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# PROPERTY AND POLL TAX LIMITATIONS UNDER THE NORTH CAROLINA CONSTITUTION, ARTICLE V, SECTIONS 1 AND 6

ALBERT COATES\* AND WILLIAM S. MITCHELL\*\*

## I

The Constitutional Convention of 1868 introduced a series of limitations on the powers of state and local governmental units in North Carolina to levy taxes. These limitations constituted one phase of its efforts to deal with the combined problems of debt, deficit, and depression, further complicated by the economic and social upheaval following the Civil War.

*State tax limitations.* It authorized "a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age", but limited it to "two dollars on the head".<sup>1</sup> It authorized a tax on "all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise; and, also, all real and personal property, according to its true value in money". It authorized a tax on "trades, professions, franchises, and incomes", but limited the income tax to income derived from property not subject to tax,<sup>2</sup> limited the property tax to 66⅔c on the hundred dollars valuation, and within that limitation required the poll tax to equal the "tax on property valued at three hundred dollars in cash".<sup>3</sup>

*Local tax limitations.* It authorized county commissioners to levy taxes "for county purposes", "in like manner with the State taxes", and limited them to the double of the state tax "except for a special purpose, and with the special approval of the General Assembly".<sup>4</sup> It made it "the duty of the legislature" to restrict the power of "cities, towns, and incorporated villages" so as to prevent abuses in taxation and assessments.<sup>5</sup> It took away the power of any "county, city, town, or other municipal corporation" to levy or collect taxes without a vote of the people, "except for the necessary expenses thereof".<sup>6</sup>

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<sup>1</sup> N. C. CONST. (1868) art. V, §1.

<sup>2</sup> N. C. CONST. (1868) art. V, §3.

<sup>3</sup> N. C. CONST. (1868) art. V, §1. The taxes for ordinary or general state and county purposes combined were limited to 66⅔c on the \$100 of property and \$2 per poll.

<sup>4</sup> N. C. CONST. (1868) art. V, §7. When the constitution was amended in 1876, Article V, §4, was stricken out and Article V, §7, became Article V, §6.

<sup>5</sup> N. C. CONST. (1868) art. VIII, §4. <sup>6</sup> N. C. CONST. (1868) art. VII, §7.

This article deals particularly with those limitations contained in Article V, Sections 1 and 6, and their evolution, from 1868 to the present day.

*Equation and limitation.* "The General Assembly," said the constitution of 1868, "shall levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which shall be equal, on each to the tax on property valued at three hundred dollars in cash . . . and the State and County capitation tax combined shall never exceed two dollars on the head."<sup>7</sup> The court first recognized the relation between the poll and property tax in *University Railroad Company v. Holden*.<sup>8</sup> Chief Justice Pearson, in construing Article V, Section 1, said: "*The tax on a poll shall be equal to the tax on three hundred dollars worth of property.*" Here we have the proportion. Then follows a provision: "The State and county tax combined shall never exceed *two dollars on the head*," and the necessary effect is, that the State and county tax on the value of property shall never exceed two dollars on three hundred dollars worth of property; and the effect also is, that if the tax on a poll is less than two dollars, then the tax on three hundred dollars worth of property must be less in the same ratio." To illustrate: if the state should levy a tax of \$1 on the poll, it would have to levy a tax of \$1 on property valued at \$300, or  $33\frac{1}{3}\%$  on property valued at \$100; or, if the state should levy the constitutional limit of \$2 on the poll, it would have to levy \$2 on \$300, or  $66\frac{2}{3}\%$  on \$100 of property value.<sup>9</sup> The purpose of this equation and limitation was pointed out by Justice Rodman in a decision handed down in the year following its adoption:<sup>10</sup> "The Constitution admitted to the suffrage a class of persons who had never been entitled to it before, equal in numbers to about one-half of the former voting population, and this class was at that time almost universally destitute of property. It was foreseen as at least possible in the somewhat unnatural condition of things then existing, that whichever of these two powers should obtain a majority in the Legislature might attempt to put on the other an undue portion of the public burdens through taxation; to prevent the confiscation of property by numbers, a proportion was established; to prevent the oppression of numbers by property, the poll tax was limited."

This equation and limitation extended only to poll and property taxes.

<sup>7</sup> N. C. CONST. (1868) art. V, §1.

<sup>8</sup> 63 N. C. 410, 413 (1869).

<sup>9</sup> According to Justice Rodman, a member of the Constitutional Convention of 1868, the attempt to limit the legislative power of taxation in the manner of the 1868 constitution was altogether novel and original. "I believe that no other State Constitution has attempted to limit the power of the Legislature as to the rate of taxation. The experiment is wholly new." *University R. R. v. Holden*, 63 N. C. 410, 430 (1869), and Appendix, 66 N. C. 655, 659 (1872).

<sup>10</sup> *University R. R. v. Holden*, 63 N. C. 410, 427 (1869).

## II

*Effect of equation and limitation on state taxes.* The court apparently assumed from the beginning that the General Assembly might levy taxes in excess of the limitation and in disregard of the equation, in order to pay the public debt existing at the adoption of the constitution and the interest thereon.<sup>11</sup> This assumption rested on the arguments: (1) that this might be the only way to give effect to that provision of the constitution which read—"To maintain the honor and good faith of the State untarnished, the public debt, regularly contracted before and since the rebellion, shall be regarded as inviolable and never be questioned";<sup>12</sup> (2) that it might be the only way to give effect to another provision of the constitution, reading—"The General Assembly shall by appropriate legislation and by adequate taxation, provide for the prompt and regular payment of the interest on the public debt, and, after the year 1880, it shall lay a specific annual tax upon the real and personal property of the State, and the sum thus realized shall be set apart as a sinking fund, to be devoted to the payment of the public debt";<sup>13</sup>—thus specifically ignoring both equation and limitation; (3) that it might be the only way to observe the provision of the Federal Constitution providing that ". . . no state shall . . . pass any . . . law impairing the obligations of contracts. . . ."<sup>14</sup>

The court also assumed from the beginning that the General Assembly might also levy taxes in excess of the limitation and in disregard of the equation if it should be necessary in order to give effect to another constitutional provision to meet emergencies: "to supply a casual deficit, or for suppressing invasion or insurrection".<sup>15</sup> Thus, it was established that the equation and limitation provision of the constitution did not apply to all taxes for all purposes,—that it applied only to the ordinary and usual purposes of the state. "The object of the Convention, in Art. V, sec. 1," said Justice Dick in *University Railroad Company v. Holden*,<sup>16</sup> "was to provide a system of general taxation for the

<sup>11</sup> *Id.* at 414, 418, 428.

<sup>12</sup> N. C. CONST. (1868) art. I, §6.

<sup>13</sup> N. C. CONST. (1868) art. V, §4. This provision was stricken out of the constitution by amendment in 1876.

<sup>14</sup> U. S. CONST. Art. I, §10(1).

<sup>15</sup> N. C. CONST. (1868) art. V, §5. When the constitution was amended in 1876, this provision became §4. Discussing this point in his opinion in *University R. R. v. Holden*, 63 N. C. 410, 429 (1869), Justice Rodman said: "We can scarcely suppose that the Constitution intended to cripple the power of the Legislature in borrowing money to suppress invasion. The limit of taxation might have been already reached; and in that case it would be impossible for the State to borrow, as it could not tax to pay either the interest or the principal, and there is no provision in such a case for leaving the question to the people. . . . I am therefore of the opinion that the limitation of taxation prescribed by sec. 1 is not imperative as respects taxes laid for the purposes contemplated in sec. 5: . . . and that its observance cannot be enforced by the courts." See also *id.* at 410, 415, 433; *Barksdale v. Commissioners*, 93 N. C. 472, 479 (1885) (dissent of Merrimon, J.).

