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A SURVEY OF STATUTORY CHANGES IN NORTH CAROLINA IN 1933

This article purports to give a descriptive survey and critical appraisal of that legislation passed by the General Assembly of 1933 which is deemed to be of foremost interest to the lawyers of the state. It is written by the members of the faculty of the School of Law of the University of North Carolina, assisted by Professor W. S. Jenkins of the Department of History and Government, and Mr. E. M. Perkins of the Institute for Research in Social Science. Wherever the abbreviation "Ch." is used alone, it refers to a chapter of the Public Laws of 1933. "C. S." refers to Consolidated Statutes of North Carolina (1919).

ATTORNEYS AT LAW

Ch. 210 as amended by ch. 331 organizes the North Carolina State Bar as an agency of the state and defines its powers. All licensed lawyers are made active members, except the state judges and resident federal judges, who are given an honorary status. A council composed of one member from each judicial district is created as the governing body, with the broad power "to do all such things necessary in the furtherance of the purposes of this act as are not prohibited by law." Jurisdiction to disbar for described causes is specifically granted to this council.¹ For the purpose of prescribing requirements for admission to practice and examining applicants, there is created the Board of Law Examiners, composed of six lawyers to be selected by the council and a member of the Supreme Court to be selected by that body. Changes in bar admission standards have to be approved by the council.

The North Carolina Bar Association has been advocating such an "incorporated" or "integrated" bar for the past decade. The movement was given its impetus in 1921, when Mr. T. W. Davis, then president of the Association, commended this plan of bar organization.² A Committee on Incorporating the Bar, appointed in 1926,³ carried on an investigation of the matter which culminated last summer in the drafting and proposal of the present Act.⁴

¹ The grant of jurisdiction is not exclusive. As to whether proceedings for disbarment could be commenced also in the Superior Court, *quaere?*

² 23 N. C. BAR ASS'N. REP. (1921) 6.

³ 28 *id.* (1926) 169.

⁴ 34 *id.* (1932) 198.

Doubtless the new type of organization is better calculated to enable the bar to render effective service in improving the administration of justice. At least, the experiment is justified by the failure of the old organization to make any significant accomplishments in this direction.⁵ Probably the new order has its best opportunity for immediate results in dealing with the problems of admission and disbarment of attorneys.

North Carolina is one of the nine remaining states which have no general educational requirements for admission to the bar.⁶ For some years the Bar Association has been urging the adoption of a prerequisite of two years' high school training,⁷ and, at its behest, the Supreme Court a few years ago held a public hearing on the matter of standards for admission to practice.⁸ But the Court has been reluctant to act. The only change which it has made in over thirty years has been to increase the period of professional study from one to two years.⁹ The newly created Board of Law Examiners now has the power and the mandate to act. No change, however, can become effective until two years after promulgation.

While action by this Board will be necessary to change admission requirements, the Act itself changes the grounds and procedure of disbarment. The Council is given jurisdiction to administer reprimand, suspension, or disbarment, for "1. Commission of a criminal offense showing professional unfitness; 2. Detention without a bona fide claim thereto of property received or money converted in the capacity of attorney; 3. Soliciting professional business; 4. Conduct involving willful deceit or fraud or any other unprofessional conduct." The accused may appeal from the decision of the Council to the Superior Court and have his case tried by jury, with the right of further appeal to the Supreme Court; the Council may also appeal to the Supreme Court. The old disbarment statutes, C. S. §§204-215, are specifically repealed.

The new Act preserves in the main the old grounds for disbarment, but with two important exceptions. Heretofore there was no such general ground as "unprofessional conduct," and the want of such

⁵ See (1929) 8 N. C. L. REV. 101 for an account of the legislative activities of the Association.

⁶ See NOTES ON LEGAL EDUCATION, Oct. 1, 1932. (Pamphlet published by the Section of Legal Education and Admissions to the Bar of the American Bar Association).

⁷ 21 N. C. BAR ASS'N. REP. (1919) 169; 24 *id.* (1922) 65; 29 *id.* (1927) 76.

⁸ 32 *id.* (1930) 67.

⁹ 3 *id.* (1901) 15.

a catch-all has created in at least one instance a necessity for piecemeal amendment to cover an apparently unanticipated case.¹⁰ Furthermore, disbarment for crime could formerly be had only after "conviction or confession in open court."¹¹ It was held that this meant confession in answer to an indictment¹² and that a plea of *nolo contendere* was not such a confession.¹³ In the new Act these limitations on the manner in which the commission of the crime is to be evidenced are omitted, and the two decisions just mentioned are, it seems, rendered obsolete.

The changes in procedure represent quite a departure from that prescribed in the superseded statutes. Formerly it was provided that "proceedings for the disbarment or suspension of any attorney . . . shall be instituted and prosecuted only by the committee on grievances of the North Carolina state bar association. . . ." ¹⁴ The proceedings were had in the Superior Court with the solicitor representing the Committee. And a recent case which excited adverse comment held that the solicitor was limited to the accusation and affidavits supplied by the Committee.¹⁵ A similar limitation may arise under the new procedure. The accused can appeal from the Council to the Superior Court with "the right to have his cause heard by a jury." The jury, however, is limited to a transcript of the evidence produced before the Council, as in cases of a jury trial after a referee's report. A recent investigation of jury trial in disbarment cases shows that it might have been well to omit the provision for jury trial altogether.¹⁶

¹⁰ The court held in *Kane v. Haywood*, 66 N. C. 1 (1872) that no disbarment of an attorney could be had for misuse of his client's funds. Thereupon C. S. 206 added this as one of the grounds for disbarment.

¹¹ C. S. 205.

¹² *Kane v. Haywood*, 66 N. C. 1 (1872).

¹³ *In re P. T. Stiers*, 204 N. C. 48, 167 S. E. 382 (1933).

¹⁴ C. S. 208. Under this section the resident or presiding judge could "institute an investigation into any reported cause for the disbarment or suspension of any attorney-at-law practicing in such district," but presumably the committee had to bring the formal charges.

¹⁵ Committee on Grievances of the State Bar Ass'n. v. Strickland, 200 N. C. 630, 158 S. E. 110 (1931), commented on in (1931) 10 N. C. L. Rev. 58.

¹⁶ C. S. Potts, *Trial by Jury in Disbarment Proceedings* (1932) 11 Tex. L. Rev. 28. The author sets forth his conclusions as follows:

- "1. That trial by jury is not a suitable instrumentality for use in disbarment cases, but is slow, cumbersome, expensive, and disruptive in its tendencies.
- "2. That to provide in the Self-Governing Bar Act an optional provision is to invite disreputable members of the profession, against whom charges may be preferred, to demand trial by jury in order that they may make political capital by posing as martyrs to the people's cause.

BANKS

Emergency Bank Legislation passed in North Carolina and many other states¹ after emergency administrative action in Louisiana, Michigan and Maryland usually included these measures: (1) the giving authority to limit withdrawals from all or certain banks; (2) provision for the receipt of deposits by those banks to be kept separate and liquid and subject to complete withdrawal on demand; (3) provision for declaration of Bank Holidays; (4) creation of a new official, the conservator, a sort of temporary receiver, to conserve rather than wind up; (5) provision for reorganizing of banks by summary procedure. The North Carolina acts follow: Ch. 103, in effect March 3rd, empowers the Commissioner of Banks to authorize any bank or deposit-receiving institution under his supervision to defer payment of both demand and time deposits for whatever period he thinks expedient, meanwhile receiving new deposits to be segregated and made subject to withdrawal in full under the Commissioner's supervision. This reverses all historic banking law² for in the past a bank unable to meet the demand of its depositors was not deemed fit to receive others even if it would handle the new ones better than it had the old. And the change in the law did not seem to change the established practice for, so far as can be learned, little new deposit business has been done by restricted banks. The Commissioner was "authorized and directed" not to take possession of a bank operating under the provisions of the act, and was exonerated for failure to do so. Since the provisions of Sec. 218 (b) 5 of the Code with respect to taking charge of a bank for failure to pay its deposits as agreed³ were permissive and not mandatory as were those

and, by postponements and appeals, delay final decision as long as possible, while they continue their nefarious practices.

"3. That the abrogation of trial by jury in disbarment cases does not in any way violate either the letter or the spirit of Magna Carta or the Bill of Rights.

"4. That trial by jury in disbarment cases has only been tried in some ten states and has been given up for a simpler and more effective procedure in at least three of these states."

¹ A table was published March 3, 1933, by the American Legislators' Association showing both legislative and administrative action throughout the country up till that time.

² But was not unique. See *e.g.*, Pa. Laws 1933, No. 6; Mass. Laws 1933, c. 59. Cf. U. S. Laws Pub., No. 1, 73rd Cong. §§4, 206.

³ The editor of N. C. CODE ANN. (Michie, 1931) considers this section modified or superseded by § 218 (c) 1. Subsection (5) however, here referred to, seems still in effect. South Carolina has recently sustained a drastic limitation on all suits against banks. See *Zimmerman, Conservatory v. Gibbs et al.*, S. C. Sup. Ct., No. 483, May 11, 1933 (1933) 1 U. S. WEEKLY L. J. 262.

of Sec. 218 (c), the Commissioner could probably have acted as now provided without the exculpatory section. One other provision may yet give trouble. All expenses of the new deposit accounts are to be borne by the bank to assure payment of those deposits in full. Since a bank reduced to this state of affairs might quite likely on later liquidation be unable to pay its old depositors in full, the expense of the new accounts would come not from "the bank" but from the old depositors. Barring their consent, as by their making new deposits thereunder, there is grave doubt of the validity of such a claim—at least if, as seems, it was intended to take preference.⁴

Ch. 120 first provides for bank holidays and then repeats some of the above provisions in slightly different form, such as that deferring payment of existing claims and that authorizing the receipt of new deposits, here called "special trust accounts" to be kept in cash or on deposit with other approved banks or invested in designated United States and North Carolina Securities. It also authorizes the Commissioner with the Governor's approval, to sanction or require clearing house certificates, to synchronize the state banking regulations with those of the National Government and to establish any other needful regulations for banks operating under the Act with the existing right of appeal to the full commission preserved as to these matters.⁵

The bank holiday feature warrants comment. The Governor of North Carolina had already proclaimed such a holiday as had many others.⁶ His action was expressly validated, and, "with the advice and consent of the Council of State," he was empowered to repeat that action in the future and thus to suspend all banking business both state and national. That would obviously be within the power of the state. But then comes an inconsistency, for, during "the holiday" the Commissioner with the Governor's approval may permit any bank to transact business. This is no holiday then, but only a provision in effect closing certain banks partly or altogether. As to national banks the state has obviously no such power and if some state banks were permitted to open, presumably all national banks could do so.

⁴ The Federal Act, Pub. No. 1, 73rd Congress, §203, contains a somewhat similar but distinguishable provision as to expenses of conservatorship which, under §206, may include receiving new deposits. Those provisions were copied in North Carolina. See c. 155, *infra*.

⁵ See N. C. CODE ANN. (Michie, 1931) §221 (o), last paragraph, and comment in (1931) 9 N. C. L. REV. 348-350.

⁶ See table cited in note 1 *supra*.

But, even assuming it to be a holiday, it is a banking holiday only—as the corresponding Pennsylvania legislation takes pains to state⁷—and interesting speculation therefore arises as to the effect on commercial paper payable at banks on one of the designated days. It is a serious question whether this liability of indorsers could be continued in spite of failure to present, because of this half breed moratorium.⁸

Ch. 155, ratified a week later, is the Bank Conservation and Preferred Stock Act and is substantially a copy as to state banks of Titles II and III of the Federal Act of March 9, 1933, Public No. 1, 73rd Congress.⁹

It creates the office of Conservator who shall be appointed to take charge of banks pending a safe resumption of business,¹⁰ a reorganization or a determination to liquidate.¹¹ The Conservator may be directed by the Commissioner of Banks to make a controlled bank's deposits available for withdrawal to the extent that he considers safe; and new deposits may be received on a segregated, fully-withdrawable basis much as was provided in previous chapters.¹²

The most important feature of the law is, however, the provision for reorganization and the issuance of preferred stock. By a reorganization agreement having the assent of certain percentages of the

⁷ Pa. Laws, 1933, No. 33.

⁸ See N. C. CODE ANN. (Michie, 1931) §§305, 3052, 3056. If the instrument was in a safe deposit box in a closed bank perhaps §3062 could avail the holder—though since the safe deposit business is no part of the banking business it should not be closed by the banking holiday. The Superintendent of Banks in Pennsylvania recognized this distinction at the outset, perhaps since many safe deposit concerns there are not banks. A general holiday would, of course, extend the time of payment, and so also the time for presentment and notice of dishonor §3066. And many holders are protected by a waiver in the note. §3063(3).

⁹ And see Mass. Laws 1933, c. 87. Some slight differences in the North Carolina and Federal acts will be ignored. Others not noted later herein are as follows:

The appointment of a Conservator for state banks requires approval of the Governor. No corresponding Presidential approval is prescribed in the Federal act. The state act expressly provides "that no reorganization shall affect the lien of secured creditors."

¹⁰ The Federal act also requires the resumption to be "in the public interest" (§205). A like provision in the matter of reorganization is present in the Federal (§207) and absent in the state law.

¹¹ Meanwhile the rights of the parties are fixed by the liquidation section of the CODE, §218 (c); but the possession is not deemed to be for liquidation (§11).

¹² See chs. 103, 120 *supra*. The Conservator holds those deposits in a special fund as the banks themselves did. The Federal act allows them to be invested in U. S. bonds as well as held in cash or carried on special account in the Federal Reserve Bank. The state law does not permit the bond investment.

creditors or stockholders¹³ and also of the Commissioner of Banks, the affairs of the bank may be removed from conservatorship and restored to the Board of Directors. All non-consenting depositors and their creditors are expressly made bound by the act. The provision here (Sec. 5, par. 2) is identical with the federal act (Sec. 207) but its validity may be questioned on a constitutional ground not applicable to the Federal Government, *i.e.*, impairment of contract.¹⁴ This question will be reverted to in consideration of the later reorganization act ratified in April (ch. 271).

The remaining notable feature is that authorizing, on certain very summary formalities, the issuance of non-assessable, cumulative stock, preferred as to 6% dividends and as to assets on liquidation (Sec. 8). The latter preference goes even further. In the event of liquidation and assessment on common shareholders may be ordered where necessary to pay off the preferred.¹⁵ It is assumed that this protection of the preferred shareholder's investment will be resorted to only when the full double liability of common stock has not been required to pay depositors; for otherwise the preferred shares would be given the status of creditors', something not permitted in the case of business corporations¹⁶ and not lightly to be inferred from indirect language.

Furthermore, the assessment is to be "under existing laws" and, therefore, as to banks substituting surplus under ch. 159 for the present statutory double liability, there will be no basis for any assessment. There is nothing here giving the preferred shareholders a claim in the new surplus equal to that of depositors, while ch. 159, §2 sets up that fund "for the sole benefit of the creditors." Some additional matters are noted in the margin.¹⁷

¹³ The requirement is either three-fourths of the creditors in interest or two-thirds of the stockholders in interest or both, a rather peculiar arrangement. Fiduciaries were later (c. 267) authorized to sign depositors' agreements under the emergency legislation when the reopening plan had the sanction of the Commissioner and the signing was approved of record by the superior court clerk and judge. The bond of the fiduciary was not thereby released.

¹⁴ U. S. Const., Art. I, §10(1).

¹⁵ Not in corresponding Federal section, 302(b).

¹⁶ N. C. CODE ANN. (Michie, 1931) §1156 and annotations.

¹⁷ Preferred stock is not valid till paid for in cash or "in such manner as may be specifically approved by the Commissioner of Banks." This quoted provision of §7 is not in the Federal act and may be intended to permit depositors to apply their frozen claims to the purchase of preferred stock. Section 9 excludes preferred shares from the connotation of the words "stockholders," "capital" or "capital stock" in the existing banking law. The Federal act is different (§303). Cf. as to later banking law, however, c. 451 *infra*.

A much more extensive law for the reorganization of banks followed a month later in ch. 271, effective only through 1934, which was copied largely from parts of a Maryland statute enacted shortly before.¹⁸ It applies, however, not to banks under conservatorship but to those not able to meet maturing obligations, or doing a restricted business (See ch. 120), or in possession of the Commissioner for liquidations. The board of directors originates the plan; the Commissioner must study and approve it and give it certain publicity.¹⁹ Objectors have 30 days in which to act and one-third in interest of either creditors (including depositors) or stockholders can block the reorganization within that period. If less than one-third object the plan goes through but the dissenters who within the allotted period filed their objections in the superior court along with an application for appraisal of their interest are entitled to have such appraised value²⁰ allotted to them in cash or in assets of the reorganizing bank. Furthermore stockholders' liability is preserved,²¹ presumably for non-assenting depositors, since those who assent to the reorganization no doubt waive those rights under the reorganization agreement.

Since the reorganization plan might include the creation of a new bank or the consolidation of several²² as well as a mere revamping of the capital and deposit liabilities of an old one, the legislature expressly preserved the trust business of the old institutions by allowing the reorganization itself to transfer fiduciary appointments to the

¹⁸ Senate Bill No. 154, an act amending Md. CODE, Art. 11, Banks and Trust Companies.

¹⁹ The commissioner's outline of the plan is to be on file for inspection in the superior court, and given newspaper publicity where possible in each county where the bank maintained an office, along with a notice to file objections, if any, within 30 days (§§2 and 3). Section 4 provides in addition for mailing notice to stockholders and creditors.

²⁰ The determination of value is to be by a superior court judge and "on the basis of a judicial liquidation of said institution." That will be an extremely difficult matter on which no doubt he will wish to order a reference. The amount allotted is to be paid to the commissioner as "receiver for liquidation." An appeal will doubtless be permitted but none of the valuation proceedings will delay the consummation of the reorganization. It might conceivably give ground for upsetting it later on, however. Section 8 makes provision for abandonment of the reorganization plan on certain contingencies.

²¹ Applicable to stockholders "of record at the time of the passage of the Act." This is misleading. The act itself does not, when passed, release any stockholder from liability; but liability as to banks reorganizing in the future will be determined by the condition of the bank at the time the shares are transferred.

²² Sections 1 and 9. The language about consolidation is not in the Maryland Act and doubtless foreshadowed the North Carolina-Page-Independence plan now being undertaken.

new state or national bank. And by a later amendment²³ this transfer was made applicable also to reorganizations under the Federal Bank Conservation Act.²⁴

Branch Banking, Ch. 451, an act to establish banking facilities for small towns, amends C.S. 220(r) on branch banking by allowing the establishment of branches in the discretion of the Commissioner by any bank which has and maintains a total capital stock (common and preferred) of one million dollars or more and which has qualified for non-assessable stock by setting up the surplus required in ch. 159 (see above) and maintains a combined capital and surplus equal to one-tenth of its deposits. This last is a step in the right direction. Some such requirement of a capital-to-deposits ratio should be made of all banks, as has been done in several states already, and it is to be hoped will be here by another legislature. As to the capital requirement the following facts appear. The last issue of the Banker's Directory²⁵ showed but four banks with a capital of one million or more. Of those two were under restrictions and in effect closed when the present act was ratified. Each of the remaining two—one already having some branch offices—had sufficient capital and surplus to indicate that it could have established branches under the old provisions without difficulty. The reason they did not do so probably had nothing to do with state law but was out of deference to the rule of the Federal Reserve Act which prohibited the establishment of branches after Feb. 25, 1927, by members of the system.²⁶ The recent change in the Federal Law by the Glass-Steagall Bill²⁷ may invite these banks to meet the new requirements of the state law created by this chapter.

Publicity for Liquidation Costs, Ch. 483 is like the moving pictures; it has more name than substance. Entitled "an act to Promote Orderly Liquidation of Closed and Insolvent Banks in North Carolina," it turns out to be merely a call for publicity as to the pay of auditors and attorneys employed by the Commissioner in bank liquidations. Such publicity may cure some abuses but, looked at from this distance, the act in singling out these two expenses for

²³ C. 499. Line 4 of §1 in the advance parts contains an obvious error. It seemingly should read, "inserting after *the word Act* in line two thereof."

²⁴ Title II, Pub. Law No. 1, 73rd Congress.

²⁵ Rand McNally & Co., January 1933 edition, corrected to March, 1933.

²⁶ 12 U. S. C. §321.

²⁷ H. R. 5661, 73rd Cong., 1st Sess., §22, permitting national banks with \$500,000 capital and under some other regulations to open branches within one state where the state law expressly permits branch banking to state banks.

special airing, seems more likely to create only a little newspaper advertising and some resulting complaints by persons ignorant of the value of such services.

Unclaimed Deposits. Ch. 546 by an interpolation in §218 (c) subsection 12, of the N. C. Code Ann. (Michie, 1931), on Bank Liquidation, escheats unclaimed deposits²⁸ to the University. Hitherto unclaimed deposits simply enriched the broth a little for depositors who did make claims.²⁹ Now it makes no difference to claimants whether anyone else files or not, for the claims will be listed as a sort of account "for whom it may concern," apparently subject to call by the rightful claimant for at least three months after liquidation is complete. This seemingly makes of none effect the provision immediately after it that tardy claimants share only in the assets not theretofore distributed. They now have an anomalous credit, so to speak, on the books as a share of the former distributions. And the final proviso saving certain unfortunates becomes also unnecessary in the light of this reasoning. The depositor who files in the specified time loses most of the reward for his promptness. As to the escheat, if there is any merit in giving the unclaimed deposits to the University instead of to the participating depositors, there would seem even more merit in thus treating unclaimed deposits in cases of voluntary liquidations. Whether the present act accomplishes that or not is uncertain due to the doubtful status of §218(a). Since the passage of the act which became §218 (c)³⁰ one remaining unanswered question is whether a stock assessment under 218(c), subsection 13, would be warranted to the extent that it would be paid to the University. Perhaps the amount of unclaimed deposits makes this question trifling, but the stock assessment is said to become distributable as general assets and would therefore seem applicable to the unclaimed indebtedness as much as to that claimed and allotted.

Required Surplus as Substitute for Double Liability of Stockholders. Ch. 159 represents a novel departure from the well-nigh universal style of statutory protection for bank depositors. Double liability has often proved no security at all for the reason that the

²⁸ Also claims disapproved, *i.e.*, where the claim is recognized but the claimant is not.

²⁹ This assumes what is usually the case, a failure leaving assets insufficient to pay all depositors and creditors in full.

³⁰ See especially subsections (2) and (22). Subsection (17) relative to unclaimed dividends (apparently on claimed deposits) has no bearing on the question. What was to be done with unclaimed deposits under 218(a), which refers vaguely to other provision of the chapter, seems impossible to find.

controlling stockholders were ruined by the bank failure or the other business difficulties which brought the failure about.¹ And for those actually forced to pay the assessment it was frequently a severe hardship. If the present act simply required a fifty per cent surplus, it might afford no added protection in many cases, since failing banks often show that much or more on paper right up to the closing date,² but the act requires that the special surplus be in the form of United States or North Carolina bonds and that they be put beyond dissipation by being placed in safekeeping elsewhere. But being thus frozen for the specific purpose, these assets will not be a source of strength to the bank in an emergency as other undesignated surplus would be. It is perhaps for that reason that the act permits existing banks to shift to this form of depositor protection only upon certain publicity and when the Commissioner of Banks considers that the bank already has a fifty per cent surplus and that its financial condition "will not be weakened by such action"—for ordinarily a bank would not be "weakened" by putting funds in investments as liquid as these.

Whether this earmarked surplus will be counted as meeting the requirements of C. S. 221 (j) relative to required accumulations before dividends can be paid to stockholders the statute does not say. Since the purpose of that provision was identical in its lesser way, we may assume that this new surplus will be so regarded.

Deposits of Public Funds without Security under Federal Guaranty. Ch. 461, in anticipation of the Federal guaranty of bank deposits, provision for which has since been made by the Banking Act of 1933,¹ removed the requirement of security to be given for state, county and city deposits in banks so secured, to the extent of the guaranty. The new insurance provided through the Federal Deposit Insurance Corporation is 100% for claims up to \$10,000,

¹ The Report of the Comptroller of the Currency for 1932, Table 43, shows varying amounts collected from stock assessments in national bank failures, but very frequently under 50%. It is believed that state bank collections in North Carolina would be less favorable although figures are not at hand.

² The Central Bank and Trust Co., Asheville, for example, in the statement which it gave to the Rand McNally Banker's Directory for publication in September, 1930 (July 1930 issue) showed: capital, \$1,000,000, surplus and profits, \$1,207,600, and it advertised in that same issue "Capital and surplus \$2,000,000." It closed two months later, November 20th, in a condition now only too well known.

³ Pub. No. 66, 73rd Congress, §8, creating new sections 12A and 12B of the Federal Reserve Act, effective as to insurance July 1, 1934. §12B (1). Cf. temporary provisions effective Jan. 1, 1934. §12B (y).

and other less percentages for deposits above that sum.² By Section 1½ of the North Carolina Act security will still be required as to the unguaranteed portion.

Since state deposits are likely to run vastly over the fully guaranteed limit of \$10,000, further interesting questions arise in connection with security for deposits by the State Treasurer in several different accounts, but in one insured bank. The Federal law provides, "That, in determining the amount due to such owner for the purpose of fixing such percentage, there shall be added together all net amounts due to such owner in the same capacity or the same right, on account of deposits, regardless of whether such deposits be maintained in his name or in the names of others for his benefit.³ If various departments of the state are to be treated as one depositor, which they well might be under the language quoted, the requirement of security can be determined only after calculation of the aggregate of state and state agency deposits in each bank.⁴

The ultimate approval of any public deposits under the relaxed demands of this act is lodged with the Council of State as to state deposits and with the Local Government Commission as to those of counties, towns and subdivisions of the state. Banks seeking to qualify as public depositories under the new arrangement must, therefore, gain the approval of two sets of officials since, under present unrepealed sections, the selection of depositories is committed to the State Treasurer as to state funds⁵ and to various specified officials as to local funds.⁶

Interest on State Deposits. Ch. 175. The interest rate on state deposits which was temporarily fixed by P. L. 1931, Ch. 127 (see N. C. Code, Michie, 1931, §7684) at 2½ % is now by this chapter left to the determination of the Governor's Council of State and a

² 75% of the next \$40,000 on deposit and 50% of all over \$50,000. Federal Reserve Act as amended, §12B (1). The terms insurance and guaranty are used loosely herein as identical. See generally on this, ROBB, *THE GUARANTY OF BANK DEPOSITS* (1921) 31-34.

³ §12B (1).

⁴ It would seem that separately incorporated units will be considered independent depositors. Municipalities would be clearly within this reasoning and counties certainly should be even though they are not strictly speaking separate entities from the state but only "quasi-corporations".

⁵ N. C. CODE, (Michie, 1931) §7691 (b); and see §7684, as amended by Ch. 175, *infra*, 7691 (a) and (d). Cf. §220 (y).

⁶ See N. C. CODE, (Michie, 1931) §§1334 (70); 2492 (27), (30), (32); 3655-3656 (probably obsolete). These references are not exhaustive.

corresponding change is made in relation to deposits by the Commissioner of Banks of funds from the liquidation of banks.¹

Bank Buildings. 3 C. S. 220 (b) permitted the indirect investment by a bank of half or more of its capital and surplus in its own bank building through provisos allowing ownership of securities in a bank building corporation. Ch. 359 now strikes out these provisos but seems to leave untouched the right to retain such stock investment if it was made prior to the ratification of the original act (Feb. 18, 1921). The provisions as to direct investment in bank building—N. C. Code, Michie, 1931, §220 (a)—and as to investment in corporate stocks generally—*Id.* §220 (c)—seem to be left undisturbed.

Dealing in Investment Securities. Ch. 303 recognizes and curbs the growing tendency of banks to depart from strict banking by denying the power "to engage in the business of dealing in investment securities (other than N. C. Municipal Stock and Federal Bonds) either directly or through subsidiary corporations." While "subsidiary corporations" are not defined, a liberal interpretation will warrant extending the term not only to cases of 51 % or more² stock ownership but to those of actual control in fact by the ownership of some smaller percentage.³ Purchase and sale "without recourse" on order of a customer, in other words, agency activity, is expressly sanctioned. It may be doubted whether there is any real sale by the bank in the type of case envisioned, though in such a case the bank may frequently purchase bearer securities in its own name even on customer's order.

Sale of Assets of Defunct Banks. Ch. 238 empowers the Commissioner of Banks (first inaccurately referred to as the Banking Commission) to conduct a public auction sale of unlisted stocks in "resident" (*i. e.* domestic) corporations found in the assets of defunct banks which he is liquidating, and to resell on like notice in the event that in his judgment a reasonable price was not first obtained. This apparently amends the present requirements of §218 (c) (7) that sales of property be conducted on court order and under specified terms. It specifically relates only to stocks though the proviso excluding securities listed on any stock exchange from its application speaks of "stocks and bonds," an obvious slip.

¹ P. L. 1927, c. 113, subsec. 15, N. C. CODE ANN. (Michie, 1931) §218 (c.) (15).

² This is the standard idea. See WEBSTER, INTERNATIONAL DICTIONARY; 3 WORDS AND PHRASES (4th ser., 1933) 579.

³ Cf. in a different connection N. C. CODE ANN. (Michie, 1931) §7880 (144) 6, "substantive portion."

Limitation on Loans. Ch. 239, in line with the tightening policy toward banks, further restricts the making of excessive loans by curtailing the discretion of the Commissioner of Banks to suspend loan limitations—see N. C. Code, Michie, 1931, §220 (e)—after Jan. 1, 1934.

Depositor's Assignment to Bank's Debtor. Ch. H. B. 1321, called the Sullivan Act, applicable to Buncombe County, but later extended by like legislation to other counties,^{3a} permits depositors in defunct banks in those counties to sell their claims to persons indebted to the depository bank with the privilege in the buyer to set off the claims against the depository bank. This obviously permits speculation at the expense of preferred creditors.

Bank Stock Assessments. Ch. 27 amends various session laws^{3b} on the subject of bank stock assessments. In case of bank closings in Buncombe County followed by a hundred per cent assessment voluntarily paid and a reopening, then no further assessment shall be collectible in case of a second closing within three years if in the meantime the bank "has made no new loans thereby diminishing its assets." Whether this means only loans which are in part uncollectible need not be inquired in view of the comment about to be made on another matter.

These two last mentioned chapters have one feature in common. They both deal with contractual rights and liabilities, by special legislation applicable only to certain geographic sections of the state. How, in view of *Plott v. Ferguson*,⁴ either of them can stand constitutionally is hard to see. And such, according to press reports, has been the holding in respect of the Sullivan Act by Alley, J., sitting recently at Marshall.⁵

Furthermore, even if some ground for distinguishing the *Plott* case should be found and these laws should slip by the State Constitutional provisions there relied upon,⁶ there still looms the shadow of the Federal Constitution and its equal protection clause.⁷ That the

^{3a} By ch. 540, fifty-four additional counties are included.

^{3b} One of the amended laws is erroneously given as P. L. 1925, c. 217. It should read c. 117.

⁴ 202 N. C. 446, 163 S. E. 688 (1932).

⁵ *Raleigh News & Observer*, May 23, 1933, p. 1. The learned judge is reported also to have held that the act impairs the obligation of contracts.

⁶ Art. 1, §7. See also art. 1, §31, monopolies; and art. 2, §29 as to special laws "regulating labor, trade," etc., which would have been more applicable in the *Plott* case than here.

⁷ U. S. Const., Amendment 14, §1, last clause, relied on by the trial judge in the *Plott* case, *supra* note 4.

federal courts would allow a man to be assessed on his shares in Bank *A* while his neighbor escaped assessment on identical facts on shares in Bank *B* simply because the banks were in different counties, seems highly unlikely.

BASTARDY

The present bastardy laws are repealed¹ and a new statute set up by ch. 228. The act will not be summarized here as to its detailed provisions, but only as to its general nature. It makes the wilful failure of either parent to support an illegitimate child a misdemeanor. If the court determines that the defendant is a parent of the child on whose behalf the action is brought, and that the defendant has neglected or refused to support the child, the court is to fix by order, subject to modification or increase from time to time, the sum of money necessary for the support of the child. For the purpose of enforcing payment, but not in lieu thereof, the court may make and modify orders imprisoning defendant for a term not to exceed six months; suspending sentence and continuing the case; putting defendant on probation; apprenticing defendant; or requiring defendant to sign a recognizance with good and sufficient surety for compliance with any order of the court. The male defendant may also be ordered by the court to pay the mother the necessary expenses of birth and medical attention.²

It is worthy of note that the new act operates against both parents, not primarily the father.³ The act is a criminal, not a civil statute; it begins by making wilful failure to support the illegitimate child by "any parent" a misdemeanor.⁴ It is the failure to support,

¹ The repealed provisions are C. S. 265-276. Section 1632-1 providing for the discharge from imprisonment of an insolvent putative father of a bastard committed for failure to give bond or to pay any sum ordered for the child's maintenance is also repealed.

² This latter provision is placed in the list of alternatives to which the court may resort to enforce payment of the sum fixed for maintenance of the child. Such a placing is obviously inadvertent; the provision has no relationship to any such purpose.

³ Some of the provisions are designed to establish paternity, but once that is established, both parents are subjected to the provisions set up in the act on behalf of the child.

⁴ The question whether the proceedings under the former statute were civil or criminal was much disputed. The earlier North Carolina cases held that the action was a civil action; then several cases held it was a criminal action; then the court expressly overruled these cases and declared the action to be a civil one in *State v. Liles*, 134 N. C. 735, 47 S. E. 750 (1904), which decision contains an extensive review of the cases. See also *State v. Carnegie*, 193 N. C. 467, 137 S. E. 308 (1927), indicating that the action is civil. The court in *State v. Liles* suggests some of the disadvantages of making the ac-

not the bastardy, which is made a crime. The consequence or punishment of the crime is the fixing of a sum to be paid by the parent for the support of the child. The failure to pay this sum brings on the other possible consequences as previously enumerated. No provision is made for execution against the parent for the sum fixed; there is no section comparable to C. S. 275. The only means of enforcing payment specifically provided in the act are the list of alternatives above set forth to which the court can turn if payment is not made.

Jurisdiction is given to "any court inferior to the Superior Court," but by virtue of other provisions jurisdiction of the justices of the peace is probably excluded.⁵ Nothing is said in the act concerning appeals; accordingly the usual rules for appeals from prosecutions for misdemeanors would seem to be applicable, including the rule that the state cannot appeal.⁶

BUILDING AND LOAN ASSOCIATIONS

Ch. 19 and 20 create new sections numbered 5175 (a) and (b). Section 5175 (a) expressly authorizes Building and Loan Associations to invest in stock of the Federal Home Loan Banks, created by the Act of July 22, 1932. (12 U. S. C. §§1421-1449). Elsewhere (see ch. 26, *infra*) such stock is recognized as proper for reserve fund purposes.

Section 5175 (b) provides for two weeks notice in a local newspaper (or, lacking that, by posting at the association office and the courthouse door) of both annual and special meetings of stockholders, of whom 25 shall constitute a quorum "unless otherwise provided"—presumably in the charter or by-laws, though the context might suggest a provision in the notice of the meeting.

tion a criminal one when it says, "The result of these cases [holding the action to be a criminal one]. . . has been practically to destroy . . . the efficacy of the proceeding by requiring proof beyond a reasonable doubt, a disparity of challenges, a denial of appeal by the woman or the state, and of the competency of the woman's affidavit (though all these are expressly given in the statute), and by exacting other incidents of a criminal trial."

Other consequences of the change specifically making the action a criminal one are not hard to see. Probably the defendant is now legally subject to extradition. (Note) Ann. Cas. 1821C, 1298.

⁵ As pointed out above the action is a criminal one. N. C. Const., art. IV, §27, provides that justices of the peace shall have jurisdiction "of all criminal matters . . . where the punishment cannot exceed a fine of fifty dollars or imprisonment for thirty days." Since §7a of the act permits a sentence not to exceed six months, and since the sum which may be fixed for support of the child is unlimited, it would appear that justices of the peace have no jurisdiction. See *State v. Addington*, 121 N. C. 538, 27 S. E. 988 (1897).

⁶ *State v. Ostwalt*, 118 N. C. 1208, 24 S. E. 660 (1896).

Ch. 26 amends N. C. Code Ann., (Michie, 1931) §5177 materially¹ in the following respects: By adding Federal Home Loan Bank securities, both stock² and bonds, to the list of approved investments for the reserve fund; and by allowing renewal or refinancing of existing loans, and the making of loans to finance the association's foreclosure sales, even when the state of quick assets in the reserve is too low to permit new (real estate)³ loans under the other provisions of the section. This obviously empowers the association to rewrite a mortgage extending the debt over a longer period by allowing smaller serial payments on principal. Whether it likewise was intended to permit increasing the size of the loan by capitalizing interest defaults is not known but the language seems broad enough to do so. The chapter also strikes from the reserve fund provisions the requirement that money deposited in bank be in "immediately available funds." This apparently is in recognition of the restricted operations of many banks in which building and loan funds have heretofore been lawfully placed as part of the reserve.

Ch. 122 creates two new sections which might reasonably follow present §5177, and in them makes express provision for withdrawals by shareholders of the amounts payable on unpledged stock after one month's written notice to the secretary of the association. When treasury funds are inadequate to pay these shareholders whose claims have ripened⁴ further provision is made for the establishment of a fund to pay in installments. The fund receives monthly, so long as necessary, one-half of the net receipts (current revenue less expenses and money set aside to meet maturity obligations). It is distributable on order of the board, and ratably, except where the board or the Insurance Commissioner directs otherwise. If this means an ungoverned discretion in these officers to create preferences it seems invalid but the rest of the Act would not need to fall with it. If it was meant to allow for preferential payments to certain share-

¹ There are also less important changes. One grammatical error in the old section is cured by inserting "such stock" in the sentence relating to paid-up stock sharing in excess earnings; another by changing "fall" to "falls" further on.

² The purchase of such stock is expressly sanctioned by Ch. 20. See above.

³ These words were added by the chapter, though, considering the limited character of loans permitted by §5182, the addition seems of little effect.

⁴ Apparently borrowed money may be used to pay matured stock. See Ch. 18 *infra*, amending §5184. Cf. Pa. Laws, 1933, No. 108, §616 E; Ind. Laws, 1933, Ch. 40, §261.

holders under specific contract, that possibility is thought to have been done away with by the 1931 amendments to §5180.⁶

Ch. 18 amends §5184 chiefly by granting express authority to an association to pledge its assets as security for money borrowed.⁶ In addition it can repledge shares of its own stock held by it as collateral, without obtaining the shareholder's consent to the repledge.⁷ The revised section also limits borrowings to thirty per cent of the "gross assets of such association", this quoted language replacing some far less satisfactory phraseology heretofore employed.⁸ Other less important changes are noted in the margin.⁹

Ch. 38 requires five days notice to a domestic building and loan association and to the Insurance Commissioner before the court can appoint a receiver for its business. The statutes on building and loan associations heretofore have contained no specific provisions on the subject of receivers but the appropriate sections of the Corporation Law (§§1208-1217) were made applicable by Code §5174. The formalities of appointing a corporate receiver were by §1208 of the Corporation Law made the same as "for the appointment of receivers in other cases" and the matter of notice seems in turn to have been cross referenced by §859 of the Article on Receivers to the sections on Injunctions (See §§848-852). The most that can be found in any of these places is a requirement of "due notice"¹⁰ and the present enactment seems therefore to establish a definite rule where there was none before. It might improve the liquidation of building and loan associations if instead of a receiver, the Commissioner of Banks were to take charge as he now does in the case of closed banks under §218c. That is substantially the arrangement

⁶ See comment on that Section, (1931) 9 N. C. L. REV. 352.

⁷ Substantially this same authority as to pledging assets and stock is found in the new Pennsylvania Building and Loan Act, except that it is there limited to borrowings from the Federal Home Loan Bank or other governmental agency. Pa. Laws, 1933, No. 108, §802 C, approved May 5, 1933; and Cf. Ind. Laws, 1933, Ch. 40, §280, requiring a court order; Mass. Laws, 1933, Ch. 144, revising Co-operative Bank Law.

⁸ No authority is given or implied to repledge Liberty Bonds held as collateral under authority of §5182.

⁹ The old language was "amount then actually paid into the association as subscription or dues on installment shares."

¹⁰ Borrowings may now be authorized by provision in the certificate of incorporation or the by-laws as well as in the constitution. The official vote approving the debt must be by $\frac{2}{3}$ of all "the directors" rather than of all "the members of the board",—a purely verbal change. The debt may now be evidenced by the associations' "bond, obligation or note", while formerly the borrowing was to be "on the note of the association".

¹¹ N. C. CODE, (Michie, 1931) §848, on restraining orders. Cf. also York v. McCall, 160 N. C. 276, 280, 76 S. E. 84, 85 (1918), receiver for property.

provided by a recent amendment to the Ohio Building and Loan Law.¹¹

CONSTITUTIONAL AMENDMENTS

In Ch. 383, the General Assembly submits to the voters at the next general election, presumably in November, 1934, its revision of the new state constitution prepared by the Constitutional Commission. The entire instrument will be voted on as a whole. If a majority of the votes cast on this "amendment of the preamble and the several sections of the constitution" are favorable, the new constitution will be in force from the date of the Governor's certification of that fact to the Secretary of State.

The complete Report of the Constitutional Commission was published in the December, 1932, issue of this REVIEW. Next December's issue will carry a critical analysis of the new constitution as prepared by the Commission and as revised by the legislature, in comparison with the provisions of the present constitution. All that will be attempted here is a brief indication of the more important changes made in the Commission's work by the General Assembly.

Taxation and Finance. The Commission's provision for a state agency which was to have supervision over local finance and without whose approval no new local indebtedness could be created unless authorized by a popular vote has been dropped. Local budgets and tax levies remain subject, however, to regulations to be prescribed by general laws. (Art. 5, §§4, 5.)

The Veto Power. The Commission's report enabled a veto to be overridden only by a vote of two-thirds of the House and Senate. Presumably that meant two-thirds of the entire membership and not merely two-thirds of those present in each house. The General Assembly has changed these provisions to read "a majority of the entire membership" of the House and Senate. (Art. 2, §21).

Senatorial Districts. The Commission provided "and no county shall be divided in the formation of a senatorial district unless such county shall be entitled to two or more senators." This has been omitted, and Art. 2, §3 now concludes "but no county shall be entitled to more than one senator."

The Judiciary. Two changes have been made here. (1) The legislature added to the Commission's draft of Art. 4, §7 "and such special Superior Court judges shall have the same jurisdiction, power

¹¹ H. B. 263, 1933 Session, amending § 687, OHIO GEN. CODE.

and authority in the courts which may be held by them as is now conferred upon and exercised by the regular judges of the Superior Courts of the state." (2) The Commission made rotation of judges among the judicial districts optional with the General Assembly and eliminated the old prohibition against a judge's holding court in a county oftener than once in four years. The legislature in its revision deprives the General Assembly of power to abolish the rotation of judges and restores the old four-year limitation, except when the regularly assigned judge is incapacitated by illness or accident. (Art. 4, §6).

Juries. Four changes have been made here. (1) The Commission required indictments by a grand jury only in capital cases. The legislature's redraft requires them in all felonies. (Art. 1, §9.) (2) The General Assembly requires a jury in a criminal case to consist of "good and lawful men." The Commission made no mention of the sex of jurors. (Art. 1, §10). (3) The Commission required unanimous jury verdicts only in capital cases. For lesser offenses, the General Assembly could "authorize trial by the judge in cases where the defendant waives jury trial, and may permit a verdict upon less than a unanimous vote of the jurors." The legislature changed these provisions so as to require unanimous verdicts in all criminal cases except petty misdemeanors, and eliminated the clause relating to trial by the judge in the event of a jury waiver. (Art. 1, §10). (4) The Commission authorized the General Assembly to provide for verdicts of less than a unanimous vote of the jurors in civil cases, but the legislature's redraft deprived the General Assembly of that power. (Art. 1, §16).

Homesteads could not be exempted from sales for taxes, under the Commission's version of Art. 8, §2. The legislature's redraft empowers the General Assembly to exempt homesteads from taxation.

Absentee Voting was restricted by the Commission to cases of physical disability or absence from home on state or federal service. The legislature has eliminated the clause relating to state or federal service and has broadened the remainder of the language so as to authorize absentee voting by persons "absent from the county in which they are entitled to vote," regardless of the reason. (Art. 6, §1).

Constitutional Conventions, according to a sentence added by the

General Assembly, are limited to 120 delegates elected on the basis of the membership of the House of Representatives. (Art. 12, §1).

CORPORATIONS

Reorganization After Forfeiture of Charter. Ch. 124. This carelessly drawn act looks as if it were introduced to take care of a particular situation, though nothing could be phrased more generally. It undertakes to save all property and other rights to the owners of a domestic corporation whose charter has been forfeited because of failure to make required reports to "the different state authorities." Apparently N. C. Code Ann. (Michie, 1931) §7880 (158) is what was in mind.¹ Under that section the Secretary of State cancels the articles of incorporation by marginal entry and "thereupon all the powers, privileges and franchises" cease. The status of a corporation whose charter has expired or has been forfeited or annulled is always sufficiently vague.² It is so here, for by a later section, if "the corporation" pays up, the secretary cancels the cancelling entry and issues a certificate permitting the exercise of corporate privileges once more.³ There is no requirement that a new or successor corporation be formed. Apparently the old one is revived or resurrected. But the present chapter pictures a new corporation of the same name organized after the forfeiture "on behalf of the same corporation" (obviously this means the same interests) and then not only gives this new corporation all the assets and rights of the old one, including its legal causes of action, but directs that shares in the new corporation shall be issued to the old stockholders in the same amount and par value as their former holdings. It does not very clearly appear that the act accomplishes anything of value. It cannot impinge on rights already vested, as is recognized in other legislation having comparable objects.⁴ And literally, it would seem capable of one undesirable consequence. It might enable a corporation which forfeited its charter by failing to report and pay fees to

¹ Since other sections provide penalties rather than forfeiture of charter. §222 (e), banks; §1108, public utilities.

² See §1193, continuing the corporate existence for three years for some purposes.

³ Probably the corporate property rights and causes of action would be considered as restored to the corporation too since, at the worst, they would meanwhile have been vested in the directors as trustees for the stockholders. §1194. See also §1131 (a) where charter has expired, and §§1199, 1208.

⁴ §1131(a).

burst forth into existence again after a considerable time by reincorporating without paying the fees due for the dormant period.

Coöperative Marketing Associations. Subch. V, of ch. 93 C. S. is further amended by ch. 350 to expand the powers of these organizations along lines already developed in other states. The coöperatives are first allowed to own some or a controlling interest in other corporations and to have the charter or by-laws of the subsidiary provide for management by the coöperative under some conditions. No limitation is here placed on the per cent of the coöperative's capital which can be devoted to this purpose, as some statutes had done,⁵ nor is there a limitation on the kind of corporation whose stock may be acquired. The usual statute elsewhere calls for some relation between the coöperative enterprise and the business acquired.⁶ The further expansion here sanctioned is in the handling of agricultural products for non-members of a value not greater than those handled for members.⁷

Consolidation. Ch. 408 provides for the consolidation of private, non-stock, charitable, educational and similar corporations and sets out the proper procedure.

Capital Issues Law. Ch. 432 broadens the definition⁸ of securities subject to registration, etc., by adding to those already listed the following: "Any contract or agreement in the promotion of a plan or scheme whereby one party undertakes to purchase the increase or production of the other party from the article or thing sold under the plan or scheme, or whereby one party is to receive the profits arising from the increase or production of the article or thing sold under the plan or scheme."

Corporate Dividends. Ch. 354 is an inexcusably bad piece of legislation in particulars to be pointed out. First, in setting up a special, rather complicated rule for the declaration of dividends by corporations which are members of partnerships, it appears to be drawn to cure the plight of some particular corporation rather than to enact a general rule of corporation law for which there is any apparent need. Second, it is far from happily worded. Third, it recognizes by a sort of backhand inference the power of a corporation to become a

⁵ WIS. STAT. (1931) §185.11.

⁶ CAL. CIV. CODE (1931) §§653ff(d), 653tt; ILL. REV. STAT. (1931) C. 32, par. 455(6)e, 455(23).

⁷ CAL. CIV. CODE (1931) §653ff(i); ILL. REV. STAT. (1931) C. 32, par. 455(6)j.

⁸ N. C. CODE ANN. (Michie, 1931) §3924(b)b.

partner, a thing usually not sanctioned without special statute or charter provision.⁹ Fourth, it wholly misplaces a section, called 1179(a), on this supposed power of a corporation and the non-liability of a corporate officer for partnership obligations by annexing it to a section on dividends, in the article on "Meetings, Elections and Dividends," to which it is not in the slightest degree germane. It is to be hoped that the courts will not be influenced by such an enactment to abandon the general rule and approve corporate entrance into partnerships. If the legislature intends a change it should say so directly.

COUNTIES AND MUNICIPAL CORPORATIONS

Consolidation of Counties. Ch. 193. Two or more counties which are contiguous, or which lie in a continuous boundary, may consolidate so as to form a single county. Uniform resolutions shall be adopted in each county, setting forth the name of the new county and the county seat; an election shall be held in each county upon the question of consolidation, and if a majority vote in favor of it, the consolidation shall become effective and the new county shall take the place of the former counties. An election shall be held in the new county for county officers and the old officers shall continue in office until these are elected. The new county shall be liable for the indebtedness of the former counties.

Annexation of Counties. Ch. 194. When two contiguous counties so desire, one may be annexed and become a part of the other. The proceeding for annexation is the same as in consolidation, but when it is complete, the county annexed ceases to exist and becomes a part of the other county. The liability of the annexing county for the indebtedness of the annexed county is to be determined in the beginning, when the plan of annexation is submitted.

Joinder of Counties and Municipal Corporations. Ch. 195. For the purpose of carrying on the administrative functions and activities of the several units, two or more counties may enter into a written agreement for the joint performance through consolidated agencies or through buildings jointly constructed. The agreement shall set forth the different functions to be jointly carried on and how the

⁹2 FLETCHER, CYC. CORPS., §§841-843. True, an exception is sometimes recognized where the corporation is in control of and manages the partnership. But the inferences of this act, while expressly describing that situation, go further as suggested above.

expenses shall be paid. Such agreement is not to continue for more than two years, but it may be renewed from time to time.

In the same manner a municipality may enter into an agreement with the county or with other municipalities in the same county for the joint performance of governmental functions. But this does not apply to Guilford County.

Ch. 201. As a further illustration of the same idea, two or more counties contiguous or in a group may enter into an agreement to construct and maintain a district jail. The agreement shall fix the terms for construction, maintenance and use of the jail, or they may adopt one already built as a district jail and dispose of the others.

Readjustment of Indebtedness. Ch. 205 provides for the appointment of a County Readjustment Committee, to be appointed by the Governor and to consist of three resident freeholders and taxpayers. It is the duty of this Commission to assist the counties and municipalities in bringing about a readjustment of their bonded indebtedness. At the request of the governing body of the governmental unit, the Commission shall investigate the bonded indebtedness, the unit's resources and ability to pay, and recommend an adjustment. If two-thirds of the holders of the securities agree to such adjustment, it shall be tendered to the minority holders, and if they do not accept, they may proceed by action to enforce their claims, but no mandamus will issue until eighteen months after final judgment on such claims. The court may ascertain the indebtedness and the ability of the unit to pay, and make such order as may seem equitable and just.

The readjustment shall be filed with the Secretary of State, and no tax or assessment shall be levied for such indebtedness except as set forth in such readjustment. The Commission may at the request of the governing body of the unit, negotiate with the Reconstruction Finance Corporation for a loan to be used in purchasing outstanding bonds or notes at a discount of forty per cent. Such governmental units are also authorized to borrow money for the purpose of paying such indebtedness and to levy a tax to pay such loans.

When a debt settlement plan has been agreed upon, it shall be published in a newspaper in the county for thirty days, and if at the end of thirty days no petition is filed for an election, the governing body may proceed to carry out its terms. But if a petition is filed by ten per cent of the qualified voters, an election shall be held

upon the adoption of the plan. If a majority of the votes cast shall be in favor of the plan, it shall be carried out; but if contrary, the agreement is to be void.

This shall not prohibit the governing body from making other terms of settlement, and after a year from the date of the first election a second election may be held upon a different plan of settlement.

Ch. 312 provides that the foregoing plan is to be considered only as an alternative and not to exclude other methods of settlement. Ch. 258 amends the Local Government Finance Act (1931, ch. 60) by making it apply to other governmental units in regard to the adjustment of their indebtedness, authorizing them to issue refunding bonds and to levy taxes for their payment. There are certain special provisions for the management of the funds to pay such obligation, the details of which need not be given here. This action of the local unit is to be subject to the approval of the County Government Commission, or under the provisions of the Readjustment Act explained above.

Ch. 257. Any governmental unit or taxing district, other than a county, city or town, may issue bonds for funding or refunding its indebtedness under the provisions of the County Finance Act, under some modifications of details in regard to the method of issuing the bonds.

Ch. 374 amends the County Finance Act (1931, ch. 60) by providing an additional method for the adjustment of the indebtedness of local government units.

After the unit has failed to pay for a year, the holders of fifty-one per cent of the indebtedness may apply to the Director of County Government, who shall appoint an Administrator of Finance for such unit by and with the consent of the resident judge of the district. The order of the appointment is to be certified to the clerk of the superior court of the county, who shall publish a notice for four weeks for the holders of the debts in default to appear and present the same. Upon the expiration of such publication the case is to be placed upon the civil issue docket, and the court may make such orders as may be for the best interests of the unit and the creditor, with certain provisions as to giving notice.

The proceeding so authorized seems to be in the nature of a creditors' bill, with a very general power in the court to make orders. The duties and powers of the Administrator of Finance are not de-

fined, but they would probably be similar to those of a receiver in a creditors' suit.

Investment of Sinking Funds. Ch. 436 amends the act of 1931 ch. 60, §29, which provides for the investment of sinking funds, by striking out the limitation that in the investment in securities of a governmental unit, such unit should not be in default in the payment of principal or interest of its indebtedness.

Ch. 376. Any county or municipal corporation may accept its own bonds, at par, in settlement of all claims which it may have against any one, on account of any money of such unit in any failed bank.

Water and Sewer Systems. Ch. 353 authorizes the governing body of a municipality, which has the management and control of a water system, to make such uniform rates for service as will pay the interest on the debt incurred for the same, the maturing installments, and the expense of operation. If there is a municipal sewer system, the same authority for fixing rates is conferred. In this act the counties of Ashe, Haywood, Mecklenburg, and Transylvania are not included.

Ch. 322, amending C. S. 2806, provides that municipal corporations operating sewer systems may fix the rates for service and the manner of payment. The charge for service shall not be a lien on the property, and when a tenant removes without payment for the service, it shall not be held against the owner of the property. A different rate may be fixed for service rendered beyond the corporate limits.

Counties Assuming School District Indebtedness. Ch. 299, having in view the fact that the Act of 1925 which authorized counties to assume the indebtedness of school districts was questioned as not being passed in accordance with the Constitution, validates such statute and the action taken by the boards of County Commissioners in accordance therewith.

COURTS AND CIVIL PROCEDURE

Transfer of Cases. Ch. 127 amends the Act of 1924, ch. 85, which authorized the judge of the Superior Court to transfer civil actions to the General County Court for trial. The amendment allows the judge of either the Superior Court or the General County Court to transfer cases to the other court for trial, either by consent or by motion upon notice.

Removal to Federal Court. Motions for the removal of cases from the General County Court to the Federal District Court may be made before the judge of the General County Court, with the right of appeal to the judge of the Superior Court. Ch. 128.

Appeals from County Court. Ch. 109 amends the statute regulating appeals from the County Court to the Superior Court. (3 C. S. 1608 (cc)). Instead of following the practice in appeals from the Superior Court to the Supreme Court, the appellant may file in duplicate the statement of the case on appeal, and this with the original records in the case shall be transmitted to the clerk of the Superior Court as the complete record on appeal. Briefs are not required to be filed by either party, unless requested by the judge of the Superior Court.

Special Judges. Ch. 217 authorizes the Governor to appoint four special judges, two from the Eastern Division and two from the Western Division, on or before July 1, 1933, to serve for two years. This continues the plan authorized by the Constitution for supplementing the judges of the Superior Court by appointing special judges.

Actions By and Against Unincorporated Associations. Ch. 182 amends C. S. 457, as to joinder of parties, by adding another section, to the effect that all unincorporated beneficial organizations, or voluntary benefit orders, associations or societies, issuing certificates or policies of insurance, foreign or domestic, now or hereafter doing business in this state, may sue or be sued in the name commonly used by them, without naming the individual members. This applies only to actions concerning such certificates or policies of insurance. Ch. 24 provides that service of summons in actions against such unincorporated associations or societies, concerning the certificates or policies of insurance, shall be made in the same manner as in actions against private corporations (C. S. 483). This changes the rule of practice in the cases mentioned, but does not apply generally to joint stock associations and other unincorporated societies, as has been done in some states.¹

Intervener in Claim and Delivery. Ch. 131 amends C. S. 840, in regard to the undertaking required of a party intervening in claim and delivery proceedings. The original section requires that the undertaking be in double the value of the property stated in the

¹Tucker v. Eatough, 186 N. C. 505, 120 S. E. 57 (1923) ; McINTOSH, N. C. PRAC. & PROC. (1929) 232, 233, 306.

plaintiff's affidavit, while the amendment requires double the value as stated in the intervenor's affidavit. This was probably intended to apply where the intervening claimant does not demand all the property involved or its value has depreciated, and not to allow his statement of the value generally to control as against the security which the plaintiff has been required to give.

It is further provided that the intervening claimant shall not be required to give an undertaking where he does not ask for the immediate delivery of the property, but leaves the right to its possession to be determined by the final judgment in the action. Whether this means that he may come into the action and claim the property as against the plaintiff and defendant without giving an undertaking for costs, is not stated. The undertaking provides for the return of the property and for costs, and to allow such claimant to assert his claim in Superior Court without any security for costs places him in a better position than if he had been the original plaintiff.

C.S. 829 provides that a third person may claim the property seized under attachment in the same manner as in claim and delivery, so that the amendment would also apply in attachments.

Jurors. Ch. 130 amends C. S. 2326. This section provides that when the names of the jurors are drawn from the box, it shall not be a cause of challenge that the juror is not a freeholder or has served on the jury within two years. The amendment provides that it shall also not be a cause of challenge that a juror "has not paid the taxes assessed against him during the preceding two years."

