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CONTINUOUS STATUTE RESEARCH AND REVISION IN NORTH CAROLINA

ROBERT MOSELEY*

The General Assembly of 1943 amended the act establishing a division of legislative drafting and codification of statutes in the North Carolina Department of Justice¹ by adding at the end of the act the following:

"In order that the laws of North Carolina, as set out in the General Statutes of North Carolina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, it shall also be the duty of the division of legislative drafting and codification of statutes to establish and maintain a system of continuous statute research and correction. To that end the division shall:

"1. Make a systematic study of the general statutes of the state, as set out in the General Statutes and as hereafter enacted by the general assembly, for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

"2. Consider such suggestions as may be submitted to the division with respect to the existence of such defects and the proper correction thereof.

"3. Prepare for submission to the general assembly from time to time bills to correct such defects in the statutes as its research discloses."²

At the time this article is being written the first three volumes of the new General Statutes have been issued and it is expected that the fourth and last volume will be issued shortly. A fine job has been done in the preparation of this code. Mr. Harry McMullan, the Attorney General of North Carolina, under whose general supervision the work was done, Mr. W. J. Adams, Jr., the original director of the division, Mr. Harry W. McGalliard, who succeeded Mr. Adams as director in October 1941, the members of the codification staff, the members of the committee appointed in 1939 to assist in planning the code, the members of the commission on recodification appointed by the 1941 General Assembly, and the editorial staff of The Michie

* Member of the Greensboro, N. C. Bar. As a member of the 1943 Legislature the author introduced the bill establishing the system of continuous statute research and correction in the division of legislative drafting and codification of statutes. At present he is a member of the Commission on Statutory Revision.

¹ N. C. Pub. Laws 1939, c. 315.

² N. C. SESS. LAWS 1943, c. 382, now appearing as N. C. GEN. STAT. (Michie, 1943) 114-9(c).

Company, which cooperated in the preparation of the code, all deserve the thanks of the bar of North Carolina and the people of the state for the preparation of such a modern, useable code as has long been needed in the state.

The General Statutes, however, simply begins, it does not complete, the necessary work of revision of our statutes. Those who prepared the new code were concerned principally with the compilation, arrangement and numbering of the general statutes in a code, with the preparation of adequate tables of contents and an index, and with the preparation of the annotations. In the course of this work they corrected many of the errors appearing in the statutes themselves, but the need for a new code was so urgent that they did not have time to make the detailed study of the individual statutes that was necessary for a complete revision. The General Statutes is thus a limited, not a complete revision, of the statutes.

It was the realization of this fact that prompted the General Assembly of 1943 to pass the act which provides that the division of legislative drafting and codification of statutes shall "Make a systematic study of the general statutes of the state, as set out in the General Statutes and as hereafter enacted by the general assembly" in order that certain classes of defects in the statutes might be corrected.

Now that the preparation of the General Statutes has been, or is about to be, completed, the division can begin the corrective or revisory work contemplated by the act. And it is the purpose of this article to indicate in some measure the scope and nature of the work that should be undertaken by the division and to make some suggestions for making its work as effective as possible.

The defects in the statutes to which the act refers are "ambiguities, conflicts, duplications, and other imperfections of form and expression." These are all matters of form rather than of substance. They do not involve matters of substantial policy. The division of legislative drafting and codification of statutes would not want to undertake, and it should not be required by the General Assembly to undertake, a revision of the statutes that would involve recommendations to the General Assembly for substantial changes in policy. Changes in the meaning of the statutes are matters for the General Assembly itself, but changes in the form of existing statutes in order to make them express accurately the intention of the General Assembly in enacting the statutes may be recommended by the division without running the risk of embroiling it in controversies which might seriously impair its usefulness or endanger its continued existence.

G. S., 8-5 (formerly C. S., 1795), which disqualifies a party to a transaction from testifying about it when the other party is dead, will

illustrate the difference between the remedial work which should and that which should not be undertaken by the division.

