeting and had either consented to the action or made no objection, brought an action to compel the repayment of this money, and it was held that the payment was unauthorized and the railroad was liable, and also that the town officers were liable, except for the statute of limitations.

A. C. M.

THE BOND RECORDING ACT—Ch. 100 provides for the recording in the office of the state auditor statements concerning bonds and notes having a fixed maturity of at least one year after the date thereof, of counties, townships, school districts, municipal corporations and taxing districts. The statements shall contain the name of the board in which is vested the authority and power to levy taxes for the payment of the principal and interest of the bonds and notes, and the dates upon which the payments of principal and interest become due. The bonds are not valid until such statement is filed with the state auditor.

The state auditor is required to notify the board having power to levy taxes for the payment of the bonds or of the interests, at least thirty days before taxes are to be levied, of the amount that will have to be raised by taxation for payments of principal and interest; and a failure of the board to levy the taxes required subjects every member of the board to a penalty of $200 upon suit brought by any bond holder, unless such member of the board has had his vote recorded as being in favor of the tax levy required.

The State auditor is also required to notify the treasurer or disbursing officer, who has the duty of paying the principal or interest of any bonds, at least thirty days before such installment becomes due of the amount of such installment, and the failure of such officer, if the funds are available, to pay the installment subjects such officer to a penalty of $200 upon suit brought by any bond holder. Any person, who individually or as member of any board, diverts funds

raised for the payment of principal or interest to any other purpose, is also liable to a penalty of $200 upon suit by any bondholder.

Thus the State auditor has a certain measure of supervision over the payment of principal and interest of bonds, and the non-performance upon part of officials of the district to provide for the payments of principal and interest subjects them to a penalty.

The new law is a restatement and consolidation of Chapter 1, Public Laws of 1921, Extra Session, and Chapter 123, Public Laws of 1923, both of which are repealed thereby. The new law does not require the State Auditor to report violations to the solicitors.

BOND REGISTRATION ACT—Ch. 129 provides for registration in the name of the owner of bonds of counties, cities, towns, school districts and school taxing districts, in registers to be kept by the treasurer or financial agent. Such registration does not effect the payment of interests, but the principal shall be payable to the person in whose name the bonds are registered. The bonds may be transferred upon the register or made payable to bearer by filing of application with the registrar and indorsement on the back of the bond.

CH. 141—Requires that in the awarding or entering into a contract for the erection, construction or alteration of public buildings, when the entire cost of such work will exceed $10,000, separate specifications must be prepared for the following branches of work: 1. Heating and ventilating. 2. Plumbing and gas fitting. Separate bids are to be secured and the contracts awarded separately to the lowest bidder regularly engaged in their respective line of work. This applies only to public contracts with counties and cities and also in case of the State itself.

It has been held that failure to observe such statutory requirements renders a contract invalid. "Respecting the mode in which contracts by corporations should be made, it is important to observe that when the mode of contracting is specially and plainly prescribed and limited, that mode is exclusive and must be pursued, or the contract will not bind the corporation."[1] Whether the contractor could recover upon an implied promise to pay for benefits received has not been definitely decided, the weight of authority denying recovery.[2]

S. C.

[1] Dillon, *Municipal Corporations* (5th Ed.) sec. 783; *Wadsworth* v. *Concord* (1903) 133 N. C. 587, 45 S. E. 948.

[2] Dillon, *Municipal Corporations* (5th Ed.) Ch. 18 and cases cited; *Wadsworth* v. *Concord,* note 1. *supra.*

PROPERTY RIGHTS

Ch. 7 amends C. S. 1654, Rule 8, of the Rules of Descent. The unamended rule provided that a widow should be deemed heir of her husband, when he died leaving none other who could claim as heir.

The amendment makes the rule mutual between husband and wife, as follows: "When any person dies *intestate,* leaving none who can claim as heir to such deceased person, but leaving a widow or husband, such widow *or* husband shall be deemed to be his heir, and, as such, inherit his estate."