<sup>16</sup> 63 N. C. 410, 432 (1869).

ordinary expenses of the government, which is to operate with a just equality upon the citizens and property of the country." Justice Settle expressed the same view.<sup>17</sup> "It was contended upon the argument that Art. V, sec. 1, of the Constitution, establishes an equation between the tax on the poll and property which cannot be disturbed for any purpose. The reply is that it is not to be presumed that the sovereign intended to part with this vital power, and we cannot construe vague and uncertain language so as to produce that result. . . .

"I conclude that the 'equation of taxation' applies only to the ordinary expenses of the State government."

At times it became practically important to determine whether the property tax was the standard by which the poll tax was fixed, whether the poll tax was the standard by which the property tax was fixed, or whether neither was the standard for the other. To illustrate: the General Assembly of 1897 levied a property tax of 46c on \$100 of property and intended to levy a proportionate poll tax of \$1.38 but, through a clerical error, entered the poll tax at \$1.29. If the property tax was the standard by which the poll tax was to be fixed, then if the poll tax was lower than the equation required, as here, it was to be corrected by lifting it to \$1.38 to bring it into line. If the poll tax was the standard by which the property tax was to be fixed, then if the property tax was higher than the equation required, it was to be corrected by lowering it so as to bring it into line. If neither poll nor property was to be the standard, then neither could be corrected save by the legislature in a new enactment. In *Russell v. Ayer*,<sup>18</sup> the court, while holding that the poll tax was the standard, nevertheless held the whole levy unconstitutional, thereby leaving operative the old revenue act passed by the legislature at the preceding assembly, a holding that took about \$75,000 a year from the increased revenues and appropriations provided for the following biennium.<sup>19</sup> But there was a sharp

<sup>17</sup> *Id.* at 435. That this view was consistently adhered to by the court is indicated in the case of *Jones v. Commissioners*, 107 N. C. 248, 258, 12 S. E. 69, 72 (1890), in which the court said: "But it is settled by many decisions of this Court that it does not establish an exclusive system or scheme of taxation . . . ; that, on the contrary, it applies only to the revenue and taxation necessary for the ordinary purposes of the State and the several counties thereof."

<sup>18</sup> 120 N. C. 180, 27 S. E. 133 (1897).

<sup>19</sup> In rendering this decision, the court adopted the result expressed by Justice Rodman twenty-five years earlier in Appendix, 66 N. C. 655, 657 (1872). Discussing the precise question raised in this case, he said: "In considering this particular question as to whether an act which disregards the equation is void *in toto* or only in part, we must put out of view altogether any supposed or real limitation of the amount of the tax, which would complicate the subject too much. We will suppose, then, a State tax to be \$3 on the poll and \$5 on the \$300 valuation. If not void *in toto*, how shall the equation be effected? By bringing down the higher tax to the lower? or raising the lower to the higher? No reason occurs to one why either of these courses should be preferred to the

dissenting opinion<sup>20</sup> advancing the view that as to the limitation the poll tax was the standard in that the constitution said it should "never exceed \$2"; but that as to the equation within the limitation, the property tax was the standard in that the constitution said the poll tax was to be the "equal of the tax on property valued at three hundred dollars in cash"; and that since the property tax was fixed at 46c on \$100 of property, it automatically followed that the entry of the proportionate poll tax was simply a clerical matter.<sup>21</sup> This dissenting opinion became the majority view in *Kitchin v. Wood*<sup>22</sup> when the question next came before the court. In this case, the legislature had again failed to observe the equation between poll and property taxes, and fixed the property tax rate at 45c with a corresponding rate per poll of only \$1.29. In adopting this view, the court said:<sup>23</sup> ". . . we have reached the conclusion that section 1, Article 5 . . . is mandatory, self-executing, and leaves nothing to the discretion of the lawmaking power. . . .

other. Moreover, the adoption of either would be an act of legislation. To raise the poll tax would be the judicial levy of a tax; to reduce the property tax is not so manifestly an act of legislation, but . . . it seems to me that such a reduction would require the Court to assume legislative power, and would be, therefore, as improper as the other course would be. It may be said, however, if declaring the whole act void is not legislation, how is declaring only the excess so? The answer is, to declare the whole act void is only in effect to declare that the Legislature has adjourned without passing any revenue act. . . . Whereas to declare it void for excess over the rate only and good for the residue would involve the entering by the Court into questions as to the application of the reduction of taxes for particular purposes, which would necessarily lead it into a line of action essentially legislative in character. . . ."

<sup>20</sup> *Russell v. Ayer*, 120 N. C. 180, 190, 27 S. E. 133, 134 (1897). Though the majority opinion in this case may have been logically sound, the practical effects were considerable: The "consequences of the construction placed upon this Act by the court," said Justice Douglas, dissenting, "will be of the gravest nature. The loss to the State will be over \$75,000 a year, the greater part of which will fall upon the common schools, the higher institutions of learning and the asylums. The treasurer, in the face of a bankrupt treasury, will be compelled to refuse payment of appropriations lawfully made by the General Assembly and essential to the welfare of the State." *Id.* at 208, 27 S. E. at 141. Perhaps these considerations were instrumental in the subsequent overruling of this case in *Kitchin v. Wood*, 154 N. C. 565, 70 S. E. 995 (1911).

<sup>21</sup> A similar problem faced the court in regard to county taxation. Adopting the view that the poll tax was the standard of the property tax, the court, in several decisions prior to the case of *Russell v. Ayer*, had merely restrained the collection of a property tax on \$100 of property levied in excess of  $\frac{1}{3}$  of the poll tax. Thus, in *Trull v. Commissioners*, 72 N. C. 388 (1875), the county had levied a total tax of \$1.60 on property, and 80c on the poll, without regard to the equation and limitation. Excluding that part of the property tax levied to pay debts contracted prior to the adoption of the constitution, the court restrained all except  $26\frac{2}{3}$ c on property, that being one-third of the 80c poll tax. Again, in the case of *Griffin v. Commissioners*, 74 N. C. 701 (1876), where the county commissioners had levied 80c per poll and \$1 on the \$100 of property, the court ruled that as the defendants had levied 80c on the poll, they could collect only  $26\frac{2}{3}$ c property tax or one-third of the tax on polls. As to counties, however, the question came to be of no practical importance a few years after the adoption of the constitution, when all counties consistently levied up to the full constitutional limit on both property and polls.

<sup>22</sup> 154 N. C. 565, 70 S. E. 995 (1911). <sup>23</sup> *Id.* at 567, 70 S. E. at 996.

"It is too plain for argument that . . . the property tax is the standard of equation, and by it the poll tax must be measured. When the former is fixed by the General Assembly the latter becomes automatic, so to speak. It adjusts itself, and is arrived at by multiplying the tax on \$100 of property by three."<sup>24</sup>

### III

*Effect of equation and limitation on county taxes.* "The taxes levied by the Commissioners of the several Counties for County purposes,"

<sup>24</sup> A group of similar problems was raised where the limitation of 66 $\frac{2}{3}$ c was exceeded, even though the equation of taxation was observed. In the Appendix, 66 N. C. 655 (1872), Justice Rodman raised, but left unanswered, the following questions: If, in a tax act, the legislature exceeds the limit (in a case not excepted from it) can the courts declare the act void *in toto* or only for the excess? And if for the excess only, how will the courts proceed to enforce the act within the limit? Suppose the county authorities exceed the limit—void *in toto*? or only for the excess? If the excess only was restrained, how would the court determine what purposes were to fail? Would it undertake to distinguish between the different types of expenditures and to say which taxes were for necessary purposes and therefore to be saved, and which, although for legitimate and important purposes, were the less necessary and therefore to be considered void? Could the court undertake to reduce the tax for each of the several purposes, *pro rata*? That might leave an insufficiency for necessary purposes, while to undertake to apportion them according to its views of the relative necessity and propriety of the several purposes would be palpable legislation.