The Foreword to the American Law Institute's *Model Code of Evidence* states that up to 1919 this statute had been before the Supreme Court of North Carolina in 221 cases.³ In the last twenty-five years it has been before the court in many other cases. The annotations to the statute cover nearly six pages of fine print in the General Statutes. The statute is like a piece of machinery so defectively constructed that it is constantly breaking down, or like an old car that has to be taken to the shop every time it runs a few miles.

Speaking of the North Carolina statute and of similar statutes in other states, the report of The Commonwealth Fund Committee in 1927, as quoted in the *Model Code of Evidence*,⁴ said: "Any statute which requires . . . two hundred and twenty-one pronouncements of the court of last resort to enable the bar to know what it means must be a curse to litigants and lawyers alike."

There are two ways of dealing with the statute. One way is to discard it entirely and replace it with a new statute embodying the modern and more liberal concept of the proper use of evidence in such cases. The other way is to revise it, retaining the policy of the statute but rephrasing it in the light of the court's construction of the statute so that, if it is possible with this particular statute, it can be used hereafter with reasonable assurance that it will not have to make such frequent trips to the Supreme Court for construction.

Probably the former would be the better way of dealing with it. That plan is followed by the *Model Code of Evidence* and by some of the other states. But that plan involves a substantial change in policy, and consequently the preparation of such a new statute and a recommendation for its adoption does not come within the scope of the functions of the division. If the General Assembly itself does not, upon its own initiative or at the suggestion of some commission or other body, change the policy of the statute, the work of the division should be limited to such a revision of the statute as will express the present policy of the statute in language that can be understood without constant appeals to the Supreme Court.

Occasionally the division will find it necessary to make recommendations to the General Assembly which will involve matters of policy. For instance, when there are contradictory statutes, or when there are contradictory provisions within a single statute, any recommendation for the elimination of the contradictions will involve a matter of policy. But a distinction must be made between changes of this kind and

³ American Law Institute, *Model Code of Evidence* (1942) p. 16.

⁴ *Id.* at p. 93.

changes such as would be involved in abolishing G. S., 8-5. The line between the two classes of cases can not be completely run in advance; the line must be marked out as the division deals with the individual statutes, but its general direction is well defined.

It is important that this general limitation upon the work of the division be clearly understood in the beginning if the division is to function successfully. No doubt many changes should be made in the policies embodied in many of our statutes, but such policies are matters about which there may be much difference of opinion. It is the function of the division not to change or to bring about changes in substantial policies, but to see that those policies adopted by the General Assembly are clearly and accurately expressed in the statutes.

The general limitation upon the work of the division in revising the statutes having been indicated, the kind of defects in the statutes that the division should undertake to correct may now be enumerated and illustrated. The examples used have been taken more or less at random from the statutes. Only one or a few of each kind are used, but many other examples of each such defect occur in the statutes.

1. *Contradictory provisions.*

G. S., 84-14 provides in its first sentence that "In all trials in the Superior Courts there shall be allowed two addresses to the jury for the state or plaintiff and two for the defendant, except in capital felonies, when there shall be no limit as to number." Notwithstanding this explicit provision of the statute, a later provision of the same statute empowers the court to limit the number of addresses to the jury in capital felonies to three.

G. S., 58-113 provides that corporations, the charters of which so provide and which are licensed by the commissioner of banks, may "... be guardian, trustee, assignee, receiver, executor or administrator in this state . . . and the clerk of the Superior Court or other officers charged with the duty, or clothed with the power of making such appointments, are authorized to appoint such corporation to any such office, whether the corporation is a resident of this state or not." But G. S., 55-117 says: "A corporation created by another state of the United States, or by any foreign state, kingdom, or government . . . is not eligible or entitled to qualify in this state as executor, administrator, guardian or trustee under the will of any person domiciled in this state at the time of his death."

