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OPEN COURT

THE BAD CHECK LAW

To the Editor of the NORTH CAROLINA LAW REVIEW :

I have just read the very interesting discussion of the Constitutionality of the bad check law by Mr. C. W. Hall in the December issue of the LAW REVIEW.

I was a member of the Judiciary Committee of the House of Representatives in 1923 and 1925 and in both sessions I served on sub-committees appointed to redraft bills introduced for the purpose of prohibiting the giving of worthless checks. Although I did not introduce the bill, the act in the form it finally passed in 1925 was drafted by me with the advice and approval of the other members of the committee.

The problem was to frame an act which would be effective by avoiding the great practical difficulty of proving actual fraudulent intent in order to convict and which would at the same time be reasonable in its operation and constitutional. I think the law as it now stands is both reasonable and effective. The question of its constitutionality is, of course, still undecided.

Mr. Hall in his article gives several possible arguments in its favor, among others, that the giving of a worthless check might be made a crime *per se*, as it "is detrimental to commerce and tends to impede business transactions, working hardships to the public in general and to the commercial world in particular." This is the idea the committee had in mind when it approved the draft of the present law. Mr. Hall, however, argues that this contention cannot be maintained in support of the constitutionality of this law, because, for one thing, "it would be absurd to insert a proviso for the condonation of the crime within ten days after notice, or to allow the criminal to bar prosecution by making his check good."

I submit, however, that a check made good within ten days does no great damage in business transactions. This proviso also takes care of most cases of mere inadvertence which should not be punishable and appears reasonable, or, at least not exactly absurd, but, even if absurd, there is, unfortunately, no constitutional prohibition against absurdities being enacted into laws. Furthermore, the idea of condonation of a crime, or of barring prosecution is not novel.

There is a provision in our statute that marriage between a woman and her seducer bars his prosecution for seduction. Marriage repairs the damage in that case, as paying the check does in this. It might also be argued that in the bad check law the only bad checks prohibited are those which are not made good within ten days after notice.

However, his main argument against the validity of the law is that it involves imprisonment for debt, as he contends that the debt is the essential element of the crime.

The act in question if construed as it should be to mean exactly what it says, prohibits the giving of worthless checks generally without any mention whatever of debt or of fraud, it is broad enough to apply to checks given without any consideration whatever and such checks if not made good may be just as detrimental as if given for a debt.

To illustrate, let us suppose that a grand-father living in Edenton sends a check for \$50.00 as a birthday present to his grandson who is a student at Chapel Hill. The grandfather is a careless and improvident old gentleman and regrettably enough it turns out later that the check is no good. Let us assume further that the Chapel Hill student is in an impecunious condition—not a violent assumption, unless things have changed considerably since I was there. He deposits the check in a bank in Chapel Hill and it is a week or more before he finds out that the Bank in Edenton refuses payment. In the meantime, elated by his supposed affluence, he sends flowers to his girl or indulges in some other unfortunate extravagance. He pays a florist in Raleigh with his own check for \$25.00. He then gets in a poker game, loses the rest of his imaginary wealth and pays with his own check. The winner in the poker game, relying on the validity of this check buys something he cannot afford. It now appears that the old man's check is bad and he does not make it good. In consequence the grandson cannot make his checks good. The grandfather owed no debt to his grandson and the grandson owed no legal debt to the winner in the poker game, but as a result of these two worthless checks the grandson is embarrassed and in debt, the florist is out \$25.00 and the winner in the poker game has made a purchase he cannot afford.

My point is that debt is not an essential or even a necessary element in the law and that the bad consequences of giving a worth-

less check, which the law intends to prevent, are not necessarily dependent on the existence of a debt owing by the guilty party.

Very truly yours,

W. D. PRUDEN.

Edenton, N. C.