There may be some question as to the effect of this amendment. C. S. 2326 was first enacted in a statute in 1913, regulating the selection of a special venire, and it was placed in its present position in the compilation of 1919. Since not being a freeholder and jury service within two years are not causes of challenge for regular jurors, whose names are always drawn from the box, but do apply to tales jurors (C. S. 2312, 2321), the section would apparently remove those causes of challenge when the names of tales jurors are drawn from the box under the direction of the judge. Non-payment of taxes for the preceding year is a cause of challenge for regular jurors and tales jurors alike, and when it is removed by amending the section which applies only to tales jurors, it would leave the qualification as to regular jurors as it was before.

A special venire in a criminal action may be selected by an order to the sheriff, or by drawing the names from the box under an order

from the judge. (C. S. 2338, 2339). It was with reference to the latter that the original of C. S. 2326 was enacted, since it had already been provided that the same causes of challenge should apply to a special venire as to tales jurors. (C. S. 4635).

From the origin of the section it would seem that these exceptions to the causes of challenge would apply to tales jurors and special veniremen when the names have been drawn from the box. The ruling of the Supreme Court, however, does not seem to adopt this view as to special venire. In a comparatively recent case, in commenting upon the causes of challenge, the court says: ". . . Special veniremen, whose names have been drawn from the box, should be considered as standing on the same footing with regular jurors, while those whose names are not drawn from the box should be considered as standing on the same same footing with the tales jurors."²

Judgment for Deficiency in Foreclosure. Ch. 36 provides that in the sale of real property under a mortgage or deed either under the power of sale or under a decree of sale, if the mortgage or deed of trust is given to secure the payment of the purchase money, the holder of the notes secured shall not be entitled to a judgment for any deficiency on account of such mortgage or deed of trust, if the evidence of indebtedness shows upon its face that it is for the balance of the purchase money for real estate. It is further provided that if the notes are prepared by the seller or under his supervision, and fail to state that they are for the purchase money of real estate, he shall be liable to the purchaser for any loss sustained. The effect of this is to limit the creditor to the property conveyed, when for the purchase money, changing in that respect the present statute.³ This applies only to such contracts as are made after the ratification of the Act, Feb. 6, 1933.

Judicial Sales. Ch. 187 amends C. S. 84 and 3240 in regard to the sale of land for assets and for partition, by providing that in case of resale advertisement shall be made for fifteen days at the courthouse door, and also by publication in a newspaper published in the county, within the fifteen-day period, once a week for two successive weeks of not less than eight days; and if no newspaper is published in the county, the notice is to be posted at the courthouse door and three other public places in the county for fifteen days.

This provides for advertising resales in sale of land for assets

² State v. Levy, 187 N. C. 581, 587, 122 S. E. 386, 390 (1924); McINTOSH, *op. cit. supra* note 1, 601, 602.

³ C. S. 507; McINTOSH, *op. cit. supra* note 1, 428.

and for partition as in other cases of resale under the Act of 1929, ch. 44. This act has also been amended by ch. 96, by providing that publication in a newspaper for four successive weeks shall be for not less than *twenty-one* instead of *twenty-two* days; and that publication of resale shall be for two successive weeks of not less than *seven* days, instead of *eight* days.

Ch. 98 amends C. S. 765, requiring commissioners appointed to make sales to file an account of receipts and disbursements, by authorizing the clerk of the superior court to compel the filing of such account by notice and commitment for contempt, as in the case of administrators.

Ch. 123 amends C. S. 1744, which has been amended by P. L. 1927, ch. 123, to allow the land belonging to a life tenant to be sold for reinvestment, by further providing that it might be sold "for obtaining funds for improving other non-productive and unimproved real estate so as to make the same profit bearing."

Witness Fees. Ch. 40 amends C. S. 3893 by providing that a sheriff, deputy, policeman, patrolman or other law enforcement officer who receives compensation for his services otherwise than by fees shall not receive any fees as a witness for attending any superior or inferior criminal court within the territory when he has authority to make arrests.

Mandamus. Ch. 349 amends C. S. 867 by providing that in application for mandamus against any county, city, town or taxing district, the applicant must allege and show that the claim has been reduced to judgment, what part of the judgment is unsatisfied, what resources are available for its satisfaction, the value of property sought to be subjected to additional taxation, and the necessity for the writ.

Limitation After Foreclosure. Ch. 529. No action is to be brought to recover deficiency on any debt secured by mortgage or deed of trust on real property after foreclosure thereof by sale, except within a year from the date of sale, or from the date of ratification of the act (May 15, 1933) if the sale has preceded such date; but this act does not extend the time of limitation on any such action.

Lienor Against Converter of Crop. Ch. 167 amends C. S. 444 by adding a subsection thereto to the effect that an action for conversion by a landlord, mortgagee, or other lienor against any person or corporation which purchases any part of the crop upon which the landlord, mortgagee, or other lienor holds an unsatisfied lien, must be

brought within *six months* from the date of purchase. Ch. 167 expressly provides that C. S. 441, subsection 4, which fixes a three-year period within which suit must be brought for the conversion of a chattel, shall not apply to this situation.

Judgments Partitioning Contingent Remainders and Executory Devises Validated. Ch. 215 validates judgments of the Superior Court which have authorized partition of contingent remainders and executory devises in land upon the petition of the life tenant or tenants and of all other persons then in being who would have taken such land if the contingency had then happened and if those unborn were duly represented by guardian *ad litem* in such partition proceeding. Such judgment is made binding on all the parties thereto and upon all other persons not then in being, but no vested right or estate may be impaired thereby.

Ordinarily, proceedings for partition of land cannot be maintained when the plaintiff holds only a contingent interest in the lands, determinable on the death of the life tenant who is still living at the time the suit is instituted.⁴

Suit Against Surety on Stay Bond. When a bond is given to stay execution in case of appeal from a justice's court, and defendant before entry of the final judgment is adjudicated bankrupt, ch. 251, provides that the sureties on the bond remain bound and plaintiff may continue the prosecution of the action against the sureties, as if they were codefendants in the cause. This act overcomes the holding in *Laffoon v. Kerner*.⁵

CRIMINAL LAW

Payment of Costs of Appeal. Ch. 197 provides that the county in which a capital felony is committed shall pay the cost of obtaining a transcript of the proceedings and the evidence offered, the cost of preparing the requisite copies of the record and briefs which the defendant is required to file in the Supreme Court, the reasonable value of the services rendered in furnishing the transcript and preparing copies of the record and briefs. Payment is to be made on order of court and only in cases where counsel has been assigned by the court.

Punishment for Involuntary Manslaughter. Ch. 249 provides that in cases of involuntary manslaughter the defendant may be fined or imprisoned in the discretion of the court.

⁴ *Vinson v. Wise*, 159 N. C. 653, 75 S. E. 732 (1912).

⁵ 138 N. C. 281, 50 S. E. 654 (1905).

Lotteries. Ch. 434 amends C. S. 4428, the lottery statute, by punishing possession of lottery tickets and by making possession prima facie evidence of a violation of the statute in other particulars.

Kidnaping. Ch. 542 provides for punishing kidnaping or demanding ransom on account of kidnaping by life imprisonment, or, in the case of a corporation, by fine of \$25,000 with revocation of charter. The act does not apply to "a father or mother for taking into their custody their own child."

DOMESTIC RELATIONS

Divorce. C. S. 1659-4 provides for absolute divorce on the ground of separation for five years, the plaintiff to be a resident of the state for the same period. The right to bring the suit is limited to the injured party.¹ P. L. 1931, ch. 72, gives a right of action for divorce on the ground of separation to either party.² The same separation and residence period, five years, is required. Ch. 71 amends C. S. 1659-4 above referred to so as to make the separation period two years and the residence requirement one year. Ch. 163 makes the same change in the 1931 act, and besides that strikes out of the 1931 act the condition that no children shall have been born of the marriage.

A difficulty is created by reason of the fact that the first of these two amendatory measures, ch. 71, is fitted in with C. S. 1661, while the second, ch. 163, is not. C. S. 1661 requires the plaintiff seeking divorce to file an affidavit setting forth, among other things, that the grounds for the divorce have existed to the plaintiff's knowledge for six months prior to the filing of the complaint. Divorce for "five years separation," which of course included divorce under either C. S. 1659-4 or the act of 1931, before they were amended, was exempt from this requirement. Naturally divorce for two years separation, *i. e.*, divorce under the new amendments, would not be included in the exemption. Ch. 71, §2 takes care of the matter by specifically providing that plaintiff's affidavit in suits brought under C. S. 1659-4 need not set forth that the grounds for divorce have existed for six months prior to the filing of the complaint. But the legislature did not include in ch. 163 a section similar to ch. 71, §2. Therefore it would seem that divorces under the act of 1931 are subject to the requirement that the grounds must have existed to plaintiff's knowledge for six months before suit. This follows because C. S. 1161 excepts

¹ Lee v. Lee, 182 N. C. 61, 108 S. E. 352 (1921).

² This act is commented on in (1931) 9 N. C. L. Rev. 368.

divorces for "five years separation" and divorces under the act of 1931 are now for two years separation. It could be argued that divorce for two years separation has succeeded divorce for five years separation and should succeed to the exemption also, but the flaw in the argument is that the legislature specifically exempted divorces under C. S. 1659-4, and if it had intended the same result for divorces under the act of 1931 it would have made the same specific exemption.

Reading the enactments literally, then, divorces for separation for two years under C. S. 1659-4 as amended may be had without waiting an additional six months; divorces under the 1931 act as amended may not.

The somewhat complicated process of tracing out the result of these acts illustrates the potential confusion when existing legislation covers a field, then new legislation covering the same field in somewhat different fashion is tacked on, and then each piece of legislation is separately amended. It might have been better had the legislature repealed both C. S. 1659-4 and P. L. 1931, ch. 72, and enacted one new measure covering the whole subject of divorces on the ground of separation.

C. S. 1661 required that plaintiff's affidavit set forth that plaintiff had been a resident of the state for two years next preceding the filing of the complaint; ch. 71, §3, amends C. S. 1661 so as to make the period one year. This change is not limited to divorce on the ground of separation.

Marriage. P. L. 1929, ch. 161, requiring, with some exceptions, in the case of persons not over twenty-one years of age, an application for a marriage license to be filed, at least five days prior to its issue, or the marriage to be publicly announced through the press five days previous to the marriage, is repealed by ch. 12.

Ch. 256,³ although its meaning is obscure, probably offers as an alternative to the present requirement of a health certificate from the groom in order to obtain a marriage license,⁴ an affidavit from the groom that he does not have and for two years has not had active tuberculosis or venereal disease. Nothing is said as to the bride except "the bride shall not be required to stand a physical examination." Apparently this eliminates as to her the requirement of a

³ The act is entitled "An act to repeal Chapter 129 of the Public Laws of 1921" etc. Nowhere in the act is any such repeal made.

⁴ N. C. CODE ANN. (Michie, 1931) §§2500a-2500e.

health certificate, without the necessity of making an affidavit of health in lieu thereof.

When couples who are residents of North Carolina marry in another state they are required by ch. 269 to file a copy of their marriage certificate in the home county of the groom. Failure to do so does not invalidate the marriage, and no penalty for failure is specified.

Adoption. The statutes providing for the adoption of children, C. S. 182 to 191 inclusive, were repealed and a new adoption act substituted, by ch. 207. The principal additions and changes are as follows: a husband and wife are specifically permitted to make the adoption jointly. The petition for adoption may be filed in the Superior Court of the county where the adopting parent or parents or the child reside, or where the child resided when it became a public charge, or where is located any agency or institution operating under the laws of this state having guardianship and custody of the child, instead of solely in the county where the child resides. The child and his parent or parents as well as the adopting parent or parents must have legal residence in the state. Upon the filing of the petition the court is to instruct the county superintendent of public welfare or the representative of a licensed child-placing agency to investigate and ascertain whether the child is a proper subject for adoption and whether the foster home is suitable. The investigator is to make a written report to the court. Instead of letters of adoption being granted,⁵ subject to revocation by the court for good cause shown at any time without limitation,⁶ and possibly subject to restoration to the natural parent by the court, also without time limitation,⁷ the court is authorized to approve the adoption tentatively and issue an order giving custody to the adopting parent. Between one and two years thereafter the court may, in its discretion, grant letters of adoption, the adoption to be retroactive to the date of the application. During the interval the child is the ward of the court. The order granting letters of adoption may be revoked within two years for good cause shown. Where the name of the child is changed to that of the adopting parent the court is to report the change to the Bureau of Vital Statistics of the State Board of Health, authorizing the Bureau to change the name of the child on its birth certificate and to issue on request a birth certificate bearing the new

⁵ *Id.* §184.

⁶ *Id.* §188.

⁷ *Id.* §190.

name of the child and the names of its foster parents. No reference in any certified copy of the birth certificate is to be made to the adoption of the child. The provisions with regard to change of name are to apply to past adoptions made under previous laws.

Where a court has declared the parents or guardians unfit to have custody of the child they shall be deemed to have forfeited all rights and privileges with respect to the care, custody and services of the child, and are not necessary parties to adoption proceedings.

The act validates and confirms all proceedings for the adoption of minors in the courts of this state.

Permanent records of petitions, orders granting letters of adoption, and revocations of such orders are to be kept by the State Board of Charities and Public Welfare.

The changes made by the new act are in the main beneficial and not likely to raise legal difficulties. Among the most desirable new provisions are those for investigation of the fitness of the home of the adopting parents, for a probationary period before letters of adoption, and for a two-year limitation on the power of the court to revoke the order granting letters of adoption. The previous state of affairs, when the adoption might be revoked at any time, was not calculated to induce adoptions, as the adopting parents could never be sure that the child would not be taken from them even after a considerable number of years.

The provision that the natural parent or parents as well as the child must have legal residence in the state is of doubtful value. If a child is born of irresponsible parents, is taken by an institution, and the parents disappear from the state, apparently the child can never be adopted. It is true that in such a case neither parent would be a necessary party to the adoption proceedings, but it is specifically made a condition to the petition that the parents be residents.

ELECTIONS

The New Election Law. Ch. 165 is a complete revision and restatement of statutes controlling elections in North Carolina, with the exception of the Corrupt Practices Act enacted in 1931¹ and secures a coherence in the election structure of the state that is attained in only a few other states. As compared with election laws of other states the North Carolina Act ranks among the first in clarity of meaning, conciseness of statement, and arrangement of content. A

¹ P. L., 1931, c. 348; comment in (1931) 9 N. C. L. REV. 371.

few very significant changes have been made by the new Act, many changes of minor importance are effected, and doubtful and conflicting points arising under the old laws have been clarified or obviated.

The Definition of a Political Party. Under the old laws there were two definitions of a political party. C. S. 5913, adopted in 1901, defined a political party for the purposes of a general election as an organized group of voters whose candidate for Governor received as many as 50,000 votes in the gubernatorial election of 1900, which, of course, limited parties with legal status to the Democratic and the Republican. The statewide primary statute, C. S. 6052, enacted in 1915, defined a political party as any group which had candidates who were voted upon for state offices at the general election in 1914, and in addition any group that could secure a declaration signed by 10,000 legal voters. Under these provisions it was difficult for new parties to attain legal status entitling their candidates to a place on the official ballot in the general election. This was demonstrated recently when the State Board of Elections had to apply the provision of the primary statute to allow the Socialist Party to secure a place on the ballot in the general election of 1932, but this ruling is questionable² unless it can be justified as based on an implied power in the Board to make supplementary rules and regulations to govern the elections. The provision in the Australian Ballot Act requiring the Board of Elections to print the names of "independent or non-partisan" candidates upon the ballot on petition signed by 10% of the number of voters that voted for the office in the last gubernatorial election was obviously inapplicable.

Ch. 165, §1, redefines a political party for purposes of the general election as "any group of voters which, at the last preceding general state election, polled for its candidate for Governor, or for Presidential electors, in the state at least three per cent of the entire vote cast therein for Governor, or for Presidential electors." Sec. 17 adopts the same percentage definition to determine party status for the primary. Both old and new parties lose their legal standing by failure to cast three per cent of the total vote cast in any Gubernatorial or Presidential election. The petition method is adopted for the creation of new parties entitled to participate in the general election, but interestingly enough the provision in the old law per-

² See comment in (1933) 11 N. C. L. REV. 148.

³ P. L., 1929, c. 164, §127 (a6).

mitting a new group to organize and enter the primary by means of the petition is not retained. Legally a new party cannot have its origin between a general election and the succeeding primary and apparently it may nominate its candidate in any way. The petition for the new party must be filed with the State Board of Elections at least ninety days before the election; it must state the name of the new party, which cannot be so similar to that of an existing party as to mislead the voters, together with the name and address of the State Chairman of the party, and must declare the intention of participating in the next general election. Ten thousand qualified voters who declare their intention of organizing a state political party must sign the petition. This is a more difficult requirement to meet than the one under the ruling of the State Board of Elections that any qualified voter might sign the Socialist petition whether he intended to affiliate with the new party or not. The requirement that the petitioner be affiliated with the new party seems wise in order to ascertain that the new party will be supported by reasonable strength in the election. The 10,000 requirement is about 1.4% of the vote cast for Governor in 1932 and seems liberal enough to afford any group with any reasonable chance of immediate success the opportunity of getting on the ballot. There must be some restrictions on the size of the ballot for the practical reasons of economy and the resultant confusion to the voter where he must make a selection from a large number of choices. It is believed that this is as liberal a provision as can be found in the law of any state where the petition method is used. An exception might well be made, however, for the Presidential ticket, since the sensible change has been made of printing the names of the Presidential candidates rather than the individual electors on the ballot. It would seem reasonable and would not greatly increase the size of the ballot to afford any party that holds a national convention and nominates candidates for President and Vice-President a place on the ballot. There are many reasons why small minorities within the state should be afforded the opportunity of voting for any Presidential candidate that has reasonable strength supporting him in the nation.

State Board of Elections. No change is made in the composition of the State Board of Elections. Sec. 1 amends C. S. 5921 to increase the term of office from two to four years and consolidates a number of provisions of the old law and conveniently enumerates the duties and powers of the state board in a single section of fifteen clauses. Several of these are new in whole or in part: No. 3, the duty

of publishing and distributing the election laws; No. 4, the right to issue explanatory pamphlets concerning the elections; No. 10, the authority to compel compliance with election laws by the election officials; No. 11, the authority to investigate irregularities; No. 13, the duty of keeping a record book of proceedings; No. 14, authority to recommend to the Governor and Legislature new rules for the conduct of primaries and elections. Finally, the Board is given the powers of a court in the performance of its enumerated powers.

C. S. 5993 is amended by §9 and C. S. 5999 is amended by §10 to abolish the old State Board of Canvassers and transfer its functions to the State Board of Elections.

County Board of Elections. Sec. 2 makes ineligible as a member of the County Board any office holder or candidate in a primary or general election. Sec. 3 amends C. S. 5926 to add fraud as a cause for removal of a member of the Board and C. S. 5927 to consolidate and enumerate the duties and powers of the Board under sixteen clauses. Several of these are new or partly new: No. 5, the power to make supplementary rules and regulations to those of the State Board and the election laws; No. 6, the duty of advertising and contracting for printing of ballots and other supplies; No. 7, the duty of providing for notices, advertisements and publications concerning elections; No. 8, duty to provide for delivery of ballots, etc., to polling places; No. 9, to provide the polling places with stalls and other supplies; No. 10, power to investigate irregularities, and report facts to the prosecuting attorney; No. 11, the authority to review the sufficiency and validity of petitions and nominating papers; No. 14, the duty of keeping a minute book of proceedings; and No. 15, wherein the Board is required to submit to the proper appropriation official a budget estimate for the expenses of the next election.

Sec. 8 rewrites C. S. 5985, 5986 by abolishing the County Board of Canvassers and assigning the duties of canvassing the returns, preparing the abstracts and certificates of the results of the elections to the County Board of Elections.

