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## NORTH CAROLINA LAW REVIEW

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Volume 9 | Number 1

Article 8

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12-1-1930

# Editorial Board/Editorial

North Carolina Law Review

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### Recommended Citation

North Carolina Law Review, *Editorial Board/Editorial*, 9 N.C. L. REV. 57 (1930).

Available at: <http://scholarship.law.unc.edu/nclr/vol9/iss1/8>

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The  
North Carolina  
Law Review

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Volume Nine

December, 1930

Number One

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THE CODIFICATION OF CRIMINAL PROCEDURE IN  
NORTH CAROLINA

The gradual development of procedural rules in criminal cases in North Carolina is recorded (1) in statutes scattered through the session laws from 1715 to 1929, (2) in decisions scattered through the reports from volume 1 in 1797 to volume 199 now in the press, (3) in the practices of courts and officials which have not found their way into printed pages but which reflect no less the habitual processes of the law.

From time to time digests have been made of the decisions: by Iredell in 1839, Jones in 1854, Battle in 1866, Busbee in 1880, Walser

in 1899, Michie in 1916. From time to time compilations have been made of the statutory changes with the judicial construction placed upon them: The Revised Statutes in 1837, The Revised Code in 1854, Battle's Revisal in 1873, The Code in 1883, Pell's Revisal in 1905, Jerome's Criminal Code and Digest in 1916, Consolidated Statutes in 1919, North Carolina Code in 1927. These statutes represent only the patchwork changes of the common law passed in scattered moments to meet obvious evils as they raised their heads. No critical analysis of our criminal practice and procedure as a whole has yet been made.

Civil procedure in North Carolina was completely revised and codified in 1868 on the basis of the Field Code. A group of distinguished law teachers, judges, and practitioners, representing the American Law Institute, completed during the spring of the present year a model code of criminal procedure. This code was drafted after an intensive study of the procedural systems of all the states in the union and the leading countries of the world. It furnishes the basis for a complete revision and codification of criminal procedure in North Carolina today.

This work has been undertaken by the teacher of Criminal Law and Procedure in the Law School of the University of North Carolina, together with a number of the younger members of the North Carolina Bar. The work has been under way for over a year. Three chapters have already been completed and substantial progress has been made on all the others. A number of judges and prosecuting attorneys of the Supreme, Superior, and Intermediate courts, are acting as advisers, together with a number of the leading practitioners. Three conferences have thus far been held for the discussion of tentative drafts of chapters, and others will be held from time to time. A number of the chapters will be ready for the consideration of the legislature in 1931.

The North Carolina procedure is first being worked out in detail—what it is, how it came to be what it is, and how it is working today. Against this background, the present status of our law is being compared with the provisions of the model code. Finally, the advisability of conforming to the code provisions in case of differences is discussed.

A short illustration will indicate the plan. Section 150 of the model code provides:

The indictment need contain no formal conclusion.

I. Three steps in the development of our law on the conclusion to the indictment for common law offenses:

(1) All indictments were required by the Constitution of 1776 to conclude "against the peace and dignity of the State." (2) This requirement was omitted in the Constitution of 1868. The court, doubted whether this omission was due to intention or inadvertence. In *State v. Parker*, 81 N. C. 531 (1879) an indictment concluding "against the peace and dignity," omitting the words "of the State," was upheld on motion in arrest on the ground that the missing words would be supplied by construction. But at the same term of court judgment was arrested where the entire conclusion was omitted. *State v. Joyner*, 81 N. C. 534 (1879). (3) In *State v. Kirkman*, 104 N. C. 910 (1889) *State v. Joyner* was overruled and the omission of the conclusion "against the peace and dignity of the State," was no ground for arrest of judgment."

II. Two steps in the development of our law on the conclusion to indictments for statutory offenses:

(1) Indictments for statutory offenses required by common law the further conclusion "against the form of the statute" to apprise the defendant that he was being prosecuted under a statute rather than under the common law, and "against the form of the statutes" to apprise him that he was being prosecuted under more than one statute. *State v. Dick*, 6 N. C. 388 (1818) conclusion omitted and judgment arrested, *Scroter v. Harrington*, 8 N. C. 192 (1820) conclusion omitted from warrant on penal statute.

On this reasoning it was held ground for motion in arrest that: an indictment based on two statutes concluded in the singular, *State v. Jim*, 7 N. C. 3 (1819), *State v. Muse*, 20 N. C. 463 (1839). Warrant on penal statute; an indictment based on one statute concluded in the plural, *State v. Sandy*, 25 N. C. 570 (1843); *State v. Abernathy*, 44 N. C. 528 (1853); an indictment for a statutory offense concluded at common law, *State v. Minton*, 61 N. C. 177 (1867), *State v. Dill*, 75 N. C. 257 (1876); an indictment for a common law