SALARIES OF JUDGES

The following table is taken from the report of the Special Committee on Increase of Judicial Salaries submitted at the annual meeting of the American Bar Association in 1924. Mr. Alexander B. Andrews of the Raleigh Bar is chairman of this committee. Mr. Andrews tells us that there have been a number of changes since the time of this report; for example, North Carolina Supreme Court judges now receive a salary of \$6,000 and \$500 for traveling expenses. It is to be hoped that the present legislature will increase judicial salaries in North Carolina. Congress has recently increased the salaries of the United States Supreme Court justices to \$20,000, with \$500 additional for the Chief Justice, of circuit judges to \$12,500 and of district judges to \$10,000. The table applies only to salaries of state supreme court judges.

State	Rank	Salary	State	Rank	Salary
New Jersey.....	1	\$18,000	Alabama, Mississippi and Texas.....	24-26	\$6,500
Pennsylvania.....	2	17,500	North Carolina.....	27	6,350
Illinois.....	3	15,000	Iowa, Kansas, Maine, Nevada, New Hampshire, New Mexico, Oklahoma and Virginia.....	28-35	6,000
New York.....	4	13,700	Florida, North Dakota and Tennessee.....	36-38	5,500
Massachusetts.....	5	12,000	Oregon.....	39	5,250
Michigan.....	6	10,000	Arizona, Colorado, Idaho, Kentucky, Utah and Vermont.....	40-45	5,000
Connecticut.....	7	9,000	South Carolina.....	46	4,500
Ohio, Maryland and Wisconsin.....	8-10	8,500	Arkansas.....	47	4,000
California, Louisiana, Rhode Island and West Virginia.....	11-14	8,000	South Dakota.....	48	3,000
Delaware, Indiana, Missouri, Montana and Nebraska.....	15-19	7,500			
Georgia, Minnesota, Washington and Wyoming.....	20-23	7,000			

Average for 48 States is \$7,701.06.

A LAYMAN'S VIEWPOINT

So many funny things happen in court, so many ridiculously absurd things, not intended to be funny but which are so farcical in the solemnity with which they are put over, that the observer might be pardoned if he occasionally "snickers in his sleeve." In fact he deserves commendation if he can so control his risibility that he does not laugh out loud. A trial has been set for weeks, months, maybe

years, to begin on a certain day and hour. Time arrives and the lawyers bustle about and proclaim their readiness. Then some of them discover the absence of important papers. They make hurried search about the court room and sometimes have to make a search of their offices while the court waits. Witnesses are called and some of them don't answer. As in the suspended judgment sentences, so many people no longer take a court seriously that when they are told to be on hand at a certain time they often go about their business and wait until they are sent for, while the court waits. Then, after much time wasted in preparing to get under way, it is suddenly discovered that some insuperable obstacle has clogged the wheels of the machine, and after much talk the case goes over. Much of this seems so frivolous and ridiculous to the bystander, same being intensified by the solemnity with which it is acted, that he is tempted to give the raucous laugh. If he refrains from that through fear of a sojourn in jail, he might be permitted the luxury of a modest snicker.

Then there are examinations of witnesses, addresses to jurors, and especially the pleas of attorneys to the court in behalf of clients. Sometimes one wonders at the self-control of the court. Some of the things the lawyers say to the court, with solemn countenance, would justify commitment for contempt if the court was sensitive, as the pleas often proceed on the theory, if accepted as sincere, that the court doesn't know any better than to believe what they are saying. But having been a lawyer himself the court listens with a perfectly straight face. It may be the bystander's fault that he is unable to appreciate the dignity of the proceeding. But he can't; and if he contents himself with a snicker he might be excused, provided of course, his indulgence isn't sufficiently noisy to interrupt the proceedings.

R. R. CLARK.

Greensboro Daily News,
January 27, 1927.

OVERPOWERING TALKER

In the case of *Bank v. Wester* (1924) 188 N. C. 374, 124 S. E. 855, the controversy was over some notes which were given for stock in a blue sky company. The following quotation is from the case, giving part of the testimony of a witness: