

1925

Statutory Changes in North Carolina Law in 1924

Atwell Campbell McIntosh

Robert Hasley Wettach

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Atwell C. McIntosh & Robert H. Wettach, *Statutory Changes in North Carolina Law in 1924*, 3 N.C. L. REV. 14 (1925).

Available at: <http://scholarship.law.unc.edu/nclr/vol3/iss1/3>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

STATUTORY CHANGES IN NORTH CAROLINA
LAW IN 1924

ATWELL CAMPBELL McINTOSH

PROFESSOR OF LAW

ROBERT HASLEY WETTACH

ASSOCIATE PROFESSOR OF LAW, UNIVERSITY OF NORTH CAROLINA

The acts of the General Assembly which met in special session in August, 1924, have just been published, and it may be of some advantage to call attention to some of the laws of general importance then enacted.*

ADMINISTRATIONS

Ch. 43 amends C. S., sec. 24 by adding a provision for issuing letters of collection in case of probable death.

When there is delay in producing positive proof of death, where a person has disappeared under circumstances indicating that he may be dead, any person interested in his estate, "as heir at law, prospective heir at law, creditor, next friend, or any other person interested, either directly or indirectly," may apply to the clerk of the county in which such persons resided, or if he were a non-resident, in the county "in which any property was or might have been located at the time of such disappearance," for the appointment of a collector for the estate. The petition shall state the circumstances attending the disappearance, it shall be verified and also be supported by the affidavits of persons having knowledge of the circumstances. If the clerk is satisfied that the person is probably dead, he shall so find, and issue letters of collection to some discreet person or persons for the protection and preservation of the property.

Under the former law, letters of collection were issued only in case of delay in the probate of a will or in a controversy as to who was entitled to administration, there being no question as to the death.¹ Under the amendment, letters of collection are issued for the protection of the estate because there is some delay in establishing the death, while there may be no controversy as to the person

* Throughout this article, the abbreviation "Ch." will always refer to a chapter of the Public Laws of North Carolina, Extra Session, 1924. The abbreviation "C.S." refers to Consolidated Statutes of North Carolina (1919).

¹C. S., secs. 24 to 27.

entitled to administration. Administration upon the estate of a living person is held to be a nullity.² The purpose of the amendment is to authorize the appointment of some one temporarily to protect the estate either for the benefit of the person supposed to be dead or for those who would succeed to his right.

Ch. 3 amends C. S., sec. 80 in regard to parties to a petition to sell land for assets.

The original section requires the heirs and devisees to be made parties to the proceeding, and the amendment provides that if the names and residences of any of the heirs are unknown, they may be joined as parties under the general designation of "unknown heirs of....." Summons is to be served by publication, and the court shall appoint a guardian *ad litem* to answer the petition and otherwise defend the rights of such unknown parties.

It has been held by the Supreme Court that generally the designation of the parties to an action as "the heirs of M." is insufficient.³ Provision has been made for the joinder of unknown parties in a special proceeding for partition,⁴ and for the sale of estates subject to contingent interests,⁵ and this amendment makes the same practice apply in the sale of land for assets. The Code of Civil Procedure provides for the service of summons by publication upon unknown parties who are interested in real estate as the subject of a civil action, and in actions to foreclose mortgages on real estate;⁶ and the same rules of procedure apply in special proceedings;⁷ so that the case of unknown parties seems to be provided for under the general law. It places the question beyond controversy, however, to have it specially provided for in the cases mentioned.

A. C. M.

CHILD LABOR

C. S., secs. 5031-5038 provide for the regulation of child labor. C. S., sec. 5031 creates the State Child Welfare Commission, whose duty it is to make and formulate rules and regulations for enforcing and carrying out the provisions of the statutes concerning child labor.

² *Springer v. Shavender* (1895) 116 N. C. 12, 21 S. E. 397; s. c. (1896) 118 N. C. 33, 23 S. E. 976.

³ *Kerlee v. Corpening* (1887) 97 N. C. 330, 2 S. E. 664.

⁴ C. S., sec. 3218, 3245; *Thompson v. Rospigliosi* (1913) 162 N. C. 145, 77 S. E. 113.

⁵ C. S., sec. 1744; *Ryder v. Oates* (1917) 173 N. C. 569, 92 S. E. 508.

⁶ C. S., sec. 484, 6, 7.

⁷ C. S., sec. 752.

Ch. 74 substitutes for C. S., sec. 5032, a new section, providing:

1. No child under fourteen shall be employed or permitted to work in or about or in connection with any mill, factory, cannery, workshop or manufacturing establishment.

2. No child under fourteen shall be employed or permitted to work in certain specified employments, such as a laundry, bakery, office, hotel, garage, street trade, etc., except in cases and under regulations prescribed by the State Child Welfare Commission.

Such things as canning clubs or vocational classes are excepted.

C. S., sec. 5033 prohibits night work (from 9 P. M. to 6 A. M.) for any person under sixteen in any of the above mentioned occupations and in any quarry or mine at any time. Ch. 74 adds to this section that no child under sixteen shall be employed except in cases and under regulations prescribed by the Commission, when

1. Such child has symptoms of disease contributory to retardation or disability; or

2. When determined by physical examination that employment of such child is injurious to its health; or

3. Employed when surrounding conditions are injurious to its morals; or

4. Employed when dangerous employment hazards are present.

It seems desirable that there should be a limitation of hours of labor for all persons under sixteen.

Ch. 74 inserts a new section for C. S., sec. 5034, making it unlawful to employ children under sixteen in ways enumerated by this act, unless, at the time of employment, the employer shall procure, rely upon and file a certificate provided for by the Commission, showing that the employee is of legal age and that the rules of the Commission have been complied with. The possession of such certificate is *prima facie* evidence of the employer's compliance with the law.

The violation of these provisions or of the rules and regulations made by the State Child Welfare Commission is made a misdemeanor. Especially noteworthy in this legislation is the concentration of power in the State Child Welfare Commission. This Commission is given legislative powers, that is, it can make laws, rules for future action, the violation of which is punishable by fine or imprisonment or both. Yet there is no doubt that this violation of the doctrine of separation of powers is constitutional. It has been going on in this country for a long time. The Corporation Commission, with its legislative, judicial and executive powers, is one of the familiar

instances in North Carolina. There are many other administrative bodies, whose activities prove that the separation of powers is more or less of a legal fiction in practical politics.⁸ The State Child Welfare Commission can make rules and regulations to govern child labor, the violation of which is a misdemeanor. This Commission is further under a duty to execute and administer such rules and the provisions of the statutes. This is in accord with the modern tendency of legislatures to outline matters of policy and leave to an expert body, the power to fill in the details and make the law effective and workable. These duties alone should keep the State Child Welfare Commission busy.

R. H. W.

CONSTITUTIONAL AMENDMENTS

It now seems to be an established procedure for certifying amendments to provide in each proposed amendment that it shall be the "duty of the Governor of the State to certify said amendment under the seal of the State to the Secretary of State, who shall enroll the said amendment so certified among the permanent records of his office." As was noted by the late Dean McGehee, this is a valuable addition and facilitates the proof of the amendment and of the time when it became effective.⁹ It resembles the method of certification of amendments to the Federal Constitution by the Secretary of State, who certifies that the amendment has become a part of the Constitution, i.e., the date of its adoption by the legislatures of three-fourths of the states.

Ch. 31. This was the amendment to raise the salaries of the members of the General Assembly, but since it was defeated by popular vote, it is evident that the people, having twice opposed a raise of pay for legislators, regard the law makers as receiving enough for their services, although the present scale seems to be too low.

Ch. 33. This chapter is the "Port Terminals Bill," which was submitted to popular vote, not as a constitutional amendment, but because of its large significance to the State. Its defeat at the polls precludes further need for discussion at this time.

SINKING FUND AMENDMENT—Ch. 91 inserts a new section, which, having been approved by popular vote, is now Section 30 of

⁸ Such as the Interstate Commerce Commission, the various state Industrial Commissions, Workmens Compensation Boards, etc.

