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A SURVEY OF STATUTORY CHANGES IN NORTH CAROLINA IN 1931

The following article is a compilation by the members of the faculty of the School of Law of the University of North Carolina. It consists of explanatory notes of and critical comments upon new legislation enacted by the General Assembly of 1931, and the discussion is largely confined to those statutes deemed to be of general interest to the lawyers of the state. Due to the prolonged session of the General Assembly, it was necessary to go to press before adjournment, but the only important measures not included in this article are the Revenue and Appropriations Acts.

Those outside of the law faculty who have assisted in the preparation of this article are Professor C. K. Brown of Davidson College, who discussed the State Highway Law; Professor H. D. Wolf of the School of Commerce of the University, who discussed the Department of Labor; and Professor W. S. Jenkins of the Department of History and Government of the University, who discussed the Corrupt Practices Act. Their work is hereby acknowledged.

Wherever the abbreviation "Ch" is used alone, it refers to a chapter of the Public Laws of 1931. "C.S." refers to Consolidated Statutes of North Carolina (1919).

Attorneys at Law

Brief mention only need be made of two acts relating to the practice of law, which have already been discussed by Mr. T. C. Smith, Jr. in an earlier issue of this Review.[1] The first (Ch. 157) prohibits corporations and unlicensed persons generally from practicing law, and in addition it specifies certain definite acts which are declared to come within the field of legal practice. It has already been amended (Ch. 347) so as to exclude from its prohibition any law school which may conduct a legal clinic. We understand that the Duke University School of Law plans to establish such a clinic in the city of Durham.

The other act (Ch. 208) prohibits any person or corporation from soliciting from any creditor the representation of any claim in bankruptcy, insolvency, or receivership proceedings or in connection with assignments for the benefit of creditors, and also forbids any person

[1] Note (1931) 9 N. C. L. Rev. 291.

not an attorney to appear on behalf of another in any such proceedings. It would seem that as applied to claims and proceedings in bankruptcy (which cover the great majority of claims and proceedings involving insolvent estates) the prohibition is ineffectual and unconstitutional as being an attempt on the part of the State to regulate the prosecution of claims in courts of the United States.

Autopsies

This act (Ch. 152), probably stating existing law, limits the right to perform an autopsy to cases specially provided for by statute or by direction of the deceased; cases where a coroner or the majority of a coroner's jury deem it necessary upon an inquest to have such an autopsy; and cases where the husband or wife or one of the next of kin or nearest known relative or other person charged with the duty of burial in the order named and as known shall authorize such examination or autopsy for the purpose of ascertaining the cause of the death.

Prior statutes dealing with *post mortem* examinations are C. S. 4518, providing for examinations in cases of homicide; C. S. 6786, providing for the distribution of certain bodies for the promotion of the study of anatomy; and C. S. 1020 (6) providing for an examination when the coroner or his jury deem it necessary and upon the request of the solicitor of the district, counsel for any accused, or any member of the family of the deceased.

The right of custody, and consequently the right of burial, belongs to the surviving relations in the order of inheritance.[1]

Banks and Banking

Commissioner of Banks. Ch. 243. The most notable change in the banking law is the creation of a new banking department and of a new official—the Commissioner of Banks, to whom is transferred the supervision of banks heretofore exercised by the Corporation Commission. Coöperating with the Commissioner of Banks under the present Act is an appointive, policy-determining Commission consisting of two bankers and a business man, besides the State Treasurer, who becomes Chairman, and the Attorney General, ex-officio. The new Commission sits as a court of final jurisdiction on appeals from rulings of the Bank Commissioner. Outside of this provision, to be commented upon below, the obvious purpose is a transfer of respon-

[1] See Floyd v. R. R., 167 N. C. 55, 83 S. E. 12 (1914).

sibility, not an increase or decrease of it in the new hands. That intent is made sufficiently clear by §4 on Powers, and §5 which amends the former banking law by substituting "Commissioner of Banks" throughout for "Commissioner," "Corporation Commission," "Chief State Bank Examiner," etc.[1] But the Legislature seemingly overlooked the confusion which such a lazy method of amending introduces into certain sections where under present law both the Corporation Commission and the State Bank Examiner are spoken of in relation to each other. To illustrate—C. S. 222 of the bank law would be affected as follows by the amending chapter: "The [Corporation Commission] *Commissioner of Banks* shall exercise control of and supervision over the banks doing business under this Act and it shall be its duty to execute and enforce through the [Chief State Bank Examiner] *Commissioner of Banks,* the State Bank Examiners and such other agents as are now and may hereafter be created or appointed. . . ."[2] Assuming the Department to continue having a Chief Examiner—and the Act gives no evidence of a contrary intent —it will not do, therefore, to make the wholesale substitution of titles provided for in the Act. Doubtless the court can cure the fault by making a substitution only in those places where the real objective of the new law will be served, but no such burden should have been thrown on the judiciary.

Recurring to the matter of appeal from the Commissioner of Banks provided for at the close of §1[3]—two peculiarities demand notice: (1) the Commission provided for by the Act is nowhere declared to be a judicial or quasi-judicial body as is the Corporation Commission to whose powers the Commissioner of Banks succeeds. It is characterized in the Act as an "advisory commission" and the later provision for appeals to such a body is therefore somewhat singular. (2) Considering that the intent is to create an administrative board with quasi-judicial powers the right of appeal from its decisions seems to be expressly denied. "The decisions of such Commission shall be final." Unless this phrase be limited by judicial

[1] A similar substitution seemingly should be made in C. S. 7684 which now requires the Corporation Commission to keep the State Treasurer advised as to the condition of designated depositaries of State funds.

[2] Similar difficulties are presented by various parts of 218 (c). Furthermore, §223 (a) as amended would provide that the [Corporation Commission] *Commissioner of Banks* should appoint a [Chief State Bank Examiner] *Commissioner of Banks* to make examination of banks.

[3] "Appeals may be made to such commission from any ruling of the Commissioner of Banks and the decision of such commission shall be final."

construction to finality on the facts there seems no chance of sustaining its constitutionality.[4] There is nothing in the Act to suggest a legislative intent that such a construction be given.

Receivers. Ch. 212 is a puzzle. It purports to amend C. S. 240 as to the time in which a receiver's action against a shareholder on a stock assessment can be brought—reducing the period from ten to three years by a word substitution. But receivers no longer liquidate North Carolina State Banks, and C. S. 240 was thought with apparent good reason by the editor of Michie's 1927 Code[5] to be repealed in effect by Ch. 113 P. L. 1927,[6] which amended C. S. 218c. What do we now do amending this repealed section in reference to the actions of a non-existent official, the bank receiver? The inference may be that Ch. 212 intends to limit the time in which the Corporation Commission (now the Commissioner of Banks—see Ch. 243, *infra*) can sue on stockholder's liability.[7] This inference is strengthened somewhat by the provisions of Ch. 215 which amends 3 C. S. 218e by making the statute on Corporate Receivers[8] applicable no longer to *bank receivers,* there being none under present practice, but to bank liquidation. While these chapters might have been more exactly fitted to the present scheme of banking administration, the purposes probably can be effected by judicial construction when occasion arises.

[4] See Nichols, *Judicial Review of the North Carolina Corporation Commission* (1924) 2 N. C. L. REV. 69, 75. Had the new banking department been created as a purely administrative agency it might fairly be contended that the finality of its action would be in an administrative sense only, and appropriate legal proceedings could be had to test them. But the Corporation Commission had judicial powers in dealing with banks—its stock assessments were, for example, given the effect of Superior Court judgments. N. C. ANN. CODE (Michie, 1927) §218 c. (13), Corporation Commission v. Murphey, 197 N. C. 42, 147 S. E. 667 (1929), aff'd. 280 U. S. 534, 50 Sup. Ct. 161 (1930); see also Corporation Commission v. Bank of Vanceboro, 200 N. C. 422, 157 S. E. 59 (1931), and the new Commissioner of Banks succeeds to those judicial powers so that he is obviously not a purely administrative official. There still remains the possibility that as to certain matters his rulings are administrative and that it is in respect to such rulings only that the decisions of the new commission as an appellate administrative body are final. *Cf.* discussion of status of the Industrial Commission (1930) 8 N. C. L. REV. 418, 433-436.

[5] See N. C. ANN. CODE (Michie, 1927) §218 (c) and §423, annotations.

[6] Commented on in (1927) 6 N. C. L. REV. 174, 175.

[7] But §218c (13) instead of providing, as does §243, for a suit on stockholders' liability to reduce it to judgment provides that a mere assessment against a stockholder shall have the force of a Superior Court judgment. Subsequent proceedings are in the nature of an appeal. See Corporation Commission v. Murphy, *supra* note 4. All of this sounds inconsistent with the present amendment to C. S. 240 so far as liability on stock assessment goes.

[8] Art. 10 of the Corporation Law, N. C. ANN. CODE (Michie, 1927) §§1208-1216.

BUILDING AND LOAN ASSOCIATIONS

Derogatory Statements. Ch. 12 simply adds these associations to the Section of the Criminal Code (C. S. 4231) which penalizes the circulation of financial rumors about banks. Building and Loan Associations had already in 1927[1] been given the benefit of the identical protection afforded banks by Pub. Laws 1921, Ch. 4, §82.[2] There seems no reason for continuing these two substantially duplicate sections in future revisions.[3]

Preliminary examination. Ch. 73. In the past it has been possible for anybody to organize a Building and Loan Association. C. S. 5170 provided the formalities. And while §5173 provided for a license from the Insurance Commissioner before commencing business, the licensing seems to have been a ministerial matter.[4] Now §5170 is amended by provisions for an investigation of its organizers, etc., substantially copied from the Banking Law.[5] Building and Loan Associations are not hereafter to be licensed if "the public convenience and advantage will not be promoted." The examiner of prospective Building and Loan Associations is, however, the Commissioner of Insurance instead of the Commissioner of Banks. There would seem to be much reason for putting this preliminary examination into the hands of the new Commissioner of Banks.[6]

Stock Sales Commissions. Ch. 75. By an amendment to C. S. 5176, Building and Loan Associations are prohibited from paying more than 1% for services in obtaining stock subscriptions. No penalty is attached for violation but the license of the Association might be revoked under the provisions of §5189 if any prohibited payments were discovered through the annual report (see §5187) or otherwise.

[1] See (1928) 6 N. C. L. REV. 179 listing amendments to C. S. 225 (m) by Ch. 141 Pub. Laws 1927.

[2] 3 C. S. 224 (d); N. C. ANN. CODE (Michie, 1927) §224 (d).

[3] It is to be noted that the head to 3 C. S. 224 (d) reads "*False* reports . . ." while the section itself inconsistently penalizes the circulation of derogatory statements maliciously without regard to their truth or falsity—as does C. S. 4231 where the caption harmonizes with the text. The compiler of Vol. 3 of Consolidated Statutes apparently considered that the new section in the banking law operated to amend also the provisions of the Criminal Code. See 3 C. S. 4231 and N. C. ANN. CODE (Michie, 1927) §4231 and annotation.

[4] See, however, §5189 providing for revocation of license.

[5] N. C. ANN. CODE (Michie, 1927) §217 (c).

[6] See Ch. 243 discussed *supra* under Banks. It is to be noted that Land and Loan Associations whose purposes are substantially the same in rural communities as are those of Building and Loan Associations in towns, will now come under preliminary inspection Act. See N. C. ANN. CODE (Michie, 1927) §5205. Savings and Loan Associations, however, will not. See N. C. ANN. CODE (Michie, 1927) §§5212, 5237.

Reserve. Ch. 107. C. S. 5177 is amended in two ways: (1) by doing away with all provisions about guaranteed dividends;[7] (2) by requiring a 5% reserve against paid-up stock in the form of United States Government or North Carolina State bonds or bank deposits. No new loans are to be made when the reserve is below that figure.

Some confusion is introduced into the Act by two provisions as to its effective date.[8]

Dividends on stock. Ch. 109. The stockholders equality feature of the law is now expressly qualified by a provision that a lesser rate of dividend may be declared on paid-up stock than on serially maturing issues.

Paying off or cashing stock. Ch. 109. The language here must be quoted: "No series or class of stock shall be paid off until fully matured: Provided, that this act shall not prevent the cashing in of any stock before maturity." The proviso is new. What seems to be meant is that until the full matured value of serial stock is earned, *i.e.,* until it has actually matured, it cannot be paid off at that ultimate figure under an agreement or guarantee, for example (see the *Fagg* case note 8, *supra*), but that before maturity it may be cashed in at its value then accrued. This construction has been put upon the act as now amended by a Building and Loan officer who was consulted on the subject.

Civil Procedure

Declaratory Judgments. Ch. 102. This valuable legislation is passed in substantially the form of the Uniform Act recommended by the National Conference of Commissioners on Uniform State Laws, the variations from that standard being to adjust it more effectively to local procedure. See the explanation and comments in (1930) 9 N. C. L. Rev. 20-24. It is hoped in a later issue of the Review to present an extended survey of the types of case in which this innovation can be advantageously used. For the present the

[7] The old title "Different Classes of Shares; Guaranteed dividends" will have to be amended in consequence.

[8] Sec. 1 declares that the act shall not take effect till January 1, 1932; §2 repeals conflicting laws: §3 reads "This act shall be in force and effect from and after its ratification" (which was Mar. 13, 1931). Apparently the act has been a law of the State from last March but its provisions do not become effective as governing rules till next year. If any previous law is repealed by the second section it would seem to leave a gap till the date next year when the act takes effect. No conflicting laws have been found, however. Consider the effect of the act on past or future contracts like that involved in Fagg v. So. Building and Loan Association, 113 N. C. 364, 18 S. E. 655 (1893).

facts of two recent Michigan cases will be stated as typical and suggestive.

In *Washington Detroit Theatre Co. v. Moore,*[1] the defendant let a theatre building in Detroit for ninety-nine years to plaintiff. Operation of the theatre proving unprofitable, plaintiff proposed to demolish it and erect offices. Defendant said the lease did not permit of such a course and threatened forfeiture if the destruction commenced. Plaintiff, standing in this quandary, lost a chance to sublease for other than playhouse uses and finally sought a judgment declaring its rights.

That the parties were adverse is evident and that a real controversy existed cannot be doubted. But there had been no breach of covenant to found an action at law. Under the Declaratory Judgments Act, however, the Michigan court held it a proper subject for judicial determination and that the trial court might proceed to declare the rights of the parties under the lease.

In another case, *City of Muskegon Heights v. Danigelis,*[2] decided only last February, the question was as to the validity of certain bonds authorized by the city to raise money for the relief of destitute inhabitants during the business depression. If the situation was one amounting to a "calamity" within the meaning of the home rule charter of the municipality, the object was lawful and the bonds would constitute valid obligations. Until that question was judicially settled, however, it was impossible to market the issue, it being in evidence that a bidder had refused to proceed with the purchase because of this doubt. On petition by the city naming two important taxpayers as defendants the circuit court declared the bonds valid and the Supreme Court affirmed the decree. One has only to look at the state of the law in North Carolina as disclosed in the recent Greene County case[3] by way of contrast to appreciate the improvement which the Declaratory Judgment Act brings to procedure in this state.

Service of Summons on non-resident motorist. Ch. 33. The act of 1929, Ch. 75, is amended by providing that in addition to the method of service of summons therein provided, the summons may be served on the Commissioner of Revenue, and the plaintiff may file an affidavit showing the residence of the defendant, and pay at least $5.00

[1] 249 Mich. 673, 229 N. W. 618, 68 A. L. R. 105 (1930).
[2] 235 N. W. 83 (Mich., 1931).
[3] Hicks v. Greene County, 200 N. C. 73, 156 S. E. 164 (1930).

as costs of service; the Commissioner of Revenue shall mail a copy of the summons, together with a statement of the nature of the action and a certificate that the summons and complaint had been served on him, to the sheriff or other process officer of the county and state where the defendant resides. The officer shall serve the summons and make return under oath, in a prescribed form, before the clerk of the court of such county, and return the same to the Commissioner of Revenue. The Commissioner shall keep a record of the return, and deliver the papers to the plaintiff to be filed with the clerk. This shall constitute presumptive evidence of actual notice to the defendant.

Joinder of Parties. Ch. 344, amending C. S. 455, 456. In the joinder of parties plaintiff, they may be joined either jointly, severally, or in the alternative; and if it shall appear that such joinder will embarrass or delay the trial, the court may make such order as may be expedient.

All persons may be made defendants, jointly, severally, or in the alternative, who have or claim an interest in the matter in controversy, or who are necessary parties to a complete settlement; and if the plaintiff is in doubt as to the persons from whom he is entitled to redress, he may join two or more defendants, to determine which is liable.[4]

Statute of Limitations. Ch. 169. *Six years.* A new section is added to the six years statute (C. S. 439), as follows:

4. Against a corporation, or the holder of a certificate or duplicate certificate of stock in the corporation, on account of any dividend, either a cash or stock dividend, paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation. This was ratified on March 23, 1931, and takes effect from ratification.