In view of the fact that it was within the power of the state to levy completely up to the constitutional limit for state purposes, to the exclusion of the counties if necessary, these problems as to state taxation never arose. As to county taxation, the court has consistently restrained the excess only, leaving it to the discretion of the county authorities as to how the valid tax should be applied. *Mauney v. Commissioners*, 71 N. C. 486 (1874); *French v. Commissioners*, 74 N. C. 692 (1876); *Carrow v. Commissioners*, 74 N. C. 700 (1876); *Griffin v. Commissioners*, 74 N. C. 701 (1876); *Clifton v. Wynne*, 80 N. C. 145 (1879); *Board of Education of Currituck County v. Commissioners*, 107 N. C. 110, 12 S. E. 190 (1890). In *Clifton v. Wynne*, *supra*, the defendant contended that as the taxes levied for state and county purposes combined were 88c on \$100 of property, and \$2.64 on the poll, preserving the equation but exceeding the constitutional limit by 21 $\frac{1}{3}$ c on property and 64c on the poll, the entire assessment was unconstitutional and void, at least as to the county levy. But the court restrained only the tax in excess of the constitutional limitation, and reasoned in effect as follows: The tax being apportioned per capita on the poll and upon the *ad valorem* principle on property, and the excess easily severable, the lawful tax may be collected, and the assessment is not wholly void. It may be that in some cases the illegal tax is so incorporated with a regular assessment as to be indistinguishable, in which case it may vitiate the whole. But we should be reluctant to hold that the incorporation in a revenue act of a small *ad valorem* tax, illegal only because it exceeds the constitutional limit, should arrest the machinery put in motion for the collection of taxes, and obstruct the administration of the government for want of means to carry it on. The consequences of such a doctrine must be its answer and refutation.

Wherever the county authorities levied a special tax in excess of the constitutional limitation for a purpose which purported not to be subject to the equation and limitation, as for a "special purpose", an "old debt", etc., if the court found such purpose to be subject to the limitation, then it was easy to segregate this tax and restrain its levy or collection. *Barksdale v. Commissioners*, 93 N. C. 472 (1885) (later overruled in *Collie v. Commissioners*, 145 N. C. 170, 59 S. E. 44 (1907)), where a special tax of 13 $\frac{1}{2}$ c on property and 40c per poll, in excess of the constitutional limitation, levied by a county pursuant to a state statute, was held invalid; *Bennett v. Commissioners*, 173 N. C. 625, 92 S. E. 603 (1917).

said the constitution of 1868, "shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."<sup>25</sup> What is meant by the requirement that county taxes "shall be levied in like manner with the State taxes"?

*"In like manner with the State taxes."* Are county taxes subject to the equation and limitation provision of Article V, Section 1? If state taxes are subject to the equation, said the court, and if county taxes are to be levied "in like manner with State taxes", then county taxes are subject to the equation.<sup>26</sup> County taxes are subject to the limitation by the express words of Article V, Section 1: "the state and county capitation tax combined shall never exceed two dollars on the head", and if the equation and limitation provisions are tied together by the constitution makers "to prevent the confiscation of property by numbers . . . and to prevent the oppression of numbers by property", then the purpose of the provisions as well as the words and implications of the constitution argue for their extension to county taxes.<sup>27</sup>

How, then, were these provisions to be applied to county taxes? According to the strictest view advanced,<sup>28</sup> the \$2 limit on the poll and the 66 $\frac{2}{3}$ % limit on \$100 of property were the outside limits of taxation for state and county, for all purposes, general and special. The argument for this view ran as follows: Read Article V, Section 6, first and note the injunction that county taxes "shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly"; then read Article V, Section 1, and note the injunction that "the State and county capitation tax combined shall never exceed two dollars on the head" and the requirement that the capitation tax shall be equal to the "tax on property valued at three hundred dollars in cash"; and you come to the conclusion that not even for a "special purpose, and with the special approval of the General Assembly" can this latter tax limit be exceeded.<sup>29</sup>

<sup>25</sup> N. C. CONST. (1868) art. V, §7. When the constitution was amended in 1876, this section became Article V, §6.

<sup>26</sup> *Southern Ry. v. Commissioners*, 148 N. C. 248, 252, 61 S. E. 700, 701 (1908) (Clark, C. J., concurring).

<sup>27</sup> *University R. R. v. Holden*, 63 N. C. 410 (1869).

<sup>28</sup> *Collie v. Commissioners*, 145 N. C. 170, 181, 59 S. E. 44, 48 (1907) (Walker, J., concurring); *Southern Ry. v. Commissioners*, 148 N. C. 220, 240, 61 S. E. 690, 697 (1908).

<sup>29</sup> *Southern Ry. v. Cherokee County*, 177 N. C. 86, 93, 97 S. E. 758, 762 (1919), where Justice Walker, concurring, argued as follows: "... I do not agree that section 6 permits a tax exceeding the constitutional limit as fixed by section 1. It was intended to establish the proportion between State and county taxation, . . . providing only, that the latter shall not exceed the double of the former except for a special purpose and with special approval of the General Assembly. There is nothing said about exceeding the limit of taxation, and no



To illustrate the working of this view: If the state should levy a 10c tax on the \$100 of property, and a 30c tax per poll, then, under Article V, Section 6, each county could levy up to 20c on the \$100 of property and 60c per poll, or "double of the State tax", for general county purposes, leaving a margin of  $36\frac{2}{3}\%$  on property and \$1.10 per poll before the constitutional limit in Section 1— $66\frac{2}{3}\%$  on property and \$2 per poll—is reached, within which margin each county could levy special taxes up to the limit of  $66\frac{2}{3}\%$  "for a special purpose, and with the special approval of the General Assembly". If the state should levy a  $22\frac{2}{9}\%$  tax on property and  $66\frac{2}{9}\%$  per poll, then, under Section 6, each county could levy up to  $44\frac{4}{9}\%$  on property and  $\$1.33\frac{3}{9}$  per poll, or "double of the State tax", for general county purposes, thereby reaching the top limit of  $66\frac{2}{3}\%$  on the property and \$2 per poll imposed in Article V, Section 1, and leaving no margin within which a county could exceed double the state tax, even "for a special purpose, and with the special approval of the General Assembly". If the state should levy a  $44\frac{4}{9}\%$  tax on property and  $\$1.33\frac{3}{9}$  per poll for state purposes, each county could levy only  $22\frac{2}{9}\%$  on property and  $66\frac{2}{9}\%$  per poll for all county purposes, and thus, as the  $66\frac{2}{3}\%$  on property and \$2 per poll limitation of Article V, Section 1, is thereby reached, could not even levy up to double the state tax, much less exceed it. In short, the county could exceed the double of the state tax for a special purpose with the special approval of the General Assembly only to the extent that a margin was left between the total of the combined state and county levy for general purposes and the  $66\frac{2}{3}\%$  limit; it could levy up to double the state tax if that double coincided with the  $66\frac{2}{3}\%$  limit on property and the \$2 limit on the poll, and then could levy no more even for a special purpose; it could not levy the double, or even the equal, of the state tax unless the state tax left sufficient margin; it could only fill the gap between the state levy and the constitutional limit and pray that the state might leave a gap to fill.

As increasing state expenditures left a diminishing margin for county purposes, another view was advanced<sup>30</sup> to give both state and county

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distinction is made in section 1 or section 6 between ordinary and extraordinary expenses. . . .

"We are not permitted to construe the Constitution by a consideration of subsequent conditions and circumstances, and if the growth and development of the State, since it was adopted, has made necessary a higher limit, the remedy is not in interpretation, but by amendment. . . . For some time after its adoption, there was plenty of room within the limit it prescribed for the counties to more than double the State tax; but however this may have been, we must ascertain the meaning of the Constitution by considering only its language."