⁹ 1 N. C. L. Rev. 269.

Article II of the Constitution of North Carolina and provides that a sinking fund for the retirement of bonds shall never be used for any other purpose. In this way, the people are able to tie the hands of the General Assembly against a future lapse.

EXEMPTION FROM TAXATION OF HOMES AND HOMESTEAD NOTES—Section 3 of Article V of the Constitution exempts homestead notes from taxation if the purchase price of the homestead is under \$3,000 and the notes run not less than five nor more than twenty years with interest at $5\frac{1}{2}$ percent. Ch. 115 substitutes a new section for the above, and it is now a part of the State Constitution. It exempts from taxation 50 percent of notes and mortgages given in good faith "to build, repair or purchase a home," if the amount does not exceed \$8,000, nor the interest thereon exceed $5\frac{1}{2}$ percent, nor the notes and mortgages run for less than one or more than thirty three years, provided the holder of the notes resides in the county where the land is and there lists it for taxation. A further proviso, if all of the above conditions are met, exempts the owner of the home from taxation for 50 percent of the value of said notes and mortgages. The home includes lands and buildings bona fide intended to be used as a dwelling and actually so used and occupied.

As a practical measure, it is doubtful whether much benefit will result. In some counties, the town and county taxes are over 2 percent. For instance, let us suppose X builds a home worth \$10,000. He puts a \$6,000 mortgage on it. If he can find a money lender in his county who will loan \$6,000 on a mortgage at $5\frac{1}{2}$ percent and who returns this \$6,000 for taxation, all is well and good for X. The money-lender would receive as interest \$330 per year, but he would pay taxes (say 2 percent) on \$3,000, or 50 percent of his loan, which would amount to \$60 and net him \$270 income on his \$6,000 or $4\frac{1}{2}$ percent. The home owner would pay \$60 less in taxes, his valuation for taxation being reduced by \$3,000, one-half of the mortgage. The law is all in favor of the home owner, but there are not many kind-hearted people loaning money at $4\frac{1}{2}$ percent today. In order to get a 6 percent loan, bonuses and charges of various kinds are paid to money-lenders. The rate of interest on securities is advancing gradually. A $4\frac{1}{2}$ percent investment on a long time mortgage, with further deductions for state and federal income taxes, will probably have little appeal to the man or company with money to loan.

R. H. W.

CONVEYANCES, PROBATE AND REGISTRATION

Ch. 64 amends C. S., sec. 3333, validating deeds made by officers in the discharge of their duties, where the seal had not been used.

It was decided by the Supreme Court that a deed executed by the sheriff for land sold for taxes was invalid without a seal, although he used the form specified in the statute which did not have a seal.¹⁰ In 1907 an act was passed validating all such deeds made prior to January 1, 1895, but not applying to actions pending at the time of its enactment. In 1917 this was amended by changing the date to include such deeds executed prior to January 1, 1910. The recent act re-writes the section and makes it apply to all such deeds executed prior to its enactment, August 22, 1924, but it does not apply to pending actions.

LAND REGISTRATION—Ch. 40 amends the Torrens Act¹¹ by providing an additional method of conveying land which has been registered under the act. When the owner of such land desires to convey the same by ordinary deed, mortgage, or deed of trust, instead of in the manner required by the act, he may present to the register of deeds his certificate of title and have entered on the margin of the certificate and of the record a statement, signed by him and by the register, to the effect that the land is released from the manner of conveyance required by the act, and thereafter the land may be conveyed as if it had not been so registered.

Ch. 41 makes a similar provision validating deeds which have already been executed for land registered under the act.

CERTAIN PROBATES VALIDATED—Ch. 68 validates the probate of deeds of trust and mortgages executed to banking corporations, where such probate was taken prior to January 1, 1924, by a probate officer who was also an officer, director or stockholder of the bank.

Ch. 108 makes the same provision as to deeds of trust and mortgages to building and loan associations, where the probate was taken prior to August 10, 1924, and the probate officer was an officer or stockholder in the association; and the order of registration made by a clerk or his deputy who was an officer or stockholder is declared to be valid. These two acts do not apply to actions pending at the time of their ratification.