Construing the original Rule 8, the Supreme Court held that the rule could only apply to property not devised by the husband. Hence, if the husband's will gave a life estate to the widow, with remainder over to his "legal heirs," and the widow failed to dissent to the will, Rule 8 would not apply. Therefore, in such a case, if the husband had no legal heirs, the property, at death of the wife, would escheat instead of going to the wife's heirs.[1]

The amendment seems to codify the *Grantham* v. *Jinnette* decision by the addition of the word, *"intestate."* Undoubtedly such term will be construed to cover a partial, as well as a total, intestacy.

Ch. 264. CONCERNING GIFTS, GRANTS, DEVISES OR BEQUESTS CREATED FOR RELIGIOUS, EDUCATIONAL, CHARITABLE, OF BENEVOLENT USES—The first section of the Act provides that no gift, grant, bequest or devise, in trust or otherwise, to religious, educational, charitable, or benevolent uses, shall be invalid because of indefinitness, uncertainty, discretion given to trustees, nor because of conflict with the Rule Against Perpetuities.

In absence of a positive statute, there has been, and is, a split among the American authorities over the doctrine of *Cy Pres,* i.e. the doctrine of approximation, whereby the intent of the grantor or testator, which it is impracticable to carry out literally, is carried out as near as possible. A majority of the courts have repudiated the doctrine entirely, and few, if any, of the minority upholding it have done so without qualification.[1] In courts adopting it as law, *Cy Pres* has frequently been used to sustain wills in which perpetuities were attempted, so that, if it can possible be done, the devise is not regarded as utterly void, but is construed in such a manner as to carry

[1] *Grantham* v. *Jinnette* (1919), 177 N. C. 229, 98 S. E. 724.

[1] See Decennial Dig. "Charities" No. 37, 50. Also Century, *ibid.,* No. 91 to 93.

out the intention of the testator in so far as the Rule Against Perpetuities will allow.[2] The principle has also been used with reference to charitable trusts, where a definite duty is to be performed which cannot be done in exact conformity with the testator's plan; in which case the courts have caused the duty to be performed with as close approximation to the original plan as is practicable.

The Supreme Court of North Carolina has followed the majority of the American courts in refusing to apply the doctrine. In the recent case of *Thomas* v. *Clay*,[3] Clarkson, J., after stating that the *Cy Pres* doctrine does not obtain in this State, cited three concurring circumstances as necessary to create a trust, viz: First, sufficient words to raise it; second, a definite object; and, third, an ascertained object.

By the enactment of the statute herein discussed, therefore, the Legislature has established the equivalent of the *Cy Pres* doctrine in North Carolina. And, not only has the doctrine been settled by such enactment, but it has been extended to a degree seldom attempted by the courts which have declared it to be law.[4]

The first section of the Act goes on to provide for the appointment of trustees by the Superior Courts, should the trust device be used, and no trustees are named in the instrument. Of course this is not a departure, having been applied as a principle even by the courts which have refused the *Cy Pres* doctrine.[5] The second section extends the enactment to religious, educational and charitable trusts created by persons domiciled in other states, which would have been valid under the law of the state of domicile, even though one or more of the trustees or one or more of the beneficiaries have foreign domicile. Section three provides that the trusts described in the second section shall be valid whether created before or after the enactment.

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[2] The reaction of the courts has been that a limitation in complete violation of the Rule Against Perpetuities is void *in toto*. The *Cy Pres* construction applies only to limitations partly within the Rule; in which case the courts may declare the devise valid as to the part which does not contravene the Rule. See *Post* v. *Rohrbach* (1892) 142 Illinois 606, 32 N. E. 687.

[3] *Thomas* v. *Clay* (1924) 187 N. C. 778, 122 S. E. 852.

[4] It is true that the English courts, in the case of charitable enterprizes, have carried *Cy Pres* beyond the limits recognized in cases of private interests; but they have drawn considerable support for this attitude from the statute of 43 Elizabeth, c, 4. See *Keith* v. *Scales* (1899) 124 N. C. 497. 32 S. E. 809, (1899), where Clark, J., calls attention to the fact that 43 Elizabeth in no way affects the validity of charitable devises in this country. Also see note on *Cy Pres Doctrine in North Carolina*, 1 N. C. Law Rev. 41.