2. *Meaningless, archaic and obsolete expressions and provisions.*

G. S., 41-2, which abolishes survivorship in joint tenancy, with an exception in the case of partnerships, uses the expression "heirs, ex-

ecutors, administrators and assigns." In *Powell v. Allen*,⁵ at page 453, the Court said: "The word 'assigns' has no signification, but evidently is a mere expletive thrown in by force of habit to accompany the words 'executors and administrators.'" The Court said that in 1876. The word still appears in the statute.

G. S., 14-70, dealing with larceny, provides in part that "All distinctions between petit and grand larceny, where the same has had the benefit of clergy, are abolished." If there are those who think this archaic language has any practical meaning today, let them ask the first half-dozen lawyers they meet, who try larceny cases frequently but who have been out of law school four or five years, to read the whole statute and then explain just exactly what the quoted language means.

3. *Inaccurately used terms.*

Is a deed probated when the acknowledgment of the grantor is taken by a notary public, or when the clerk of the court certifies that the notary's certificate is correct?

Whatever may be the case in other states, the term "probate" is used in North Carolina with respect to deeds as well as wills. In some of our statutes the term is used to refer simply to the acknowledgment by the grantor or other maker of a deed or other instrument which may be registered; for example, G. S., 47-1, the title of which is "Officials of state authorized to take probate," and which prescribes simply who may take acknowledgments, and G. S., 47-41, which says, "The following forms of probate for deeds . . . shall be deemed sufficient," and then set out forms of acknowledgment only.

But elsewhere in the statutes "probate" has a different meaning; for example, in G. S., 47-48, which speaks of admitting a deed to probate, where the term refers to the act of the clerk of the court in passing upon the certificate of the officer taking an acknowledgment. And the title of Article 3 of Chapter 47 of the General Statutes is "Forms of Acknowledgment, Probate and Registration," while the title of Article 4 is "Curative Statutes; Acknowledgments; Probates; Registration."

Perhaps it may be said that the term is not inaccurately used in either case, but that it has simply two different meanings. There is nothing unusual about two different meanings for a single word, but certainly there is no justification for it when the same term applies to different acts performed by different officers with respect to a single instrument.

Sometimes when the term "void" is used it means *void*, sometimes

⁵ 75 N. C. 450 (1876).

voidable. In *Walters v. Walters*⁶ the court said: "Revisal, 2083 [now G. S., 51-3] Who may not marry specifies the instances in which parties are forbidden to marry, and that such marriages 'shall be void.'" But further in the opinion the court says: "It will be seen from this that the only marriages that are absolutely void are those in the proviso. As to the others, they are not void *ipso facto*, but must be declared so—that is, they are voidable."

4. *Uncertain references.*

One of the statutes dealing with void marriages says, "The superior court . . . may declare such marriage void from the beginning, subject, nevertheless, to the proviso in Section 51-3." There are now two provisos in Section 51-3. The reference ought to be made specific.

5. *Doubtful application of qualifying provisions.*

G. S., 55-110 provides in part: "Unless otherwise provided in the charter or by-laws of a corporation, at every election each stockholder is entitled to one vote in person, or by proxy duly authorized in writing, for each share of the capital stock held by him, but no proxy may be voted after three years from its date; nor may there be voted at any election a share of stock which has been transferred on the books of the corporation within twenty days prior to the election." Does the phrase "Unless otherwise provided" apply only to that portion of the sentence of which it is a part, that is, the part preceding the semi-colon, or does it apply also to the portion of the sentence following the semi-colon? Or, to put it differently, may a corporation, by virtue of the quoted phrase, have a valid provision in its charter or by-laws allowing stock transferred within twenty days of an election to be voted at such election?

A defect of the same general kind appears in G. S., 8-56, which deals with husband and wife as witnesses in civil actions. The statute says in part: "Nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action or proceeding in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage)." Does the phrase, "except to prove the fact of marriage," apply only to actions for divorce on account of adultery, or does it apply also generally to actions in consequence of adultery? Justice Clark, commenting on the statute in *Brown v. Brown*,⁷ in 1902 indicates that the exception applies to both classes of cases, but the defect is still in the statute and makes necessary an examination of the decisions of the Supreme Court.