<sup>30</sup> Griffin v. Commissioners, 74 N. C. 701, 704 (1876), where the defendants contended that the only restriction upon taxation by the counties was contained in Article V, §7(6); Seaboard Air Line Ry. v. Commissioners, 178 N. C. 449,

budgets ample room for life and growth. According to this view Article V, Section 1, was a limitation of the poll tax but not a limitation of the property tax; the equation between the poll tax and the property tax must be observed until the poll tax reached \$2 and the property tax reached 66⅔c; thereafter the county tax on property could be levied for any county purpose until it reached double the state tax, and could then exceed the double of the state tax for a special purpose with special approval.

To illustrate the working of this view: If the state should levy a 10c property tax and a 30c poll tax, the county could levy up to a 20c property tax and a 60c poll tax for any county purpose, then, for special county purposes, with the special approval of the General Assembly, could levy a tax on property without limit, but, observing the equation, could levy a poll tax up until the combined poll tax for all purposes reached \$2 on the head, at which point the latter was arrested. Thus, in this case, for special purposes an additional poll tax of \$1.10 could be levied before the \$2 limit would be reached. If the state should levy a 22⅔c property tax and a 66⅔c poll tax, a county could levy a 44⅔c property tax and \$1.33⅓ poll tax for any county purpose—observing the equation; and then for a special purpose with special approval of the legislature could levy beyond the double of the state tax on property without regard to the equation and without levying a poll tax. If the state should levy a 44⅔c property tax and a \$1.33⅓ poll tax, a county could levy an 88⅔c property tax—observing the equation until the \$2 poll tax limit was reached (*i.e.*, for the first 22⅔c property tax levied the county had to levy 66⅔c on the poll); and then, for a special purpose with special approval of the legislature, could levy beyond the 88⅔c rate without further limit or regard to the equation. In short, according to this view the poll tax limit for state and county together was \$2, up to which the equation was to be observed, while the property

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459, 101 S. E. 91, 96 (1919), where Chief Justice Clark, dissenting, argued as follows: It may not be amiss to call attention to the fact that the constitution, as written, does not limit state and county taxation to 66⅔c, though the court has often so said. While §1 does provide that the General Assembly may levy a capitation tax on the poll, which shall be equal to property valued at \$300 cash, and that the state and county capitation tax combined shall never exceed \$2 on the head, that is only a limitation on the capitation tax which does not apply to the restriction of the property tax when it is necessary to exceed 66⅔c. The ruling of the court that "the State and county property tax combined should not exceed 66⅔ cents" is not in the constitution, and began at a time when the state taxes did not exceed one-third of 66⅔c, and though the county levied double the state tax, the whole levy ordinarily would not exceed 66⅔c. Then the state taxes for necessary purposes steadily mounted year by year to 22c, and then above, till now they reach 47⅔c. The always narrowing margin between such levy and 66⅔c did not leave enough to defray necessary county expenses. As the state taxation is 47⅔c, the county would be authorized to levy, without requiring legislative permission, "not to exceed double that sum" *i.e.*, 95⅔c.

tax for general county purposes could not exceed double the state tax on property, yet for special county purposes, with the special approval of the legislature, there was no limit.

Between these two extremes another view was advanced:<sup>31</sup> Read Article V, Section 6, first and note the injunction that county taxes "shall be levied in like manner with State taxes, and shall never exceed the double of the State tax, *except for a special purpose, and with the special approval of the General Assembly*"; then read Article V, Section 1, and note the injunction that the "State and county capitation tax combined shall never exceed two dollars on the head" and the requirement that the poll tax shall be "equal to the tax on property valued at three hundred dollars in cash"; and you come to the conclusion that while the county is subject to both the "double of the State tax" limitation of Article V, Section 6, and the equation and 66⅔c limitation of Article V, Section 1, yet it may exceed all of these restrictions for a special purpose and with the special approval of the General Assembly.<sup>32</sup>

To illustrate the working of this view: If the state should levy a 10c property tax and a 30c poll tax, a county could levy up to a 20c property tax and a 60c poll tax for any county purpose, and then for a special purpose with special approval, could levy any additional amount even if this tax went beyond the 66⅔c limit on property and \$2 limit

<sup>31</sup> Various reasons justifying this view were advanced by the court during the fifty-two years in which the equation and limitation were applied. In *University R. R. v. Holden*, 63 N. C. 410 (1869), all of the justices conceded that in order to render the equation and limitation practical in operation certain exceptions had to be allowed. In *Moose v. Commissioners*, 172 N. C. 419, 436, 90 S. E. 441, 449 (1916), the court argued that if Article V, §6, meant that the counties could never exceed double the state tax for ordinary purposes, but might do so for special purposes, *within the limitation, however, of \$1*, then §6 would have no practical operation, for there had been very few years since 1868 in which the state tax plus double that amount for ordinary county purposes did not exceed the 66⅔c limitation, leaving nothing for special purposes; reasoning to like effect was advanced in *Seaboard Air Line Ry. v. Commissioners*, 178 N. C. 449, 455, 101 S. E. 91, 94 (1919).

<sup>32</sup> In *Herring v. Dixon*, 122 N. C. 420, 423, 29 S. E. 368, 369 (1898), the court, speaking of the power to exceed the 66⅔c limit for a special purpose, said: "Article V, Section 6, confers upon the Legislature power to authorize a county . . . 'to exceed double the state tax.' As the State tax is 43 cents, this would have empowered the Legislature to authorize the county to go far beyond the point to which this tax reaches, and, as the greater includes the less, authorizes this levy [a special tax in excess of the 66⅔c limit of 15c on property and 45c per poll, for roads], which is well within that limit, though exceeding the limitation of 66⅔ cents . . . and \$2 on the poll." In *Southern Ry. v. Commissioners*, 148 N. C. 248, 252, 61 S. E. 700, 701 (1908), in a concurring opinion Chief Justice Clark, speaking of the power of counties to disregard the equation in levying taxes for special purposes, said: "But for the use of the words '*in like manner*', no one could contend that the equation applied to county taxes at all. . . . As those words refer us back to section 1 of Article V, so the exception applies both to '*in like manner*' (the equation) and to exceeding '*double the State tax*'; i.e., when taxes are levied '*for a special purpose*' . . . both the equation and the prohibition upon the county to exceed double the State tax are to be disregarded."

per poll. If the state should levy a  $22\frac{2}{9}\text{c}$  property tax and a  $66\frac{2}{3}\text{c}$  poll tax, a county could levy up to a  $44\frac{4}{9}\text{c}$  property tax and a  $\$1.33\frac{3}{9}$  poll tax for any county purpose, and then for a special purpose with special approval, could exceed the  $66\frac{2}{3}\text{c}$  limit on property and the  $\$2$  limit per poll. If the state should levy a  $44\frac{4}{9}\text{c}$  property tax and  $\$1.33\frac{3}{9}$  poll tax a county could only levy up to a  $22\frac{2}{9}\text{c}$  property tax and a  $66\frac{2}{3}\text{c}$  poll tax for any county purpose, but then for a special purpose with special approval, could exceed the  $66\frac{2}{3}\text{c}$  limit on property and  $\$2$  on the poll.