¹⁰ *Patterson v. Galliher* (1898) 122 N. C. 511, 29 S. E. 773; *Strain v. Fitzgerald* (1901) 128 N. C. 396, 38 S. E. 929.

¹¹ C. S., sec. 2405 to 2417.

Somewhat similar curative statutes are found in Consolidated Statutes.¹²

REGISTRATION UPON AFFIDAVIT—Ch. 56 amends C. S., sec. 3310 by changing the date therein named from 1885 to 1890. This section provides for the registration of deeds executed prior to the date mentioned, by making an affidavit that the grantor and witnesses are dead or cannot be found and that their handwriting cannot be proved, and that affiant believes that the deed was bona fide executed.

EXTENSION OF TIME FOR REGISTRATION—Ch. 20 provides that for all grants and other instruments required by law to be registered within a certain time, the time shall be extended to the first day of September, 1926. This act is general in its terms, but it applies more particularly to grants from the state, since it has been held that the Connor Act does not apply to such grants. The time has been extended from time to time by similar acts, as had been done for all deeds prior to the Connor Act.¹³

A. C. M.

CORONERS

Ch. 65 re-writes Ch. 20 of Consolidated Statutes, in regard to Coroners, and prescribes in more complete detail their powers and duties. The more important changes in the wording of the statute are as follows:

In case of a vacancy, the clerk of superior court appoints a coroner to hold office until a successor is elected and qualified, and no special coroner is to be appointed for an inquest unless, in the opinion of the clerk, there is not sufficient time to select a suitable person to fill the vacancy.

In making inquests, it is the duty of the coroner to make a personal investigation, upon information that a person has probably come to his death through the fault of some other person, and he shall not summon a jury if he is satisfied that there is no blame attached to others for the death. He shall make a record of his investigation and report the same in writing.

If it appears that any one was to blame, the coroner shall summon a jury "of six good and lawful men, freeholders, who are otherwise qualified to act as jurors, who shall not be related to the

¹² C. S., sec. 3343, 3344, 3345, 3346. Vol. 3, 3366 (g), (h).

¹³ C. S., sec. 3309, 7579, 7593. *Wyman v. Taylor* (1899) 124 N. C. 426, 32 S. E. 740.

deceased by blood or marriage, or to any person suspected of guilt in connection with such death," and shall proceed to make inquiry as to the cause of the death; and for that purpose he may cause such persons as may be necessary to appear before the jury. If upon such inquiry it appears that any one is to blame for the death, the coroner shall issue a warrant to have such person brought before the jury, and the investigation shall proceed as in other cases of preliminary investigation before a justice of the peace, by ascertaining probable cause, commitment, etc., and no further preliminary investigation shall be necessary.

The coroner is also required to notify the solicitor of the district when he considers an investigation necessary, and the solicitor or some one designated by him, counsel for the family of the deceased and counsel for the accused are entitled to participate in the hearing. He may also summon a physician, if he thinks it necessary, or at the request of the solicitor, or counsel for the accused, or a member of the family of the deceased. If the coroner is himself a physician, he may make the investigation.

The inquest shall begin where the body of the deceased may be, but may be adjourned to other times and places. Process for parties, witnesses and jurors may be issued by the coroner and served by the sheriff, and process may issue to another county under the official seal of the coroner.

The provisions as to election, term of office, official oath and bond, and the duty to act as sheriff where the sheriff is interested or there is a vacancy, remain as before.

A. C. M.

CORPORATIONS

Ch. 80 is a new sort of statute in North Carolina making it unlawful for any railroad company, incorporated in North Carolina or operating a railroad in this state, to engage in any business other than the business authorized by its charter. This is made a misdemeanor, punishable by fine.