⁶ 168 N. C. 411, 84 S. E. 703 (1915). ⁷ 130 N. C. 562, 41 S. E. 673 (1902).

6. *General exceptions.*

Possibly no defect introduces more uncertainty into a statute than such a phrase as "except as hereinafter provided," except the phrases "except as otherwise provided" or "except as otherwise provided by law."

G. S., 28-73 provides: "Every executor and administrator shall have power in his discretion and without any order, except as hereinafter provided, to sell, as soon after his qualification as practicable, all the personal estate of his decedent." There are 164 chapters of the General Statutes. The exception or exceptions may therefore be found not only in any one or more of the sections of Chapter 28 following section 73, but in any of the sections of the following 136 chapters as well. And if the phrase were "except as otherwise provided," the exception or exceptions might be found in any of the sections preceding G. S., 28-78 as well as in any of the sections following it.

7. *Omission of needed details.*

G. S., 1-99 provides that when service is to be had by publication the order therefor must direct the publication of a notice "for such length of time as is deemed reasonable, not less than once a week for four successive weeks." G. S., 1-100 provides that "the summons is deemed served at the expiration of the time prescribed by the order of publication, and the party is then in court; and the defendant shall have twenty days thereafter in civil actions and ten days in special proceedings in which to answer or demur."

May the order of publication properly provide that service of publication shall be complete immediately upon the publication of the notice the fourth time, which means a span of only twenty-two days for the entire publication, or must a week elapse from the last publication before the publication can be deemed complete, which means a period of twenty-eight days? In 1891 our Supreme Court, in *Guilford v. Georgia Co.*,⁸ discussed the sufficiency of publication, but the facts in that case were such that a great many lawyers do not think that it is decisive of the question just stated.

The defect of this statute is, of course, that one of the details necessary to explicitness and completeness is omitted. There are literally hundreds of instances of this kind in the statutes.

G. S., 55-66 specifies six different methods by which a corporation may decrease its capital stock, and then provides how "the certificate decreasing the same" shall be published. A corporation may decrease its outstanding capital stock without amending its certificate of incorporation. What then is "the certificate decreasing the same?" The

⁸ 109 N. C. 310, 13 S. E. 861 (1891).

statute also provides that "In default of such publication the directors of the corporation are jointly and severally liable for all debts of the corporation contracted before the filing of the certificate." If the decrease in capital stock is effected by some means which does not involve amending its certificate of incorporation, where is the certificate to be filed? The omission of these needed details makes the statute uncertain and confusing.

8. *Lack of conformity of statutes to amended related statutes.*

The summons used to commence a civil action in the Superior Court formerly had a definite return date. Section 476 of the Consolidated Statutes of 1919 provided with respect to the summons that "It must be returnable before the clerk at a date named therein, not less than ten nor more than twenty days from its issuance." The statutes governing attachments conformed. But in 1927, C. S., 476 (now G. S., 1-89), was amended, so that the summons now has no definite return date. But corresponding changes have not been made in the attachment statutes. After seventeen years it is still provided that the warrant of attachment "shall be made returnable before the clerk at the same time and place to which the summons is returnable." G. S., 1-443. Other references to the return date of the warrant of attachment in the attachment statutes are equally confusing. Professor McIntosh in his *North Carolina Practice and Procedure in Civil Cases*, published in 1929, was obliged to say: "The frequent changes in the return day of the summons have left this feature of the warrant in some uncertainty." And the uncertainty has continued to the present time.

9. *Illogical unit-divisions.*

The section title of G. S., 8-57 is "Husband and wife as witnesses in criminal actions." One examining the statutes with reference to the competency of husbands and wives as witnesses for or against each other might reasonably expect to find all of the statute law on that subject in that section. And it ought all to be in that section. But it is not, for G. S., 8-58 provides that "The wife shall be competent to make affidavit and testify in applications for peace warrants against the husband."