Other Election officials. C. S. 5928 is amended by §3 to add an additional requirement for election officials; they must be able to read and write. No political office holder, federal or state, except a Justice of the Peace, may be appointed an election official.

Registration of Voters. No significant change has been made in the system of registration. In §3, C. S. 5935, the provision for new registrations of voters and revisions of the registration books,

is rewritten. Several scattered provisions of the old law are amplified and clarified. Sec. 5 amends C. S. 5947 to change the time for opening the registration books from the fourth Saturday to the fifth Saturday before each election and C. S. 5940, to require an applicant for registration removing from one precinct to another to present a certificate from the registrar of his former precinct showing that his name has been removed from the registration books of the former precinct before he is entitled to have his name placed on the registration books of another precinct.

Qualification of Voters. No changes are made in the qualifications for the suffrage, the age, citizenship, literacy, and residence requirements remain. C. S. 5937, as amended by §4, however, adds ten rules to govern and aid Registrars and Judges of Elections in determining the difficult problem of the voter's legal residence.

The Ballot. Sec. 11 amends C. S. 6010 to provide that the names of the Presidential electors shall not appear on the ballot, but instead the names of the candidates of each party for President and Vice-President. The lists of candidates for electors of each party are to be filed with the Secretary of State and a vote for the party candidate for President shall be a vote for the entire list of electors. Here the legislature, acting under its plenary power of determining the method of appointing Presidential electors,⁴ has attained the desirable object of direct voting for President and Vice-President, a practice that has existed in the voting machine states for some years. It is believed that this change will lessen the burden and decrease the confusion that resulted to the average voter because of a complicated presidential ticket; and at the same time will preclude the bare possibility of a split electoral vote of the state, possible under the old law, if in a very close election a sufficient number of voters for petty reasons scratched the electoral ticket.⁵ Neither the old law nor the new law, however, pledges the elector to cast a party vote, and legally, at least, the individual elector, as was intended by the framers, still has discretion to cast his vote for whomsoever he individually de-

⁴This power flows from the first clause of U. S. Const., Art. II, §1. In *McPherson v. Blacker*, 146 U. S. 1, 13 Sup. Ct. 3, 36 L. ed. 869 (1892) the court upheld the power of a state legislature to adopt the district system for the selection of electors. See (1933) 11 N. C. L. Rev. 148. It would seem that a state might even provide for a system of proportional representation in the selection of presidential electors.

⁵This actually occurred in California in 1912 and in Maryland in 1908. OGG AND RAY, AN INTRODUCTION TO AMERICAN GOVERNMENT (4th ed. 1931), 244.

sires.⁶ The moral force of party allegiance is so binding, however, that seldom in the history of the electoral college has an elector refused to cast his vote in harmony with the will of the popular majority in his state.⁷

Primary Elections. The statewide primary remains optional rather than mandatory upon parties that have attained legal status by polling three per cent of the vote cast in the last general election. New parties no longer gain the privilege of entering the primary by the petition method, as they formerly did under C. S. 6052 and as they do under the new law for the general elections.

The old requirements for candidacy on the party ticket, namely, notice, payment of a fee, and pledge of party loyalty, are retained. Sec. 12 amends C. S. 6022 to change the time for filing the notice of candidacy from six weeks to the seventh Saturday before the primary date, and C. S. 6023 to change the basis of candidacy fees from a flat sum for each office to one per cent of the salary of the office. Sec. 13 repeals C. S. 6025 which required all candidates to file statements of expenditures in the campaign. The whole matter of campaign expenditures is now covered by the Corrupt Practices Act.⁸ That part of C. S. 6030 which originally permitted a preferential vote for President of the United States is repealed by §15.

EVIDENCE

Evidence of Threats. Ch. 189 provides that where the defendant pleads self-defense to a charge of assault, assault and battery, or affray ("wherein deadly weapons are used and serious injury is inflicted") evidence of communicated threats by the assaulted person against the defendant shall be competent as bearing upon the reasonableness both of his apprehension of harm and use of force.

The North Carolina cases are in conflict and confusion concerning the admissibility of both communicated and uncommunicated threats under the plea of self-defense. Evidence of communicated

⁶ In at least one State, Oregon, it is prescribed by law that the party candidates for electorship "shall pledge themselves, if elected, to vote for their party nominee for President and Vice-President of the United States in the Electoral College." H. W. HORWILL, *THE USAGES OF THE AMERICAN CONSTITUTION* (1st ed. 1925) 36. Pennsylvania insures the regularity of Presidential electors by authorizing the nominee of each political party for the office of President within thirty days after his nomination to nominate a list of persons to be the candidates of his party for electors. *Id.* 36-37.

⁷ Probably the latest case of casting an unfettered vote was in 1820 when William Plummer voted for John Quincy Adams instead of James Monroe. HORWILL, *op. cit.*, *supra.*, note 6, 46-47.

⁸ P. L., 1931, c. 348.

threats was received with apparent approval in *State v. Scott*¹ and with explicit approval in *State v. Turpin*.² It was denied in *State v. Byrd*³ in an obscure opinion and in *State v. Skidmore*⁴ in an opinion which overlooked the two cases first cited.

Evidence of uncommunicated threats was admitted in *State v. Turpin*⁵ and *State v. Baldwin*⁶ and denied in *State v. Hines*.⁷ Wigmore favors the admissibility of evidence of both types of threats.⁸

Ch. 189 is unfortunately restricted to only one type of threat-evidence, and that for only a limited number of self-defense cases. The state of the precedents called for a more comprehensive enactment settling the admissibility of both types of threat-evidence for all self-defense cases.

Testimony of Wife in Non-Support Cases. Chs. 13 and 361 amend C. S. 1802 by making it lawful to examine the wife in behalf of the state in prosecutions against the husband for non-support of his children. This creates another exception to the rule of the statute that "nothing herein shall render any husband or wife competent or compellable to give evidence against each other in any criminal action or proceeding." It has been suggested that this general disqualification is unsound and should be repealed.⁹

GUARDIAN AND WARD

Guardian for Missing Person's Estate. Ch. 49 provides that if a person disappears from his home community, and his whereabouts remain unknown for a period of three months and cannot be ascertained by diligent inquiry; and, that if such person has left, unattended, property within the state which is likely to be affected by his absence or which may need protection and administration, the Clerk of the Superior Court of the county wherein such person was last resident may appoint a guardian for the missing person's estate. Such guardianship is analogous to that of a minor or of a person *non compos mentis* and entails like powers and duties with respect to the estate. The guardian is required to give bond for the faithful performance of his trust.

¹ 4 Ired. 409 (1843).

² 77 N. C. 473 (1877).

³ 121 N. C. 684, 28 S. E. 353 (1897).

⁴ 87 N. C. 509 (1882).

⁵ 77 N. C. 473 (1877).

⁶ 155 N. C. 494, 71 S. E. 212 (1911).

⁷ 179 N. C. 758, 103 S. E. 374 (1920).

⁸ 1 WIGMORE, EVIDENCE (2d ed. 1923) §§110, 247.

⁹ See (1930) 9 N. C. L. REV. 41.

The statute further provides that the general laws of the state, particularly C. S. ch. 40, pertaining to guardianships shall apply to the guardian appointed under this act.

In addition to the powers given to guardians under the general laws, such guardians may, with the court's approval, use funds on hand to pay the debts of the absent person, renew notes and other obligations, and pledge property for loans necessary in carrying on or in liquidating the affairs of the missing person. The guardian may also, with the approval of the court, cultivate the land or operate the business enterprises of such person and make the necessary contracts in connection therewith, if such activity be necessary to conserve the estate.

If the absent person returns, he may petition the Clerk of the Superior Court for a restoration of his property. Within six months after the filing of such petition the Clerk must require a settlement of the estate by the guardian and a return of the property to its owner after the payment of reasonable commissions.

Neither the guardian nor the sureties on his bond are liable for acts of the guardian, in managing the estate, except where there has been loss through misconduct or bad faith of the guardian in office or from waste of assets of the estate through mismanagement amounting to gross carelessness or in violation of the law.

In view of the short period of time required by the statute to elapse before a missing person's estate is subject to guardianship and because of the extensive powers over the estate conferred on the guardian, it would seem that clerks of court should make appointments of guardians under the statute only after a very careful and thorough investigation of each particular case.

Corporate Guardian. Where a corporation acts as guardian and fails to make a satisfactory account after being ordered to do so, ch. 317 provides that the responsible agent of the corporation may be committed to jail as if he were an individual guardian,¹ if the failure was wilful on his part. Also, the corporation may be fined or removed.

Veterans' Guardianship Act. This Act, passed in 1929,² is amended by ch. 262 to require every guardian to exhibit at the time of filing his annual account "all investments and bank statements showing cash balance." A hearing on the account is to be had only

¹ The provision concerning individual guardians is N. C. CODE ANN. (Michie, 1931) §2187.

² N. C. CODE ANN. (Michie, 1931) §§2202-1 to 19.

if objections are raised. Also, investments by guardians under the act are limited to United States government bonds, State of North Carolina bonds, and loans on real estate not to exceed half the value of the property, evidenced by sealed notes or bonds and secured by first mortgages or deeds of trust. The guardian may purchase a home or farm for the sole use of the ward or his dependents.

INSURANCE

Automobile Accident Insurance. Classification of risks, rules, rates, and rating plans for automobile liability, property damage, and collision insurance must be filed with the Insurance Commissioner and are made subject to his approval by ch. 283. After due notice and a hearing before him, the commissioner is to order an adjustment of rates on any such risks or classes of risks whenever he finds that such rates are excessive or unreasonable, or that any insurer is discriminating unfairly between its policyholders whose risks are of essentially the same hazard. The findings and orders of the commissioner are subject to review on their merits by appeal to the Superior Court of Wake County. The act does not limit the method of determining rates or plan of operation of any mutual insurance company or inter-insurance exchange in this state or prevent refunds to all policyholders of the same class of any portion of the annual premium not required to defray expense of such insurance.

Any bureau organized in this state for making or administering automobile rates and rating plans must provide for equal representation of stock and non-stock insurers on its governing and all other committees and must admit to membership any insurer applying therefor.

The most important feature of this legislation is the authorization of rate regulation by the Insurance Commissioner. Insurance premium rate regulation has been generally upheld as an exercise of the police power, since insurance is a business affected with a public interest.¹

Mutual Burial Associations. Ch. 222, supplementing the regulation of mutual burial associations, provides, among other things, for semi-annual statements to the Insurance Commissioner. The commissioner is authorized for any one of a number of reasons to revoke

¹ VANCE, INSURANCE (2d ed. 1930) 32, especially footnote 77, which contains a good review of cases on insurance rate regulation.

The Insurance Commissioner of this state has power to find fire insurance rates to be excessive or unfair, and to make recommendations. N. C. CODE ANN. (Michie, 1931) §6393.

and cancel the license of such an association. It is noteworthy that the commissioner may cancel the license of the organization if "its mode of business is not feasible for the purposes of carrying out successfully its plans, or its condition is such as to render its further proceedings hazardous to the members." Such broad provisions give the commissioner wide authority. The association may appeal to the Superior Court.

Deposits Required of Insurance Companies. Ch. 60 requires every insurance company writing fidelity, surety or casualty business in this state to deposit with the state described securities in the amount of \$25,000 when the annual premium income of the company from the state is less than \$100,000, and in the amount of \$50,000 when that income is over \$100,000. C. S. 6442, into which the provisions of ch. 60 are inserted, requires deposits from foreign fire insurance companies only, and the amount of the deposit depends on the capital stock of the company.

LABOR

Department of Labor. In 1931, the General Assembly reorganized the Department of Labor and Printing by creating a new department known as the Department of Labor.¹ This change was discussed in the LAW REVIEW at the time.² Ch. 244 codifies certain powers of the Commissioner of Labor which were not expressly conferred under the original statute. These additional powers include the taking and preserving of testimony, examination of witnesses, entering public institutions, factories, stores, workshops, laundries, eating-houses, mines, etc., for the purpose of questioning any person employed or connected therewith. Likewise he is authorized to file with officials of corporations interrogatories requiring full and complete answers within thirty days.

In carrying out any program of labor law enforcement, the Commissioner must have assistants and inspectors. These are authorized by the new statute to be appointed by the Commissioner. He also prescribes their duties, which are in general the visiting and inspecting of factories, mercantile establishments, mills, eating places, etc., in order to see that the labor laws are enforced, particularly the provisions relating to the employment of adult persons and children, the regulation of hours of labor and of working conditions. Upon request of the Commissioner of Labor or of any of his

¹ P. L. 1931, c. 312; N. C. CODE ANN. (Michie, 1931) §§7309-7310 (j).

² *Survey of Statutory Changes* (1931) 9 N. C. L. REV. 347, 410-414.

assistants or deputies, the Solicitor of the proper district shall prosecute any violation of law which comes under the jurisdiction of the Department of Labor to enforce.

Proper labor conditions in a community or state are dependent, not so much upon the existence of labor laws on the statute book, as upon the enforcement and administration of these laws by an efficient and active Department of Labor, which carries on thorough and regular inspections. The new statute is essential in bringing about such a result.

Female Labor. Female clerks, saleswomen, waitresses and other female employees of public eating places may not be permitted to work longer than ten hours in any one day, or over fifty-five hours in any one week, or more than six hours continuously without an interval of half an hour, by virtue of ch. 35. There are some minor exceptions. Employers violating the act are guilty of a misdemeanor. The act does not apply to employees in establishments located in a city or town of less than five thousand inhabitants.³

LOBBYING

By Ch. 11 North Carolina follows some thirty odd states in the enactment of lobby legislation. These statutes are based either upon the Massachusetts law or upon the Wisconsin law (which is generally conceded to be the most stringent and effective of the lobby statutes), and the provisions most commonly appearing in them are, first, the definition of lobbying; second, provisions to give publicity to lobby practices generally; third, provisions prohibiting certain practices; and, fourth, enforcement provisions.

Sec. 1 of the North Carolina Act defines lobbying as follows: "That every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the state, or to act in any manner as a legislative counsel or agent in connection with any such legislation. . . ."

Sec. 7 exempts counties, cities, towns and municipalities from the operation of the law, but includes officers of corporations even where they receive no additional compensation for their lobbying.

³ See N. C. CODE ANN. (Michie, 1931) §6554 for regulation of hours of labor of women in factories and mills.

The lobbyist, under the North Carolina Act, then, it would seem, is the paid professional counsel or agent. There seems to be no doubt but that many persons who attempt to influence legislation positively or negatively do not fall within the scope of the statute.

Publicity is the feature of the lobby statute that will be most likely to defeat sinister practices of the lobbyist just as publicity has been an effective weapon with which corrupt practices in elections have been fought.¹ Definite identification of persons lobbying is provided by sec. 1, requiring all persons, corporations, and associations employing a lobbyist to register the name of the person employed within one week after the date of the employment, and also making it the duty of the person so employed to register. In sec. 2, the exact requirements for the docket to be kept for public inspection by the Secretary of State are outlined. On the docket must be entered the name, occupation or business, and business address of the employer, the name, residence, and occupation of the person employed, the date and length of employment, and the subjects related to the employment. Sec. 4 requires the lobbyist to file within ten days after registration a written authorization to act as such signed by his employer. Sec. 5 requires the filing of a statement under oath within thirty days after final adjournment of the legislature by all lobbyists whose names appear on the docket giving a detailed and complete account of all expenses paid or incurred by the lobbyist in connection with promoting or opposing legislative measures. It would seem that the thirty day period is unfortunate in that the legislature has become a matter of history and cannot profit by the report to defeat or alter the acts passed. In case the power of veto is granted to the Governor, as is proposed by the new constitution, it might be wise to require reports to be submitted on each public bill during the Governor's consideration period in order that he may check legislation passed under the influence of large lobby expenditures.²

Sec. 3 prohibits employment based on fees contingent upon the passage or defeat of any proposed legislation, or upon any other contingency connected with either house of the General Assembly. Sec. 6 prohibits a lobbyist from going upon the floor of either house of the General Assembly except upon invitation from such house. No

¹ See comment (1931) 9 N. C. L. REV. 347, 371. MD. ANN. CODE (Bagby, 1924) Art. 40, §§4-15.

² Maryland has such a provision in her law. Art. 40, §§4-15.

particular classes of persons are prohibited from acting as lobbyists as is the case in the Massachusetts law prohibiting members of political party committees,³ and the law of a number of states prohibiting public officials from acting as lobbyists.

Sec. 8 is the enforcement provision of the act. It makes violation of the act by a lobbyist a misdemeanor and the penalty not more than one thousand dollars, or imprisonment not exceeding two years, or both. An obvious defect in this provision is that no specific official is made responsible for enforcement. It is doubtful if the penalties are sufficient to seriously deter the spending of large sums of money by lobbyists.⁴

MACHINE GUN ACT

Ch. 261. The conspicuous difference between this Act and the Uniform Machine Gun Act, approved by the Conference in October, 1932¹ and already adopted in some states,² is that our law prohibits possession of machine guns for any purpose³ while the Uniform Act prohibits their possession only if it is for aggression.⁴ But the two Acts are not as far apart as this statement would indicate, for the Uniform Act then creates a sweeping set of presumptions of fact as to when possession is for aggressive use,⁵ including one highly objectionable discriminatory presumption against unnaturalized foreigners.⁶

³ MASS. GEN. LAWS (1921) C. 3, §§39-40.

⁴ The best articles on lobby regulation are: Pollock, *The Regulation of Lobbying* (1923) 17 AM. POL. SCI. REV., and Logan, *Lobbying*, THE ANNALS (1929) (supplement).

¹ See HANDBOOK OF NAT. CONF. OF COMRS. ON UNIF. STATE LAWS (1932) 418, 423.

² The Secretary of the Conference reports (June 3, 1933) Wisconsin and South Dakota as having passed the Act. Reports to the American Legislators' Association indicate that the uniform act was introduced also in the 1933 legislative sessions of Colo. (H. 803); Md. (H. 302); Mass. (H. 149).

³ With an exception in favor of "Banks, merchants and recognized business establishments" who on registration in the Superior Court may have such weapons to protect their business. The question of whether the prohibition on possession can be extended by the Act to weapons theretofore lawfully acquired which was raised by one judge in *People v. Camperlingo*, *infra* note 18, was later decided in favor of the legislation. *People v. McCloskey*, *infra* note 12. And see *Samuels v. McCurdy*, 267 U. S. 188, 45 Sup. Ct. 264, 69 L. ed. 568 (1925).

⁴ UNIFORM ACT §§2, 3.

⁵ *Id.* §4.

⁶ *Id.* §4 (b). See corresponding discrimination in prohibitory statute held constitutional as to other firearms. *Ex parte Ramirez*, 193 Cal. 633, 226 Pac. 914 (1924); *People v. Cruz*, 113 Cal. App. 519, 298 Pac. 556 (1931); *State v. Rheume*, 80 N. H. 319, 116 Atl. 758 (1922). Cf. *People v. Zerillo*, 219 Mich. 635, 189 N. W. 927, 24 A. L. R. 1115 (1922), *contra*, but on "right to bear arms."

We are, on the other hand, more lenient in our definition of machine guns—a sixteen shooter with us,⁷ a six shooter with them;⁸ and in the penalties inflicted for unlawful possession—a fine or possible brief imprisonment,⁹ as against a compulsory long term.¹⁰

Both Acts provide for registration, the Uniform Act extending this supervision to manufacturers (§7) while our Act (§1) seems literally to prohibit all manufacture and sale within the state under any regulation. This last is probably an inadvertent discrimination against local manufacturers and dealers but of relatively little practical consequence at this date.¹¹

Perhaps the special dispensation granted "bona fide residents" owning guns used in former wars as relics or souvenirs¹² may be open to the charge of denying constitutional rights of others¹³ but this is relatively trivial, and the exemption of peace officers while on duty is of course usual and justifiable.¹⁴ The grant of a right to protect business at the point of a machine gun and the refusal of a corresponding right to citizens to protect their homes and persons in like manner is, however, a more serious weakness. Such weapons are, of course, most commonly associated with robberies

⁷ P. L. 1933, c. 261, §1, par. 2, *proviso*.