From the precise wording of the section, it does not seem to apply to an isolated ultra vires act by a railroad company, as the statute mentions only "to engage in any business." The law as to ultra vires transactions is found in the decisions of our courts. In general, it is ultra vires of a corporation to carry on a business which is not fairly within the scope of the business described in its charter.¹⁴ A stockholder may enjoin or set aside any acts which

do not conform to those limits. Thus a railroad company could not manufacture and sell electric power.

Under the doctrine of implied powers, it is uncertain just what a railroad company may lawfully do, although it is clear that it may do many things not specified in its charter.

In light of the above considerations and others, it is hard to say just what the new statute means. It may be that single, ultra vires acts are to be punished by fine. It may mean that only the doing of some business other than that specifically authorized by its charter is punishable. It may mean that the doing of business which comes within the scope of the corporation's implied powers is not to be punished, or it may intend to punish the doing of any business not within its express powers. Adding a criminal sanction to ultra vires action does not seem to help much in the present state of the law on that confused subject.

R. H. W.

COUNTIES AND MUNICIPAL CORPORATIONS

LIMITATION OF BOND ISSUE—Ch. 97 amends the acts of Extra Session, 1920, c. 3, s. 6.¹⁵ The original act imposed a general limitation of bonded indebtedness for the counties not exceeding five per cent of the assessed valuation of property for taxation. The amending act extends the limit to eight per cent where the tax valuation does not exceed \$10,000,000; and to seven per cent where the tax valuation is between \$10,000,000 and \$20,000,000.

Ch. 113 amends the acts of 1923, c. 143, s. 4,¹⁶ by limiting the amount of bond issue by the county for courthouse and jail to two per cent of the tax valuation, instead of one per cent as in the original act.

MUNICIPAL CONDEMNATION OF LAND FOR STREET IMPROVEMENT—Ch. 107 amends acts of 1923, c. 220, s. 2, which provides a method for acquiring additional land for street improvement. The amendment act provides that where fifty per cent or more of the cost of the improvement is to be assessed against the property in a certain assessment district, a petition must first be filed with the governing body, signed by a majority in number of the property owners and representing a majority of the street frontage in the proposed district.¹⁷

A. C. M.

¹⁵ Cook, *Principles of Corporation Law*, p. 449 et seq.

¹⁶ C. S. Vol. 3, s. 1291 (a).

¹⁶ C. S. Vol. 3, s. 1321 (b).

¹⁷ C. S. Vol. 3, s. 2792 (b).

COURTS AND CIVIL PROCEDURE

SPECIAL TERMS—Ch. 100 amends C. S., sec. 1450, by authorizing the Governor to order "a special term of court to be held in any county or district during the holding of a regular term of the superior court in such county or district, either by a judge of the superior court or by an emergency judge, if the dispatch of business requires it." The purpose of the amendment is not entirely clear, since the original statute already authorizes the Governor to order a special term to be held in any county, when necessary, and to designate a judge, including the emergency judges, to hold the court.¹⁸

COUNTY COURTS—The act of 1923, c. 216, which provides for the establishment of a system of county courts, is amended in some particulars by Ch. 85.

The county commissioners are authorized to establish such court without submitting it to a vote of the people, and also to discontinue the court when, in their opinion, it is no longer necessary. The discontinuance is to be at the expiration of the terms of office of the judge and solicitor, unless such officers consent.

In addition to the jurisdiction already conferred, the court is given concurrent jurisdiction with special courts in cities and towns in the county. When the court is established, the clerk is to transfer from the docket of the superior court to the county court all such criminal cases as are within its jurisdiction; and the judge at term may, on motion and notice, transfer cases to the county court. In criminal cases in the county court the defendant may demand a jury trial without depositing the jury fee.

The act also authorizes the commissioners to appoint the judge and solicitor and to fix the term of office and salaries, and they need not be elected by popular vote. It also removes the restriction upon the judge to engage in the practice of law.

PARTIES—Mention has already been made of joining "unknown parties" in a petition to sell land for assets.