A defect of this kind frequently results from the fact that one who desires to broaden or limit an existing statute finds it easier to draw a separate statute than to amend the existing statute by incorporating in it the desired extension or limitation. That course may be easier originally, but it frequently results in creating confusion.

One of the best examples of this kind occurs in Art. 15 of Chapter 116 of the General Statutes, entitled "Educational Advantages for

Children of World War Veterans." The article is too long to discuss here in detail, but anyone who tries to determine just who are entitled to the advantages, what the advantages are, and how they may be obtained, will be driven to the conclusion that the article could be immensely clarified and improved by rewriting it entirely with a logical arrangement of subject-matter and a logical division of that subject-matter into sections.

10. *Illogical unit-combinations.*

Chapter 2 of Title 1 of the U. S. Code deals with formalities of enactment of acts and resolutions of Congress. Section 24 of that chapter provides that "Each section shall be numbered, and shall contain, as nearly as may be, a single proposition of enactment." "A single proposition of enactment" as used here means a logical unit of statute law, and the Code, consequently, states a sound rule which ought to be followed in the drafting of all statutes, but it is one that has frequently been disregarded entirely in the drafting of the statutes that now make up our General Statutes.

G. S., 105-24 is a good example. That statute deals with at least two distinct, although related, matters, namely, (1) the opening of a safe deposit box of a decedent, the inventory of the contents, and the delivery of the contents to the personal representative, and (2) the payment of a decedent's bank deposit. In connection with these two principal matters the statute deals also with several incidental matters such as the fee of the clerk of the court for attending the opening of a safe deposit box and making the inventory, and the liability of a bank or safe deposit company for failure to comply with the requirements of the statute. The liability of the bank or safe deposit company is stated in a separate paragraph of the section, but the other matters are, for the most part, mixed up in one exceedingly long paragraph of the statute so that one who is interested, for example, in ascertaining the procedure for opening a decedent's safe deposit box must go through the whole paragraph and separate the provisions relating to that matter from the provisions relating to the decedent's bank deposit.

11. *Unskillful or careless draftsmanship.*

The specific defects in the form of our statutes which have been enumerated and illustrated, together with any others of like kind that may have been omitted, might all probably be included under the heading of "Unskillful or careless draftsmanship." For the sake of completeness other defects of form not specifically mentioned may be here included under this heading. A few illustrations will indicate how careless the draftsmanship sometimes is.

G. S., 14-238 provides: "No person, agent, representative or salesman shall solicit or attempt to sell or explain any article of property or proposition to any teacher or pupil of any public school on the school grounds or during the school day without having first secured the written permission and consent of the superintendent, principal or person actually in charge of the school and responsible for it. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court." An analysis of this section shows that it makes it a criminal offense for any "person . . . to . . . explain any . . . proposition to any pupil of any public school on the school grounds or during the school day without having first secured the written permission and consent of the superintendent, principal, or person actually in charge of the school and responsible for it," which is surely not what the General Assembly meant.

Another statute dealing with our schools, G. S., 115-371, provides that "Children to be entitled to enrollment in the public schools for the school year one thousand nine hundred thirty-nine-forty, and each year thereafter, must be six years of age on or before October first of the year in which they enroll, and must enroll during the first month of the school year." This statute means to provide that, beginning with the school year 1939-40, children under six years of age may be enrolled during any school year only (1) if they enter during the first month of the school year and (2) if they will become six years of age on or before the October first next following such enrollment. But the statute is so drawn that it is not limited in its application to children under six years of age, and consequently it provides in effect that children are not entitled to enrollment in the public schools during any school year unless they enroll during the first month of such school year.

12. *Non-conformity of statutes to decisions.*

In 1901 our Supreme Court in *Best v. British and American Mortgage Company*,⁹ in an opinion written by Justice Walter Clark, held specifically that the statute providing for service by publication¹⁰ did not require the issuance and return of a summons as a prerequisite to service by publication. The decision was contrary to the language of the statute which provided how a civil action might be commenced, that statute providing that "Civil actions shall be commenced by issuing a summons; but no summons need issue in controversies submitted without action, and in confessions of judgment without action."¹¹

⁹ 128 N. C. 351, 38 S. E. 923 (1901).