The court rejected the first view as a fetish sacrificing the life and growth of the state to a formula—transforming a constitutional provision designed as a shield to save the state from financial disaster, into a sword thrusting itself into the heart of the state. To enforce such a construction, said Justice Reade,<sup>33</sup> would be to arrest the state and counties in their various spheres of progress and development. "It ought not to be supposed that a Constitution would be framed with such limitations upon the taxing power, as that the vessel of State will sail safely in fair weather, to be wrecked in the first storm. We may well impute it to wisdom, to provide that ordinarily there shall be light taxes and economy in expenditures, but when any extraordinary necessity arises, the whole power of the State must be unloosed to meet it." It rejected the second view as a prodigal abandonment of all constitutional restraints and an open invitation to wild and reckless spending. It adopted the third as a way out—thus preserving parts of both points of view.<sup>34</sup>

<sup>33</sup> *University R. R. v. Holden*, 63 N. C. 410, 418 (1869). But see note 30, *supra*.

<sup>34</sup> The equation and limitations contained in Article V, §§1 and 6 were invoked by the court in the following cases: *Simmons v. Wilson*, 66 N. C. 336 (1872); *Haughton v. Commissioners*, 70 N. C. 466 (1874); *Uzzle v. Commissioners*, 70 N. C. 564 (1874); *Mauney v. Commissioners*, 71 N. C. 486 (1874), where a tax in excess of double the state tax, levied for the purpose of paying debts incurred since the adoption of the constitution, was restrained; *Trull v. Commissioners*, 72 N. C. 388 (1875), where a tax of  $\$1.60$  on the  $\$100$  of property and  $80\text{c}$  per poll was levied by the county alone, the tax on property being far in excess of double the state tax, and levied in part for the payment of debts incurred before the adoption of the constitution, and in part for new debts incurred for jail fees, witness and jury tickets, support of the poor, clerk's fees, etc. The court upheld the tax for the payment of the old debt, but restrained the collection of all in addition except  $26\frac{2}{3}\text{c}$  on property, that being one-third of the  $80\text{c}$  levy on the poll. *French v. Commissioners*, 74 N. C. 692 (1876), where the county commissioners had levied a tax of  $35\text{c}$  on the  $\$100$  of property for general county purposes which, when added to the state tax of  $38\text{c}$  on property, exceeded the  $66\frac{2}{3}\text{c}$  limit by  $6\frac{1}{3}\text{c}$ . The county levy was amended to conform to the  $28\frac{2}{3}\text{c}$  margin between the state tax and the constitutional limit. *Carrow v. Commissioners*, 74 N. C. 700 (1876), where the county commissioners had levied a tax of  $74\text{c}$  on property and  $\$2.22$  per poll to pay the necessary county expenses, which, when added to the state tax of  $40\text{c}$  on property and  $\$1.20$  per poll, exceeded the constitutional limit by  $47\frac{1}{3}\text{c}$  on property and  $\$1.42$  per poll. The court restrained the collection of the excess tax, and allowed the county to collect only  $26\frac{2}{3}\text{c}$  on

*Exceptions to the rule.* The constitution itself, as thus interpreted by the court, provided one specific device through which the counties might "exceed the double of the State tax" and escape the limitation and equation—by levying a tax "for a special purpose, and with the special approval of the General Assembly".<sup>35</sup> No sooner was it said than done. The counties went, hat in hand, first to the legislature for the "special approval", and then to the courts for the "special purpose", which, through successive rulings was extended to include: the building and repair of roads, bridges, and ferries; building, repair, and upkeep of courthouses, jails, county homes and farms, and other county buildings; county aid and poor relief generally, and hospital care of indigent sick and afflicted poor; county health activities; pensions to widows of Confederate soldiers; farm agent's salary; county accountant's salary;

property and 80c per poll. *Griffin v. Commissioners*, 74 N. C. 701 (1876), where the equation and limitation were applied where the county commissioners had levied \$1 on property and 80c per poll, which when added to the state tax of 40c on property and \$1.20 per poll exceeded the constitutional limit by 73½c on property; *Long v. Commissioners*, 76 N. C. 273 (1877); *Clifton v. Wynne*, 80 N. C. 145 (1879); *Cromartie v. Commissioners*, 87 N. C. 134 (1882), where the court refused to require the county commissioners to levy a tax in excess of the constitutional limit to pay a judgment against the county obtained for necessary county expenses; *Barksdale v. Commissioners*, 93 N. C. 472 (1885); *Board of Education of Currituck County v. Commissioners*, 107 N. C. 110, 12 S. E. 190 (1890); *Russell v. Ayer*, 120 N. C. 180, 27 S. E. 133 (1897), cited *supra* note 18; *Commissioners v. MacDonald*, 148 N. C. 125, 61 S. E. 643 (1908), where the legislature gave its permission, and a majority of the qualified voters rendered a favorable vote, to Pitt County to issue \$50,000 of bonds, with no mention of a special tax to pay same, for the purpose of establishing a teachers' training school, a *non-necessary* expense. The court, in refusing to allow a tax in excess of the constitutional limit, held that the bonds were valid as the power to incur the debt carried the implied authority to levy taxes for the payment of interest and principal on same up to the constitutional limit, but that in order to exceed the limit for a non-necessary expense, there must be special permission of the legislature to levy the tax, and a vote of the people also (under Article VII, §7). *Bennett v. Commissioners*, 173 N. C. 625, 92 S. E. 603 (1917), in which the county commissioners were enjoined from issuing \$200,000 of county road bonds without special legislative permission to levy a special tax where there was a recitation in the bonds that an unlimited tax sufficient to pay the interest and principal on same would be levied annually, when it was shown that the state taxes on property were 47⅔c, that the county taxes for general purposes took up the remaining 18½c, exhausting the limit, and that in order to live up to the covenant in the bonds, a special tax of 17c annually would be required; *Southern Ry. v. Cherokee County*, 177 N. C. 86, 97 S. E. 758 (1919), where the county commissioners, under authority of a general state statute authorizing any county to levy a special tax in excess of the constitutional limitation, not exceeding 5c on the \$100 of property "to provide for any deficiency in the necessary expenses . . .", levied a tax of 2⅓c in excess of the 66⅔c limit "for the purpose of taking up a note" and to pay for other current expenses, and the court held that as this tax could not be upheld under Article V, §6, the limitation must be observed; *Seaboard Air Line Ry. v. Commissioners*, 178 N. C. 449, 101 S. E. 91 (1919), where a tax of 5c on property and 15c per poll, levied in excess of the constitutional limit "to meet the current and necessary expenses of the county" was restrained; see *Herring v. Dixon*, 122 N. C. 420, 424, 29 S. E. 368, 369 (1898).

<sup>35</sup> N. C. CONST. art. V, §6.

and, for a time, apparently any "floating indebtedness incurred for necessary expenses".<sup>36</sup>

For a generation the court resisted pressure to include schools within the growing list of special purposes and thus get them out from under the constitutional tax limitations of Article V, and finally achieved the same result by reading Article IX, Section 3, as a mandate to disregard the equation and limitation provisions if necessary in order to support the schools for the constitutional term.<sup>37</sup>

Then the counties inquired if they might exceed the limitation and equation in order to pay principal and interest on county debts existing at the adoption of the constitution. The argument excepting county taxes for old debts was not as strong as the argument excepting state taxes for old debts, for the constitution of 1868 had made specific provision for retiring the state debt,<sup>38</sup> and had made no mention of retiring the county debt. Although the argument was not as strong, it was strong enough. "It is true . . .," said Justice Reade,<sup>39</sup> a few years after the adoption of the constitution, "that as a general rule the county commissioners cannot levy for county purposes a tax more than double the State tax. . . . But that provision was not intended to apply to taxes laid to pay debts existing at the time of the adoption of the Constitution. And if it had been so intended it would have been in conflict with the Constitution of the United States, as impairing the obligation of contracts."<sup>40</sup> From that time on, it was consistently held that there were no constitutional restraints upon the power of taxation for the purpose of paying "old debts".<sup>41</sup>

<sup>36</sup> See page 297, *infra*, for a full discussion of the question as to what constitutes a "special purpose" within the meaning of Article V, §6.