Ch. 231. *Two years. Usury.* A subsection (3) is added to the two years statute (C. S. 442), providing that a claim for the forfeiture of all interest for usury in a contract shall be barred in two years. This was ratified April 1, 1931, and takes effect from ratification, but does not apply to pending litigation.

Ch. 168. *Six months.* C. S. 444 is amended by adding thereto a provision that upon a contract, transfer, assignment, power of attorney, or other instrument transferring or affecting unearned

[4] This is a form of alternative pleading, explained in (1930) 9 N. C. L. REV. 24.

salaries or wages, or future earnings, or any interest therein, whether the instrument be under seal or not, the statute of limitations shall be six months, the period to commence from the date of the execution of the instrument. Upon instruments executed prior to the ratification of this act, the time shall be counted from the date of ratification. The act was ratified on March 23, 1931.

Receivers' Sales. Ch. 123. The resident judge of the district or the judge assigned to hold any of the courts in the judicial district shall have power to order a sale of property, real or personal, in the hands of a receiver duly appointed by the Superior Court, upon such terms as may appear to be for the best interests of the creditors affected. Any sale made by a receiver may be confirmed outside of the county in which the action is pending, by the resident judge or the judge assigned to hold any of the courts of the district. Written notice must be given to each creditor who has filed his claim with the receiver, at least ten days before the date for confirmation, specifying the time and place for such confirmation; and the affidavit of the receiver that notice was mailed to each creditor at his last known address shall be sufficient proof of notice.

All receivers' sales heretofore made upon orders entered or confirmation decreed outside of the county in which the actions were pending, by the resident judge or the judge assigned to hold the courts of the district are validated.

While the act is not an amendment to any particular section of the existing law, it might be considered as a new section (862 a) in the statutes regulating receivers. It determines the proper judge in such cases, and authorizes the making of orders of sale and confirmation outside of the county in which the action is pending.

Execution. Ch. 172 amends C. S. §672, which had been amended by P. L. 1927, c. 110. The new amendment provides that executions are to be dated of the day when issued and to be returnable to the court from which issued not less than forty nor more than ninety days from the day of issuing; and no execution against property shall be issued until the end of the term during which the judgment was rendered. This amendment substitutes ninety days for sixty in the former act.

Time and Place for Sale of Land. C. S. 690, fixing the time and place for the sale of land under execution, or order of court, has been amended by Ch. 23. Sales under execution are to be made, as heretofore, at the court-house door of the county in which the land

or some part thereof is situated, and on the first Monday of the month or during the first three days of a term of the Superior Court.

Sales of land under order of court are to be made at the courthouse door of the county in which the land or some part thereof is situated, on any Monday of any month or during the first three days of a term of the Superior Court, unless the order of sale designates some other place and time, and in such case the sale shall be made as designated in the order on any day except Sunday. The former statute also excepted holidays, but this is now omitted. The amendment also validates sales heretofore made on a day other than the first Monday, but this does not apply to pending litigation.

Constitutional Amendments

Method of amendment. Ch. 104 is a proposed amendment of Art. XIII, §2 of the Constitution, which at present provides for constitutional amendments upon three-fifths vote of each house and submission to popular vote at the *next general election.* Ch. 104 adds to this method of adoption, the alternative of submission at a *special election* to be called for that purpose, as the General Assembly may determine. This is very important in view of the tremendous difficulty of getting any interest in constitutional amendments when they are voted upon at a general election. The proposed amendment has special significance in case the 1933 General Assembly decides to submit amendments pursuant to the report of the proposed commission to study the matter.

Commission to study Constitution. This commission is provided for by joint resolution of both houses, to be composed of nine members appointed by the Governor. It is authorized to study the Constitution and any changes that may be needed to make the Constitution serve the interests of all the people of the state and to report their conclusion to the 1933 General Assembly with proposals for such amendments as they shall deem necessary and expedient, or, in lieu thereof, to submit a proposal for a redraft of the Constitution. There are provisions for making this report to the Governor not later than thirty days before the convening of the next General Assembly and for the distribution of printed copies of the report to each member-elect. Per diem compensation is provided for the members of the Commission while actually engaged in the work, and the hiring of clerks, stenographers and other assistants is authorized, to be paid out of the contingency fund.

Solicitorial Districts. On two previous occasions[1] the Legislature of North Carolina has passed laws submitting, for the approval of the voters of the State, a proposed amendment to Art. IV, §23 of the Constitution providing for the creation of 20 solicitorial districts instead of a solicitor for each judicial district as at present. Undaunted by the failure of the proposed amendment to secure the favorable vote of the people, the legislature of 1931 has shown its faith in the efficacy of the proposed constitutional change by passing an act, Ch. 367, which re-enacts in identical language P. L. 1929, Ch. 140.

It might not be amiss to explain the present constitutional situation pertinent to the matter under discussion. For the transaction of its judicial business, the State of North Carolina is at present divided into twenty judicial districts. By Article IV, §10 of the Constitution a judge of the Superior Court must be chosen for each district; likewise, by Article IV, §23, a solicitor (the prosecuting officer in behalf of the state in criminal actions) must be elected for each judicial district. The legislature is authorized by the Constitution to increase or reduce the number of judicial districts as it may see fit for the best interests of the state. However, it will be seen from the above sections of the Constitution that a *judicial* district may neither be added to nor taken away from the present number without at the same time increasing or reducing the number of solicitors. This means, of course, that if it becomes necessary to increase the number of judicial districts (and therefore Superior Court judges) in order to relieve the congested dockets of the courts, it necessarily follows under §23, Article IV, of the Constitution as it now stands that the number of solicitors is correspondingly increased. This is the result whether or not the solicitor is needed for the criminal business of the newly added district.

The present amendment submitted by the legislature would permit the State to be divided into 20 solicitorial districts with a solicitor to be chosen for each for a term of four years. The General Assembly, however, would be granted authority to increase or decrease the number of districts should it become necessary. If the amendment is adopted, the state will have a system of judicial districts and also a system of solicitorial districts, and the two need not be coextensive. The only obstacle that stands in the way of the expansion of the present Superior Court system along logical lines to cope with

[1] N. C. PUB. LAWS 1927, Ch. 99; N. C. PUB. LAWS 1929, Ch. 140.

the burden of increasing litigation will have been removed. In other words, instead of creating new courts as it must now do to relieve congested dockets, the legislature, unburdened of the Constitutional handicap outlined above, will be able to create more separate judicial districts and thus provide for more Superior Courts and Superior Court judges, without at the same time producing an oversupply of solicitors. Some difficulty might be experienced in allocating the work of the solicitors in cases where the judicial districts and solicitorial districts are not co-extensive. Any work expended in working out this technical difficulty will be more than justified if by the adoption of the amendment our docket problems can be solved and at the same time the pristine simplicity of our Superior Court system can be preserved. Our judicial system is one of the simplest in the world; it should be kept so in the interest of the efficient administration of justice.

Insurance. Ch. 262 provides for the submission of an amendment to Art. 10, §8 of the Constitution to the effect that life insurance taken out by a husband for the sole benefit of his wife and children shall be exempt from the claims of his creditors *during his life.* At present such an exemption is provided by the Constitution only after death of the husband.

Election of Sheriffs and Coroners. Ch. 47 proposes a Constitutional Amendment to be submitted in the next general election providing for the election of sheriffs and coroners for terms of four years on the theory that the longer term will tend to a more efficient performance of the duties attaching to these offices.

Contracts for Futures Made on Exchanges

Ch. 236 amends the "Bucket Shop Act" of 1889, now C. S. §2144, so as to exempt contracts with respect to the purchase or sale for future delivery of commodities, stocks and bonds, and choses in action, where the contract is made on and in accordance with the regulations of any exchange, and where the rules of the exchange permit either party to require delivery. It is intended to remove the ban of illegality from transactions on legitimate exchanges, as distinguished from "an establishment nominally for the transaction of a stock exchange business, or business of a similar character, but really for the registration of lots or wagers, usually for small amounts, on the rise or fall of stock, grain, etc., there being no trans-

fer or delivery of the stocks or things dealt with."[1] The amendment of 1905, adding the last sentence to what is now C. S. §2144, proved abortive. That sentence, which is substantially retained in the 1931 amendment, reads: "This section shall not be construed to apply to any person, firm, corporation or his or their agent engaged in the business of manufacturing or wholesale merchandising in the purchase or sale of the necessary commodities required in the ordinary course of their business." The Court held, in *Rodgers, McCabe & Co. v. Bell*,[2] that this sentence should not be regarded as an exemption from the prohibition against speculation in futures, but as a qualification of what is now C. S. §2146, relating to the burden of proof.

In addition to the foregoing, Ch. 236 expressly repeals C. S. §§2145 and 2146. The first made non-delivery and the putting up of "margin" prima facie evidence of illegality under C. S. 2144.[3] The other, as noted, shifted the burden of proof of illegality. Apparently the last case decided thereunder is *Martin v. Bush*.[4]

It is understood that the General Assembly acted upon evidence that the evils aimed at by the original statute, namely, those incident to the operation of "bucket shops" for gambling purposes had largely disappeared, and that its restrictions as construed and applied by the courts, had embarrassed the operation of bona-fide exchange-brokerage businesses.

Counties and Municipal Corporations

Changes in Local Government. Chs. 60, 99, 100, 134, 186, 294, 296, 338.

Important changes have been made in the control of local governmental units, including counties, cities, towns, and other subordinate divisions. While it is impossible to give in a brief summary the different statutory changes, the general effect has been to create a much greater centralized control than has ever been exercised heretofore.

1. *The Local Government Act.* This creates a Local Government Commission, consisting of nine members, the state auditor, state treasurer, and commissioner of revenue being ex officio mem-

[1] Gatewood v. North Carolina, 203 U. S. 531, 27 Sup. Ct. 167, 51 L. ed. 305 (1906). See also, State v. McGinnis, 138 N. C. 734, 51 S. E. 50 (1905).
[2] 156 N. C. 378, 72 S. E. 817 (1911).
[3] See State v. McGinnis, note 1; Welles & Co. v. Satterfield, 190 N. C. 89, 129 S. E. 177 (1925).
[4] 199 N. C. 93, 154 S. E. 43 (1930).

bers, and six others appointed by the Governor. One of the six shall have had experience as the chief executive officer of a city or town, another shall have had experience as a member of the governing body of a county, and another shall be designated as the director of local government. The three state officers and the director constitute the executive committee, exercising general control, with the director as the general executive manager. The director receives a salary, while the other members, except the state officers, receive $10 a day and expenses for the time actually spent. The county government advisory commission is abolished and all of its duties, with greatly increased powers, are conferred upon the new commission. The former duties of the state auditor and the state sinking fund commission, in regard to county and municipal bonds, have been transferred to this new commission.

2. *Bonds, notes, and sinking funds.* No county, city, town or other subordinate governmental unit can issue any bonds or notes without first obtaining the approval of the commission, after a thorough investigation has been made; and after the bonds or notes have been issued, they are to be sold by the commission, according to regulations prescribed in the act. It is made the duty of the director to require the officers of the various units to report the amounts of sinking funds collected for the payment of bonds, the manner in which they are invested, and the rate of taxation for the payment of the obligation. He is also required to see that the officers comply with the requirements for the securing of such funds, by depositing them with proper security, as specified in the act, or investing them in United States or State bonds, or in other securities approved by the commission.

If funds sufficient for the payment of principal and interest on any indebtedness are not remitted promptly, the director may appoint an administrator of finance for that unit, to take charge of the collection of taxes and to have the custody and disbursement of funds, as the director may determine. Penalties are imposed for any failure to perform the duties required, and in addition any officer so failing may be subject to removal by the Governor.

3. *Fiscal control.* In addition to the supervision and control as set forth above, all cities and towns are made subject to the provisions of the county fiscal control act of 1927 and the amendments thereto. The municipal finance act and the county finance act are amended in several respects in regard to the issuing of funding and

refunding bonds. In order to avoid the necessity of borrowing money in anticipation of the collection of taxes, the various units are authorized to create a revolving fund, and levy taxes therefor, to be used for the purpose of such anticipated revenues, with the consent and approval of the commission. The fiscal year is to begin on the first day of July; an accountant is to be appointed for each municipality, with duties similar to the county accountant, and all accounts for auditing by any governmental unit shall be subject to the approval of the director. It is made the duty of the director to visit the local units, to advise and assist the officers in the discharge of their duties, to prepare a system of uniform accounting and recording, and to require its use by the various units.

4. *Bonds and notes validated.* When bonds and notes have been issued by any unit, and the money received therefor has been expended for a public purpose, such indebtedness is hereby validated; but this does not apply to bonds and notes, the proceeds of which have been lost through the failure of any bank.

A test case may be brought to determine the validity of any bonds, at any time prior to July 1, 1932, in the nature of a proceeding in rem. A suit may be instituted in the name of the governing unit against all the property owners and citizens in the unit, without requiring the names of any such owners and citizens to be used in the pleading. The summons shall be published once a week for four weeks in a newspaper, and jurisdiction shall be deemed to have been acquired within thirty days from the completion of the publication. The complaint shall set forth all the particulars connected with the bond issue, and shall ask the court to determine its validity. Any person interested may become a party and contest the validity of the bond issue. After a trial had, as in other cases, the judgment of the court shall determine the validity, and from this an appeal may be taken. The final judgment rendered shall be conclusive as to the validity of the bonds.

Special provision is made for determining the validity of bonds issued for funding or refunding obligations issued since March 1, 1929. At any time before July 1, 1932, the unit may publish a notice of the intention to issue such bonds, giving the nature of the bonds and tax to be levied. The notice is to be published once a week for three weeks, and shall contain a copy of the act authorizing the publication. Bonds issued subsequent to such publication shall not be open to question.

5. *Contracts to lowest bidder.* No contract for supplies, work, etc., shall be awarded by any county, city, town, or other subdivision of the state, where the estimated cost is over $1000, unless proposals are invited by advertisement at least one week before the time for opening the proposals. If there is no newspaper and the estimated expense is less than $2000, notice may be published at the courthouse door, giving the nature of the contract, the time and place for opening bids, and reserve the right to reject all bids. Each proposal shall be accompanied by a sum not less than 2 per cent of the proposal, the contract shall be given to the lowest responsible bidder, and he shall be required to give bond. Contracts involving the expenditure of $200 or more may be awarded to the lowest responsible bidder, after informal bids have been received.

6. *Tax reduction.* Carrying out the intention to reduce ad valorem taxes, Ch. 134 provides that, in the levying of taxes for the years 1931, 1932, and subsequent years, the counties shall not make any levy "which in the gross does not reflect within three per cent a reduction in the ad valorem taxes accomplished" by the state highway commission act, the six months school term act, and other acts tending to this result. The tax rate for the year 1931 shall be the standard from which the reduction is to be made. If a new assessment of property shows a reduction in valuation, a proportionately higher rate may be levied. If there is a deficit or an emergency arises which may require a higher rate, a higher levy may be made, subject to the approval of the local government commission. Any levy made in excess of the limit herein fixed is declared to be absolutely void. The meaning of this enactment is not entirely clear, except as an expressed determination to have reduced ad valorem taxes. It seems to mean that, taking the tax rate for the current year as a standard and deducting the road tax and the general school tax, the rate must show an ad valorem reduction of the remainder within three per cent.

Street Improvements. The general provisions for making local improvements are contained in C. S. 2703-2728. Ch. 222 amends these sections by adding a provision that where a railroad owns the abutting property on one side of a street, the municipality may go ahead with street or sidewalk improvements without having the consent of the railroad; that for the purpose of getting a proper petition, the majority of foot frontage, exclusive of the railroad property, is sufficient. Since a municipality may proceed to make street improve-

ments without petition of the owners of abutting property,* it is clear that where a railroad, owning half of the abutting property, could hold up the improvement by refusal to sign the petition, that the state may authorize the municipality to proceed without the railroad's consent.

CORPORATIONS

Involuntary Dissolution. Ch. 310. Under C. S. 1190 Corporate Charters were automatically forfeited by an adjudication of bankruptcy unless the stockholders took certain specified action within six months. The present act extends a like forfeiture to a corporation which is shown in the Superior Court to have lost its entire assets either through foreclosure, assignment or execution.

Tort and Wage Claims against Public Service Corporations. Ch. 238. C. S. 1138 gave to tort claimants acting promptly on their rights a priority over corporate mortgages subsequently executed. C. S. 1140 made the mortgaged corporation property subject to levy on judgments for tort or wage claims. These sections were amended in 1929 so as to apply only to public service companies.[1] And by a subsequent chapter in that year they were made applicable only to mortgages executed after ratification of the amendment, *i.e.,* Feb. 13, 1929.[2] The present chapter repeals this last amendment and consequently the original act, limited to public service companies, must be regarded as affecting the standing of corporate mortgages whenever executed.

COURTS

Special Judges of the Superior Court. The 1931 Assembly has by Ch. 29 reënacted the provision in the laws of 1929** providing for the appointment of special judges. The law requires the Governor to appoint four special judges, and he may appoint two more if in his judgment the necessity exists therefor. The term of service for these judges is two years, beginning July 1, 1931, and ending June 30, 1933. It is provided that this latest enacted law shall not affect §§1435 (a) and 3884 (a) of the Consolidated Statutes relating to retired Supreme and Superior Court judges as emergency or special judges.

* Shute v. City of Monroe, 187 N. C. 676, 123 S. E. 71 (1924).

[1] N. C. PUB. LAWS (1929) Ch. 28 and 29.

[2] N. C. PUB. LAWS (1929) Ch. 256. See comment in (1929) 7 N. C. L. REV. 375, which gives this amending chapter as No. 254 having been taken from advance proofs. The final numbering was 256.

** Ch. 137.

New District County Courts. Ch. 70 amends Ch. 27 of the Consolidated Statutes by adding at the end of sub-chapter 5, designated as article 25 and relating to the establishment, organization and jurisdiction of general county courts, a new article providing for the establishment of District County Courts. This article adds sub-sections to C. S. 1608.

The new law provides that in any two or more contiguous and adjoining counties of any judicial district of this State there may be established upon compliance with specified terms a court of record of civil and criminal jurisdiction to be known as a district county court. The act also provides for any county where a general county court already exists by virtue of law, and where it is desired to change such county court to a district county court. In such event the judge and solicitor of the county court serve out the remainder of their terms of office as judge and solicitor of the new district county court.

The district county court is given the same criminal and civil jurisdiction as that exercised by the general county court.[2] The practice and procedure of the new court shall also be the same as that prescribed by law[3] for the general county court. The statute provides that the first judge of the court, who may be a licensed attorney and shall be a qualified elector of one of the counties composing the district, shall be elected by the several boards of county commissioners of the counties establishing the district court. He shall hold office until January first following the next general election of county officers, at which time his successor is elected, in the same manner as a judge of the Superior Court is elected, for a term of four years. The judge must reside in one of the counties of the district, hold his terms of court in the several county court houses of the district and shall not be permitted to practice law during his tenure of office.

The judge's salary is fixed by the joint boards of commissioners. His salary, together with that of the prosecuting attorney, is to be paid from the costs collected in the trial of all actions in the court, to which costs there is added a trial fee of five dollars. Should there be a deficiency in the payment of the salaries from the costs, such deficiency is to be paid by the several counties composing the district in proportion as the population of each county bears to the total

[2] N. C. ANN. CODE (Michie, 1927) §§1608 (m), 1608 (n).
[3] N. C. ANN. CODE (Michie, 1927) §§1608 (t), 1608 (u), 1608 (v), 1608 (w), 1608 (x), 1608 (y), 1608 (z), 1608 (aa), 1608 (bb), 1608 (cc), and 1608 (dd).

population of the counties creating the court, on the basis of the 1930 census. A prosecuting attorney is elected for the district by the boards of county commissioners and his salary provided for by them in the same manner as for a judge of the court.

In each county where terms of the district court are held the Clerk of the Superior Court of that county is made ex officio clerk of the new court and is subject to the laws governing clerks of the general county courts.[4] Likewise the sheriffs of each county and their deputies must attend the terms of the district court held in their respective counties, and they are subject to the law governing sheriffs of the general county courts.[5] The court must be open for business and the trial of cases at least once a week in each county in each month in districts composed of four counties or less, and at least once in every eight weeks in districts composed of more than four counties. The time of holding court is to be determined by a joint meeting of the boards of commissioners upon recommendation of the bars of the counties composing the district, or of a majority of the resident lawyers of the said counties.

Any county in the district may, by a resolution properly certified and presented to a joint meeting of the several boards of commissioners abolish the court for that county, and the court may continue as a district court if two or more counties desire its continuance. The court may be abolished at any time by proper compliance with the statute; in which event all cases pending therein are transferred to the Superior Court of the respective counties.

How effective this new court will be in relieving the Superior Court of its load of litigation remains to be seen. It certainly contributes to the growing complexity of our once most simple and efficient judicial system. The more complex the judicial machinery of a state, the more chance there is for expense, delay, and inefficiency in the administration of justice. North Carolina should hesitate long before she transforms her simple, uniform, statewide Superior Court system into a system of local county courts with varying jurisdictions.

Wilson General County Court. Ch. 61, amending Ch. 216, P. L. 1923,[6] applies only to Wilson County. Under the amendment the Wilson General County Court is, in effect, allowed to use the same

[4] N. C. ANN. CODE (Michie, 1927) §§1608 (j), 1608 (l).
[5] N. C. ANN. CODE (Michie, 1927) §1608 (k).
[6] N. C. ANN. CODE (Michie, 1927) §§1608 (f)-1608 (dd) inclusive.

procedure in the service of summons and the return thereof, and in the filing of the complaint and answer, as obtains in the Superior Court. Either party is entitled to trial by jury in civil cases upon demand made in his pleadings; otherwise he will be deemed to have waived the right.

It is important to note that the amendment gives to this county court jurisdiction to try divorces, according to the course and practice of the Superior Court in such actions. Hitherto the legislature had conferred the sole original jurisdiction in all applications for divorce and alimony upon the Superior Court.[7]

The amendment also makes provision for the appointment, by the judge of the court, of a court reporter for a term or from term to term. The court fixes the compensation of the reporter, said compensation to be paid out of a fund accumulated by requiring the plaintiff in all civil actions to make a deposit of $2.50. This amount is taxed against the defendant as part of the costs if plaintiff recovers judgment. The judge in his discretion may require each party to make an additional deposit for the reporter's services should the exigencies of a particular case require it.

Under the law as amended, Wilson County now has a general county court whose powers and jurisdiction are practically equivalent to (and in one respect greater than)[8] the Superior Court of the same county. The situation is still more anomalous in that under the present law, appeals must be taken from this general county court to the Superior Court and thence to the Supreme Court instead of directly to the latter court, since it has been held that under the Constitution the Superior Court is the head of the inferior court system of the state,[9] and as such has appellate jurisdiction over all matters arising in the courts below it. The possibility of double appeals in Wilson County, with the further delay and expense in the administration of justice consequent on such double appeals, is obvious. This needless complication of our present Superior Court system by the creation of these county courts, to say nothing of the resulting absurdities and inconsistencies in our judicial system, could have been obviated had the citizens of the State seen fit to adopt the re-

[7] N. C. ANN. CODE (Michie, 1927) §1655; Williamson v. Williamson, 56 N. C. 446 (1857); Barringer v. Barringer, 69 N. C. 179 (1873).

[8] The General County Court has jurisdiction over contract actions involving $200 or less.

[9] Rhyne v. Lipscombe, 122 N. C. 650, 29 S. E. 57 (1898); see also Tate v. Commissioners, 122 N. C. 661, 29 S. E. 60 (1898).

cently proposed constitutional amendment providing for solicitorial districts separate and distinct from the judicial districts.[10] Such an amendment would have made possible the expansion of the Superior Court system along logical, horizontal lines in the effort to relieve congested dockets. The result would have been more judicial districts with more Superior Courts and more judges to try cases, instead of more new separate courts with new jurisdictional limits pregnant with many difficulties for the lawyer and the litigant.

CRIMINAL LAW

County Criminal Courts. Ch. 89 authorizes boards of county commissioners (1) to establish county criminal courts, (2) to appoint the judge, prosecuting attorney and clerk for two year terms at appropriate salaries. These courts are to have jurisdiction over all criminal offences committed within the counties and below the grade of felony, and the same power as the Superior Court in the punishment of crimes of the same grade. Convicted persons have the right of appeal to the Superior Court and to a trial *de novo*. Jury trials may be demanded by the state or the defendant or may be ordered by the court on its own motion. Process issued by the court is to be directed to the usual police officers of the county to which the process is directed and on being attested by the seal of this county, runs anywhere in the State of North Carolina. This act is supplemental to the act authorizing the establishment of general county courts.

Extradition. Ch. 124 codifies and clarifies the procedure in extradition cases. It sets forth (1) the types of criminals to be delivered upon requisition, (2) the form and contents of the demand, (3) the Governor's power to investigate the case, (4) the right of the accused to a writ of habeas corpus, (5) the right to arrest with and without a warrant and to commit to jail prior to receipt of requisition papers, (6) the right of the accused to bail, etc.

Abandonment of Child by Mother. Ch. 57 makes the abandonment by a mother of her legitimate or illegitimate child under sixteen years of age a misdemeanor.

Payment of Costs. Ch. 252 amends C. S. 1288 in providing that where a person is convicted in a Justice, Mayor, County or Recorder's Court, in any criminal action within the jurisdiction of a Justice of the Peace, the convict shall pay the costs. When he is acquitted,

[10] N. C. PUB. LAWS 1929, Ch. 140. Re-enacted in identical language by Ch. 367, discussed *infra*, p. 357.

the complainant shall pay the costs and may be imprisoned for the non-payment if the prosecution is adjudged frivolous or malicious. But in no such case shall the county be liable to pay the costs.

Prisons. Ch. 110 allocates $400,000 to carry out recommendations of the Prison Advisory Commission for the erection of a new prison building with equipment and facilities for vocational work among prisoners. Ch. 142 enables two or more counties to establish a district prison farm in lieu of separate jails.

DIVORCE

Separation for Five Years. Ch. 72. Absolute divorce may be granted upon the application of either party, when the husband and wife have been separated, either under a deed of separation or otherwise, and they have lived separate and apart for five years, no children having been born of the marriage, and the plaintiff has resided in the state for the five years. It is also provided that this shall constitute an additional cause for divorce and shall not have the effect to repeal other laws. This act is not made an amendment to C. S. 1659, which gives the right of action to the injured party, but either party may maintain the action without regard to the cause for separation.

DRAINAGE LAWS

Ch. 227 amends C. S. 5280 by providing that the report called for in that section, and to be filed with the clerk, apportioning the cost of maintaining the canal or drain, shall constitute a lien on the land affected, in the nature of a judgment lien, to be enforced by execution as in case of judgments.

A new section (C. S. 5280a) is added, providing that the freeholders, commissioners or jurors, appointed in any proceeding under the drainage statutes, are authorized, during the establishment of and providing for the construction, maintenance and payment for any canal or drain, to make further assessments for costs and expenses, when it shall be determined by the clerk of the Superior Court that the prior assessments are insufficient. In case of a vacancy arising in the commissioners appointed in any such proceeding, the clerk may fill the vacancy by appointing some disinterested freeholder.

Ch. 273 amends C. S. 5361, regulating the sale of land for assessments in drainage proceedings. The original section authorized the sale to be made on the first Monday in February in each year, and if for any cause the sale could not be made on that day, it might be

continued from day to day for four days, or readvertised and sold on the first Monday in March, without any order therefor. Such sales may now be made at the place and during hours before designated, "on any day, except Sunday or another legal holiday, which may be designated by the board of drainage commissioners." For necessary cause, the sale may be continued from day to day for four days, or re-advertised and sold on any day designated by the board, without any order therefor during the same calendar year. No order of court is required for such sale or resale. This amendment is retroactive, to have effect as if ratified prior to January 1, 1929, and no sale is to be declared void because made on a day other than as specified in the statute.

EDUCATION

University Consolidation. Ch. 202 consolidates and merges the three chief educational institutions of the State into the University of North Carolina, effective March 27, 1931. Actually, however, the consolidation will not get under way until after July 1, 1932. Until that time, the respective, separate institutions and their boards of trustees are to function as heretofore. The new, consolidated board, 100 strong, as elected afterwards, for the same tandem terms as are now required, is to take office July 1, 1932. In the meantime, a commission of twelve, equally representative of the three institutions and of the state at large, and assisted by "distinguished and competent experts in the several pertinent fields of higher education in America," is to study and report upon the details of consolidation and administration. The three institutions are, in the main, to continue to be located at Raleigh, Greensboro, and Chapel Hill. But the ultimate location of particular schools, departments and divisions of work within the institutions, is to be subject to the recommendations of the commission, unaffected by the statute. The commission is to report to the Governor and new consolidated board of trustees by July 1, 1932. That board is to modify or approve the report, and, as adopted, to put it into effect without the need of further legislation.

The name of the institution at Chapel Hill remains the same; that of the institution at Raleigh becomes the North Carolina State College of Agriculture and Engineering of the University of North Carolina; that of the institution at Greensboro becomes, instead of the North Carolina College for Women, the Woman's College of the University of North Carolina.

Gifts, endowments, and trusts heretofore or hereafter created for either of the three institutions are to be preserved intact for the use of that institution.

After July 1, 1932, all degrees, certificates and marks of distinction are to be conferred by the University of North Carolina, but the particular institution at which they were earned is to be designated, and the recipients are to be recommended to the new board of trustees by the faculty of that institution. One of the questions to be considered by the commission is whether the University of North Carolina should award diplomas or other certificates to former graduates of the North Carolina State College of Agriculture and Engineering and the North Carolina College for Women.

By a specific provision in title VII, §3 of the Appropriation Act, the appropriations therein made to the three individual institutions are, during the second year of the biennium, to become interchangeable, in accordance with the innovations inaugurated by the new board of trustees.

McLean Act. The Constitution of North Carolina, in art. ix, §2, provides: "The General Assembly . . . shall provide by taxation and otherwise for a general and uniform system of public schools. . . ." Section 3 of the same article adds: "Each county of the state shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year. . . ."

Heretofore, these schools have been maintained by locally imposed and collected taxes on property, aided by a constantly mounting state equalization fund. For a decade, the state has derived its revenues solely from franchise, excise, and income taxes. Before the 1931 General Assembly had been in session a month, the MacLean act was passed. This is now Ch. 10. It declares a policy to make the above quoted constitutional provisions "effective, so that the public school system for the constitutional term of at least six months shall be general and uniform in all the counties and shall be *maintained by the state from sources other than ad valorem taxation on property.*" The local counties and districts are of course free to add to the state-supported six-months term, as many months as they wish, at their own expense. And, doubtless, to the state standard of work. The italicised portion of the declaration of policy in the MacLean act precipitated a deadlock which kept the 1931 General Assembly in session longer than any in the history of the state, for

a total of approximately five months. The clash was over the method or methods of raising revenue for the support by the state of the minimum six-months school term. A compromise, however, was effected, and a Revenue Act containing a fifteen cent per one hundred dollar tax on property enacted. Thus the policy announced in the MacLean act has been modified. The appropriation for the public schools is to be derived partly from increases in and new forms of franchise, excise and income taxes, and partly from a small property tax.

Deficits—Measure to Meet. Fearful that the compromise Revenue Act will not yield enough to meet state appropriations for all purposes, educational and otherwise, Ch. 371 is aimed at an expected deficit. The first section withdraws from the Executive Budget Act and from the power of the Director of the Budget to reduce appropriations to meet income, the appropriation made for the state support of the minimum six-months school term. Instead, that appropriation is to go to the schools intact.

The second section of Ch. 371, however, is not limited to the public school appropriation. It authorizes the State Treasurer, upon direction of the Director of the Budget, and by and with the consent of the Governor and Council of State, to issue general fund notes of the state, and renewals thereof, in such amounts, rates of interest, dates of issuance and of maturity, and methods of sale, as may be determined by the Governor and Council of State, for these three purposes: (a) to balance revenues and disbursements on June 30, 1931, at the close of the present fiscal year, so that the state's finances may start the new biennium with a clean slate; (b) in anticipation of tax collections, from time to time, so as to make the payment of appropriations to the various institutions, departments and agencies as even as possible during the next biennium; and (c) "to preserve the best interest of the state in the conduct of its various departments, institutions and agencies during each fiscal year of said biennium."

Elections

The Corrupt Practices Act. Ch. 348 makes more effective the control of the state over corrupt practices in primaries and elections. Following earlier statutes passed in over one-half of the states, supervision under the North Carolina Act takes the following forms. First, there are requirements of publicity as to campaign revenues and expenditures. It is made the duty of every candidate, and every

chairman and treasurer, of a campaign committee, to keep detailed accounts of all contributions and all expenditures made to or for any candidate or committee, and the name and address of the contributor and the person paid the expenditure. Every person receiving contributions for a candidate or committee and every person who makes any expenditure in behalf of a candidate or committee must render a detailed account of such contributions and expenditures to the candidate or committee. Candidates for nomination for state and federal offices must make a statement under oath of all pre-primary expenses to the Secretary of State ten days before the primary and within twenty days after the primary a statement of all actual expenditures in the primary. Candidates for nomination for county offices must file their statements with the Clerk of the Superior Court. Similar statements are required of the campaign committees.

Secondly, there are restrictions as to the sources of expenditures. Corporations doing business in the state are prohibited from making contributions, and both criminal and civil liability are provided for any officer of the corporation who aids and abets in the violation of the prohibition. The definition of "contribution" in the statute is very broad, including any "gift, payment, subscription, loan, advance, deposit of money, or anything of value, and includes any contract, promise or agreement to give . . . whether or not said contract . . . is legally enforceable."

Thirdly, there are limitations on the amounts to be expended. It is made a misdemeanor for a candidate to receive contributions or to make expenditures or to assent to or permit contributions and expenditures in behalf of his candidacy in any primary[1] in excess of the following amounts: for Governor and U. S. Senator, $12,000; for Congressman, $6,000; for Lieutenant-Governor, $2,500; for any other elective state office, one-half annual salary; for a member of the General Assembly, $600. In addition candidates may pay their transportation expenses and lodging bills while campaigning. In a second primary a candidate may spend one-half of the above amounts. The statute does not make it clear whether the limitations are on the expenditures of the candidate personally or upon the total amount of the fund available for the conduct of the campaign.

Fourthly, there is a number of practices declared to be felonies

[1] The word "election" does not appear in the statute, but "candidate" is defined earlier as "an individual whose name is presented for any office to be voted upon on any ballot, at any primary, general or special election."

or misdemeanors. It would seem that most of these sections have been incorporated in the statute from C. S. 4185-4199 (b); but there is no repealing clause in the act and there are certain sections in the Code clearly left unchanged.[2] Limitations of space forbid a detailed collation. The necessity here presented for such a comparison seems to demonstrate clearly the desirability of a system of repeal by specific reference to the sections of the repealed law.[3]

Petition of Independent Candidate for Municipal Office. Ch. 223 amends Ch. 164, §6, P. L. 1929, N. C. Code (Michie, 1929 Supp.) §6055 (a6), so as to define the number of qualified voters who must sign a petition to enable an independent candidate to run for a municipal office. The original section required that the petition be signed "by at least ten per cent of those entitled to vote for a candidate for such office according to the vote cast in the last gubernatorial election in the political subdivision in which such candidate may be voted for." The new amendment, badly worded, apparently means that in municipal elections, the number who must sign the petition must be equal to ten per cent of the votes cast for the successful candidate for that office in the last municipal election. It reads: "The written petition provided herein, in municipal elections shall be signed by at least ten (10%) per cent of the votes cast for the candidate running, in the last municipal election, for the particular office."

Evidence

Judicial notice. An act (Ch. 30) of similar purport to that recommended in the December number of this Review[1] was passed. It provides that the court shall take judicial notice of the laws of any other state, territory or country.

Motor vehicle accidents. An act (Ch. 88), probably declaratory of existing law, provides that in civil actions arising from motor accidents, evidence of the license number borne by the automobile which inflicted the injury together with the introduction of a certified copy of the record of the Commissioner of Revenue in respect to such license number and the applicant therefor, shall be competent evidence of the ownership of the vehicle.

[2] *E.g.*, N. C. Ann. Code (Michie, 1927) §4199.
[3] Van Hecke, *Four Suggested Improvements in the North Carolina Legislative Process* (1930) 9 N. C. L. Rev. 1, 3.
[1] (1930) 9 N. C. L. Rev. 39, 40.

HIGHWAYS

Ch. 145, amending the 1921 highway law and acts amendatory thereof, makes changes which may be summarized under four heads:

1. *The State Highway Commission.* In lieu of the old State Highway Commission of nine district commissioners and a chairman, a new commission consisting of six commissioners and a chairman is set up. The old district lines are wiped out, and the members of the new commission are to represent the State at large. One of the six commissioners must be a member of the minority political party. All are appointed by the Governor subject to the confirmation of the Senate, and any member may be removed by the Governor for cause. After the first appointments, which run for various periods, all commissions are to be for terms of four years. The chairman will hold a full-time position with a salary of $7,500. The remaining commissioners will receive expenses and a per diem of $10.

The new commission will succeed to all the powers of the old commission, and in addition will undertake the tasks imposed upon it by the new law.

2. *County roads.* On July 1, 1931, the State Highway Commission is to take over and assume full charge of all county roads in the State. At the same time all local road-governing bodies will be abolished, and henceforward all local taxation for roads is forbidden, except for the repayment of outstanding indebtedness. Likewise, local bond issues for roads are forbidden, except for the funding of existing obligations. All local laws maintaining in force the ancient tax of the labor of citizens for road building are repealed. In view of the abolishment of the local road-governing bodies, the boards of county commissioners are constituted fiscal agents, in their respective counties, to levy taxes and pay off all outstanding road bonds and other road debts of the minor political divisions. All road building equipment of any county, township, or district road-governing body is to be turned over to the State Highway Commission on July 1, 1931.

A map of the county roads to be taken over by the State must be posted at the courthouse door of each county for 30 days from May 1, 1931. Objections to the map as posted may be entered by the county board of commissioners or the street-governing body of any town or city. In the event of such objection, the State Highway Commission shall have final authority to decide what roads shall constitute the county road system to be taken over by the State. Once

a road shall have been taken over by the State Highway Commission it may be abandoned only with the consent of the board of county commissioners of the county in question.

In the future only the boards of county commissioners will have the right to petition the State Highway Commission to change or abandon roads or to build new ones (although the street-governing body of any town directly affected must be heard by the State Highway Commission if it wishes to offer objection). The boards of county commissioners, in their turn, must hear all petitions for road changes signed by 25 or more citizens. Furthermore, any board of county commissioners may complain to the State Highway Commission of failure to maintain the county roads in good condition, and in such complaints appeal shall lie from the State Highway Commission to the Governor, who is charged with adjusting the differences between the two bodies. Where there now exists a road district "comprised of territory in two or more counties with a population in excess of twenty thousand inhabitants" as shown by the 1930 census, the Governor is to appoint a road commission of three members, which shall exercise, so far as the roads of that district are concerned, all the functions which the boards of county commissioners would otherwise exercise relative to the adoption, alteration, and maintenance of the county road systems.

Finally, the State Highway Commission is to appoint, with the approval of the Governor, directors of county roads, who will act as contact officers between the State Highway Commission and the various boards of county commissioners.

3. *Taxation and the appropriation of funds.* The new law raises the tax on motor fuels from 5 cents to 6 cents per gallon. The county aid road fund is, of course, abolished, but the State Highway Commission is directed to set aside from its current funds each year a sum equal to the estimated yield of two cents of the gasoline tax, but in no event less than $6,000,000. This sum is to be devoted to the maintenance and improvement of the county roads to be taken over by the State on July 1, 1931. No basis for distributing this sum among the various county road systems is provided except the injunction that such distribution must be equitable in view of the traffic requirements and the convenience of the public.

The new rate of taxation on motor fuels went into effect on April 1, 1931. Rebates are allowed only on motor fuels (1) sold to the United States government; (2) used in aircraft; (3) used in farm

tractors; (4) used in motor boats principally for fishing; and (5) used in manufacturing where gasoline is an ingredient, solvent or vehicle in the process. Moreover, rebates are allowed only to those holding refund permits issued by the Commissioner of Revenue and then only upon sworn affidavit accompanied by invoices marked at the time of purchase with the words: "refund will be requested." A provision is further included to the effect that if any court of last resort holds the method of refund permits invalid, then all provisions of the law for refunds shall thereby be annulled. Should rebates in the future be allowed by the courts to any counties purchasing gasoline from parties other than licensed distributors, then the sums so allowed as rebates shall be deducted by the State Highway Commission from the amount available for maintenance of the county roads of the county in question.

4. *Convict labor.* The State Highway Commission is to establish not less than five prison districts with a camp or camps in each, located with the approval of the Governor. Present prison camps are to be taken over by the State Highway Commission, and hereafter all prison camps in the State are to be under the direction of the State Highway Commission and operated under rules made by the State Highway Commission. Such rules, however, are to be approved by the Governor and the State Board of Public Welfare and Charities.

All prisoners in county road camps on July 1, 1931, are to be turned over to the State Highway Commission, and thereafter, the judges of the courts will, in lieu of assigning prisoners to the county road authorities, assign the same classes of prisoners to the State Highway Commission's camps. In case, however, a county or a town operates a farm with convict labor, a sufficient number of convicts for the operation of the farm will continue to be assigned there.

The convicts thus assigned to the roads may be employed by the State Highway Commission either to work on the county road systems to be taken over on July 1 or to work on the highways of the state highway system as constituted prior to the adoption of this law.

In addition to providing for this use of convicts, the new law continues the provisions for the use of prisoners from the state prison by allowing agreements between the State Highway Commission and the Board of Directors of the State's Prison for the use of such prisoners at rates of compensation not in excess of that prevailing for free labor. In case of disagreement between the State Highway Commission and the Prison Board the Governor shall have final

decision on this, as well as on the matter of the use of prison-made products by the State Highway Commission.

INSURANCE

Life Insurance—Creditors' Rights. Ch. 179, in form an independent statute, is actually an amendment of C. S. §6464. It makes six changes[1] in the present statutory exemption of the beneficiary of a life insurance policy from the claims of creditors of the insured. (1) It leaves out the requirement of the present statute that the beneficiary to be so protected must have an insurable interest. This is undesirable in the case where the insurance is effected by one on the life of another for a third person.[2] (2) It extends the present exemption to include beneficiaries made such by a change of beneficiaries[3] and to include assignees of the policy.[4] In either case, however, there must have been no attempt to defraud creditors. (3) It is to be immaterial that a power to change the beneficiary has been retained. (4) It is also to be immaterial that the insurance is payable to the insured in case the beneficiary predeceases him. (5) The creditors, where there has been an attempt to defraud them, may recover the premiums with interest,[5] out of the proceeds of the policy. (6) But the insurer is to be discharged by payment unless notified by creditors of their claim, before payment.

The new statute expressly applies to policies of insurance heretofore or hereafter written. The courts, however, will not permit it to

[1] See VANCE, INSURANCE (2d ed., 1930), 539, 546, 621, for exemption legislation in other states.

[2] See VANCE, note 1, at 154 *et seq.*

[3] Compare Pearsall v. Bloodworth, 194 N. C. 628, 140 S. E. 303 (1927) (change of beneficiary from estate to wife while insolvent).

[4] Compare, as to the need for an insurable interest in the assignee, Powell v. Dewey, 123 N. C. 103, 31 S. E. 381 (1898) (partnership); Hinton v. Mutual Reserve Fund Life Assn., 135 N. C. 314, 47 S. E. 474 (1904) (wife assigned insurance payable to her estate to her husband's creditors); Hardy v. Aetna Life Ins. Co., 152 N. C. 286, 67 S. E. 767 (1910) s. c., 154 N. C. 430, 70 S. E. 828 (1911) (uncle assigned insurance payable to his estate to nephew); Johnson v. Mutual Benefit & Ins. Co., 157 N. C. 106, 72 S. E. 847 (1911) (bona fide sale); McNeal v. Life & Cas. Ins. Co. of Tenn., 192 N. C. 450, 135 S. E. 300 (1926).

[5] As to the confused state of the decisions, clarified by this clause, see VANCE, note 1, at 621. The statute does not of course deal with the case where the premiums have been paid out of stolen funds and the victim of the theft seeks to reach the entire proceeds of the policy. As to that, see VANCE, note 1, 618-621.

prejudice the rights of existing creditors in previously issued policies.[6]

Notice of Non-payment of Premium. Ch. 317 amends C. S. 6465 by adding to the provisions for notice of non-payment of premium on life policy before forfeiture a provision for notice to the insured where the policy is accident and/or health and the employer has failed to make payment pursuant to a payroll deduction arrangement.[1]

Group Insurance. Ch. 328 amends C. S. 6466 (a) by providing that the term "employees" in the definition of group insurance shall include officers, managers, and employees of subsidiary or affiliated corporations, firms, or individuals whose business is controlled by a common employer.

Mutual Burial Associations. Ch. 71 provides that death benefits under contracts of mutual burial associations or assessment insurance associations issuing contracts to their members providing benefits in excess of $100 must be paid only in lawful currency or coin and not in services.

Fraternal Benefit Societies. Ch. 38 repeals C. S. 6530. The new enactment provides for the insuring by fraternal beneficiary societies of members' dependent children between the ages of one and sixteen for amounts ranging from $20 to $1,000. The repealed statute had set the ages as between two and eighteen and the amounts from $34 to $600.

JURIES

The thirteenth juror. This Assembly, doubtless retained a fresh recollection of the trial of Beal and fifteen other defendants for the murder of Aderholt during the Gastonia disturbances in 1929, which trial after the selection of the jury and the examination of a number of witnesses, was abruptly terminated by the fact that one of the jurors was seized with an acute attack of emotional insanity. The delay and expense of a new trial followed.* Some remedy for the recurrent risk of the frustration of lengthy trials by mischances of this sort was demanded. The obvious remedy would be a statute which should provide that if any juror should die or become incapacitated during the trial, the remaining members of the jury should be empowered to render the verdict. The practical difference to the

[6] Bank of Minden v. Clement, 256 U. S. 126, 41 Sup. Ct. 408, 65 L. Ed. 857 (1921); Rice v. Smith, 72 Miss. 42, 16 So. 417 (1880); Boehmer v. Kalk, 155 Wis. 156, 144 N. W. 182 (1913).

[1] See (1929) 7 N. C. L. REV. 386.

* See State v. Beal, 199 N. C. 278, 284, 154 S. E. 604 (1930).

litigants between a jury of eleven and twelve is almost nil. Certainly such a fortuitous diminution in numbers is no more likely to injure one party than the other and the remaining eleven could be trusted to deal justly. It is unfortunately true that our Supreme Court has adopted the view that a verdict by eleven, *even by consent of both parties,* cannot stand in a capital case.[2] The Supreme Court of the United States has recently sanctioned such a verdict[3] and has let in the flood-light of common sense on the subject. At all events, the legislature felt it necessary to resort to the awkward and clumsy expedient of the thirteenth juror. Chapter 103 provides that in any case, civil or criminal, "when it appears to the judge presiding that the trial is likely to be protracted" an additional juror may be selected who shall be sworn and shall sit near the jury and shall hear all the proceedings. If a juror dies or becomes disqualified or incapacitated before the final submission of the case to the jury, this thirteenth juror takes his place. The act does not take effect until July 1, 1931.[4]

Additional jurors from other counties. Ch. 308 amends C. S. 473 to allow the presiding judge *on his own motion,* as well as upon suggestion as provided for in C. S. 471, to cause additional jurors to be summoned from any county in the same judicial district *or in any adjoining district* to try a case in the county where it is pending and from which removal of the cause was sought because of the possibility of an unfair trial by a local jury. The amending act allows the judge to summon jurors from counties in an adjoining judicial district if he does not desire to take them from a county in the same judicial district in which the case is pending. He was restricted to the same district by the former law.

Landlord and Tenant

Protection for agricultural tenant. Ch. 173 amends C. S. 2347 to permit an agricultural tenant for years, in case the tenancy is terminated by the sale of the land under any mortgage or deed of trust, to continue his occupation to the end of the current year and to apportion the rent. The tenant already had such protection where the lease was determined during a current year by the happening of any *uncertain event* cutting short the estate of the lessor.

[2] State v. Rogers, 162 N. C. 656, 78 S. E. 293 (1913).
[3] Patton v. U. S., 281 U. S. 276, 74 L. ed. 854 (1930).
[4] For further discussion, see (1929) 8 N. C. L. Rev. 122.

LAW IMPROVEMENT COMMISSION

At the beginning of the present school year the law faculty at the University of North Carolina determined that it would be desirable in view of the legislative session impending in the spring, to make some plans for coöperation by the school in the work of the law-makers. It was felt that the faculty had been too long content merely to discuss in class the desirability of legislative changes of existing rules of substantive law and procedure. It was thought that if these constantly reiterated suggestions as to improvements in the texture of the law were worth making at all they were worth presenting in a practical and effective way to the body vested with the responsibility of actually making the proposed changes.

Following out this discussion, each member of the faculty was requested by the group to assemble a number of the proposals for improvement which had been evolved in the teaching of his subjects, and to prepare a statement of each proposal with a description of the existing law and the reasons for a change. It was agreed that it was desirable at this beginning stage to select out the less controversial suggestions, and those which would seem most likely of passage, with the hope that when a beginning of coöperation between the school and the legislature had been made, the way would be opened to the introduction later of more controversial reforms. These proposals and supporting statements by the faculty were at once prepared, and jointly criticised and amended in faculty meetings, and were then published in the December, 1930, issue of the NORTH CAROLINA LAW REVIEW. In each instance, the detailed wording of the proposed changes was made a part of the proposal. The suggestions made in the LAW REVIEW dealt with matters in the fields of Banks and Banking, Civil Procedure, Contracts, Courts, Criminal Procedure, Evidence, Legislation, Property, Torts, Trusts, and Warehouse Receipts.

After the proposals had been published in the pages of the LAW REVIEW a small conference was held at the University for the purpose of securing the opinion of some representative lawyers and legislators as to the practicability of the measures proposed and as to ways and means of securing favorable consideration by the General Assembly. This meeting was called by Hon. Willis Smith, chairman of the Committee on Legislation of the State Bar Association. To it were invited all the members of that committee, and a small number of legislators known to the law faculty here as being interested in the

progress of the law. In addition, representatives of the law faculties of Duke University and Wake Forest University were asked to participate.

This conference group consisted of Messrs. Willis Smith, Henry M. London, E. B. Jeffress, M. K. Blount, H. G. Connor, Jr., A. L. Butler, J. B. Crudup, R. G. Cherry, A. A. Hicks, and all members of the law faculty of the University of North Carolina. It proved to be a most lively and successful interchange of views. In many instances suggestions were made by the lawyers which disclosed the need for modification of the proposals and in others the proposals were shown to be unnecessary changes in view of the actual practice. In other cases the sense of the group was that there was no hope of securing any legislative support for the particular suggestion. In the upshot, out of more than twenty proposed bills, ten were selected as embodying needed changes which offered some hope of success. Several of these were redrafted to conform to suggestions made in the conference. Just before the conference adjourned, Senator M. K. Blount expressed the view that some form of legislative sanction should be secured for the continuance of such conference in future and proposed that a commission be created which would consist of members of the law faculties and members of the legislature for the purpose of supervising research and drafting proposals for the improvement of the law.

This conference met about a month before the convening of the Assembly. A week before the opening of the session, reprints of the proposals as they appeared in the LAW REVIEW were distributed to all the members of the Assembly.

When the session opened, the chairman of the conference-group became Speaker of the House. Others who attended the conference became members of the House and Senate Judiciary Committees to which all these proposals would eventually be referred. Bills embodying the proposals finally sponsored were at once introduced, and then shortly after the opening of the session, a joint session of the House and Senate Judiciary Committees to consider these bills was arranged. Before this joint committee members of the University of North Carolina law faculty submitted oral arguments in favor of the proposals. A great many questions were asked by the committee members and the bills were fully explained. Many legislators seemed to be deeply interested and expressed themselves as gratified at the

willingness of the law faculty to engage in the preparatory work of legislation.

For the next month of the legislative session, the various faculty members kept in constant touch with those legislators who had attended the conference and who had individually agreed to keep track of particular bills. Many of the bills fell by the way upon encountering opposition on the floor. Some died in committee, but five finally reached the statute book. These were the following:

The Act Empowering the Courts to Take Judicial Notice of the Laws of Other States and Countries, (Ch. 30)

The Uniform Declaratory Judgments Act (with slight modifications suggested in the conference) (Ch. 102)

The Act Providing for Alternative Pleading (Ch. 344)

Amendments to the Warehouse Receipts Act (Ch. 358)

The Act Creating a Commission for the Improvement of the Laws (Ch. 98).

The Commission for the Improvement of the Laws which is perhaps the most important result of the conference, furnishes the machinery by which coöperation between the law faculties and the legislature may be continued in future under favorable official auspices. The Commission is to consist of the following:

(a) *Official* members: The Attorney-General, the Chairman of the Judiciary Committees (of which there are four) in the Assembly, two judges of the Supreme and/or Superior Court (appointed by the Governor).

(b) Unofficial members (all appointed by the Governor): two attorneys in active practice, three law professors from the three universities in the state, and two laymen. The purpose of the Commission is to focus the efforts of the law schools upon research into the actual working of present rules of law and upon the examination of improvements adopted in other jurisdictions and finally upon the drafting of proposals for change. The work of the schools will, in the meetings of the Commission, be subjected to keen, helpful criticism by lawyers, judges, and laymen. The proposals will be carefully redrafted in the light of this criticism, and then the residuum will be placed in the hands of the incoming legislators at least a month before the opening of the session. The Assembly will listen with great respect to proposals which some of its own leaders have had a hand in framing. These legislator-members of the Commission will

accept responsibility for keeping the bills on the move through the committees and for securing a favorable hearing upon the floor. Such, at least, is the hope which our experience with the little informal, unofficial conference leads us to hold.

LIENS

Lien on textiles in possession of independent contractor. The textile industry has evidently felt the need for some extension of the common-law doctrine which gives a lien to one who as an independent contractor is vested with the possession of another's materials or chattels for the purpose of doing work on them for their improvement.[1] Chapter 48 provides that concerns "engaged in the business of finishing, bleaching, mercerizing, manufacturing, dyeing, weighing, and printing or otherwise processing cotton, wool, silk, artificial silk," or mixtures of the same, shall have a lien on goods of others coming into their possession for such processing. The lien is not restricted to the charge on the particular goods but extends to the entire balance of account for similar services owed by the same owner. The goods must be delivered to the lien-holder by one who has been entrusted with them by an owner. A power of sale upon 60 days notice is conferred upon the lien-holder.

Agricultural Liens for advances. C. S. 2481, which gives an agricultural lien to a mortgagor or trustor in possession of the encumbered lands who has advanced money or supplies, is amended by Ch. 173, §2, to give the same protection to the tenants, lessees or croppers of said mortgagors or trustors.

MORTGAGES

Reopening Sales upon Advanced Bids. Ch. 69, §2591 of the Consolidated Statutes provided for keeping open for ten days sales of land made under power of sale in a mortgage or deed of trust, or by an executor or administrator under a power of sale in a will, and authorized the clerk of the Superior Court to order a resale upon the filing of an advanced bid. The amending act of 1929* made this apply also to sales "by order of court in foreclosure proceedings in the superior court." By the recent amendment (Ch. 69), the first sentence of the original section reads as follows: "In the foreclosure

[1] Johnson v. Yates, 183 N. C. 24, 110 S. E. 603 (1922). See also N. C. ANN. CODE (Michie, 1927) §2435.

* Pub. Laws, 1929, ch. 16.

of mortgages or deeds of trust on real estate, or by order of court in foreclosure proceedings either in the superior court or in actions at law, or in the case of the public sale of real estate by an executor, administrator, or administrator with the will annexed, or by any person by virtue of the power contained in a will, the sale shall not be deemed to be closed under ten days." The meaning of this amendment is not entirely clear. The amendment of 1929 inserted the words "or by order of court in foreclosure proceedings in the Superior Court." This amendment repeals the former and inserts the words "or by order of court in foreclosure proceedings either in the Superior Court or in actions at law." While a proceeding for foreclosure must be in the Superior Court and is an equitable remedy under the former practice, the distinction between actions at law and suits in equity is abolished, and the remedy is by a civil action. The provision for resale upon an advanced bid has been held not to apply to a sale of land under execution,[2] and to make the provision apply to such sales, or to other than foreclosure sales under order of court, would seem to be adding something to the meaning of the words employed.

Motor Vehicles

Safety Responsibility Act. Ch. 116. The Safety Responsibility Act, as sponsored by the American Automobile Association, has been adopted in one form or another by some eight states and two Canadian provinces. The purpose of the legislation is to promote safety on the highways and to secure financial responsibility for accidents. In the original act, the burden of responsibility is placed on two classes of the driving public; first those who have violated certain of the more serious provisions of the law governing the operation of motor vehicles, such as the hit-and-run driver, or the motorist who drives recklessly or while intoxicated, in short, those offences for which the guilty driver's license would be removed by a Driver's License Law, and, second, those against whom have been recorded judgments of a certain amount ($100) and who have allowed those judgments to remain unsatisfied.

In such cases, the driver's license is suspended until he gives proof of his ability to respond in damages of $500 or $1000 for personal injuries and $1000 for property damages. This can be done by taking out an insurance policy for such protection or filing a bond.

[2] Weir v. Weir, 196 N. C. 268, 145 S. E. 281 (1928).

The North Carolina statute (Ch. 116) provides only for the person against whom there is an unsatisfied final judgment in excess of $100 resulting from the ownership, maintenance, use or operation of a motor vehicle. After thirty days, the operator's license and all the registration certificates of said person shall be suspended and shall not be renewed while "any such judgment remains unstayed, unsatisfied and subsisting and until every such judgment is satisfied or discharged *or* until said person gives proof of his ability to respond in damages for future accidents."

The North Carolina act differs in several substantial matters from the American Automobile Association proposed law. In the first place, North Carolina is the only state which is trying to use the Safety Responsibility measure without a state-wide driver's license law. This putting of the cart before the horse will mean greatly impaired enforcement, particularly in view of the small force of state police. The purpose of the law, which is to secure safety, is not furthered as well by taking the car off the road as by removing the unfit driver.

Likewise the North Carolina act provides nothing for the first injury. Every driver is given the privilege of one accident as far as the present law goes. The license may be renewed either by paying the judgment *or* by proving financial responsibility. The American Automobile Association act uses the conjunctive "and" instead of "or." This change from the American Automobile Association act is probably due to a fear of unconstitutionality if the word "and" were used.[1] This seems to be unfounded and the highest courts of California and Massachusetts have upheld the type of act which compels the first judgment to be satisfied as well as the proving of responsibility for subsequent accidents.[2]

However when the North Carolina act is dealing with non-residents, it provides that they shall satisfy or discharge the judgment against them *and* furnish proof of financial responsibility before having licenses renewed. This discrimination against non-residents presents a constitutional problem which will undoubtedly come before the courts, but much authority would sustain it.[3] The practical dif-

[1] Ex parte Lindley, 291 Pac. 638 (Cal. App. 1930).

[2] Watson v. Division of Motor Vehicles, 298 Pac. 481 (Cal. 1931); *In re* Opinion of Justices, 251 Mass. 569, 147 N. E. 681 (1925).

[3] La Tourette v. McMaster, 248 U. S. 465, 39 Sup. Ct. 160, 63 L. ed. 362 (1919) upholding discrimination between "residents" and "non-residents" in granting licenses to act as insurance brokers. For cases involving statutes

ficulty is to understand what the non-resident would be doing with a North Carolina automobile license unless he sojourned in the state for some substantial part of each year.

It might be pointed out that the driver of a car from a city which has a local driver's license ordinance would, under the provision of the statute, lose his driver's license as well as his car license. This creates a discrimination in favor of the car owner from cities and towns and the country districts where no driver's license requirement exists.

There is no provision in the statute for reciprocity with other states. It is provided that the judgment against the owner or operator of a car resulting from the ownership, use or operation of the car shall be rendered by a "court of competent jurisdiction in this state." The Uniform Act makes provision for taking away a driver's license where such a judgment is rendered against him in other states having a Safety Responsibility Act.

It would appear that the chief difficulties ahead of the North Carolina statute are in its administration. Without a state-wide driver's license law and an adequate state highway police system it is doubtful that the law will accomplish the purposes for which it is enacted, to wit, safety on the highways and financial responsibility in case of accident.

PENSIONS

Check on Pension Roll. Obviously to prevent the recurrence of a pension fraud such as was recently brought to light in Guilford County and which had existed over a period of many years, the present Assembly passed Ch. 144 providing for a closer check on the pension rolls in each county. The Register of Deeds and the Clerk of the Court of each county in the State are required to check the roll of pensioners furnished each Clerk, with the record of vital statistics in the office of the Register of Deeds within ten days after the receipt of the pension roll, which roll must be furnished by the State Auditor on or before October 15th and April 15th of each year. They must certify under their hands and seals of their office the names of all deceased pensioners with the dates of death to the State Auditor. The State Auditor, at the time of furnishing the pension rolls to the Clerks and Registers of Deeds, is required also to furnish copies of

discriminating against non-residents, see MCGOVNEY, CASES ON CONSTITUTIONAL LAW (1930) 469-490.

the rolls to the State Registrar of Vital Statistics who causes the same to be checked against the vital statistics records in his office. The latter officer must then certify to the State Auditor the names of all persons appearing on the pension rolls whom the records in his office show to be deceased, together with the dates of their deaths.

Police Regulations

Method of Payment required of Tobacco Warehousemen. Ch. 101. (New section—C.S. 5126 A). This act requires warehousemen to pay sellers in cash or by check drawn to order.[1] It seeks to do away with checks payable to bearer and so apparently to diminish sales by thieves, dishonest tenants and others acting unlawfully. Two customs seem to prevail in local tobacco markets now. One method is to pay by bearer checks except on express request of the seller when an order instrument will be given him. The other method is to settle by check to order but to instruct the drawee bank to pay all such checks as if drawn to bearer. The hazard to the farmer in the first case is evident. If he loses his bearer check he might as well have lost the cash. The hazard to banks (and the warehousemen) under the second style of payment has been illustrated by a case in the Supreme Court.[2] Despite the risk to the farmers of bearer checks most of them seem to have preferred to receive payment in that form so as to facilitate cashing the check at the market town. Payment in a form requiring identification will be troublesome to them and to the banks called upon to pass upon the identity of the payee and the genuineness of indorsements. Bearer paper involved neither of these annoyances. It is the opinion of one warehouseman that in markets where checks to bearer have been the accepted thing heretofore, it will now be necessary to adopt the second practice spoken of above and instruct banks to pay without identification. Such a course would seemingly defeat the objects of the act while literally complying with it. The risks pointed out in the *Greenville* case already alluded to would then be definitely on the warehouseman and his bank and so

[1] The act reads: "The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method." No penalty is prescribed for violation.

[2] See Dawson v. Nat'l Bank of Greenville, 197 N. C. 499, 150 S. E. 38 (1929); Note (1929) 8 N. C. L. Rev. 46, footnote 13. The text contains an obvious misprint: p. 49, line 5, "drawee" should read "drawer." A more recent case on joint payee is Mathews v. DeFoor, 158 S. E. 7 (Ga. 1931).

far as can be found would have to remain there as no type of bank insurance policy would seem to cover the case.

Question may arise as to the constitutionality of the act since it interferes with supposed freedom of contract. Store order and pay ticket laws suggest themselves as an immediate analogy.[3] But these have not always been sustained[4] and even if they were universally admitted to be constitutional, there is one notable distinction, i.e., that such laws prohibiting the giving to employees of merchandise orders to be used at company stores are aimed against oppression of the laborer—one of the contracting parties. In the present case, however, the payee seems actually to prefer the form of payment he receives—or he can freely have it otherwise on request—and the people to be protected are seemingly some outsiders whose interests may be prejudiced by the practice satisfactory to the parties. If the abuse is shown to be of a serious enough character, however, it is believed that the court will find it possible to sustain the act.[5]

Hunting Grounds. Perhaps North Carolina farmers may rival the owners of the Scottish moors in their profits if a new law (Ch. 159) authorizing the establishment of "privately owned public hunting grounds" has the effect desired by its sponsors. An owner, or owners, of not less than 3000 acres of land, may apply to the Department of Conservation and Development to list the land as a public hunting ground. If it grants this application, the Department will assist in protecting and in advertising such land to hunters. Hunters may be charged not more than four dollars per day plus dog hire, except where the land is specially stocked, in which event the Department may permit him to charge more. The hunter must not leave the grounds on any day without paying the owner, and he must while hunting carry the owner's written permission, "under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars for each and every offense."

Sale of Game Birds. By amendment a new section (Ch. 320) is added to the Game Law which authorizes the sale of upland game

[3] See among others ARIZ. PEN. CODE (1913) 707 ff.; 4 IND. ANN. STAT. (Burns, 1914) §8545; 2 MICH. COMP. LAWS (Cahill, 1915) par. 7208; 3 N. J. COMP. STAT. (1915) 3046; N. Y. CONS. LAWS (Cahill, 1923) 1198; 2 ORE. LAWS (Olson, 1920) §6797; 4 PURDON'S DIG. PA. 5055; W. VA. CODE (Hogg, 1914) §§535-40.

[4] See Note (1895) 28 L. R. A. 273; Note (1889) 4 L. R. A. 328.

[5] The argument for the validity of the act would seem to be advanced not at all by the fact that tobacco warehouses are or may be "affected with a public interest."

birds, ducks, and geese, alive or dead, where they have been propagated upon land owned or leased by a person licensed to engage in the business of such propagation by the Board of Conservation and Development. The owners of hotels, restaurants and other eating places may likewise be licensed by the Board to sell and serve such game to their customers. Elaborate regulations are formulated for the taking, marking, transporting, and labeling of such game birds and for the recording of all sales thereof.

Non-residents taking shrimp and fish. Non-residents (defined to be persons not resident in North Carolina for the preceding period of twelve months) are prohibited from taking shrimp (Ch. 117) and from using seines, trawls or nets of any kind for taking fish for sale or transportation. (Ch. 36) The statutes apply in all territorial waters. Such restrictions against non-residents taking shrimp and fish are justified under the police power which may be exercised in favor of residents as to the state's natural resources.[6]

Ch. 36 empowers the Fisheries Commissioner or his deputies to seize nets and appliances used in violation of law and sell the same at public auction, after advertisement for ten days, or to seize any boat engaged in violation of the law and institute proceedings for condemnation in the name of the state. Such power in administrative agencies is held to be due process,[7] since the owner has recourse to the courts to recover his property before condemnation by injunction or by claim and delivery proceedings and may maintain an action for damages for the value of the property against the officials who seized it, if such taking prove to be wrongful.