⁸ UNIFORM ACT §1. And see as to other states, HANDBOOK, *supra* note 1, 427.

⁹ C. 261, §2.

¹⁰ UNIFORM ACT §3.

¹¹ THOMAS' LIST of manufacturers gives only two, the nearest in Philadelphia. Furthermore, so far as can be learned there have been no sales of guns in this state by local dealers heretofore. *Cf.* statutory prohibition on the receipt without a permit of certain weapons from either within or without the state. N. C. CODE ANN. (Michie, 1931) §5121. And see language, "deadly weapons," in *id.* §952 (36).

¹² These "souvenirs" can apparently be fully effective arms. There is no provision that they must be obsolete or useless. *Cf.* WIS. STAT. (1931) §340695; and Calif. act exempting "antique pistols or revolvers incapable of use as such," *People v. McCloskey*, 244 Pac. 930 (Cal. App. 1926).

¹³ C. 261, §1, *proviso*. Note that this is not an exemption to the soldiers themselves, which might raise a constitutional question already tried out in respect of other matters. See *Marallis v. Chicago*, 349 Ill. 422, 182 N. E. 394 (1932) (privilege of peddling without license); *Ratta v. Healy*, 1 F. (2d) 669 (D. N. H. 1932) (same); *Wheelon v. South Dakota Land Settlement Bd.*, 43 S. D. 551, 181 N. W. 359 (1921) (state loan); *State v. Empie*, 164 Minn. 14, 204 N. W. 572 (1925) (preferment in public employment). The special favor here is to residents of North Carolina, hence the question raised may be as to privileges and immunities of citizens. But residents and citizens are not the same. *La Tourette v. McMaster*, 248 U. S. 465, 39 Sup. Ct. 160, 63 L. ed. 362 (1919); *Douglas v. New Haven R. R. Co.*, 279 U. S. 377, 49 Sup. Ct. 355, 73 L. ed. 747 (1929); *Loftus v. Penna. R. R. Co.*, 107 Ohio St. 352, 140 N. E. 94 (1923) appeal dismissed per stip., 266 U. S. 639, 45 Sup. Ct. 97, 69 L. ed. 483 (1924).

¹⁴ UNIFORM ACT §6 and note thereto in HANDBOOK, *supra* note 1, 433; *People v. Brown*, 253 Mich. 537, 235 N. W. 245 (1931).

of banks and business houses, but that is by no means their only use. Protection of the person is usually placed before protection of property¹⁵ and the right to use machine guns in defense is not properly judged by considering where it is most often the offensive weapon. Nevertheless, without putting business above human life (for that too is involved in business robberies) it may be that the legislature could reasonably believe that assaults in large force of a sort making machine gun protection needful are those upon banks and business establishments and that misuse in the hands of such possessors is much less likely than in the hands of the public at large. Some support for the discrimination can also be found in authority sustaining concealed weapon legislation which excepts conductors, baggagemen, messengers, drivers, watchmen, railroad police and other specified persons.¹⁶ Furthermore the problem of supervision is far simpler where business establishments are the licensees.

Finally there is the State Constitutional right of bearing arms which must be hurdled before the act can be declared valid.¹⁷ That right does not extend, said Clark, C. J., to such things as dirks, brass knuckles and the like, nor, to cannon and bombing devices.¹⁸ Historically it extended to those arms which would be owned and borne by militiamen; and our constitutional preservation of the right to bear arms is coupled with language indicating a like intent.¹⁹ The machine gun is today a well recognized part of the equipment of our National Guard, and a weapon therefore with which the citizens might be expected to have acquaintance. And yet one may doubt if the constitutional protection by any test should extend to a weapon for wholesale slaughter, and may agree with Chief Justice Fead in a Michigan Case²⁰ that the historical test fails to fit present-day conditions. There was seemingly no urgent present need for a machine gun act in this state and the one enacted is open to some ob-

¹⁵ See *e. g.*, "the necessary defense of his person or property," in concurring opinion of Allen, J., in *State v. Kerner*, 181 N. C. 574, 580, 107 S. E. 222, 226 (1921).

¹⁶ *People v. Saltis*, 328 Ill. 494, 160 N. E. 86 (1928), appeal dismissed, 277 U. S. 575, 48 Sup. Ct. 530, 72 L. ed. 995 (1928).

¹⁷ N. C. Const., art. I, §24, not including concealed weapons.

¹⁸ *State v. Kerner*, *supra* note 15. See also the following cases from California where there is apparently no constitutionally guaranteed right to bear arms: *People v. Ferguson*, 14 Pac. (2d) 311 (Cal. App. 1932), on rehearing 18 Pac. (2d) 741 (1933); *People v. Camperlingo*, 69 Cal. App. 466, 231 Pac. 601 (1924).

¹⁹ *Supra* note 17. And see *Pierce v. State*, 275 Pac. 393, 395 (Okla. Crim. App. 1929).

²⁰ *People v. Brown*, *supra* note 14.

jections not present in the Uniform Act but it seems likely nevertheless to withstand constitutional attack.

MORTGAGES

Sale of real estate by a mortgagee, trustee, commissioner or other person authorized to sell the same may by virtue of ch. 275 be enjoined on the ground that the amount bid or price offered is inadequate and will result in irreparable damage, or upon any other legal or equitable ground the court may deem sufficient. Application for the injunction may be made to a judge of the Superior Court prior to the confirmation of the sale by anyone having a legal or equitable interest in the land. The court, before the sale is confirmed, may also order a resale by the mortgagee, trustee, commissioner or other person authorized to sell the land, upon such terms as may be just and equitable. In the case of either the resale or injunction a bond or deposit is required as a condition to the relief. Pending sale or resale the court may appoint a receiver of the property and the rents and proceeds, and may make such order for the payment of taxes or other prior liens as may be necessary. Appeal may be taken to the Supreme Court.

By §3, when a mortgagee, trustee or other authorized person sells real estate or personal property and at the sale the mortgagee, payee, or other holder of the obligation secured becomes the purchaser and takes title directly or indirectly, and thereafter sues for a deficiency judgment against the mortgagor, trustor or other maker of the obligation whose property was purchased, it is competent for defendant to show as a defense and offset, but not as a counter-claim, that the property sold was fairly worth the amount of the debt at the time and place of sale, or that the amount bid was substantially less than its true value, and on such showing defendant can defeat the deficiency judgment in whole or in part. Rights of other purchasers or of innocent third parties are not to be affected by §3, nor is the negotiability of the secured obligation. Foreclosure sales made pursuant to an order or decree of court, and judgments sought or rendered in any foreclosure suit are likewise not affected by §3.

The act does not apply to tax foreclosure suits or tax sales.

The immediate cause of this legislation was doubtless the hardship wrought upon mortgagors by having their lands sold at inadequate prices due to the depression. The act to some extent

overcomes the effect of *Bolich v. Prudential Insurance Co.*,¹ previously discussed in this REVIEW.²

PROHIBITION

The two most significant enactments concerning prohibition are ch. 216 legalizing beer and light wines and ch. 403 providing for a convention to consider the proposed twenty-first or "repeal" amendment. Both, of course, are responsive to the action of Congress in modifying the Volstead Act and in submitting the amendment, and both present interesting constitutional questions. Ch. 216 raises the obvious question of whether the beverages thereby legalized are non-intoxicating and thus beyond the prohibition of the Eighteenth Amendment. Ch. 403 presents a more complex problem.

The election by Congress to submit the proposed amendment to conventions in lieu of legislatures is novel, and it has created many problems common to all the states.¹ A few of these may be profitably mentioned. Is the action of a state legislature in calling a convention subject to veto? At least three state governors have exercised such a veto (in Oklahoma, Colorado, and Pennsylvania); yet it is arguable that the calling of a convention is not the exercise of a legislative function authorized by the State Constitution, but the exercise of a non-legislative federal function derived from the Federal Constitution and that, like the act of ratification by the legislature, it is not therefore subject to veto.² May convention delegates be pledged in advance or must the convention be deliberative? The Supreme Court of Alabama has ruled that the delegates may be pledged to abide by the result of the state-wide vote.³ May the delegates be chosen at-large or must they be representative of some smaller divisions of the state? Both types of representation have been followed; for example, the North Carolina Act provides for 120 delegates

¹ 202 N. C. 789, 164 S. E. 335 (1932).

² (1933) 11 N. C. L. REV. 172.

³ Since Congress has attempted to exercise no power beyond submitting the proposed amendment, the interesting question of its power to call the conventions is not raised.

⁴ It has been held that the submission by Congress of a proposed amendment is not the exercise of the law-making function and is not therefore subject to the President's veto. *Hollingsworth v. Va.*, 3 Dall. 378 (1798). And the Secretary of State disregarded a veto by the Governor of Arkansas of the resolution by the legislature of that state ratifying the Sixteenth Amendment. See Dodd, *Amending the Federal Constitution* (1921) 30 YALE L. J. 321, 346.

⁵ *In re* Opinions of the Justices, 148 Sou. 107 (Ala., 1933). See (June, 1933) 6 STATE GOVERNMENT 13 for an analytical compilation of the convention bills which had then been passed.

chosen by counties, while the New Mexico Act provides for three delegates chosen at large.⁴

Apart from these general considerations, however, there is a purely local aspect of the problem in North Carolina, which, it is believed, is unique. Section 1 of Art. 13 of the North Carolina Constitution provides:

"No convention of the people of this state shall ever be called by the General Assembly, unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and except the proposition, convention or no convention be first submitted to the qualified voters of the whole state, at the next general election. . . ."⁵

Whether this provision applies to the calling of a convention to consider a proposed federal amendment proved to be a question which perplexed the Legislature and divided the Supreme Court.

Ch. 403 in its original form⁶ provided for a special election to be held in November of 1933 (a year in advance of the next general election) to choose delegates to the convention. There was no provision for reciting passage of the bill by a two-thirds vote, nor for submitting the proposition of convention or no convention. On April 5, 1933, a divided court, in an advisory opinion which announced no reasons, pronounced this bill unconstitutional.⁷ Thereupon the bill was amended by designating the election "general" in lieu of "special" and by providing the additional features of passage by a two-thirds vote and submission of the proposition of convention or no convention. Thus the question of constitutionality was narrowed to the fine point of whether the bill as amended provided for submission to a general election in the sense of Art. 13. On April 26, 1933, the Court in a second advisory opinion informed the Legislature of the belief of four of the Justices that the bill as amended was constitutional.⁸ The opinions were delivered *seriatim*, and two, while conceding that the bill would be valid if Art. 13 applied, expressed the further belief that the article did not apply to the calling of a convention to consider a proposed federal amendment.

This, it is submitted, is the sounder view. At the outset it is apparent that Art. 13, §1 does not purport to limit the authority of

⁴ *Ibid.*

⁵ The same provision is found in the new constitution submitted by the legislature. P. L. 1933, c. 383, art. 12, §1.

⁶ See S. B. 351 and H. B. 879.

⁷ Opinions of the Justices; 204 N. C. i (1933).

⁸ *Ibid.*

the convention, but merely to regulate the manner of assembling it. Is the Legislature in assembling such a convention free from the restrictions of state law because performing a federal and not a state function? Does the convention when assembled perform a federal or a state function? We have an answer to the latter question in the case of *Leser v. Garnett*.⁹ In this case the validity of the Nineteenth Amendment was attacked on the ground that some of the legislatures which ratified it disregarded the provisions of their respective state constitutions. For example, the Tennessee Constitution provided that:

"No convention or General Assembly of this state shall act upon any amendment of the Constitution of the United States proposed by Congress to the several states unless such convention or General Assembly shall have been elected after such amendment is submitted."¹⁰

And the Missouri Constitution provided that:

"The legislature is not authorized to adopt nor will the people of the state ever assent to any amendment or change of the constitution of the United States which may in any wise impair the right of local self-government belonging to the people of the state."¹¹

It was contended that, since the Tennessee legislature which ratified the proposed amendment had been elected before the amendment was proposed, its ratification was invalid, and that the ratification of the Missouri legislature was against the Missouri constitution. The court held that the provisions of the Tennessee and Missouri constitutions were ineffective, and said:

"The second contention is that in the constitutions of several of the 36 states named in the Proclamation of the Secretary of State there are provisions which render inoperative the alleged ratifications by their legislatures. The argument is that by reason of these specific provisions the legislatures were without power to ratify. But the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the federal constitution; and it transcends any limitations sought to be imposed by the people of a state."¹²

⁹ 258 U. S. 130, 42 Sup. Ct. 217, 66 L. ed. 505 (1921).

¹⁰ Tenn. Const. 1870, art. 2, §32. Florida has a similar provision. Fla. Const. 1885, art. 6, §10.

¹¹ Mo. Const. 1875, art. 2, §3.

¹² *Leser v. Garnett*, 258 U. S. 130, 136, 42 Sup. Ct. 217, 66 L. ed. 505, 511 (1921). But redistricting by a state legislature has been designated a federal function legislative in character and therefore subject to the Governor's veto.

Now if action on an amendment by the legislature is a federal function, the same is true of action by a convention. And if the convention is to perform a federal function, is not the Legislature *pro hac vice* performing a non-legislative, federal function in assembling it? If a state constitution cannot directly interfere with the convention, it cannot, it is submitted, do so indirectly by limiting the power of the Legislature to call it. That is, the assembling of the convention and action by the convention should be regarded as constituent parts of a non-legislative, federal function deriving its sanction from the Federal Constitution and also its immunity from the limitations of state law.

In addition to the first advisory opinion by the North Carolina Supreme Court, there is an advisory opinion of the Alabama Supreme Court which is against this contention.¹³ Section 76 of the Constitution of Alabama provides:

"When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house."

The Governor called a special session without enumerating provision for a convention in his proclamation. The Court advised the Legislature that a two-thirds vote would be necessary to pass a bill providing for a convention. The Court says:

"In as much as it will require legislation to provide for, and to hold the convention, we are of the opinion that . . . it will require an 'aye' vote of two-thirds. . . . The proposed bill involves legislation, which was not the case in *Johnson v. Craft*, 205 Ala. 386, 87 Sou. 375, which was dealing with an amendment to our Constitution."¹⁴

It is believed that this perfunctory dogmatism is ill-advised. In addition to the objection that it proceeds on a questionable theory of the function of a legislature in calling a convention of the type in question, there is the weighty practical circumstance that such a view, if generally followed, would lead to absurd extremes. In Rhode Island, for example, the Supreme Court has held that the

Thus it seems that to gain immunity from the restrictions of state law the legislature must be performing a federal function which is not law-making. *Smiley v. Holm*, 285 U. S. 355, 52 Sup. Ct. 397, 76 L. ed. 795 (1932). In *Hawke v. Smith*, 253 U. S. 221, 40 Sup. 495, 64 L. ed. 871 (1920) the court held a provision in the Ohio Constitution providing for the referendum inapplicable to a ratification resolution of the legislature.

¹³ *In re* Opinions of the Justices, 146 So. 407 (Ala. 1933).

¹⁴ *Ibid.*

express provision in the state constitution for amendment by legislative initiation precludes the possibility of utilizing constitutional conventions.¹⁵ Thus under the view of the North Carolina and Alabama courts Rhode Island could have had no convention to ratify the proposed twenty-first amendment. Again a startling result would flow from following the constitutional practice in North Dakota, where it has been held by the Attorney General that, because of the absence of express provision for a convention, the legislature itself may in effect act as a convention.¹⁶ Finally, in many states a convention is required to submit its work to the electorate for adoption or rejection. Surely these provisions would not require resubmission by a convention called solely for the purpose of considering a proposed federal amendment and whose membership necessarily reflects the wishes of the electorate on the issue because chosen only with this purpose in view.

PUBLIC UTILITIES

Corporation Commission Abolished. The legislature made some progress in the development of laws for the control of public utilities in North Carolina, at the expense of introducing no little confusion into the statutes. Two major acts were passed dealing with utility regulation. By ch. 134 the Corporation Commission is abolished, and the statutes setting it up are repealed.¹ In its place there is established a single Utilities Commissioner, who succeeds to the powers and duties of the commission and its individual members, including the functions of the Securities Commissioner. The Utilities Commissioner is to be elected for a term of four years at an annual salary of \$4,500.² In described cases of a more important nature two Associate Commissioners, appointed for terms of four years but paid on a *per diem* basis, may be called in to sit with the Commissioner.

The task of cutting the old commission from the statutes and fitting the new commissioner and his associates into the gap is not done altogether smoothly. To illustrate: §3 of the act specifies the

¹⁵ *In re* Constitutional Convention, 14 R. I. 649 (1883).

¹⁶ See ELECTION LAWS OF N. D. (1921) 320-325.

¹ The sections repealed are C. S. 1023 to 1034 inclusive. Ch. 134 contains contradictory provisions as to when it is to take effect. See §§1 and 20. Some of the provisions of Ch. 134 are obviously designed to be effective on ratification, others Jan. 1, 1934. Compare §4 with §1.

² A commissioner appointed by the Governor with the advice and consent of the Senate goes into office Jan. 1, 1934, and holds office until Jan. 1, 1935, when the first regularly elected commissioner takes office.

public utilities over the rates and service of which the Utilities Commissioner shall have control. This largely duplicates the list of enterprises over which the corporation commission had general control,³ and a similar list as to which that commission had authority to fix rates.⁴ The sections of the statutes setting forth these last two lists were not repealed; the sections probably still stand with the Utilities Commissioner substituted for the commission; therefore we have three lists of utilities over which the new commissioner has some measure of control. Obviously they should have been combined into one new section and the old ones repealed.⁵

Worse still, ch. 307, the second of the two major acts in the field of public utility regulation, adds a fourth list, largely duplicating the other three, and confers powers of regulation over the listed utilities, which powers frequently duplicate existing ones.⁶ Ch. 307 specifically repeals no legislation; it is not even fitted in with ch. 134, which the legislature had just passed;⁷ it is merely tacked on to existing legislation. The act contains many admirable provisions, many of them embodying regulatory powers existing in other jurisdictions. Among the powers of control conferred or reconferred on the corporation commission with respect to the utilities listed are control of rates, service, standards, classifications, regulations, prac-

³ N. C. CODE ANN. (Michie, 1931) §1035.

⁴ N. C. CODE ANN. (Michie, 1931) §1066.

⁵ Section 1035, subsec. 7 as it is written in the Consolidated Statutes and the Code gives the corporation commission control over banks. Section 221r of the Code, enacted 1931, transfers the powers of the *corporation commission* over banks to the commissioner of banks. Section 8 of the new act amends §1035 so as to substitute the utilities commissioner for the corporation commission. But §221r does not transfer the powers of the *utilities commissioner* to the commissioner of banks. If §1035 of the Code were to be rewritten as it now stands, save that the utilities commissioner were substituted for the corporation commission, he would falsely appear from this section to have control over banks. A stranger examining the statute books would get that impression unless he observed that the powers of the corporation commission had been transferred to the commissioner of banks, and *later* the powers left to the corporation commission had been transferred to the utilities commissioner. This illustrates the potential confusion when the legislature makes blanket transfers of powers, and substitutes one body for another.

⁶ Compare c. 307, §§13, 15 and 16 with N. C. CODE ANN. (Michie, 1931) §§1037 a, b and c for such duplications of powers.