<sup>37</sup> See page 297, *infra*, for a full discussion.

<sup>38</sup> N. C. CONST. (1868) art. I, §6; art. V, §§4, 5.

<sup>39</sup> *Haughton v. Commissioners*, 70 N. C. 466, 467 (1874).

<sup>40</sup> Speaking of this exception forty years later, Justice Connor, in *Southern Ry. v. Commissioners*, 148 N. C. 220, 232, 61 S. E. 690, 694 (1908), reasoned as follows: No provision is made in the constitution for the payment of county indebtedness contracted prior to 1868. "Prior to 1861 but few counties had contracted debts. By section 13, Article VII, the debts contracted by counties during the Civil War were repudiated. . . . Either the members of the Convention thought that the outstanding county debts could be paid by levying taxes within the limitation or that the term 'public debt' used in section 4 included county debts. Between 1865 and 1868 the counties had but little credit and contracted but little indebtedness. It may be that it was supposed that the last clause of section 7(6) would enable the counties to provide for their debts by 'special taxes for a special purpose.' However this may be, for reasons now manifest, the necessity for providing for such indebtedness was soon presented, and the Court found it necessary to make another exception to the limitation and equation. . . ."

<sup>41</sup> *Haughton v. Commissioners*, 70 N. C. 466 (1874) (holding that "double of the State tax" could be exceeded for the payment of "old debts"); *Street v. Commissioners*, 70 N. C. 644 (1874) (holding that it was not necessary to observe the equation or limitation of Article V, §1, in levying taxes to pay "old debts"); *Brothers v. Commissioners*, 70 N. C. 726 (1874) (holding that a poll tax in

## IV

*Effect of equation and limitation on cities and towns.* Six years after the 1868 constitution was adopted, in *Weinstein v. Commissioners of Newbern*,<sup>42</sup> the court assumed that taxes levied by cities and towns were subject to the equation and limitation provisions. This assumption was partially undermined by the observation of Justice Rodman shortly afterward: "It is settled by several decisions of this Court, that while the Constitution fixes no limit to the *amount* of taxation which the corporate authorities of a town or city may impose, it does require that the . . . proportion fixed by the Constitution between the tax on property and on polls shall be observed."<sup>43</sup> This doctrine was rejected altogether in *Wingate v. Parker*<sup>44</sup> when the court squarely held that taxes levied by cities and towns were not subject to the limitation or equation provisions of Article V, Section 1.

In support of this view it was argued: that while Article V, Section 1, applies the equation and limitation to state taxes, and Article V, Section 6, requires county taxes to be levied "in like manner with State taxes", neither section applies these provisions to cities and towns; that common knowledge of the legislative and financial history of the state shows that the "equation and limitation have scarcely allowed a levy of taxes adequate to meet the ordinary expenses of the State and Counties, and it is altogether probable that it was not intended to apply to

excess of \$2 could be levied and without regard to the equation for the purpose of paying "old debts"); *Mauney v. Commissioners*, 71 N. C. 486 (1874); *Trull v. Commissioners*, 72 N. C. 388 (1875); *French v. Commissioners*, 74 N. C. 692 (1876) (holding that a note issued to fund an outstanding "old debt" was an "old debt" for which the restriction might be disregarded); *Clifton v. Wynne*, 80 N. C. 145 (1879); *Blanton v. Commissioners*, 101 N. C. 532, 8 S. E. 162 (1888) (holding that new county bonds issued to refund a debt incurred prior to the adoption of the constitution were to be considered an "old debt" for tax levying purposes).

<sup>42</sup> See 71 N. C. 535, 536 (1874).

<sup>43</sup> See *Young v. Henderson*, 76 N. C. 420, 423 (1877), where although not necessary for the decision in the case, one of the grounds upon which the city tax levy was declared void was that the proportion between property and polls had not been observed; see also *French v. Wilmington*, 75 N. C. 477, 482 (1876), where Justice Rodman, pointing out that the constitution imposed no limit on the amount of tax which a city might levy, said: "The omission was of purpose. It was unwise to establish in a law which was expected to be comparatively permanent, the same maximum rate of taxation for all the cities and towns in the State, with population and other conditions so different. These two are subject to constant change, and a maximum proper, in 1868, might be otherwise a few years later. The Constitution, therefore, almost necessarily left this duty to the Legislature, which could both perform it better originally, and could change the maximum from time to time as the conditions might change. By Art. VIII, sec. 4, it imposed on the Legislature a moral obligation to restrict the power of municipal corporations to tax and to contract debts." *Barksdale v. Commissioners*, 93 N. C. 472, 476 (1885).

<sup>44</sup> 136 N. C. 369, 48 S. E. 774 (1904), where the town of Spencer, pursuant to its charter, levied a tax of 50c on each poll and 50c on each \$100 of property, the tax being contested on the ground that it did not observe the equation as required by the constitution, Article V, §1.

municipal corporations"; that the constitution makers did not intend to subject cities and towns to these provisions, in that they singled out cities and towns for separate treatment in Article VIII, Section 4: "It shall be the duty of the legislature to provide for the organization of cities, towns and incorporated villages and to restrict their power of taxation . . . so as to prevent abuses in assessment. . . ."

## V

### *Effect of equation and limitation on townships and special districts.*

Did the equation and limitation provisions extend to taxes levied by townships,<sup>45</sup> and special districts such as road districts,<sup>46</sup> school districts,<sup>47</sup> and special assessment districts?<sup>48</sup> The first and second argu-

<sup>45</sup> *Jones v. Commissioners*, 107 N. C. 248, 12 S. E. 69 (1890). Here a state statute authorized any township, upon a favorable vote of the majority of persons voting, to issue its bonds and subscribe to the capital stock in a railroad company, and to levy a special tax to pay the interest and principal. Upon a favorable vote of the majority of the qualified voters in Hollaway township, the tax levying authorities issued township bonds and levied a special tax upon property alone to pay same. When the plaintiff sought to restrain the tax on the grounds that the equation had not been observed, the court held that the constitution, Article V, §1, did not apply to townships or municipal corporations other than counties.

<sup>46</sup> See *Trustees of Youngsville Township v. Webb*, 155 N. C. 379, 386, 71 S. E. 520, 523 (1911), where the legislature had appointed a board of road trustees for a township, giving them power to contract, and other such powers as were incident to other municipal corporations, including the power to issue road bonds and levy a special tax to pay the interest and principal thereon. Although the question at issue was whether or not such bonds and special tax required a vote of the people, the court said: ". . . when these special districts were incorporated for governmental purposes, they came within the limitations and restrictions as to methods, purposes, and powers of taxation contained in Article VII, secs. 7, 9, 13. . . . And with the exception of these sections . . . there was not only no further restraint on the power of the Legislature contained in the Constitution, but under section 14 of the same article express provision was made for its fullest exercise." In view of the fact that county taxes for roads could be levied in excess of the constitutional limit as for a "special purpose" under Article V, §6, the equation and limitation has not presented a problem as to this purpose. *Herring v. Dixon*, 122 N. C. 420, 29 S. E. 368 (1898); *Tate v. Commissioners*, 122 N. C. 812, 30 S. E. 352 (1898).

<sup>47</sup> *Smith v. Trustees of Robersonville Graded School*, 141 N. C. 143, 53 S. E. 524 (1906); *Perry v. Commissioners*, 148 N. C. 521, 62 S. E. 608 (1908). In this case a general state statute (Pell's Revisal 1908, §4115) authorized any county board of education, upon a favorable vote of the majority of the qualified voters within a proposed district, to create a special school district. Pursuant to this statute, a special school district was created, with power in the board of county commissioners to levy a special tax of 20c on the \$100 of property and 60c per poll. The county commissioners levied a tax of \$2 per poll for state county purposes, and an additional special poll tax of 60c within the special district; it was sought to restrain the collection of the 60c tax on the ground that it was in violation of Article V, §1. In upholding the tax, the court held that Article V, §1, did not apply to special school districts or other "public quasi corporations". *Bonitz v. Trustees of Ahoskie School District*, 154 N. C. 375, 70 S. E. 735 (1911).