¹⁰ N. C. GEN. STAT. (Michie, 1943) 1-98, formerly N. C. CODE ANN. (Michie, 1939) 218.

¹¹ N. C. GEN. STAT. (Michie, 1943) 1-88, formerly N. C. CODE ANN. (Michie, 1939) 199.

The next year, although there had been no change in the membership of the court, the Supreme Court, with only Justice Clark dissenting, reversed itself and held, in *McClure v. Fellows*,¹² that the issuance and return of a summons not served was a prerequisite to an order for service by publication. The decision was put partly on the ground that the statute which provided how civil actions might be commenced, said that they should be commenced by issuing a summons, with exceptions only in the case of controversies without action and confessions of judgment without action.

And thus the law stood until 1906. By that time Chief Justice Walter Clark, who had become chief justice since the decision in *McClure v. Fellows*, was the only member of the Supreme Court of 1901 and 1902 remaining on the Supreme Court bench. When the same question was presented in 1906, this time in *Grocery Company v. Bag Company*,¹³ the position that Chief Justice Clark had taken in the two earlier cases prevailed, *McClure v. Fellows* was overruled, and the Court held again that the issuance of a summons was not a prerequisite to an order for service by publication.

Although that was nearly thirty-eight years ago, the language of the statute has not yet been made to conform to the decision of the Court. Because of the unchanged wording of the statute and because of the fact that the Supreme Court has twice changed its position about the meaning of the statute, lawyers in North Carolina generally still think it is prudent, in cases where they know the defendant can not be personally served and that service must be by publication, to have a summons issued and to have it returned by the sheriff with a notation thereon that the defendant is not to be found in his county. And that is the practice in the state.

The uncertainty that existed from 1901 to 1906 and the uncertainty that still exists, despite the latest decision on this point, could all have been prevented by a simple amendment to the statutes involved making it clear that when service is to be made by publication the procedure of issuing a summons for the party so to be served and having it returned unserved is wholly unnecessary.

About no matter of practice in this state is there more confusion than there is about the meaning of G. S., 1-568 to 1-576, inclusive, which sections provide for examination of the adverse party in civil actions before trial and prescribe the procedure to be followed. The Supreme Court has been called upon many times to say what these statutes mean, the annotations to these statutes, involving this one procedural point, covering nearly three pages of fine print in the Gen-

¹² 131 N. C. 509, 42 S. E. 951 (1902).

¹³ 142 N. C. 174, 55 S. E. 90 (1906).

eral Statutes. By studying the decisions one can determine what these statutes mean, but one can not determine what they mean by reading the statutes themselves, for the statutes have not been amended to make them say clearly what the Supreme Court says they mean.

G. S., 28-24 provides that "In all cases where letters of administration with the will annexed are granted, the will of the testator must be observed and performed by the administrator with the will annexed, both in respect to real and personal property, and an administrator with the will annexed has all the rights and powers, and is subject to the same duties, as if he had been named executor in the will." But our Supreme Court, in construing this statute, held, in *Creech v. Granger*,¹⁴ that discretionary powers conferred upon an executor could not be exercised by an administrator c.t.a. Although that decision was rendered more than fifty years ago, the statute still says that "an administrator with the will annexed has all the rights and powers . . . as if he had been named executor in the will."

The act providing for a system of continuous statute research and correction makes it the duty of the division of legislative drafting and codification of statutes to undertake to correct, as far as practicable, all such defects in the statutes as have been described and illustrated in this article, and in doing this it is contemplated that the division shall proceed along two lines.

The act requires, first, that the division shall upon its own initiative "Make a systematic study of the general statutes of the state . . . for the purpose of ascertaining where such defects occur and how they may be corrected." That means a section-by-section study. It means a complete and comprehensive study of each statute that will include the purpose of the statute, the questions that have been raised about its meaning, the construction of the statute by the Supreme Court, if there has been any, and the change or changes in the language of the statute necessary to make it say clearly and concisely what it is meant to say.