⁷ C. 307 adds to the powers of the corporation commission, which had already been abolished beginning Jan. 1, 1934, by c. 134. C. 134 does not specifically transfer powers to be given the corporation commission in the future to the utilities commissioner. A way around this difficulty, since c. 134 contains contradictory provisions as to when it is to become effective, is to construe §8 substituting the utilities commissioner for the corporation commission in C. S. c. 21, as being applicable to C. S. c. 21 as it stands Jan. 1, 1934, one of the dates specified for c. 134 to take effect.

tices, standards of measurement and measuring devices, accounts, reports, security issues and disposal of proceeds, assumption of liability with respect to the securities of others, payments made other companies for services, connected service of telephone and telegraph companies, and abandonment of services or facilities. Authority is also provided for investigation of management and for valuations of utility properties.

Probably the most important of the new powers conferred is control of security issues.⁸ The fundamental principle of rate fixing is not altered; rates are to be "just and reasonable";⁹ but much more detailed provisions are made for the process of establishing such rates.

The shakeup made by these acts is quite in line with the present discontent with utility regulation, and the tendency to reexamine such regulation.¹⁰ However, the shortening of the term of office of the commissioner from six years to four is a step in the wrong direction. The salary paid the new commissioner, especially considered in connection with his term of office, is not calculated to attract and keep a first-class expert in this field, and the selection of the commissioner by popular vote leaves little assurance that an expert of any sort will be chosen.¹¹ The act contracting the commission makes incongruous company for the act expanding its powers and duties.

After the experience of the next two years with the new legislation, the time will be ripe for the legislature to reduce our assortment of overlapping regulatory measures to one unified statute.

Regulation of Motor Freight Transportation. The bus law, regulating motor vehicle transportation, was amended by ch. 440 so as

⁸ See on this subject Rosenbaum, *Regulation of Security Issues by the Ohio Public Utilities Commission* (1930) 4 CINN. L. REV. 321.

⁹ A staggering amount of material has been written on the obstacles between the regulatory body and this simple looking objective. See Rottschaefer, *Valuation in Rate Cases* (1925) 9 MINN. L. REV. 211; Robinson, *Duty of a Public Utility to Serve at Reasonable Rates* (1928) 6 N. C. L. REV. 243; Robinson, *The O'Fallon Case* (1929) 8 N. C. L. REV. 3; BAUER, *EFFECTIVE REGULATION OF PUBLIC UTILITIES* (1925); *Southwestern Bell Tel. Co. v. Pub. Serv. Com'n. of Mo.*, 262 U. S. 276, 43 Sup. Ct. 544, 67 L. ed. 981, 31 A. L. R. 807 (1923), especially the dissenting opinion of Justice Brandeis.

¹⁰ See Hormel, *Public Utilities Legislation in 1929* (1930) 24 AM. POL. SCI. REV. 109; Hormel, *State Legislation on Public Utilities in 1930* (1931) 25 AM. POL. SCI. REV. 103; MOSHER AND OTHERS, *ELECTRICAL UTILITIES* (1929) 35, 124; Malcolm, *Public Operation versus State Regulation* (1929) 18 NAT. MUN. REV. 75, 76.

¹¹ In twenty states utilities commissioners are elected by popular vote. Terms of office vary from two to ten years. Salaries range from \$2,250 to \$15,000. MOSHER AND OTHERS, *ELECTRICAL UTILITIES* (1929) 8, 9.

to authorize the corporation commission (utilities commissioner) to deny a certificate to operate a motor vehicle freight line on the ground that existing service would be duplicated. The commission already had such authority in the case of passenger lines.¹²

RACE TRACK BETTING

Four acts legalizing pari-mutuel race track betting were passed by the General Assembly.¹ The acts apply to McDowell,² Pasquotank,³ Rowan,⁴ Haywood, New Hanover, and Polk counties,⁵ and require the approval of the voters in the counties.⁶ They all have essentially the same provisions and are similar to the Buncombe County Racing Bill which was defeated at the 1931 session.⁷ They create commissions for the counties and these commissions have power to grant to any North Carolina corporation created for the purpose of promoting the breeding of quality horses a franchise to operate a race course for horse races. A minimum fee of one hundred dollars is charged for a five-year franchise, and, for a longer franchise, one hundred dollars per year additional up to ten years. In addition each corporation is to pay ten per cent of the gross receipts from operations incident to the races. These sums are to be paid to the commission for the use of the county. The enfranchised corporations are authorized to operate pari-mutuel machines and the patronizing of these machines is declared legal. The counties to which the acts apply are exempted from such provisions of the state gaming laws as might conflict with the acts.

The constitutionality of this legislation has been questioned in the press⁸ and in the court.⁹ The criminal gaming laws of North

¹² N. C. CODE ANN. (Michie, 1931) §2613 (1) subsec.

¹ Legalized race betting legislation has flourished in the 1933 legislatures. By March 20, four new states were added this year to the seven previously permitting it, and the legislatures of other states were considering similar bills. *Time*, March 20, 1933, p. 34.

² Ch. 373.

³ Ch. 511.

⁴ Ch. 545.

⁵ Ch. 563. This act applies to the last three counties.

⁶ The McDowell and Pasquotank acts direct the county commissioners to hold an election to vote on the question of permitting racing in those counties. The Rowan, and the Haywood, New Hanover and Polk acts authorize, but do not direct, the commissioners to hold the election.

⁷ (1932) 10 N. C. L. REV. 293.

⁸ *Raleigh News and Observer*, March 12, 14, 1931; *Charlotte Observer*, May 3, 1932; *Greensboro Daily News*, May 26, 1933; (1932) 10 N. C. L. REV. 293.

⁹ On May 29, 1933, at Hendersonville, N. C., Judge P. A. McElroy denied a petition for an injunction against the holding of an election in McDowell County on the question of legalizing pari-mutuel betting on horse races. Peti-

Carolina make it unlawful to bet upon a game of chance or to operate a gambling device.¹⁰ If the pari-mutuel qualifies as a game of chance, then the immunity granted corporations in these counties may violate the North Carolina constitutional prohibition against granting exclusive or separate emoluments or privileges.¹¹ And the exemption from the civil gaming laws seems to be a violation of the same constitutional provision.

REORGANIZATION

The reorganization of the state government was one of the paramount issues in the early days of the legislative session. Although a number of offices were abolished, and duties were shifted from one department to another, and consolidations were effected, still the net result is not of great importance in the field of state government. Thus (1) the Tax Commission is abolished and its duties transferred to the Commissioner of Revenue; (2) the office of Director of Personnel is abolished and his duties transferred to the Budget Bureau; (3) the office of Executive Counsel is abolished and a part of his duties transferred to a new officer, the Commissioner of Parole; (4) the office of Legislative Reference Librarian is transferred to the department of the Attorney General; (5) the Corporation Commission is abolished and its duties now centered in a Utilities Commissioner; (6) the office of Director of Local Government and the Local Government Commission are abolished and their duties transferred to the State Treasurer; (7) the office of State Game Warden and the office of Commissioner of Inland Fisheries are abolished and their duties transferred to a new official in the Department of Conservation and Development; (8) the Highway Patrol is transferred from the Highway Department to the Department of Revenue with additional duties of inspection; (9) the State Prison and the Highway Commission are consolidated.

Thus it is rather clear that the existing duties of government are for the most part transferred to other officers, largely with the view of getting the work done with less expense. The above changes should now be examined more closely:

tioners contended the act denied equal protection of the laws in its unequal treatment of persons in different counties. *Raleigh News and Observer*, May 30, 1933.

¹⁰ N. C. CODE ANN. (Michie, 1931) §§4427-4435.

¹¹ N. C. Const., Art. I, §7, *Plott v. Ferguson*, 202 N. C. 446, 163 S. E. 688 (1932); *State v. Fowler*, 193 N. C. 290, 136 S. E. 709 (1927).

1. The Tax Commission has done some very fine work during the six years of its existence, and its reports to the General Assembly may well serve as models for the future. Ch. 88, which abolishes the Tax Commission, transfers to the Commissioner of Revenue the duty of making a report to the General Assembly, which shall contain all available data with respect to the tax laws of this state and other states and make recommendations for the improvement of our tax laws and system. For the compiling of such report, outside assistance seems almost a necessity, in view of the present load of the Commissioner of Revenue.

2. The office of Director of Personnel is abolished by ch. 46 and his duties are transferred to the Budget Bureau. In discussing the creation of a Department of Personnel two years ago, it was pointed out in the *LAW REVIEW*¹ that North Carolina had taken a first step in building up a real civil service in the state. It is desirable that this embryonic development be advanced, but it is doubtful if this can be done by a Bureau which is already heavily burdened. Matters relating to the selection and tenure of state employees are not necessarily connected with the work of the Budget Bureau.

3. Ch. 30 abolished the office of Executive Counsel. Ch. 111 gives the Governor power to appoint a Commissioner of Parole, who assumes that part of the function of the Executive Counsel which dealt with the pardoning power, a plan for the parole of prisoners. Under rules and regulations to be promulgated by the Governor with the advice of the Commissioner of Parole, the worthy prisoner will be given the opportunity to complete his sentence under supervision outside prison walls. An earlier act gave the Governor power to parole certain prisoners for work on public buildings and grounds in Raleigh.² Under P. L. 1929, ch. 147, the Executive Counsel was authorized to conduct investigations relative to pardons, reprieves and commutations. This is repealed by ch. 30. So the Commissioner of Parole succeeds to the work of pardons, reprieves and commutations of sentences of prisoners and has the duty of organizing and conducting a system of parole. If this significant step in the treatment of prisoners could be joined with a system of probation under the direction of trial judges, much could be accomplished in restoring the individual delinquent as a useful member of society, as well as preventing the over-crowding of our existing penal

¹ *A Survey of Statutory Changes* (1931) 9 N. C. L. REV. 408.

² N. C. CODE ANN. (Michie, 1931) §§7449-57; P. L. 1925, Ch. 163.

institutions, which was an important consideration with the members of the General Assembly. Ch. 111 authorizes the appointment of not more than four Parole Supervisors to be selected from the existing personnel of the State Prison or the Highway Commission, with no additional expense. Likewise the various state agencies which have records dealing with criminals are to coöperate in securing family and case histories. The Commissioner of Parole is authorized to call upon the Department of Public Welfare, the State Prison, and County Welfare Officers for such assistance.

4. The Legislative Reference Library was established in 1915 as a unit of the Historical Commission, largely for the purpose of collecting materials and gathering a library which could be used in advising officials and members of the General Assembly concerning legislation in existence or contemplated. A bill drafting service is not mentioned but it was very soon that the Legislature Reference Librarian found himself drafting many bills.³ Ch. 21 transfers the office of Legislative Reference Librarian to the department of the Attorney General. No changes in duties are intended except that as an assistant to the Attorney General the Legislative Reference Librarian shall perform such duties, consistent with his present duties, as the Attorney General may direct. The present change will probably discourage promiscuous bill drafting for the members of the General Assembly, and the bills which issue from the Attorney General's office will be largely administration measures, having a certain stamp of legal approval upon them.

5. Ch. 134 abolishes the Corporation Commission and its duties are centered in the new Utilities Commissioner, discussed herein at p. 245. The immediate result has been merely a change in personnel.

6. Ch. 31 abolishes the office of Director of Local Government and transfers his duties to the State Treasurer. Since the former Director of Local Government is now the State Treasurer, we have a man capable of handling both offices, but the need for both offices is still present, and it is to be hoped that both offices may be capably administered by subsequent State Treasurers. The functions of the Local Government Commission and of the Director of Local Government shall be maintained and operated as a distinct division of the department of the State Treasurer.

7. Ch. 357 abolishes the offices of State Game Warden and of

³ *Proposals for Legislation in North Carolina* (1930) 9 N. C. L. REV. 4.

Commissioner of Inland Fisheries, but authorizes a new official to continue their duties. The act specifies that the new official to be appointed by the Board of Conservation and Development shall be a person of scientific training and experience in the propagation and preservation of fish and game.

8. Ch. 214 transfers the State Highway Patrol from the Highway Department to the Department of Revenue. Additional duties of inspection, particularly oil and gasoline inspection, are imposed. Likewise the Highway Patrol shall assist the work of the Motor Vehicle Theft Bureau in addition to its regular work of patrolling the roads. The significant development is the consolidation of functions under the Department of Revenue and the use of the Highway Patrol to assist in the work. Thus the Motor Vehicle Bureau, the Motor Vehicle Theft Bureau, the Division of Oil and Gas Inspection, and the Division of Weights and Measures are now consolidated under the Department of Revenue.

9. The most important reorganization of the legislative session is the consolidation of the State Prison Department and the State Highway Commission. The purpose of this consolidation is expressed in Section 1 of the Act (ch. 172) as follows:

"It is hereby declared to be the public policy of this State to build and maintain a State system of dependable highways and to maintain and improve the public roads in the several counties at the State's expense; and to that end to make the most economical use of the prison labor of the State in the construction, improvement and maintenance of said highways and roads."

To carry out this public policy, a new commission is created to be known as the "State Highway and Public Works Commission." It consists of a chairman and six members to be appointed by the Governor. Present highway and prison officials are to surrender all property, records, etc., to the new commission.

All persons sentenced to more than thirty days (formerly sixty days) are assigned to work on the roads under the supervision of the new commission, except that prisoners may still be sentenced to a county jail and assigned to work on county property by the court. To make the state's prison population more self-supporting, the act directs that other gainful occupations for able-bodied prisoners be provided, particularly the production of food supplies and necessary articles for use in the State Highway Department and other state

supported institutions. Likewise, prison labor may be furnished other state departments and institutions where it is desirable in carrying out the work of those state agencies.

Section 24 of the Act provides for indeterminate sentences in cases of prisoners sentenced for more than twelve months. Judges are authorized to provide for a minimum and maximum sentence in such cases, and, every six months, the records of such prisoners shall be investigated and an earlier discharge given for good behavior after the minimum sentence is served.

The details of this tremendous reorganization will be worked out during the next two years for the appraisal of the next General Assembly. The consolidation has great merit, and, if well done, will improve our present facilities for handling prisoners, relieve congestion at the State Prison, carry out the program of state-supported highways and roads, and save money for the taxpayers.

STERILIZATION

A considerable impetus was given to the sterilization movement in the United States by the decision of *Buck v. Bell*,¹ in which the Virginia sterilization law was held constitutional, thus recognizing as a valid exercise of the police power the sterilization of mentally incompetent persons for the purpose of preventing procreation. Although North Carolina had a much earlier statute dealing with sterilization,² it apparently had been used very little and had never been passed upon by the courts. Following the decision of *Buck v. Bell*, however, the General Assembly of 1929 passed a new sterilization law.³ This law was discussed in the NORTH CAROLINA LAW REVIEW, where it was pointed out that there was no provision for either notice or opportunity to be heard and therefore the individual would not have due process of law.⁴ The recent decision of *Brewer v. Falk*⁵ holds that the Sterilization Act of 1929 is unconstitutional because it fails to provide for notice to the person to be sterilized and for a fair hearing of the case.

¹ *Buck v. Bell*, 274 U. S. 200, 47 Sup. Ct. 584, 71 L. ed. 1009 (1927).

² P. L. 1919, c. 281; N. C. CODE ANN. (Michie, 1931) §§7221, 7222.

³ P. L. 1929, c. 34; N. C. CODE ANN. (Michie, 1931) §§2304 (h) to (1).

⁴ *A Survey of Statutory Changes in North Carolina in 1929* (1929) 7 N. C. L. REV. 392, 395.

⁵ *Brewer v. Falk*, 204 N. C. 186, 167 S. E. 638 (1933). Over forty operations were performed under the unconstitutional act. Landman reports 21 operations on January 1, 1932. LANDMAN, HUMAN STERILIZATION (1932) Appendix A, 289. This book gives a history of sterilization in the United States and an excellent appraisal of the existing problem. The author is very pessimistic about the future of the sterilization movement.

Within two months of the Supreme Court's decision in *Brewer v. Falk*, the General Assembly of 1933 passed a new sterilization law⁶ to remedy the defects of the old one. But the new law (ch. 224) is more than an attempt to get around the objections of the Supreme Court. It is a thoroughgoing revision of the entire procedure leading to sterilization and is, in reality, a new statute.

A Eugenics Board is created consisting of five members: the Commissioner of Public Welfare, the Secretary of the State Board of Health, the Chief Medical officer of an institution for the feeble-minded or insane, not located in Raleigh, the Chief Medical Officer of the State Hospital at Raleigh, and the Attorney General of North Carolina. Any one of these officials may for the purpose of a single hearing delegate, in writing, his power to act as a member of the board to an assistant. The members of the Board are to serve without additional compensation. The Eugenics Board is authorized to formulate rules and regulations for the conduct of proceedings before it; it shall meet at least quarterly in Raleigh; a secretary shall be appointed, not a member of the Board, for the purpose of keeping complete records and to conduct the business of the Board between the times of the regular meetings under directions of the Board.

The new statute provides for service of a copy of the petition for sterilization upon the inmate, patient or individual concerned with notice of the hearing before the Board. Further service upon the legal guardian or next of kin is also required. At the hearing before the Board, the person to be sterilized has the right to be present and to have counsel. If an operation is ordered by the Board, there is provision for appeal to the Superior Court of the county of the person's residence, but, on appeal, the record of the proceedings before the Board shall be conclusive and binding as to all questions of fact, the court reviewing only questions of law. This is similar to the manner of reviewing decisions of the Industrial Commission.⁷

While this procedure is somewhat cumbersome, it does safeguard the individual. From the viewpoint of protecting society against socially undesirable offspring, it is to be hoped that the procedure under the new law will not be a barrier to the performance of operations in those cases where it is advisable.

Section 20 presents a new feature, making the procedure pro-

⁶ C. 224.

⁷ Two recent cases involving review of findings of the Industrial Commission are *Winberry v. Farley Stores, Inc.*, 204 N. C. 79, 167 S. E. 475 (1933); *Massey v. Board of Education*, 204 N. C. 193, 167 S. E. 695 (1933).

vided for under the Act mandatory whenever a written request is filed with the head of an institution thirty days before the release, parole or discharge of any inmate or patient. If the Eugenics Board approves the order, the operation must be performed before the discharge, release or parole of any such patient or inmate. It seems to be most desirable to put a stop to the present practice of turning loose upon society persons who are likely to have offspring with a tendency to serious physical, mental or nervous disease or deficiency.

Section 16 of the Act exempts from both civil and criminal liability all persons legally participating in the execution of the provisions of the Act, except in case of negligence in the performance of the operation. Section 17 probably codifies the existing law by providing expressly that nothing in the Act shall be construed so as to prevent treatment for sound therapeutic reasons of any person in this state by a licensed surgeon or physician, although the treatment may incidentally involve the nullification or destruction of the reproductive functions.

The General Assembly has certainly cured the procedural defects of the old law, but, in so doing, it may have erected a procedural structure which will not be consistent with the need for ready enforcement of the purpose of the law.

TAXATION

Income Taxes (Ch. 445). Under a constitution which limits income taxes to a maximum of six per cent,¹ any attempted increase in productivity of this field of revenue had to come at the expense of the small income man. That is what has happened. Instead of a rate of two per cent on the first two thousand dollars above exemptions, the rate is now three per cent. On the next two thousand the rate is four per cent instead of the former three per cent, and on the third two thousand, five per cent instead of four per cent. All over six thousand dollars now pays the maximum of six per cent. Formerly the maximum rate did not apply until ten thousand dollars was reached.² The corporation income tax has been increased from a flat rate of five and a half per cent to a flat rate of six per cent.³

The North Carolina Constitution provides that the salaries of the

¹ N. C. Const., Art. V, §3.

² §310.