<sup>48</sup> See *Sanderlin v. Luken*, 152 N. C. 738, 743, 68 S. E. 225, 226 (1910), where Justice Hoke said: "When these drainage districts are created . . . they are regarded as public quasi-corporations . . . and for general purposes of taxation . . . they come, as a rule, within the restrictions established by the Constitution



ments supporting the exclusion of cities and towns applied with equal force to these remaining types of governmental units, but not the third. On the other hand, townships and special districts were commonly regarded as subdivisions of the county, and county commissioners frequently acted for them. Nevertheless, the motives which wrote the equation and limitation provisions into the constitution of 1868 gave way to more practical considerations—"the tendency in this State to encourage the spirit of local self-government by the establishment by legislation of special districts for the purpose of providing for and stimulating public schools, good roads and other matters of local interest. . . ."<sup>49</sup> Thus the creation of special function districts became an effective device for evading constitutional limitations. Special assessment districts also achieved the same purpose, since special assessments were not taxes within the meaning of the tax limitation provisions of the constitution.<sup>50</sup>

*Results of exceptions.* With the state thus authorized to exceed the limitation for all except ordinary purposes, with counties authorized to exceed it for a steadily growing number of special purposes, with cities, towns, townships, and special districts authorized to exceed it for all purposes, the exceptions which may have proved the rule in the beginning all but destroyed it in the end.

Did authority to exceed the limitation carry with it the authority to ignore the equation? If so, the General Assembly was free to levy taxes, and free to permit all local units to levy taxes, (1) observing the equation in whole or in part, or (2) ignoring the equation by levying property taxes only, or poll taxes only. For years after the constitution was adopted, however, many justices thought that even after the limitation was exceeded the equation continued in force. "While the Constitution fixes no limit to the *amount* of taxation which the corporate authorities of a town or city may impose," said Justice Rodman, eight years after the constitution was adopted, "it does require . . . that the proportion fixed by the Constitution between the tax on property and on polls shall be observed."<sup>51</sup> "Although the Legislature must observe the ratio

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upon municipal corporations in reference to the imposition of taxes both as to the amount and method . . . but under our decisions these restrictive provisions as to taxation have been held not to apply to the case of local assessments, where, as in this case, such assessments are made and collected by some recognized method apportioning the burdens according to the benefits received by the property affected."

<sup>49</sup> *Perry v. Commissioners*, 148 N. C. 521, 529, 62 S. E. 608, 611 (1908) (Connor, J., concurring).

<sup>50</sup> *Cain v. Commissioners*, 86 N. C. 8 (1882); *Busbee v. Commissioners*, 93 N. C. 143 (1885); *Sanderlin v. Luken*, 152 N. C. 738, 68 S. E. 225 (1910).

<sup>51</sup> *Young v. Henderson*, 76 N. C. 420, 423 (1877). In *State v. Godwin*, 123

of taxation between property and the poll provided in Article V, section 1," said the court forty years later, "it is not required to obey the limitation upon the poll and the property tax, if thereby they are prevented from giving effect to the provisions of Article IX."<sup>52</sup> On the other hand, there had been dicta in several decisions of the court that the equation need not be observed whenever the limitation was exceeded.<sup>53</sup> The question was definitely settled, however, in *Southern Railway Company v. Commissioners*,<sup>54</sup> in which the court ruled that for special purposes with the special approval of the General Assembly neither the equation nor the limitation need be followed.

The status of the equation and limitation in 1919 was summed up by the court in *Davis v. Lenoir County*<sup>55</sup> as follows: "The equation and limitation . . . apply only to taxes for the ordinary expenses of the State and county government, and the levy of taxes for special purposes is committed by the Constitution to the discretion of the General Assembly, which may, as to such taxes, exceed the limitation [on the poll and on property], and may levy the tax on property alone, without observing the equation, subject to the qualification that if the tax is not for a necessary expense it must be submitted to a vote of the people,' in which last case only it must be approved by a majority of the registered voters."

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N. C. 697, 31 S. E. 221 (1898), a statute was held invalid which authorized a special tax in excess of the constitutional limitation for the special purpose of working the public roads of a county, on the ground that it violated the equation by authorizing the tax on property alone and not upon the poll. See also Board of Education of Macon County v. Commissioners, 137 N. C. 310, 313, 49 S. E. 353, 354 (1904), where the court, upholding a county tax of 30c on property and 90c per poll in excess of the constitutional limitation, levied for the purpose of working public roads, said: "In *Jones v. Comrs.*, *supra*, it was held that the necessity for observing the equation applied to . . . all special acts authorizing counties to levy a special tax to meet the necessary expenses—such as building a court-house, a bridge, or improving the roads, etc. It was therefore essential to the validity of the tax of thirty cents on property that a tax of ninety cents on the poll be levied and collected."

<sup>52</sup> *Collie v. Commissioners*, 145 N. C. 170, 174, 59 S. E. 44, 45 (1907).

<sup>53</sup> See *University R. R. v. Holden*, 63 N. C. 410, 414 (1869); *Brothers v. Commissioners*, 70 N. C. 726, 728 (1874); *Barksdale v. Commissioners*, 93 N. C. 472, 477 (1885).

<sup>54</sup> 148 N. C. 220, 61 S. E. 690 (1908), where a state statute forbade Mecklenburg County to levy any poll tax for any purpose in excess of \$2. In obeying this statute, the county commissioners levied a special tax on property alone in excess of the constitutional limitation without observing the equation. In holding the taxes valid, the court reasoned that since under the mandate of Article V, §1—"the State and county capitation tax combined shall never exceed two dollars on the head"—the poll tax could never exceed \$2 for any purpose, counties not only should not, but could not, observe the equation after \$2 on the poll was reached. *Southern Ry. v. Commissioners*, 148 N. C. 248, 61 S. E. 700 (1908), cited *supra* note 32; *Davis v. Lenoir County*, 178 N. C. 668, 101 S. E. 260 (1919).

<sup>55</sup> 178 N. C. 668, 670, 101 S. E. 260, 261 (1919).

## VI

In 1920 Article V, Sections 1 and 6, were amended to read as follows: Section 1: "The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied. The commissioners of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity." Section 6: "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

*Effect of 1920 amendments on the equation.* The 1868 requirement that the poll tax "shall be equal, on each, to the tax on property valued at three hundred dollars in cash"<sup>56</sup> was eliminated by the 1920 amendment, which thus swept away the remaining vestiges of the equation which for fifty years had haunted fiscal policies like a steadily receding but never disappearing ghost.

*Effect of 1920 amendments on the poll tax limitation.* The 1868 requirement that "the state and county capitation tax combined shall never exceed two dollars on the head"<sup>57</sup> was replaced with the 1920 requirement that "The General Assembly may levy a capitation tax . . . which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied."<sup>58</sup> This replacement wrought a significant and decisive change in the situation that had developed by 1920.

The two dollar limitation of 1868 had been steadily whittled away by judicial decisions holding that it did not apply to poll taxes levied for the payment of state and county debts existing at the time of the adoption of the constitution;<sup>59</sup> for casual deficits and the suppressing of invasion and insurrections;<sup>60</sup> for special county purposes with the

<sup>56</sup> N. C. CONST. (1868) art. V, §1.

<sup>57</sup> *Ibid.*

<sup>58</sup> N. C. CONST. art. V, §1.

<sup>59</sup> See note 41, *supra*.