Search without warrant for game illegally taken. Ch. 282, §4 amends C. S. 2141 (nn) by providing that any game warden shall have power to enter and search any refrigerating plant or ice box in public storage plants, meat shops, hotels and restaurants or other public eating places in which such officer has reasonable grounds to believe that game, which has been taken, killed or stored in violation of the Game Law, has been concealed or stored and which will furnish evidence of a violation of such law, and that such search may be made without a warrant except that no dwelling may be searched without a warrant.

This amendment seems to be contrary to the constitutional pro-

[6] Corfield v. Coryell, Fed. Cas. No. 3230, 4 Wash. C. C. 371 (1825).
[7] Daniels v. Homer, 139 N. C. 219, 51 S. E. 992 (1905). See (1925) 3 N. C. L. Rev. 27.

vision prohibiting searches without a warrant[8] and goes much further than provisions for enforcing the Prohibition Law[9] and the Narcotic Act,[10] both of which require a warrant before seizure. It is conceded that, in the exercise of the police power, a state may regulate such businesses as meat packing, barber shops, etc. and provide for regular inspection of such places to bring about the enforcement of the law. Likewise, health officers may make inspections of places where food is sold to see that requirements of sanitation and cleanliness are observed. But no such inspection is involved in the present amendment, the sole purpose of which seems to be to assist in the enforcement of the game laws. Consequently, the exemption of dwellings from search without a warrant does not save the constitutionality of the amendment, as other buildings are included in the protection against unreasonable searches.[11]

Collection Agencies. The title of Ch. 217 is "An Act to Regulate Collectors of Accounts and Detective Agencies," but a careful perusal of the act fails to disclose any further reference to detective agencies. As confined to the regulation of collection agencies, the act provides for the licensing of those who engage in the business in North Carolina. The applications for license are made to the Insurance Commissioner with provisions for appeal to the Superior Court in case he refuses to grant a license. The Insurance Commissioner likewise remains in control of the license and may cancel it, after notice and hearing, if the licensee is not conducting his business in a "business-like way." While this is an exceedingly indefinite standard of conduct, the statute is probably valid, in view of the right of appeal to the courts. Those exempt from the act are licensed attorneys, who are not engaged in the business of collecting accounts under a trade name or as a corporation, and local county agencies, which are engaged in collecting claims only against debtors residing in the same county in which they operate.

Hours of Labor. Three new statutes make rather feeble attempts to regulate hours of labor. C. S. 6554, which provided a sixty hour week for men and women, permitting the men to exceed it under special contract for overtime, is struck out and a new section (Ch. 289) substituted making a 55 hour week for women over 16 years of

[8] N. C. Const., Art. I, §15.
[9] C. S. 3411 (1).
[10] C. S. 6682.
[11] See Carroll v. U. S., 267 U. S. 132, 45 Sup. Ct. 280, 69 L. ed. 543 (1925).

age with a maximum day of 11 hours. No provision seems to be made for male workers. Ch. 112 provides a new section prohibiting the employment of females between ages of 16 and 18 in any mill, factory, etc. after nine in the evening or before six in the morning. Ch. 125 amends C. S. 5033 by exempting newsboys over 14 and under 16, distributing papers on fixed routes, from its operation, but providing that they shall not be employed after 8 p. m. and before 5 a. m. and that the total of hours of work and hours in school shall not exceed 8 in any one day.

This ineffective patchwork changing of our labor laws reflects a state of mind unwilling to grapple with the present day problems of labor regulation.

Manufacture and Sale of Oleomargarine. The protection of the local butter and egg industry received the attention of the General Assembly in two new statutes. Ch. 229 is the North Carolina attempt to regulate the manufacture and sale of oleomargarine. The main provisions of the act are an absolute prohibition on the sale of oleomargarine colored to resemble butter and a strict licensing of those engaged in manufacture or sale of oleomargarine which is not made or colored to resemble butter. The statute imposes a license fee of $1,000 for the manufacturer and $100 for the distributor. This applies to restaurants and eating places and requires in such places a prominent sign "Oleomargarine served here." The State Department of Agriculture is authorized to administer the provisions of this law, which is clearly a valid exercise of the police power.

Sale of Eggs. Ch. 206 is an attempt to regulate the sale of eggs by classifying them as (1) cold storage, (2) processed, (3) shipped and (4) fresh. Eggs placed on sale must be properly labeled. Such a requirement seems to be within the police power in the prevention of fraud and deception. Farmers selling eggs at retail are exempted. The Board of Agriculture is given power to provide for the enforcement of the law.

PROPERTY

Torrens Law Amended. Ch. 286 amends the Torrens Act[1] to permit any land heretofore registered under the Act to be removed and excluded from its operation. This may be accomplished by a motion in writing filed in the original cause wherein the land was brought under the provisions of the Torrens Law, and by the filing

[1] N. C. ANN. CODE (Michie, 1927) §§2377-2428.

of a petition therein showing the names of all persons owning an interest in the land and of all lien holders, mortgagees and trustees of record, and the description of the land. The Clerk of the Superior Court then issues a citation to all parties interested and named in the petition, and upon the return date of the citation and upon the hearing of the motion the Clerk may enter a decree removing the land from the operation of the Torrens Law and providing that transfer and conveyance of said land may be made thereafter "as other common law conveyances." No procedure is provided for in case such a petition should be contested. And while the Legislature rather loosely provides that the Clerk, upon rendering his decree excluding the land, also may decree that subsequent transfers of said land may be made "as other common law conveyances," it obviously means that such transfers should be effectuated by deeds duly probated and registered under our present laws. The amendment makes no specific provision for the recordation of the Clerk's decree as notice that the particular tract of land is no longer registered under the Torrens Act.

The Torrens system of land registration, though highly desirable from many points of view, has never been extensively used in North Carolina. Since 1913, when the Act was passed, scarcely five hundred titles have been registered under it. The present amendment now makes possible the "unregistering" of these titles.

Ch. 286 further amends the Torrens Act to require the register of deeds in the county where land shall have been registered under the Act to cross-index the registration in the general cross-index for deeds in his office.

Nothing in this amending act is to be construed to impair or remove any lien or encumbrance existing against the land involved.

Mortgage of Property of Incompetents. Ch. 184 amends C. S. 2291 and 2292 to permit the mortgaging, under order of the Clerk of the Superior Court, of the personal or real estate of any idiot, inebriate, or lunatic in order that such incompetent may be adequately supported, his debts paid, or his property disposed of if such disposal be to his best interests. Under the former law his property could only be sold or rented.

Mortgage of Household and Kitchen Furniture. Ch. 211 amends C. S. 2577 to the extent that a married man may now convey or mortgage the household and kitchen furniture without the joinder of his wife or her privy examination being taken if said conveyance or

mortgage is executed for the purchase money of the furniture. Formerly, *any* conveyance or mortgage of the household and kitchen furniture by the husband to secure the payment of money or other thing of value without the formalities of his wife's joinder and her privy examination was absolutely void. The amendment does not controvene the policy of the law designed for the protection of the home;* it is also consistent with the law which permits the husband to execute a purchase money mortgage or deed of trust on his real estate that will be valid as against his wife without her joinder in the instrument.**

STATE OFFICERS—TREASURER

Interest on State Deposits. Ch. 127. In recognition of prevailing financial conditions C. S. 7684 is amended by Ch. 127 so as to permit designated depositories of the State to pay at the rate of 2½ instead of 3%, per annum, until February 1, 1933.

Investment of surplus state funds. P. L. 1925 Ch. 128, §2[1] provided for a bond or collateral security from banks carrying state deposits. Recent bank failures have apparently given rise to some uneasiness and Ch. 127 temporarily authorizes the purchase of United States or North Carolina State bonds with current state funds as an alternative to depositing them in banks when in the discretion of the Treasurer "conditions are such as to warrant it."[2] These bonds are to be sold when ready cash is needed for governmental expense, the state profiting by any gain and correspondingly absorbing as "insurance" any loss which may accrue, provided the Treasurer "has exercised sound business judgment in the premises." Since the test is by this language not made one of good faith, some risk is thrown on the Treasurer by this provision. He will hesitate to buy bonds on a falling market.[3]

SURETYSHIP

Limitation of Liability. Ch. 285 repeals C. S. 6382 regulating the limit of liability to be assumed by fidelity and surety companies. The

* Kelly v. Fleming, 113 N. C. 133, 18 S. E. 81 (1893); Thomas v. Sanderlin, 173 N. C. 329, 91 S. E. 1028 (1917).

** N. C. ANN. CODE (Michie, 1927) §1003.

[1] N. C. ANN. CODE (Michie, 1927) §7691 (b).

[2] The title and paragraph one of §2 suggest that the investment in bonds is to be made only when adequate security cannot be obtained but the clause giving him discretion contains no such condition.

[3] The provision of §7691 (b) relative to taking security is perhaps as strict, "shall require . . . collateral in a sufficient amount to protect the State" but is more certain and consequently less hazardous.

old statute placed the limit at ten per centum of the capital and surplus of the surety company, unless "suitable and sufficient collateral agreements of indemnity" were made, mentioning ostensibly as such "suitable agreements" a pledge deposit or conveyances in trust. The new enactment provides the same per centum limit, but makes specific the necessary protective arrangement for a liability in excess of said percentum: reinsurance, co-suretyship, pledge deposits, or conveyance in trust on mortgage. It also provides that the actual amount involved in three types of secured transactions—appeal bond, executor's bond, and bond for performance contract—shall be the basis for estimating the risk, for the purpose of the statutory limitation, although the professed penalty of the suretyship obligation exceeds such actual amount. Depository bonds are specifically mentioned as coming within the limits set down. It seems advisable to have cleared up the ambiguity of the loose phrase in the old statute describing the conditions under which the limited liability could be exceeded and to have furnished a test for determining the amount of the risk in at least three transactions. But as to the test for the risk assumed in other types *quaere.*

TAXATION

Tax Liens. (a) *Release of tax lien upon payment of tax on particular tract.* Ch. 83 amends in several important respects C. S. 7987 as amended by Ch. 306, P. L. 1929.[1] In order to facilitate the alienation of a particular track or lot of land which is subject to the general tax lien covering several tracts of land owned by the same person, the new law provides that the owner of the particular lot may obtain from the sheriff or other tax collecting agency a release of that lot from the general tax lien. The release may be secured by the owner making full payment of the taxes assessed against the particular lot and by payment of the ratable share of the tax charged and assessed against the personal property of the party in whose name the land is assessed. The tax collector or sheriff must require the owner, upon his application for a release, to pay all of his personal property tax charged on the return. It is possible for such a release to be obtained at any time before the commencement of the advertisement of such property for sale for taxes and prior to the sale of such property for taxes. The statute does not specify any particular form or formalities regarding the release nor does it require any recordation thereof.

[1] (1929) 7 N. C. L. REV. 397.

Under the same circumstances of tax payment and of time mentioned above, the tax collector or sheriff may release from the general lien any lot or lots which constitute the subdivisions of a tract of land which has been subdivided into lots but has been returned, charged, and assessed as a whole tract. The release is given after an investigation by the tax collecting agency together with the county auditor or accountant to determine the pro-rata part of the whole assessment justly applicable to the lot or lots concerned. The new law also validates any releases heretofore made by the tax collector or sheriff.

(b) *Subrogation of party paying taxes.* The amendment further provides that where any interested person, other than the person listing the property for taxation, has paid or shall pay the taxes on certain parcels of land sold or to be sold for taxes, and takes an assignment of the tax sales certificates and the lien of the taxes thereby represented; then in that event, the person, firm or corporation paying said taxes is subrogated to the lien of the governmental agency levying the tax for the payment of which the property has been sold. He also is given a cause of action for contribution from the other parcels of real estate listed on the return upon which the tax was levied for such proportion of the taxes so paid as the tax value of such pieces of real estate bear to the whole tax value of the property embraced in the return. The time for redemption of the land sold for taxes is unaffected by this law.

(c) *Pro rata redemption.* It is further provided, under the amending statute, that where more than one parcel of land has been listed for taxes and the sheriff or tax collector shall have sold one or more tracts so returned for such taxes, and such property has been bid in by the governmental agency levying the tax, such governmental agency may issue a receipt for taxes to any owner or other interested person who shall pay the proportionate amount of tax for which said property has been sold, plus costs and penalties due. The amount to be paid is determined by the proportion which the tax value of the property upon which the tax is paid bears to the whole tax value of the property embraced in the return. If, however, less than all the property listed has been advertised and sold, then no piece of real estate, already sold for taxes or whose advertisement for sale for taxes shall have been commenced by the sheriff or tax collector, can be released until the whole of the taxes for which said piece or parcel of land has been advertised or sold shall have been paid.

Foreclosure of Tax Sale Certificates. Ch. 260. Before the act of 1927, Ch. 221, the purchaser of land at a tax sale could take a deed from the sheriff or bring a suit for foreclosure as in case of a mortgage. This was changed by that act, and the remedy was limited to a foreclosure according to the method provided in the act. This was found to be rather burdensome and expensive, and certain changes were made in 1929 Chs. 204, 334, making the procedure somewhat shorter and simpler and reducing the expense. This, however, was still found to be expensive and gave rise to much complaint, especially since in the great majority of sales the county or the municipality was forced to become the purchaser and then to bring the suits for foreclosure. The present statute (Ch. 260) has made some important changes in the practice.

1. *Costs.* An attorney's fee may be taxed in the costs, and in some instances this was claimed to be excessive. The amendment requires the governing body of the county or municipality to employ an attorney for this purpose and fix his compensation, to be paid out of the general fund, and to reimburse this fund an attorney's fee, not to exceed $10 in any case, shall be taxed as costs. No process tax shall be taxed for the state, and the officers shall receive half fees. This amendment apparently is intended to control the action of counties and municipalities in such foreclosures, and how far it may apply to suits by private individuals is not clear, but the question of costs would probably be the same.

2. *Interest.* The rate of interest on tax certificates is changed from twelve per cent to ten per cent.

3. *Extension of time.* All holders of certificates on which suits should have been brought, have until December 1, 1931, to bring suit; and this includes all certificates prior to and including sales for the taxes of 1928. In an action by a county or municipality, where no final judgment has been taken, the governing body may, by recorded resolution, cause such action to be held in abeyance until December 1, 1931. But this shall not prevent a continuance and completion of action for foreclosure brought under existing laws, before the ratification of this act.

4. *Time for suit.* The officer of a county or municipality, whose duty it is to collect certificates of sale and to sue therefor, if the same are not paid at the end of 16 months (instead of 14) from the date of the certificate, shall institute foreclosure proceedings within 24 months (instead of 18) from the date of the certificate.

5. *Parties and notice.* In a suit for foreclosure, the person in whose name the land is listed, with the wife or husband, if married, shall be made defendant and served with summons. Notice shall be given to all other persons claiming any interest in the land to appear and defend their claims. Such notice is to be given by posting at the courthouse door a notice describing the nature of the action, and requiring all persons claiming any interest to present their claims within six months from the date of the final appearance of a general advertisement of such proceedings, or be barred of any claim in the land or in the proceeds of sale.

A general advertisement of foreclosure proceedings shall be published once a week for four successive weeks in a newspaper, and it shall contain a list of the foreclosure suits instituted during a particular month, giving the names of the plaintiffs and defendants, the township, and the year of delinquent taxes, and the notice shall be designated as first, second, third, or final advertisement. The cost of such publication shall be prorated among the defendants. The court in which the actions are pending, if there has been service of summons upon the defendants, will proceed to judgment without waiting for the expiration of the six months given in the notice published. It is further provided that the deed executed under the order of foreclosure shall convey to the purchaser the land free from the claims of all persons. This probably means the claims of the defendants served with process will be immediately barred by the judgment, and the claims of others notified by publication will be barred after the expiration of the six months.

6. *Liens filed.* Between the first day of December and the first day of May, after taxes are due, persons having liens on land listed by a taxpayer may file a list with the register of deeds, and the register shall enter these in a book designated as "Record of Taxes for Mortgagees," and keep a cross-index of the same. All persons who have filed such notice of liens shall be made defendants in a suit for foreclosure, with service of summons, the cost of which is to be taxed against them; and their rights will not be affected unless so made parties.

7. *List of tax sales.* The sheriff or tax collector is required to keep a book in which he shall enter the sales of land for taxes, and file and certify this list with the register of deeds. This shall be sufficient notice to holders of liens and others interested; and when

certificates of sales have been paid, they may be presented to the register and entered upon such list.