[5] *Keith* v. *Scales, supra.*

STATE ADMINISTRATIVE AGENCIES

As government and business become more complex, legislatures turn to various bodies of experts to assist in administering the law and carrying on the governmental functions. This was already indicated in the discussion of the regulation of trades and callings, where, in each case, some administrative body or commission is called upon to carry out the statutory program. Some further administrative agencies of the State, including investigating commissions, are mentioned herewith:

1. Ch. 29 creates the position of Commissioner of Pardons who is appointed by the Governor and whose duty it is to assist the Governor in connection with applications for pardons, commutations and reprieves. While the final decision in any case is with the Governor, it is likely that the recommendation of the Commissioner of Pardons will be followed, since he is in a position to make a decision and the Governor must depend on his judgment, unless he selects to take the time to do the work himself.

2. Ch. 62 establishes the State Sinking Fund Commission, composed of the Governor, State Treasurer and Auditor, who shall manage the State sinking funds and invest such funds only in government bonds and under specific requirements as to the price at which such bonds shall be purchased or sold.

3. The Budget Act is Ch. 89, with an amendment thereto in Ch. 230. As director of the budget, the Governor has large powers in supervising the expenditure of State funds and in determining what appropriations shall be made by the General Assembly. The idea that our governments, Federal, State and local, should be run in a business-like fashion is gaining prevalence and the budget system in government is an attempt to carry out the wishes of the people that government shall be administered economically and efficiently.

4. Ch. 120 is an attempt to place all State charitable institutions on the same basis, with similar policies, so that the expense which the State bears will be lightened by requiring those who are able to pay to bear the expense of their care, maintenance and treatment. Suits may be brought in favor of the State for the recovery of the cost of caring for patients who are able to pay, and such patients may be removed from State institutions if no payment is made.

5. Ch. 122 establishes a Department of Conservation and Development, which is to take the place of and which takes over the powers

and duties exercised by the State Geological and Economic Survey, the State Geological Board and the State Geologist. In addition, the name of the new department indicates its principal function, which is to aid, by investigation, recommendation and publication, in the promotion of the development and conservation of the natural resources of the State and in the development of commerce and industry. The control of the department is vested in a Board of Conservation and Development, consisting of the Governor and six members, one of whom shall be selected from the staff of the University and another from State College. The Board may conduct investigations, compel the attendance of witnesses and make such rules and regulations as may be necessary to carry out its work.

6. Ch. 125 creates the Salary and Wage Commission, composed of five persons appointed by the Governor. The Commission is authorized to study the wages paid to State employees and to classify and standardize such wages in relation to the service rendered. Thus the Commission has power to raise and lower wages of State employees, as long as they do it by classifying and standardizing the various kinds of service rendered.

7. Ch. 163 provides for a complete reorganization of the State Prison, the details of which are omitted for lack of space.

8. Ch. 203 createst an Educational Commission of twelve members to be appointed by the Governor. They are authorized to make a survey of the systems of public education in the State, to investigate the cost of operation of the State's educational institutions, both institutions of higher learning and high schools and grammar schools, and to inform the public with regard to the State's educational problems so that a system of education may be developed to meet the needs.

R. H. W.

WILLS AND ADMINISTRATION

CAVEATS TO WILLS—By C. S. 4158 married women were in the class of those under disability to file caveats to wills within the prescribed seven years. Ch. 81 removes married women from this classification of disability and is in accordance with the modern tendency as to married women's property rights.

Ch. 86 authorizes the personal representative to renew an obligation of the deceased for not over two years, so as to bind the estate, but not himself personally.

It will be recalled that a writing was necessary under the Statute of Frauds for personal liability in such a case.

WIDOW'S ALLOWANCE—Under C. S. 4112 the widow's year's allowance was from stock, crops and provisions. By Ch. 92 it may now be taken from "any other personal property."

PRIVATE SALE BY PERSONAL REPRESENTATIVE—Under C. S. 69, private sale was authorized only in certain cases—cotton, tobacco, other crops, stocks, bonds, etc. Ch. 267 repeals the above section and provides that the Clerk of Courts may authorize a sale of personal property (no particular kinds specified) whenever the personal representative is of the opinion that the interests of the estate will be promoted.

P. H. W.