Ch. 110 provides that an action for the penalty imposed by law for holding two offices may be brought only by a bona fide resident of the county in which the defendant resides.¹⁹

VENUE—Ch. 62 provides that in partition proceedings, where the tract of land lies in more than one county, or there are several tracts

¹⁸ C. S., sec. 1450; Vol. 3, s. 1435 (a).

in different counties, the proceeding may be brought in any county in which a part of the land is situated, with same effect as if all of the land were in such county. Where commissioners are appointed to make partition, the court may appoint such additional commissioners from the other counties as may be deemed necessary.²⁰

PLEADINGS. FILING REPLY—Ch. 18 makes a very important amendment to acts of Extra Session, 1921, c. 92, s. 1, subsec. 4.

The Crisp Act of 1919 made no special provision for the time for the plaintiff to file a reply to the defendant's answer, but the Consolidated Statutes adopted the same time, twenty days, as for filing an answer.²¹ The act of Extra Session of 1921 changed the time to ten days.²² The present act provides that if the answer contains a counterclaim and a copy of the answer is served upon the plaintiff or his attorney, a reply must be filed within twenty days thereafter. For good cause the clerk may extend the time to a day certain. If the answer contains a counter claim and no copy is served upon the plaintiff or his attorney, then the counterclaim shall be deemed to be denied, as fully as if a reply had been filed. In all other cases replies may be filed within twenty days from the filing of the answer. The clerk or the judge, when the cause has been transferred to the civil issue docket, may, for good cause, extend the time to a day certain.

This amendment went into effect on the first day of January, 1925.

A. C. M.

CRIMINAL LAW

MOTOR VEHICLES—C. S., sec. 2617 provides for the ordinary rules of the road in passing, keeping to the right, signaling with outstretched hand, etc. Ch. 61 adds to this section two new provisions: first, that when an operator of a motor vehicle meets an approaching vehicle, he shall pass to the right, which means that the vehicle and its load shall be on the right of the center of the road, and second, that an operator of a motor vehicle shall permit all vehicles approaching from the rear to proceed without hindrance by turning to the right, i.e. the vehicle and its load shall be on the

²⁰ C. S., sec. 447, 3201.

²⁰ C. S., sec. 463 (2), 3214, 3219.

²¹ C. S., sec. 524.

²² C. S., Vol. 3, s. 524.

right of the center of the road, and by proceeding at a rate of speed not exceeding the speed limit. Violation of this is punishable by fine up to \$50.00 and imprisonment not exceeding thirty days.

This statute is clearly aimed at "road hogs" and the large-sized trucks with their tremendous loads and should serve to protect the ordinary driver from the danger of meeting "road hogs" and big trucks and busses. Since failure to turn to the right is negligence,²³ a similar failure to keep to the right of the center of the road should likewise be held to be negligence or such a violation of statute that it gives rise to a right of action against the offender, if such violation is the proximate cause of the injury.

Ch. 63 makes it unlawful for any person to display on his motor vehicle the emblem or insignia of any organization, lodge, fraternity, etc., unless he is a member of the same. This will aid in preventing the display of such insignia as physicians use, as well as preventing a promiscuous carrying of fraternal insignia.

PROTECTION OF HIGHWAYS AND ADJACENT PROPERTY—Ch. 54 makes it a misdemeanor for any person, not on his own lands, within 100 yards of any public road or highway, wilfully to commit any damage, injury or spoliation to or upon any tree, wood, timber, garden, crops, plants, lands, springs, or any other matter or thing growing or being thereon or to cut or injure any tree, plant or flower or deposit any trash, garbage, litter, etc. within such limits. It is hoped that this law may prevent the laying waste of gardens, flowers, etc. by tourists who are not in the habit of regarding another's property rights and who usually leave trash and garbage at every place they stop to eat.

Ch. 109 prohibits the posting of any advertisement on trees, poles, etc. without the owner's consent, and putting such ads on danger signals, guide posts, etc. within the limits of the public highway. The first part of the section seems to apply to ads put up anywhere on private property, while the second part applies to those put up within the limits of the public highway, where no consent can be obtained for the posting of advertisements.