8. This act applies to all taxes and tax certificates up to and including the levy for 1929; but it shall not affect pending litigation nor contracts with attorneys by counties or municipalities prior to this act; nor shall it affect pending litigation by any holder of a tax certificate other than a county, city or town. (Ratified April 8, 1931.)

9. *Alias and pluries summons.* Ch. 264, amending C. S. 480, as amended by 1929 Ch. 237. In suits brought for the foreclosure of tax sale certificates, an alias or pluries summons may be issued at any time within two years after the issuing of the original summons, whether an intervening summons has been issued within that time or not, and this shall have the effect to prevent a discontinuance of the action.

Trusts and Trustees

Consolidated banks and trust companies—successor fiduciary. Ch. 207 provides that whenever any bank or trust company in this state consolidates or merges with any other bank or trust company in this state, whether either or both were or are state or national banks, the new institution shall succeed to all the fiduciary rights, powers, duties and liabilities of the constituent institutions, including those as executor, administrator, guardian, trustee or other fiduciary, whether under appointment by order of court, will, deed, or other instrument. The statute, independent in form, is actually an amendment of Ch. 148 and of Ch. 150 of the Public Laws of 1929.[1] The first of these applied only when a state bank consolidated with and became a national bank. The other applied only when the original bank had been named executor or trustee in a will.[2] The new statute covers both grounds, and, in addition, the cases where the original fiduciary was so constituted by order of court or by deed.[3]

Embezzlement. Ch. 158 amends C. S. §4268, so as to add "trustees" to the list of persons, including executors and administrators, who may be guilty of embezzlement. Sec. 4270 applies only to trustees of public bodies and institutions. The addition was probably

[1] See (1929) 7 N. C. L. Rev. 366, 405.
[2] This is now a part of N. C. Code (Michie, 1929 Supp.) §4145.
[3] The divergent views about the country are collected and commented upon in 61 A. L. R. 994, Annotation; Note (1928) 37 Yale L. J. 670; Note (1928) 41 Harv. L. Rev. 665; Note (1929) 2 So. Cal. L. Rev. 471.

necessary because of the fact that embezzlement is wholly a statutory crime.

Investment of Funds by Clerks of Superior Courts. Ch. 281 regulates the investment of funds coming into the hands of the clerks of the Superior Court. It is apparently intended to supply the need indicated in *William v. Hooks*,[4] decided October 1, 1930. The Court there held that "there is no mandatory requirement of law imposing upon the clerk of the Superior Court the express duty of investing funds in his hands belonging to minors." The new act is broader than that, however, and applies to all funds held by the clerk as such or as receiver or trustee for any infant or person *non compos mentis*. It should be read in connection with C. S. §153 and §956, as construed in *Williams v. Hook, supra,* and with C. S. §5027 (cemetery funds). The first, in part, and the last, in part, would seem to be repealed by the new act, by implication.

The clerk must invest in the following: (a) loans on real estate, secured by first mortgage or deed of trust, of not to exceed 50% of the assessed tax value of the property; (b) U. S. Government bonds; (c) U. S. Government Postal Savings certificates; (d) North Carolina state bonds; (e) North Carolina county or municipal bonds approved by the Local Government Commission;[5] (f) certificates of time deposits, when secured[6] by corporate surety bond or any of the bonds listed above. Between these various classes of investments, the clerk may in his discretion make his own selections. Subject to the approval of the judge, the clerk is given a broad discretion, unlimited by the items mentioned in this paragraph, in the investment of the funds of infants or persons *non compos mentis* used in the management or cultivation of lands held for them by the clerk as receiver or trustee.

Investments now existing contrary to these provisions are to be liquidated and converted by April 16, 1932, unless extended for not more than a year by the judge.

Violation of the act is made a misdemeanor, punishable by fine or prison or both in the discretion of the court.

Audits and inspections of the clerks' compliance with the act are to be made both by the County Auditor or Accountant and by the

[4] 199 N. C. 489, 154 S. E. 828 (1930).

[5] The act reads "Sinking Fund Commission." The Local Government Commission, by Ch. 60, has taken over the Sinking Fund Commission's duties.

[6] The act reads "section four." It should be "section three."

Local Government Commission.[7] The former is to report to the county commissioners and to the Local Government Commission. The latter is to report failures in compliance to the solicitor for prosecution.

This effective reform suggests the need of a general overhauling of the law relating to investments by fiduciaries. Apparently no law regulates investments by savings banks. C. S. §4018 is wholly permissive. It authorizes "guardians, executors, administrators, and others acting in a fiduciary capacity" to invest in certain public securities. C. S. §2308 is likewise permissive. It authorizes guardians to loan upon bonds with sufficient security, but requires compound interest. C. S. §6334, as to insurance companies, is, aside from this new statute, the only restrictive regulation. It limits investments to first mortgages and certain public securities up to a given proportion of the capital stock of the company, investments above that figure to be in such securities as are approved by the Insurance Commissioner, including, in some cases, preferred stock of corporations. Independently of statute, the Supreme Court has consistently adhered to the rule that a fiduciary, in handling investments, is required only to exercise good faith and the care that a prudent man, under the particular circumstances, would use in the management of his own affairs. In *Sheets v. Flynt Tobacco Co.*,[8] apparently the latest decision in this field, a guardian, without an order of court, invested all of the funds of his ward in the preferred stock of a local tobacco company, purchased from the company. The stock depreciated. The wards attempted to recover the amount of the investment, less dividends, from the company. The court held that on the record the company was not liable, but intimated that the company and the guardian might be liable if the guardian had not complied with the test of good faith and due care. This case should be compared with *Mobley v. Phinizy*,[9] where a trustee, without an order of court, and in violation of a Georgia restrictive statute, had invested funds in bank stocks. The bank failed. The trustee was held responsible both to the beneficiaries and to the Superintendent of Banks.

Local officers—official and personal funds to be kept separate. Ch. 77 requires local public officers to keep their official bank accounts

[7] The act reads "County Government Advisory Commission, or its successors." By Ch. 60, the Local Government Commission is the successor.
[8] 195 N. C. 149, 141 S. E. 355 (1927).
[9] 155 S. E. 73 (Ga. App., 1930).

separate from their personal accounts and prohibits them from applying official funds to personal uses and from intermingling official and personal moneys. To this extent it probably states a well-known principle of law. The need for the statute, however, arose out of cases where local officials had defaulted and where the mixup of personal and official funds in the same account made tracing difficult if not impossible. The new statute, therefore, by making the principle specific, perhaps puts the officers on warning. It should be read in connection with N. C. CODE (1927) §§1326 and 1334 (70), relating to the reports and deposits. To its specific injunction, the new statute adds two safeguards: (1) A violation of the act is made a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court. (2) It is made the duty of the Local Government Commission[10] to report violations to the solicitor.

Sales and foreclosures by receivers of corporate trustee. Ch. 265 authorizes receivers and trustees of corporate trustees named in mortgages or deeds of trust to sell or to foreclose and sell, pursuant to court order, the property conveyed to the original trustee as security for the payment of indebtedness. It validates all such sales heretofore made pursuant to court order, but does not apply to pending litigation. The need for the statute is not apparent, in view of C. S. §§1209 and 1210, as construed in *Wachovia Bank and Trust Co. v. Hudson,*[11] decided shortly after the act was ratified, unless it was because those statutes are limited to receiverships and are inapplicable, as the new statute is, to trusteeships as well.

Sales under deeds of trust by Corporation Commission in liquidating banks. Ch. 132 validates the sales under deeds of trust, mortgages and the like, made by the Corporation Commission and its representatives in the course of liquidation of insolvent banks, when the power of sale was originally granted to such a bank before the state took it over. It appears to have been intended to overcome the effect of the case of *Mitchell v. Shuford,*[12] decided January 27, 1931, in which the Court held that the Corporation Commission had no such authority. The contrary decision of the Florida court in *Power v. Amos,*[13] represents a construction of a statute similar to Ch. 113,

[10] The act reads County Government Advisory Commission. By Ch. 60, the Local Government Commission has succeeded that commission.
[11] 200 N. C. 688 (April 29, 1931).
[12] 200 N. C. 321, 156 S. E. 513 (1931).
[13] 114 So. 364 (Fla., 1927).

P. L. 1927, more in line with the purpose of the state administration of insolvent banks. Ch. 385 now makes this clear.

In view, however, of *Mitchell v. Shuford,* and of *Booth v. Hairston,*[14] doubt is cast upon the constitutionality of the validating act. Upon the rehearing of the latter case, Judge Brogden said: ". . . but the power to cure a crippled instrument, having at least a spark of legal life, does not extend to raising a legal corpse from the dead."[15] It is believed, however, that if more emphasis is placed upon the need for a dependable device for translating the security into a satisfaction of the debt, which is all the deed of trust or mortgage amounted to, than upon questions of title or contracts, that the facts of the situation aimed at by the validating act can be distinguished.

Compare this statute with Ch. 265, noted in the preceding paragraph, and with Ch. 146, noted in the last paragraph under this heading. The future policy is stated in Ch. 250, noted herein under *Substitution of trustees when bank or trust company insolvent,* and in Ch. 385 (Commissioner of Banks given authority).

Substitution of trustees by beneficiaries. Ch. 78[16] grants to the holders of a majority, in amount, of the notes or bonds secured by a mortgage or deed of trust or other land-security device, a power commonly conferred upon them in the more elaborate corporate and railroad mortgages, namely, a power to substitute trustees in certain designated emergencies, without court action. The emergencies relate to the plight of the trustee incumbent, and include such situations as where the trustee has removed from the state, has become mentally or physically incompetent, has been committed to an institution, has refused to act, has been involved in bankruptcy or insolvency proceedings, has died, or, if a corporation, has ceased to do business, or has become involved in bankruptcy, insolvency or receivership proceedings, or is in course of liquidation.

In such cases, the majority bond holders may substitute trustees by the execution of a paper writing, authenticated by the certificate of the clerk of the Superior Court that the statute has been complied with and that the new trustee is a fit and proper person or corporation to perform the duties of the trust. Both instruments are then to be recorded.

As to deeds of trust and other instruments of like character

[14] 193 N. C. 278, 136 S. E. 879 (1927); s.c., 195 N. C. 8, 141 S. E. 480 (1928).

[15] 195 N. C. 8, 9.

[16] The title of this act purports to amend C. S. §2583. The body is, however, an independent statute, in effect, supplementary to §2583.

executed before the ratification of this act (March 4, 1931) an appeal lies from the findings of the clerk to the judge of the Superior Court, provided that appeal is taken within twelve months of the registration of the substitution and clerk's certificate but within thirty days from actual knowledge thereof. All persons interested are to be made parties and the judge is to go into the whole matter *de novo*. If the substituted trustee is removed by the judge, he may appoint a new one. The acts of the substituted trustee who has thus been removed are validated, and any trustee found upon the hearing before the judge to have been wrongfully removed is given a right of action against the new trustee for compensation.

No similar statute has been found, but in the belief that decisions under substitution powers conferred in the deed of trust will be helpful by way of analogy, collections of these are referred to in the footnote.[17]

Substitution of trustees when bank or trust company insolvent. C. 250 authorizes the clerk of the Superior Court, after notice to all interested parties and a hearing, to appoint a successor trustee, when the original trustee bank or trust company named in any deed of trust or mortgage to secure an indebtedness shall have been taken over for liquidation by the state. Appeals are to lie as in case of special proceedings, if objection is made at the hearing. The order of appointment is to be recorded wherever the original instrument has been put on record. And the order may relate to any number of indentures, deeds of trust or other like instruments. The remedy is cumulative, in addition to all other remedies now provided by law. It should be read in connection with Ch. 78, noted in the preceding topic. And see Ch. 132 noted herein under *Sales under deed of trust by Corporation Commission.*

Validating sales of land by administrators to obtain assets. Ch. 146, applying only to sales made prior to January 1, 1900, and not applicable either to pending litigation or to any pending or unsettled administration or estate, or to any case where the administrator was the purchaser, validates sales of land by administrators, in good faith and upon a valuable consideration, to obtain assets to pay debts of the estate, when the deeds have been exchanged for the purchase price, and no action has been begun by the heirs to annul the sale.

[17] 4 COOK, CORPORATIONS (1923) 3672-3673; WILTSIE, MORTGAGE FORECLOSURE (4th ed., 1927) §831; Ettlinger v. Persian Rug Co., 142 N. Y. 189, 36 N. E. 1055 (1894) (trustee beyond jurisdiction and insane, bondholders allowed to foreclose without service on trustee or appointment of a new trustee).

The preamble indicates that the act is to apply where no order of court was obtained or where the court proceedings authorizing and confirming the sales have been lost without being recorded. Recitals in the deeds, therefore, that the sale was made under order of court are to be presumed to be prima facie correct, as are those to the effect that the proceeds have been applied to the payment of the debts and costs of administration. The act is not, however, to prevent the sale from being impeached or fraud. As to its constitutionality against the charge of disturbing vested rights, see *Charlotte Consol. Constr. Co. v. Brockenbrough.*[18]

Warehouse Receipts Act

Amendments to Uniform Act. Ch. 358, amending C. S. §§4060, 4080, and 4087, brings up to date North Carolina's Uniform Warehouse Receipts Act,[1] which was adopted in 1917. The new law amends C. S. 4060 to make a warehouseman liable to a holder of a receipt for damages caused by the non-existence of the goods or by failure of the goods to correspond with the description thereof in the receipt at the time of its issue, only when such receipt was issued by the warehouseman or on his behalf by an agent acting within the scope of his actual or apparent authority to issue warehouse receipts.

C. S. 4080 is repealed and in lieu thereof is substituted a law which permits, in substance, any one in possession of a negotiable receipt to negotiate the same. This new law gives the warehouse receipt full negotiability, thus placing it on the same level with bills of lading under the Uniform Act.[2]

C. S. 4087, as explanatory of former §4080, is also amended to conform to amended §4080. Under the law as amended, negotiability of a receipt is not impaired by the fact that its possession was obtained by loss, theft, fraud, accident, mistake, duress, or conversion.[3]

Wills and Administration

Time for Qualification of Executor. Ch. 183 amends C. S. 16 by providing that when more than one executor is appointed in a will, thirty days after any of them has qualified is the time limit in which the others can qualify. Previously a period of sixty days fol-

[18] 187 N. C. 65, 121 S. E. 7 (1924).
[1] N. C. Ann. Code (Michie, 1927) §§4036-4095.
[2] N. C. Ann. Code (Michie, 1927) §312.
[3] For a further discussion of the effect of these amendments, see (1931) 9 N. C. L. Rev. 55.

lowing the probate (plus such time not exceeding thirty days as the clerk allowed in his citation to show cause) was allowed to "any person appointed as executor."

Probate Jurisdiction Where Clerk Interested in Estate. Ch. 165 gives to the resident judge of the Superior Court or the judge holding the courts of the county by regular or special assignment the probate jurisdiction of the clerk where the latter is interested in the estate in question.

Workmen's Compensation

The Workmen's Compensation Law of 1929 is amended by Ch. 164 and 274. Section 8 of the law[1] is so revised as to permit counties and school districts to exempt themselves from the operation of the Workmen's Compensation Act on 30 days notice to the Commission. Claims under the act arising either prior to the notice or during the 30-day period following it are expressly preserved. Ch. 274 §1.

A corresponding amendment to §17[2] permits sheriffs to exempt themselves and their deputies forthwith upon notice without any 30-day period and without any clause preserving prior claims, though presumably they would be by implication. Ch. 274 §2.

The amendment to §25[3] concerning medical treatment to injured employees, strikes out all of the provisions on voluntary treatment furnished by the employer and inserts a sentence empowering the commission on request of the employee to order a change of treatment at the employer's expense. Ch. 274 §4.[4]

There is added to §31 of the act[5] the following in an apparent effort to meet the decision in the *Henninger* and *Porter* cases:[6] "that disfigurement shall also include the loss or serious or permanent injury of any member or organ of the body for which no compensation is payable under the schedule of specific injuries set out in this section."