Where the division shall begin and in what order it shall study the statutes are matters to be determined by the division with regard to where the most pressing need for such study lies, but every section must be studied, every such defect, as far as practicable, must eventually be corrected. That was the intention of the General Assembly, and, in effect, the act so provides.

The act requires, second, that the division shall "Consider such suggestions as may be submitted to the division with respect to the existence of such defects and the proper correction thereof." Perhaps every lawyer and judge in the state is troubled by some particular defects in the statutes which perplex him and which he would like to see

¹⁴ 106 N. C. 213, 10 S. E. 1032 (1890).

corrected but for which no adequate means of correction had been provided prior to the enactment of this act. Now this act invites persons who have knowledge of such defects in the statutes to report them to the division, and it is the duty of the division, whenever any such defects are called to its attention, to study the defects, to consider any suggestions for correction which may be made, to determine how the defects can be corrected, and to prepare the necessary corrective bills for the General Assembly.

Obviously, the systematic study of the statutes section by section (along with which will go the study of miscellaneous defective statutes called to the attention of the division), the preparation of the necessary corrective bills, and the enactment of these bills by the General Assembly will take much time. But the task, as far as existing statutes are concerned, ought not to be indefinitely prolonged. Perhaps a ten-year plan ought to be adopted by the division for the consummation of the work of studying and making necessary revisions of the statutes that now constitute the General Statutes, together with such other general statutes as may be enacted during the ten-year period.

The act intends that the division shall continue to function permanently, for each session of the General Assembly will bring a new supply of statutes, and, however well the division may perform its task within the limits of human skill, some questions about the meaning of the statutes will continue to arise, so that as long as our legislature and our courts exist there will be a continuous supply of grist for the revision mill. But at the end of ten years, or some comparable period, the division ought to be able to say that it has completed its study of the old statutes, that is, those now existing, and of the statutes enacted during the selected period, and that thereafter its work will be confined to such statutes as are subsequently enacted and such questions as are subsequently raised.

In order that the work may be done efficiently and expeditiously, adequate support should be provided by the General Assembly for the maintenance of a thoroughly competent staff in the division. Salaries paid members of the staff should be sufficient to offer a substantial incentive to them to become real experts in statute study and revision and to stay with the division as long as their services may be needed.

The commission on statutory revision, which was created¹⁵ by the General Assembly of 1943 for the purpose of cooperating with the Attorney General and the division of legislative drafting and codification of statutes in the preparation of amendments to clarify defects which the division discovered in preparing the General Statutes, but which was created without reference to the permanent revisory work of the

¹⁵ N. C. SESS. LAWS 1943, Joint Resolution 23.

division, should be made a permanent, instead of a temporary body, as it is now.¹⁶ The membership of the permanent commission should come very largely from the General Assembly, since the services of such members will be invaluable in securing the enactment of corrective bills prepared by the division and approved by the commission; but, in order to correlate the revisory work of the division with any similar work of our two state bar organizations, either one or two members from each of these organizations—the North Carolina State Bar and the North Carolina Bar Association—should be elected by the General Assembly or appointed by the governor to membership on the commission.

In studying the statutes and in preparing necessary corrective bills, there are three principles—simple but important—that should be kept in mind by the division.

First, every section of the statutes should embrace a single logical unit, should be as brief as the nature of its subject-matter permits, and should be drafted so as to lend itself to easy analysis.

What is meant by this can be explained by an illustration from the carefully drawn Uniform Partnership Act, recently adopted in this state. G. S., 59-39 is as follows:

"Sec. 59-39. Partner agent of partnership as to partnership business.—

"1. Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

"2. An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

"3. Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

"a. Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

"b. Dispose of the goodwill of the business,

"c. Do any other act which would make it impossible to carry on the ordinary business of a partnership,

"d. Confess a judgment,

"e. Submit a partnership claim or liability to arbitration or reference.