SALE OF NON-MAILABLE PUBLICATIONS—Ch. 45 makes it a misdemeanor for any news-dealer, book seller or any other person, firm or corporation to offer for sale, sell or cause to be circulated in North Carolina any magazine, periodical or other publication now

²³ *Goodrich v. Matthews* (1919) 177 N. C. 198, 98 S. E. 529.

or hereafter excluded from the U. S. mails, nor to offer for sale, sell or give away any such publication to any person under twenty-one years of age.

While this statute seems to be aimed at preventing the sale and distribution of obscene literature, it applies to all non-mailable matter, such as newspapers excluded from the mails during the war for political reasons or otherwise. It is specified that the act shall not be construed as conflicting with or abridging the freedom of the press, and the act clearly comes within the scope of the state police power.

R. H. W.

ELECTIONS

AUSTRALIAN BALLOT—Since there is considerable discussion in this State relative to the adoption of a state-wide Australian ballot law, it is interesting to know that there is now such a law in eight counties, which are thus serving as experiment stations for the State. Ch. 37 provides for the Australian ballot in the counties of Stanly, Brunswick, Alexander, Yancey, McDowell, Cherokee, Surry and Caldwell.

R. H. W.

MORTGAGES AND LIENS

COMMISSION ON MORTGAGE LOANS—By ch. 35, a commission of not exceeding $1\frac{1}{2}$ percent is authorized on mortgage loans running not less than nine years. As has already been mentioned above, there is a rather common practise existing of charging fees and bonuses for the lending of money, so that the legal rate of interest is being exceeded. This statute allows an overcharge of not more than $1/6$ percent per year on a long time loan as a commission for loaning the money and seems to be entirely reasonable.

FEDERAL TAX LIENS—By act of Congress, it is provided that there shall be a lien in favor of the United States against any person who, being liable to pay any federal tax, shall neglect or refuse to pay the same after demand. The lien attaches from the time the assessment list is received by the collector until paid, with interest and penalties accrued, upon all property and rights to property belonging to such person. It is provided that such lien shall not be valid against any mortgagee, purchaser or judgment creditor until notice of the lien is filed in the office of the Clerk of the District Court of district wherein the property is situated. It is further provided that whenever a state, by appropriate legislation, authorizes the filing of such notices in the office of the recorder or register of deeds,

then the lien shall not be valid as to mortgagees, etc. until such notice is filed in the register's office of the county where the property subject to the lien is situated.

Ch. 44 provides for the filing of liens for federal taxes and also for certificates discharging such liens in the office of the register of deeds of the county within which the property subject to such lien is situated. This carries out the federal statute and protects the purchaser of property, the mortgagee and the judgment creditor, by enabling them to find a record of liens for federal taxes in the register's office of the county where the land, in which they are interested, is situated.

R. H. W.

POLICE REGULATIONS

MEAT INSPECTION—C. S., sec. 4762 provides against the sale of unsanitary meat by making it unlawful for any person to sell meat which has been slaughtered, prepared or kept under unsanitary conditions, such as delapidated slaughter house, insufficient drainage, filthy pools or hog-wallows near slaughter house, impure water supply, bad-smelling storage rooms or refrigerators, etc. Peace and health officers may seize meat found under such conditions and the owner may be fined and the meat destroyed.

The above law continues in force and meets a condition where regulation is very necessary. Ch. 11 provides for the regular inspection of meat packing plants in North Carolina where more than 1,000 beef cattle, 10,000 hogs or 500 sheep are slaughtered per year. The inspector may condemn or approve the meat and stamps it accordingly.

This new statute is undoubtedly important, but the older statute is the one which comes closer to the consumer in North Carolina in protecting him against unsanitary meat.

This power of the inspector to condemn and order the destruction of meat found to be unfit for human consumption, like the similar power of health and police officers under C. S., sec. 4762, may give rise to some difficulties in case the packer or butcher believes that the meat is good and has been improperly destroyed.