Section 40 formerly provided for a payment to the personal rep-

[1] N. C. Pub. Laws (1929) Ch. 120, §8; N. C. Ann. Code (Michie Supp., 1929) §8081 (o).
[2] N. C. Ann. Code (Michie Supp., 1929) §8081 (x).
[3] *Ibid.*, §8081 (gg). See typographical error in this section: "opinion" (option).
[4] Section 3 is missing from the Act.
[5] N. C. Ann. Code (Michie Supp., 1929) §8081 (mm).
[6] Henninger v. Industrial Commission, 1 N. C. I. C. 3 (1929); Porter v. Jennings Cotton Mills, 1 N. C. I. C. 218 (1930). See (1930) 8 N. C. L. Rev. 423-424.

resentative of a deceased employee who left no dependants.[7] It is now amended so as to direct payment to a narrow class of next of kin specially defined by the section, *i.e.*, "father, mother, widow,[8] child, brother or sister of the deceased." Failing such persons, a more complicated arrangement is provided. One-half goes to the Industrial Commission and one-half to the personal representative for distribution to the broader class of next of kin defined in the Statutes of Distribution,[9] or if there be none of these, then for payment of the expense of administration, any surplus to be returned to the Commission. Money paid to the Commission under the act goes to a fund for special awards in cases of second injury under certain restrictions as to total amount payable.[10]

The original act was criticised as providing an unjustifiable windfall for non-dependent next of kin.[11] The present amendment makes a half-hearted move toward cutting off this bounty for relatives at the expense of the employer, the industry and eventually the public, by turning a part of the money over to the Commission in some cases. If payments on the death of employees without dependents are justifiable at all it is to prevent discriminations at the employment office against workers with dependents. But all of it should go to the

[7] N. C. ANN. CODE (Michie Supp., 1929) §8081 (vv). And see discussing this section (1930) 8 N. C. L. REV. 418, 427-430.

[8] Widowers are not here named. *Cf.* §39 of the Act, N. C. ANN. CODE (Michie Supp., 1929) §8081 (uu) where widowers are not only named but are made conclusively dependent along with widows and children. The amendment is therefore not altogether harmonious with this section, since these relatives are described as next of kin when there are no dependents.

[9] C. S. 137, 140, 142; N. C. ANN. CODE (Michie, 1927) §§137, 140, 142. Note an error in this section as amended, which is corrected by Ch. 319.

[10] Most states seem to provide only for the payment of burial expenses and/or expenses of last sickness in the case of no dependents. See (Nov. 1929) U. S. Dept. of Labor, Bulletin of the Bureau of Labor Statistics No. 496, chart opposite p. 50. The following jurisdictions, however, are shown to require some additional payment: Arizona ($850 to a rehabilitation fund); Dist. of Columbia ($1000 to special fund); Idaho ($1000 to administration fund); Illinois ($300 to second injury fund); Kentucky ($100 to representative of deceased); Louisiana ($50 contingent expenses); Massachusetts $(100 to second injury fund); Minnesota ($200 ditto); New York ($1000 special fund); Utah (20% of death benefit to second injury and total dependent's fund); Wisconsin ($1600 to special dependency fund); U. S. Longshoreman's Act ($1000 to special fund). It will be noted that the personal representative is provided for in only one case—Kentucky—and in that state only $75 is allowed for burial expenses. North Carolina pursues a unique and seemingly unsatisfactory policy in this respect. No statistics are available to show that workers with dependents are discriminated against less in the states which require these substitute payments than in the others and it may be that the matter is simply reflected in the general premium rates.

[11] (1929) 7 N. C. L. REV. 406, 410.

Commission for some useful general purpose; non-dependants are wholly without meritorious claim to any of it.

Section 46[12] is amended so as to permit review and revision of an award by the Commission only within twelve months from the date of the *last payment of compensation pursuant to an award under this Act* (instead of from the date of the *first award*).

Amendments to §47[13] strike out the paragraph allowing parents to receive payments of less than $300 due to dependents under 18 and that requiring payments over such sum to be made to a guardian acting under Superior Court appointment. In place there is inserted a proviso leaving the matter largely to the discretion of the Commission.

The governor is privileged under §51[14] as now amended to designate a commissioner as Chairman notwithstanding his past affiliations with either employers or employees.

Amendments relating to salaries of commissioners (hereafter to be fixed by the governor with Budget Commission approval) and to offices (no longer specifically assigned to Raleigh) are made in §§52 and 53.[15]

Section 62[16] is radically changed. It formerly allowed costs in any proceeding found to have been prosecuted or defended without reasonable grounds to be thrown on the party so acting unreasonably. The amendment first of all, limits its application to a hearing on review before the Commission or to an appeal before a court and second, inflicts the penalty in the discretion of the tribunal only on an insurer who is defeated in the proceedings. The costs now include, moreover, a reasonable attorney's fee to be determined by the Commission.

The stated fees of examining physicians heretofore borne by the state under §63[17] are shifted by the amending act to the employer by a word substitution.

Various amendments are made to §73,[18] effective July 1, 1931, to change the tax rate on premiums from a flat 2½% to the rate provided in the Revenue Act.

[12] N. C. ANN. CODE (Michie Supp., 1929) §8081 (bbb).
[13] *Ibid.*, §8081 (ccc).
[14] *Ibid.*, §8081 (ggg)
[15] *Ibid.*, §8081 (bbb) and (iii).
[16] *Ibid.*, §8081 (rrr).
[17] *Ibid.*, §8081 (sss).
[18] *Ibid.*, §8081 (cccc).

Section 74½ is new. It gives the Commission power to collect by civil action the penalties provided for in the act.

Finally, there is an entirely new Bureau created by Ch. 279 to make surveys, provide information on, and fix rates of premium for, compensation insurance, with the power to give reduced premium ratings to employers with superior working conditions. Every insuring organization must become a member of the Bureau as a condition to obtaining a license to write compensation insurance in the state. Provision is made for pro-rating the expense of the bureau; and the structure, personnel and powers with regard to requiring the production of books and records are set out. The Insurance Commissioner or his appointed deputy is made Chairman. This act is already in effect.

State Administrative Agencies

The Civil Service. In 1925 a small beginning was made toward a survey and classification of the employees of the state departments and agencies by the establishment of a Salary and Wage Commission.[1] A much longer step in the direction of civil service reform is taken by a new act (Ch. 277) which creates the office of Director of Personnel. He is given remarkably plenary powers to regulate the number, grades, salaries, hours of work, and vacations of the employees in the departments, bureaus, and commissions of the state. Seemingly his jurisdiction does not extend to the "institutions." Perhaps the feature of the new act which promises most far reaching effects is the provision that after July 1, 1931, no new employees can be appointed except after submission of the name of such person to the Director of Personnel. The Director "shall immediately inquire into the qualifications of such person," and the person can be appointed only if he finds him qualified. The Director is empowered also to receive applications for employment, to "examine" into the qualifications of the applicants and to prepare certified lists of qualified persons, for the information of the heads of departments, and he may make rules and regulations to carry out these powers. No express mention is made of competitive written examinations such as are conducted by the Federal Civil Service Commission, but it would seem to be within the implied powers of the Director of Personnel to ascertain the qualification of applicants by that method. It is to be hoped that a system of standard requirements in age, experience,

[1] N. C. Pub. Laws (1925) Ch. 125. See comment (1926) 4 N. C. L. Rev. 18.

and education may be set up by the Director for the various jobs, and that competitive examinations may be held for positions where that method is appropriate. If a future Assembly shall make provision for a reasonable degree of permanency of tenure by forbidding dismissals except for adequate cause, a good foundation will then be laid for competent and efficient civil service.

Director of Purchase and Contract—Contracts with the State and Its Agencies. Two enactments require scrutiny by lawyers who may be called on to advise clients who have business relations with state offices and departments. An important new act (Ch. 261) vests in a new officer, the Director of Purchase and Contract, the duties *(inter alia)* "to contract for the purchase of all supplies, materials and equipment required by the State Government or any of its departments, institutions or agencies"; "to establish and enforce standard specifications"; similarly to contract for services, such as telephone and telegraph; "to rent or lease" all land or buildings. It is further provided that if the requirements of a given commodity entail an expenditure of more than $2000 "sealed bids shall be solicited by advertisement in a newspaper of state-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract, "provided that other methods of advertisement may be adopted with the approval of the Advisory Budget Commission. Contracts shall be awarded to the lowest responsible bidder. Rules and regulations governing bids and awards are to be made by the Director of Purchase and Contract with the approval of the Advisory Budget Commission. It is provided, however, that unless otherwise ordered by the Director, instruments, supplies and books of a technical nature, perishable articles, need not be purchased through the Director, but even such purchases "shall wherever possible be based on at least three competitive bids."

The Director, likewise, may purchase in the open market, presumably without advertisement or bids, in case of emergency. If a contract or purchase be made in violation of the act or of the rules and regulations pursuant thereto, such contract is void, and the executive officer making such purchase "shall be personally liable for the costs thereof," and if state moneys be paid out on such purchase, they may be recovered in an action by the state. A Standardization Committee is constituted whose duty it shall be to establish standard specifications applying to state contracts.

The Director and the members of the Advisory Budget Commis-

sion and of the Standardization Committee are forbidden to have any financial or beneficial interest in any contract, or to receive any thing of value from any successful bidder. Violation is a felony punishable by fine or imprisonment or both.

Another act (Ch. 291) governs contracts for construction or repair work involving the expenditure of public money, entered into by "any board or governing body of any institution of the state government." Where the estimated cost exceeds $1000 an invitation for bids for such contract must (except in emergency) be advertised for at least ten days in a North Carolina newspaper of general circulation. A deposit by certified check for two per cent of the bid must be made. Bids shall be publicly opened and the award, if any, shall go to the lowest responsible bidder. The contract shall be made in writing, and a bond of a surety company operating in this state shall be given for the full amount of the contract. Contracts must not be divided for the purpose of evading the act. Where the estimated cost is $5000 or less, bids by three reputable contractors are necessary to an award; if the estimated cost is greater, five bids are required.

Department of Labor. Ch. 312. A reorganization of the Department of Labor and Printing, henceforth to be known as the Department of Labor, is effected by Chapter 312 of the 1931 statutes of the North Carolina General Assembly. As reorganized the department will be administered by a Commissioner of Labor, and will consist of three divisions—a Division of Workmen's Compensation, a Division of Standards and Inspections, and a Division of Statistics. Additional divisions may be set up by the Commissioner of Labor, with the approval of the Governor, should such action be deemed advisable for the more efficient and economical administration of the Department. On the other hand, the activities of two or more divisions, except the Division of Workmen's Compensation, may be combined or consolidated for the same reasons. Each division, except the Division of Workmen's Compensation, shall be in charge of a chief administrative officer, appointed by the Commissioner of Labor, with the approval of the Governor, and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division, with the approval of the Governor, shall prescribe and promulgate.

The Commissioner of Labor is to be elected, and shall hold office for a term of four years. He is charged with the general administration of the Department, and succeeds to all duties and responsibilities

heretofore vested in the Commissioner of Labor and Printing, except those relating to printing which are transferred to the Division of Purchase and Contract. In addition to the appointing of division heads, as stated above, the Commissioner is given broad powers in appointing and assigning to duty such clerks, stenographers, and other employees as may be necessary to carry out the work of the Department; and of transferring employees from one division to another, or of combining the clerical forces of one or more divisions where necessary or advisable.

An important duty of the Commissioner is that of filing with the Governor annually, on or before the first of January, a report covering the activities of the Department. This report, which is to be accompanied by the Commissioner's recommendations with respect to changes in the law applying to or affecting industrial and labor conditions for those years in which the General Assembly is in session, is designed to give full and much needed information concerning labor in the State. The act calls for statistical details relating to wages, hours of labor, the extent of unemployment, number and sex of employees, and "conditions with respect to labor in all manufacturing establishments, hotels, stores, and workshops; and the industrial, social, educational, moral, and sanitary conditions of the labor classes, in the productive industries of the State." Individual statistics obtained from any employer shall not be published or divulged in any way as such, but shall be published in connection with other similar statistics and set forth in aggregates and averages.

To secure the foregoing information the Commissioner, or his authorized representative, is given power to examine witnesses under oath, to compel the attendance of witnesses, the giving of testimony, the production of papers, etc. Upon the refusal of any witness to comply with these requirements, or upon the refusal of any employer to make the proper reports and returns upon blanks furnished by the Department it shall be the duty of any judge of the Superior Court, upon application of the Commissioner or his representative, to order such witness or employer to show cause for failing to comply, if in the discretion of the judge such requirement is reasonable and proper. Refusal to comply with the order of the judge of the Superior Court shall be dealt with as for contempt of court.

The Division of Workmen's Compensation is to consist of the present Workmen's Compensation Commission transferred to the Department of Labor as one of its integral units, with its personnel,

powers, and duties unchanged. Inasmuch, however, as divisions are set up in the Department to perform statistical work and work of inspection, the act provides that such adjustments shall be made in connection with work of this nature heretofore done by the Industrial Commission, and similar work of other divisions as will facilitate and improve the work of the Department as a whole.

The Division of Standards and Inspection, in charge of a Chief Inspector, is required to make all necessary inspections to see that all laws, rules, and regulations concerning the well-being of labor is carried out. It thus succeeds to all the powers, duties, and responsibilities of the North Carolina Child Welfare Commission, which organization is to be continued, subject to such changes as shall be made by the Commissioner of Labor and the Chief Inspector, with the approval of the Governor. It is required to make studies and investigations of special problems connected with the work of women and children, and to perform all duties devolving upon the Department of Labor, or the Commissioner of Labor, with respect to the enforcement of laws, rules, and regulations governing the employment of women and children. It is also required to perform the duties of mine inspection.

An important part of the functions of the Division of Standards and Inspection is to conduct such research and to carry out such studies as will contribute to the health, safety, and general well-being of the working classes of the states. Its findings, with the approval of the Commissioner of Labor and of the Governor, and with the cooperation of the Division or Divisions directly concerned, are to be promulgated as rules and regulations governing work places and working conditions. All recommendations and suggestions pertaining to health, safety, and well-being of employees are required to be transmitted to the Commissioner of Labor in an annual report which shall cover the work of the Division of Standards and Inspection. Finally, the Division of Standards and Inspection is required to collect and collate information and statistics concerning water-power, developed and undeveloped, farms and farming, timber lands and timber, truck gardening, dairying, "and such other information and statistics concerning the agricultural and industrial welfare of the citizens of this state . . . as may . . . be of interest and benefit to the public."

The Division of Statistics, under the direction of a Chief Statistician, is charged with the duty of collecting, assorting, systematizing,

and printing all statistical details relating to all divisions of labor in the State as set forth above.

The reorganization of the Department of Labor as outlined above is to become effective July 1, 1931. The present Commissioner of Labor and Printing, however, shall continue to hold office until the expiration of his present term.

The plan of reorganization, as called for by Chapter 312, has many admirable points. It brings together the several scattered agencies charged with the administration of the laws relating to labor which have heretofore functioned independently and with little regard for the functions of each other. This has resulted in gaps on the one hand, and in overlapping of functions on the other. By bringing them together under one head not only is the Commissioner of Labor made responsible for the work of the Department as a whole, but he is given opportunity to coördinate the work and to make it more effective. His power to create new divisions when necessary, and to combine the activities of divisions already provided for when such seems advisable, as well as to transfer employees from one division to another should operate in the interests of economy and efficiency. The duties of the Division of Standards and Inspection in conducting research and making studies in connection with the health, safety, and general well-being of the employees of the State, the findings of which will result in the promulgation of rules and regulations governing work places and working conditions is abreast of modern developments along this line in other states and is highly commendatory. The fact that this division will do all the work of inspection, as well as the fact that all statistical work will be done for the Department by one division will eliminate duplication of effort in these respects.

On the other hand there are some disappointing features and omissions in connection with the plan of reorganization. In the first place, the writer is of the opinion that the Commissioner of Labor should be appointed by the Governor rather than elected by popular vote. This office calls for an expert, and there is little reason to think that the person who is likely to be elected will possess the necessary qualifications. Secondly, there is complete absence of advisory boards to confer with and advise the Commissioner or heads of any of the several divisions. The experience of the more progressive states in this connection has demonstrated the wisdom of having such boards, whose powers are purely advisory, and whose members serve

without pay. Composed as they are of representatives of employers, employees, and public minded citizens, they are of great value in bringing about goodwill and coöperation, to say nothing of practical suggestions and full consideration of important matters which a group of this kind could give.

There seems little justification for burdening the Division of Standards and Inspections with the duty of collecting information and statistics concerning water-power, agriculture, dairying, etc. To be sure, these matters are important, and have a bearing, directly or indirectly, on the welfare of the working classes of the State. But so does almost any other aspect of economic activity that could be mentioned. Such inquiry properly belongs to other departments, and should not be required of a department that is going to have its hands full with matters with which it should properly concern itself. The practice of making the labor department a catch-all for all sorts of duties which other departments should, but do not do, is one that is altogether too common, and one that is not conducive to effective administration.

Finally, the absence of machinery of any sort for the settlement of industrial disputes is a matter of some surprise. In view of the recent experiences in Gastonia, Marion, and elsewhere within the State it is almost incomprehensible. While the presence of such machinery by no means guarantees that disputes will be settled promptly and effectively, or at all, for that matter, the experience of other states which have such machinery, with competent men administering it, would seem to fully warrant its establishment. This omission, together with the above duties imposed upon the Division of Statistics and Inspections which are somewhat foreign to its primary purpose, seem to the writer the most serious defects in the plan of the reorganization which in most other respects is fairly satisfactory.