¹⁶ The commission was created only for a term expiring January 1, 1945.

"4. No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction."

Not every section of the statutes is susceptible of such simple analytical arrangement, but the extent to which the principle just stated can be applied to a whole subject is well illustrated in our statutes by the whole of the Uniform Partnership Act,¹⁷ by the Uniform Limited Partnership Act,¹⁸ and, to name a much older and more familiar law, by the Negotiable Instruments Act.¹⁹

Second, as far as practicable, the meaning of every statute should be clear without resort to the decisions of the courts.

Certain statutes state general policies, principles or rules. These must be stated broadly, and it would not be advisable to amend them from time to time to make them cover specifically the individual cases to which they are held applicable by the courts. Such statutes constitute the exception to the principle stated. But these statutes are to be distinguished from the thousand-and-one other statutes that have to be construed not because they involve the question of the application of a policy, principle or rule to a particular case, but simply because, for some reason or other, they are inadequately drawn.

Two illustrations may make clear what is meant. G. S., 75-1 provides that "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the state of North Carolina is hereby declared to be illegal." It would not be wise to amend that statute so as to make it specifically cover the various contracts, combinations and conspiracies to which it has been held applicable. Resort must continuously be had to the decisions of the courts to determine the scope of the statute, but such statutes should not be confused with the multitude of statutes involving the kinds of defects which have been discussed and illustrated earlier in this article. For example, why should it be necessary to read the decisions in order to determine that G. S., 1-88 and 98 do not require the issuance and return unserved of a summons as the basis for service by publication? If a statute of this kind is defectively drawn originally so that the court has to be called upon to say which it means, as soon as the meaning is declared the statute should be amended so as to correct the defect, instead of leaving the defect in the statute to breed confusion and promote litigation. And if a second or third defect is brought to light each should likewise be corrected as soon as practicable to the end that resort to the decisions for the meaning of the statute shall be made unnecessary.

¹⁷ N. C. GEN. STAT. (Michie, 1943) 59-1 through 59-30.

¹⁸ *Id.* 59-31 through 59-73.

¹⁹ *Id.* 25-1 through 25-199.

Third, every statute should be complete either in itself or by proper reference.

This principle, while involving to some extent both of the principles previously stated, goes further than either or both of them. It requires that the statute be drawn by one who knows thoroughly the subject matter of the statute, who understands the purpose of the statute, and who has sufficient skill in the use of words to express the idea of the statute. It requires that terms be used accurately, that references be specific, that the application of qualifying provisions be clear, that exceptions be definite, and that all necessary details be included. And it requires also that the draftsman be able to view his work objectively. The final test of his work is not whether he understands it but whether he who reads it can tell exactly what it means from the statute itself.

Within the last few decades the volume of statute law and of decisions has enormously increased. If the courts and the members of the bar are to discharge their duties to the public efficiently, it is imperative that our statute law be made and kept as clear as possible and that the necessity for construction of the statutes by our courts be reduced to the minimum. Modern conditions will not permit the continuance of such defects in our statutes as made it necessary for our Supreme Court to say in a recent case:²⁰ "On account of the exceedingly confused state of this statute and the practical impossibility of satisfactory construction, the court has not always agreed as to what may be done under it."

On the front of each issue of the United States Code Congressional Service, Honorable Eugene J. Keogh, chairman of the committee on revision of the laws of the federal house of representatives, is quoted as saying, "Making laws understandable is as important as making the laws." For the first time in our history the state of North Carolina has authorized the establishment of a permanent system for ensuring, as far as possible without resort to the courts, that all our statute law shall be made understandable.

The division of legislative drafting and codification of statutes thus has a splendid opportunity, in discharging its duties under the act quoted at the beginning of this article, to do some pioneer work in a comparatively new field, to make a worthwhile contribution to the development of our legal system, and thereby to render a genuine service to the people of this state and of the nation.

²⁰ *State v. Summerlin*, 224 N. C. 178, 181, 29 S. E. (2d) 462, 464 (1944).