There are three remedies available. In case the meat has not been destroyed, but simply condemned, the packer might seek to stop the destruction by an injunction or try to recover the condemned meat by an action of claim and delivery. But after the destruction of the meat, the only redress is against the inspector or the health

or police officer for the value of the meat destroyed. This is the effect of *Daniels v. Homer*,²⁴ where certain fish nets were unlawfully used by the plaintiff, and the defendant, an assistant oyster commissioner, seized the nets and proposed to sell them to pay costs. The action to prevent the sale was decided in defendant's favor, as it was admitted that the nets were being unlawfully used when seized.

But if property is destroyed, under such police regulations as the above, before the owner takes any steps to protect himself, it is clear that due process of law requires that he have his right of action for the value of the destroyed article.²⁵ Thus unfit meat may be destroyed without giving the owner a hearing or trial beforehand. This is true even if the meat has a value independent of its food value, as for fertilizer. This exercise of the state's police power is reasonably necessary for the public health and is constitutional.

Whether the right to destroy or forfeit private property for violation of law should properly be left to the police power in executive hands or whether it requires judicial proceedings with notice beforehand, is generally resolved in favor of the police power in such cases as the above where the public health is concerned. There are objections²⁶ to this, but it is usually agreed that such administrative action under the police power is within the scope of due process, as long as there is opportunity to be heard in an action for damages after the destruction.²⁷

In such an action for damages, the plaintiff may recover if the jury finds that the defendant official acted wrongfully, although in good faith. It may be observed that this is putting a price on free administrative action. Competent officials, who use their best judgment and act in good faith in destroying property under the police power, should not be subject to personal damages if the jury thinks they acted wrongfully, as by finding that meat was not unfit for human consumption. It seems that the law should protect officials against this and thus encourage honest administrative action. This might be done if the State provided for the payment, from public

²⁴ *Daniels v. Homer* (1905) 139 N. C. 219, 51 S. E. 992.

²⁵ *Cold Storage Co. v. Chicago* (1908) 211 U. S. 306, 29 Sup. Ct. 101; *Lawton v. Steele* (1894) 152 U. S. 133, 14 Sup. Ct. 499; *Miller v. Horton* (1891) 152 Mass. 540, 26 N. E. 100.

²⁶ McGehee, *Due Process of Law*, p. 377; Freund, *Police Power*, p. 525.

²⁷ Cases in note 2, *supra*.

funds, of damages to owners of private property improperly destroyed through bona fide administrative action under the police power.

SALE OF DRUGS—C. S., sec. 6667 prohibits the sale of drugs without a license and regulates the drug trade. It excepts from the requirement of a license physicians who compound their own prescriptions, also the sale of non-poisonous domestic remedies and patent medicines containing no poisonous ingredients.

Ch. 116 adds to these exceptions a list of some thirty drugs and remedies, such as paregoric, aspirin, bicarbonate of soda, calomel, castor oil, camphor, etc. These may be sold by anybody without a pharmaceutical license, provided there is no established drug store in the same town. The act does not apply in twenty-six counties, which further restricts it.

Since most of the list of drugs named are harmless in ordinary use, it may be safe enough to allow the small, country store-keeper to sell them, but the statute makes an opening which might lead to worse things. There may be a question whether paregoric, a strong narcotic, should ever be sold except upon a doctor's prescription. Similarly with other drugs in the list. It seems that the legislature would have done better to leave the details of drug-selling to the State Board of Pharmacy or to some other expert group, who understand the nature and effect of drugs and the danger involved in allowing them to be sold by anybody.

FOREST FIRES—Ch. 119 authorizes the Insurance Commissioner to appoint two deputies to investigate forest fires and try to fix responsibility and begin prosecutions against those deemed guilty. This is of great value in protecting our forests against fire, but what is needed is a real policy of forest conservation. R. H. W.

RECEIVERS

Ch. 13 provides that receivers of a corporation, who are directed to sell property pending the litigation, may be authorized to report the sale to the resident judge or to the judge holding the courts of the district for confirmation. Notice shall be given to creditors and others interested by publication in a newspaper for at least ten days before the time fixed for the hearing; and the judge may confirm the sale or order a resale, as if the hearing were at a regular term.²⁸

A. C. M.

²⁸ C. S., sec. 360, 1214.