³ §311.

constitutional executive officers⁴ and of the judiciary⁵ shall not be diminished during their continuance in office. *Long v Watts*⁶ decided that this prevented the state from taxing the salaries of the judges during their terms of office. Sec. 317(1), which defines gross income, now makes this term apply to "the salaries of all constitutional State officials taking office after the date of the enactment of this act, by election, re-election or appointment, and all acts fixing the compensation of such constitutional State officials are hereby amended accordingly." The legislature may designate the compensation of these officials prior to the beginning of their terms and it should follow that the compensation may be declared a certain amount less the income tax on that amount.⁷

Sec. 322 shows a few changes in permissible deductions from gross income. It is provided that taxpayers who receive income which is not taxed in this state, are allowed to deduct only such proportion of the deductions as the taxable income bears to the total income from all sources. Sub-section (3) excepts installment paper dealers along with banks from the limitation on interest deductions for corporations. Sub-section (4), which provides for deduction of certain taxes, now states that no deduction shall be made for gasoline tax, automobile license or registration fee by individuals not engaged in business. Sub-section (6), permitting deduction of losses, becomes more specific. Losses of property not connected with business are limited to those arising from fire, storm, shipwreck, or other casualties or theft. No deductions are allowed for losses from loans or endorsements not entered into for a profit. Deduction of losses in connection with the sale of securities is allowed only to the extent of security gains during the income year, unless the losses resulted from the sale of stocks or bonds held by the taxpayer for not less than two years prior to their sale. Sub-section (10) is changed to provide for deduction on net income of residents and domestic corporations when the income is derived from business or investments in another state and the income is taxed there. The former act provided that the tax paid the other state be deducted from the tax due this state.

⁴ Art. III, §15.

⁵ Art. IV, §18.

⁶ 183 N. C. 99, 110 S. E. 765 (1922).

⁷ The tax rate applicable to these officials could not be changed after the terms of office begin, otherwise that would be either diminishing the compensation if the rate were increased, or increasing the compensation if the rate were decreased, and this latter must be constitutionally objectionable to the executive officers.

Inheritance Taxes (Ch. 445). Inheritance tax rates in classes A¹ and B² have been increased. The 1931 law applicable to class A started with a one per cent tax on the first twenty-five thousand dollars above exemptions. Now the one per cent rate applies only to the first ten thousand dollars above exemptions. A two per cent rate applies to interests over ten thousand dollars and up to twenty-five thousand dollars, and from there on the rate in each bracket has been increased one per cent. A flat ten per cent was applied to interests in class A of over two and a half million dollars under the 1931 law. Now eleven per cent is the rate for interests from two and a half million dollars to three million dollars, and a flat twelve per cent for all over three million. In class B the only change is an increase of one per cent in each bracket.

The express exemption of bonds of this state and of the political subdivisions when owned by a non-resident decedent no longer is found in the act.³ Neither is there the section providing for the exemption of foreign owned intangibles when the non-resident decedent's state reciprocates,⁴ nor the section for the collection from foreign executors of a tax on the transfer of bonds or stock in this state.⁵ These omissions may be due to developments of late in inheritance tax decisions, but the decisions themselves are not as broad as the omitted legislation.⁶

The federal estate taxes were increased sharply by the additional levies of June 6, 1932.⁷ These additional taxes are not allowed as a deduction in determining the value of property under the North Carolina law.⁸

Sec. 21½ is new. Persons and institutions who have in their possession securities, deposits or other property belonging to the decedent are forbidden to deliver the same to any person without retaining a sufficient portion to pay taxes which may thereafter be assessed under this Act; and persons and institutions renting lock boxes shall require the presence of a representative of the Clerk of

¹ Where persons entitled to interest are the lineal issue, or lineal ancestor, or husband or wife, or step-child, or adopted child, §3.

² Where persons entitled to interest are the brother or sister, or uncle or aunt by blood, §4.

³ P. L., 1931, Ch. 427, §2(d).

⁴ P. L., 1931, Ch. 427, §13.

⁵ P. L., 1931, Ch. 427, §21.

⁶ *Farmer's Loan and Trust Co. v. Minnesota*, 280 U. S. 204, 50 Sup. Ct. 98, 74 L. ed. 371 (1930); *First National Bank v. Maine*, 284 U. S. 312, 52 Sup. Ct. 174, 76 L. ed. 313 (1932).

⁷ 26 U. S. C. A. §1092a.

⁸ §7(e).

Superior Court as a condition precedent to the opening of the box upon the death of the decedent. Intentional or negligent failure to comply with these requirements renders the person or institution liable for the taxes due on such property.

Franchise Taxes (Ch. 445). Some of these taxes have been increased. The tax on railroads has been raised from seventy-five one-hundredth of one per cent to ninety one-hundredth of one per cent of the value of the railroad's property taxes in this state.¹ Electric light, power, street railway, gas, and water companies,² and telephone companies³ pay six per cent of gross earnings from business within this state instead of five per cent as formerly. Telegraph companies now pay seven dollars per mile of line instead of six dollars per mile.⁴ The franchise tax on domestic corporations has been increased from one dollar and a quarter to one dollar and a half for each thousand dollars of capital, surplus and undivided profits,⁵ and the same increase has been made in the franchise tax for foreign corporations doing business in this state.⁶

License Taxes (Ch. 445). This source of revenue shows numerous changes. The gross sales tax levied in §§400-427 is treated as an additional license tax and for some forms of business the former license rates are lowered considerably.¹ For others the former rates remain but they are counted as advance payments on the sales tax.²

A special stamp tax is imposed on the work of laundries³ and pressing and dry cleaning establishments.⁴ The tax, which is to be paid by the customer, is one cent for each dollar's value of the work or for each fraction thereof.

The chain store tax was increased. Instead of a flat tax of fifty dollars for each store in excess of one,⁵ the new rate depends upon the size of the chain. The tax starts at fifty dollars for each store

¹ §202.

² §203.

³ §206.

⁴ §205.

⁵ §210.

⁶ §211.

¹ Cash registers, adding machines, refrigerating machines, etc., §119; sewing machines, §120; pianos, victrolas, §144; peddlers, §121.

² Traveling theatricals, §103; carnivals, §107.

³ §150.

⁴ §139.

⁵ P. L., 1931, Ch. 427, §162.

in excess of one in a chain of not more than four, and increases to one hundred and fifty dollars for each store in excess of one in a chain of fifty-one or more.⁶

Additions to the list of licensed businesses are tourist homes,⁷ small loan agencies,⁸ and attendance checkers at moving picture shows.⁹ Realtors, rent collecting agents, and real estate loan brokers are included in the section licensing professions.¹⁰ The tax on buyers or sellers of scrap tobacco,¹¹ and the tax on motor vehicles for hire,¹² are omitted from the license tax section of the 1933 law.

There are some changes in methods of graduating the taxes.¹³ Population, a very inaccurate gauge of ability to pay, continues to be a favorite method of graduation. The advent of the gross sales tax as a part of the license tax system indicates the way toward something more than a formal uniformity in license tax classification. When gross sales have to be kept track of, such a rough method of classification as population is unnecessary.

The Sales Tax (Ch. 445). This source of revenue takes the form of a three per cent tax on the gross sales of retail merchants, and a tax of one twenty-fifth of one per cent on the gross sales of wholesale merchants. All merchants, wholesale and retail, are required to obtain from the Commissioner of Revenue an annual license for which one dollar is charged. The act expresses the intention that the tax on wholesale merchants will be absorbed by them. The retail sales tax is imposed with the intention that it will be added to the sales price of merchandise and be passed on to the consumer. Indeed it is made a misdemeanor for a retail merchant to offer to absorb the tax or to advertise that it is not considered as an element in the price.

⁶ §162.

⁷ §126½. Tourist homes or camps having five rooms or less pay a tax of ten dollars; those with more than five rooms pay two dollars per room. The same taxes apply to other boarding houses having fifteen or more boarders.

⁸ §152. There is a flat tax of five hundred dollars. Sub-section (b), which requires the person making the loan to give the borrower a written statement showing the amount received by the borrower, the amount to be paid back, the time at which it is to be paid and the rate of interest and discount agreed upon, identifies this section as regulatory as well as fiscal.

⁹ §104. The tax is twelve hundred and fifty dollars.

¹⁰ §109. And consequently they enjoy the graduated fee of that section. Their old tax was a flat fee of twenty-five dollars.

¹¹ P. L., 1931, Ch. 427, §142½.

¹² P. L., 1931, c. 427, §165.

¹³ Under the former law the soda fountain tax was graduated according to population; now the tax depends on the number of carbonated draft arms, §144. Pool tables are taxed according to their size, §129; the old tax was a flat rate.

An exemption is made of the sale of gasoline, commercial fertilizer, public school books, and the original sale of the products of farms, forests or mines when the sales are made by the persons producing the articles. In addition there is a conditional exemption of the retail sale of flour, meal, meat, lard, milk, molasses, salt, sugar and coffee. This exemption is upon condition that the retail merchant shall keep separate records of sales of these articles.

The Machinery Act. Ch. 204 sets up the machinery for the listing and assessing of property. In addition to the administrative changes there are a few changes in the subjects of taxes.

Sec. 304 (4A) exempts real property belonging to or held for the benefit of religious, charitable or educational institutions when the income from the property is used for religious, charitable or educational purposes, or is used in payment of the bonded indebtedness of the institutions.

Sec. 304(5A) directs the boards of county commissioners to accept, as credits on hospital property taxes, bills for services rendered to indigent residents of the county, and the governing boards of municipalities are authorized to allow similar credits for services to indigent residents of the municipalities, provided the bills are not presented to the county commissioners as a credit on county taxes. Both these sections are new.

Sec. 305(6) now lists postal savings as an item of personal property which is to be listed for taxation. It may be questioned whether postal savings are not a federal governmental instrumentality immune from state taxation. However, the postal savings system seems more of a business function than of a governmental function.

Sec. 521 provides that the board of county commissioners in each county shall enter on the tax list property which is discovered unlisted. Sub-section (10) and (11) have been added and provide for an appeal to the Superior Court from the assessment of the commissioners. Ch. 356 makes these sub-sections apply to such assessments under the Machinery Acts of 1929 and 1931.

Section 805 re-enacts the penalties on tax payments made after February first each year, but authorizes the governing boards of counties and municipalities to eliminate these penalties by resolution adopted prior to October 1, 1933. This section also re-enacts the discounts of the 1931 law, but authorizes the governing boards to adopt instead a system of discounts not in excess of the following:

two per cent discount on taxes paid on or before October first; one per cent discount, on or before November first; one-half per cent discount, on or before January first.

The Refunding of Tax Sale Certificates. Ch. 181 provides relief for delinquent taxpayers.¹ Instead of foreclosing at this unfavorable time, governing agencies may refund taxes and tax sale certificates for the years 1927-1931. Upon request of the property owner the governing agency owning the taxes or tax sale certificates may, on or before April 1, 1934, take a note for the taxes, with interest at six per cent from April 1, 1933 payable annually,² and with the principal payable in installments covering a period not to exceed five years. If default is made on any installment of the principal or interest, the governing agency may foreclose. The maker of the note may anticipate the payment of the whole or a part by paying cash less ten per cent before the installment is due.³ If the governing agency has bought land under foreclosure proceedings it is authorized to convey the land to the former owner for taxes, and costs which the agency paid for the land. A five year, six per cent, note may be given for the purchase price here as provided above for refunding tax sale certificates. The note in this re-purchase is to be secured by a deed of trust providing for foreclosure upon default in any payment of principal or interest. Holders of first mortgages or deeds of trust may take advantage of this act and receive title to the property if the former owner does not upon notice take title to the property. April 1, 1934 is the time limit for taking advantage of this act.

Tax liens for 1926 and previous years held by governing agencies and upon which foreclosure proceedings have not been instituted are

¹ This chapter does not apply to Forsyth, Orange, Hyde and Hertford counties, and it is subject to the approval of the governing boards in Alleghany, Gaston, Polk, Granville, Catawba, Lincoln, Wilkes, Guilford, Surry, Nash, Moore, Richmond, Camden, Durham, Rockingham, New Hanover and Halifax counties.

² Ch. 304 provides that Granville County or municipalities therein may either follow the plan of Ch. 181 or may accept notes bearing interest from dates of tax sale certificates.

³ Ch. 304 provides that this anticipation section is not to apply to Granville County or municipalities unless the governing bodies so elect. Ch. 505 provides that the anticipation section and the ten per cent discount section shall not apply to Dare County, and Ch. 536 is to the effect that these provisions apply to Chatham County only on approval by the governing body. Ch. 402 states that the anticipation section is not to apply to Alleghany, and the ten per cent discount applies only in event of payment before November 1, 1933.

barred. The time for institution of foreclosure suits on tax sale certificates for 1927-1931 is extended to October 1, 1934.

Interest and penalties are remitted on delinquent taxes for 1927-1931. The act provided for a ten per cent discount on tax payments for these years if paid before April 1, 1934. However, ch. 548 limits the ten per cent discount to payments before December 1, 1933, and provides these discounts for payments thereafter: December 1, 1933 to January 1, 1934, seven and one-half per cent; January 1, 1934 to February 1, 1934, five per cent; February 1, 1934 to March 1, 1934, two and one-half per cent.

Tax Foreclosures. Ch. 148, which later was virtually repealed, set up a simplified procedure for tax foreclosures. Under the existing law the sheriff sells real estate for taxes and gives the purchaser a certificate of sale. The purchaser then forecloses his certificate. Under ch. 148 the town or county would obtain judgment against the delinquents, execution against their property, and the sheriff would sell the property and give a deed to the purchaser. There would be one sale instead of two. Later in the session numerous amendatory acts were passed exempting certain counties, and finally ch. 560 repealed ch. 148 for all counties except Wake and rehabilitated the old procedure. Ch. 560 also makes some changes in the old law. Instead of "one reasonable attorney's fee for plaintiff", as formerly, the fee is limited to two dollars and fifty cents for each suit. The newspaper advertisement charge is limited to three dollars for each suit. And the total cost per suit, including attorney's fee and advertisement, is not to exceed six dollars. Interest on tax sales certificates is fixed at eight per cent, while formerly it was ten per cent for twelve months and eight per cent thereafter. Suits to foreclose certificates for sales in 1931 and prior years may be brought at any time not later than October 1, 1934.

WILLS AND ADMINISTRATION

Probate of Wills. Ch. 114 amends C. S. 4149 by providing that where one or more of the subscribing witnesses to a will resides in a county of this state other than the county in which the will is being probated, the examination of such witness or witnesses may be taken by way of affidavit before a notary public in the county in which the witness or witnesses reside. If such affidavits are satisfactory to the probating clerk, he may order the will to be probated. This amendment will facilitate the probate of wills where difficulty is encoun-

tered in securing the personal appearance of witnesses who reside within the state but at a distance from the county of probate.

Notice of Probate to Devisees and Legatees. Ch. 133 requires and directs each Clerk of the Superior Court, in whose county a will has been filed for probate, to notify by mail all legatees and devisees—whose addresses are known—that they have been designated to take under the will. All expense incident to such notification will be deemed a proper charge in the administration of the respective estates. While this requirement appears to be mandatory, it does not seem to be prerequisite to the probate of the will itself. Nor does it assume the status and importance of a citation to devisees and legatees as in the case of the probate of a will in solemn form. Apparently the purpose of the statute is to expedite the settlement of the estate of a person who has died testate.

Transfer of Title and License to Motor Vehicles upon Inheritance, Devise, or Bequest. Ch. 344 amends C. S. 2621 (16), subsection (f), by providing that, in the event the title or interest in a motor vehicle of the deceased owner thereof shall be transferred to another person or persons by virtue of a bequest in a will or by inheritance under the intestacy laws, the Motor Vehicle Department shall—upon receipt of a certified copy of the will, letters of administration, or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as a part of her year's support—transfer both the title and the old license to the heirs, legatees, or widow. A new registration card and certificate of title are issued to the transferee upon payment of the transfer fees. Under the former law when the title to a deceased owner's motor vehicle devolved upon an heir or legatee, such person upon application for a new certificate of title would have to present to the Motor Vehicle Department the original registration card, certificate of title, and number plate, together with proper evidence of his acquisition of title. If satisfied, the Department would then issue him a new title and a *new license*. The law, as amended, transfers the title of the decedent to the new owner and obviates the latter's purchase of a new license plate.

Damages for Wrongful Death—Assets for Burial Expenses. C. S. 160 provides that the damages recovered by the personal representative for the wrongful death of the decedent shall not be applied as assets in the payment of debts or legacies of the deceased but shall be distributed as personalty under the statute of distribu-

tions as in case of intestacy. Ch. 113 amends §160 to permit the personal representative to pay the burial expenses of the deceased out of the sum recovered. The statute does not specify what proportion of the recovery—or whether all of it, if necessary, may be spent in burying the deceased. Since, however, the administration of the whole sum is under the supervision of the clerk of court, it is assumed that the expenditure for funeral expenses will be regulated by that official.

Power to Renew Obligation. C. S. 176 (a) authorizes an administrator, executor, or collector of an estate, without risk of personal liability, to renew for a period of two years from such representative's qualification the obligation of the decedent in all cases where the latter was a maker, surety, or endorser of said obligation for the payment of money due or past due at the death of the decedent or to become due prior to the settlement of the estate. Ch. 196 amends this statute to permit such renewal if the decedent were a *guarantor* or one of the guarantors of the obligation.

C. S. 176 (a) is amended also by ch. 161 which provides that if it appears to the court that it is for the best interest of the estate that the time for final payment extend for a longer period than two years, then the court in its discretion may authorize the personal representative of the estate to renew the obligation, or any renewal or extension thereof, "for such a period as the court may deem best or for such a period of time not exceeding two years." The amending statute is not quite clear; but, apparently, if the obligation has already been renewed once, the personal representative may, under court authorization, renew it again for a period of time not greater than two years.

Ch. 161 does not apply to Mecklenburg and Pamlico counties.

C. S. 176 (a) is further amended by Ch. 498 which provides that when the time for final settlement of the estate has been extended from year to year, by order of the Clerk of the Superior Court, beyond the two year period authorized by C. S. 176 (a) for the renewal of a decedent's obligations by his personal representative, the obligation of the decedent, or any further renewal thereof, may likewise be extended by the personal representative but not beyond the period authorized by the Superior Court for the final settlement of the decedent's estate.

This amendment coördinates C. S. 176 (a) with C. S. 150 as amended by Ch. 188. Ch. 188 empowers the Clerk of the Superior

Court, under certain circumstances, to extend the time for the final settlement of the estate beyond two years. This latter statutory change is discussed under the next succeeding sub-head of this article.

Time for Final Settlement of Estate Extended. Under C. S. 150, the personal representative of a decedent must render an accounting and make final settlement of the estate within two years after his qualification. Section 150 is amended by Ch. 188 which authorizes the Clerk of the Superior Court, for good and sufficient cause shown by petition of the personal representative, to extend the time for final settlement of the estate from year to year, the total extension of time not to exceed five years from the date of the qualification of the personal representative. The clerk's order for extension is not effective until approved by the resident judge of the Superior Court.

Notice of the petition must have been given in writing by registered mail to all devisees, legatees, and other parties in interest at the last known post office address of each, and such notice must have been posted not less than thirty days prior to the hearing upon such petition.

Since Ch. 188 is added by way of proviso to §150, the requirement of the present law that the decedent's estate be finally settled within two years is still in effect. The proviso thereto will serve a useful purpose in permitting more time, if necessary, for the orderly settlement of large and complicated estates; the accomplishment of which task might require more than the allotted two years. The new law seems to safeguard adequately the interests of all parties concerned.

Waiver of Landlord's Lien. Ch. 219 amends C. S. 2355 by adding a proviso thereto to the effect that when advances have been made by the Federal Government or any of its agencies to a tenant on lands under the control of any guardian, executor or administrator for the purpose of enabling said tenant to plant, cultivate, and harvest crops grown on the land, the said guardian, executor, or administrator may waive the landlord's lien—preferred to all other liens—in favor of the Government or its agencies making the advances.