<sup>60</sup> See note 15, *supra*. See Board of Education of Bladen County v. Commissioners, 113 N. C. 379, 385, 18 S. E. 661, 663 (1893).

special approval of the General Assembly;<sup>61</sup> for schools;<sup>62</sup> and for all purposes of cities, towns, townships, and special districts.<sup>63</sup> Thus there was no limit to the poll tax which might be levied in these instances, and in many places it had reached oppressive heights. To illustrate: The court, in *Southern Railway Company v. Commissioners*,<sup>64</sup> observed that a citizen living in the city of Asheville in 1907 was required to pay the following poll tax: to the city, \$4.50; to the state and county for general purposes, \$2—making a total poll tax of \$6.50 on each head. And if, as contended by the plaintiff, the equation had to be observed for special taxes for special county purposes, an additional \$1 would have been required, making a total of \$7.50 per person. During some years, in many localities, the poll tax often exceeded \$10 per head.

This judicial whittling had not been done without protest. A few years after the adoption of the 1868 constitution, Justice Settle observed:<sup>65</sup> "It is clear that the limit of two dollars on the poll cannot be exceeded for the payment of any debt, State or County. . . ." If more explicit language is needed than the statement that "the state and county capitation tax combined shall never exceed two dollars on the head," said protesting justices years later,<sup>66</sup> it may be found in the words of Article V, Section 2: "The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor. . . ." It is one violation of the constitution to levy a poll tax in excess of \$2, and it is another violation to apply the proceeds of such a levy to purposes other than education and the support of the poor.

The state tax commission in 1902 recommended to the governor

<sup>61</sup> *Herring v. Dixon*, 122 N. C. 420, 29 S. E. 368 (1898); *Crocker v. Moore*, 140 N. C. 429, 53 S. E. 229 (1906); *Collie v. Commissioners*, 145 N. C. 170, 59 S. E. 44 (1907); *Moose v. Commissioners*, 172 N. C. 419, 90 S. E. 441 (1916).

<sup>62</sup> See note 81, *infra*.

<sup>63</sup> See notes 44, 45, and 47, *supra*.

<sup>64</sup> 148 N. C. 248, 250, 61 S. E. 700, 701 (1908).

<sup>65</sup> *Brothers v. Commissioners*, 70 N. C. 726, 728 (1874) (dissent by Settle, J.).

<sup>66</sup> *Southern Ry. v. Commissioners*, 148 N. C. 220, 245, 61 S. E. 690, 697 (1908). The majority opinion in this case pointed out that the poll tax was clearly a regressive tax of the heaviest kind, and that to limit it to \$2 would make it uniform throughout the state, thus restoring the principle incorporated in the constitution of 1776 as amended in 1835, and conforming to the express declaration of the people as expressed in the constitutional amendment ratified in 1900, which provided that "every person presenting himself for registration shall pay, and before he shall be entitled to vote he shall have paid, on or before the first day of May . . . his poll tax for the previous year, as prescribed by Article V, section 1. . . ." This criticism was repeated by the majority in *Southern Ry. v. Commissioners*, 148 N. C. 248, 61 S. E. 700 (1908), by a concurring opinion in *Perry v. Commissioners*, 148 N. C. 521, 529, 62 S. E. 608, 611 (1908) (concurring opinion by Connor, J.), by dissenting opinions in *Moose v. Commissioners*, 172 N. C. 419, 445, 451, 90 S. E. 441, 454, 457 (1916) (dissents by Clark, C. J., and Walker, J.), and in other opinions up until 1920.

" . . . that the poll tax be not levied except as a State and county tax, and that in no case shall the State and county capitation tax combined be greater than \$2 a head, and that all laws authorizing municipalities to levy taxes on polls be repealed."<sup>87</sup> Thereafter, dissenting opinions of the court argued at every opportunity that the tax commission's recommendations represented the original meaning of the 1868 constitution. And thus the ground was laid for the 1920 amendments limiting the state and county to \$2, and cities and towns to \$1 per head, with the result that the combined poll tax on any person can never exceed \$3.<sup>88</sup>

Even this imperative command, however, is subject to one exception: it cannot operate to impair the obligations of contracts existing at the time the amendment was adopted. "It may be well to note," cautioned the court in *Hammond v. McRae*<sup>89</sup> soon after the amendment was adopted, "that as to all liabilities theretofore incurred, and all bonds theretofore issued under statutes or elections requiring the levy of a tax on both property and poll, the power and obligation to levy the tax on both will continue, for a State, no more by constitutional amendment than by statute, can impair the vested rights held by the creditor in assurance of his debt."

*Effect of the 1920 amendments on the property tax limitations—state and counties.* The 1868 constitution limited the combined state and county property taxes to 66⅔c on \$100 of property (excepting taxes for the principal and interest on the debt existing at the time of the adoption of the constitution and taxes for special county purposes with the special approval of the General Assembly), with the power in the state to levy up to the limit and leave the counties nothing. The resulting dilemma of the counties was recognized by the court a year

<sup>87</sup> *Southern Ry. v. Commissioners*, 148 N. C. 220, 242, 61 S. E. 690, 698 (1908).

<sup>88</sup> *Smith-Courtney Co. v. Road Comm'rs of Hertford County*, 182 N. C. 149, 154, 108 S. E. 443, 447 (1921) (Clark, C. J., concurring); *Ballou v. Road Comm. of Ashe County*, 182 N. C. 473, 475, 109 S. E. 628, 629 (1921) (Clark, C. J., concurring); *Hammond v. McRae*, 182 N. C. 747, 754, 110 S. E. 102, 106 (1921) (" . . . this school district, composed . . . of the town of Laurinburg and two or more unincorporated mill villages . . . is a special-tax district, and is without power to levy a capitation tax of any amount. . . ."); *Board of Education of Buncombe County v. Bray Bros. Co.*, 184 N. C. 484, 115 S. E. 47 (1922); *Dixon v. Commissioners*, 200 N. C. 215, 156 S. E. 852 (1931).

<sup>89</sup> 182 N. C. 747, 754, 110 S. E. 102, 106 (1921); cf. *Dixon v. Commissioners*, 200 N. C. 215, 156 S. E. 852 (1931), where pursuant to a public-local act of 1917, the county commissioners, after having obtained a favorable vote of the qualified voters in several townships, were levying, and had levied each year since 1920, a special poll tax in excess of the \$2 limit for the purpose of working the township roads. The court held that although the tax was levied pursuant to a statute passed prior to the constitutional amendment, to restrain the same was not an impairment of contract. It is only when the state acts directly upon contracts as distinct from vested rights that contracts are impaired; accordingly, the state may pass laws which will operate to divest antecedent rights if they do not technically impair the obligation of contracts.

later in the first case arising under the constitution.<sup>70</sup> Twenty-one years later in the case of *Board of Education of Currituck County v. Commissioners*,<sup>71</sup> the dilemma which the county had seen in its imagination confronted the court in fact. The court said: "The taxes for the State are levied by statute, and before the levy for the several counties by the proper county authorities; and hence, as well as for other reasons, the tax levy for the State is paramount, has precedence and must prevail to the exclusion, if need be, of the like levy for the county. . . ."<sup>72</sup>

The 1920 amendments eliminated the old limitation and introduced a new one: "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property. . . . Provided further, the State tax shall not exceed five cents on the one hundred dollars value of property."<sup>73</sup> Since 1920 the state has left the whole of the 15c levy to the counties, and has levied no property tax at all, except for a special levy of 15c for schools during one biennium<sup>74</sup> under authority of the exception in Article V, Section 6.<sup>75</sup>

*Special approval of the General Assembly.* The 1868 constitution permitted counties to levy taxes in excess of double the state tax "for a special purpose and with the special approval of the General Assembly". The 1920 amendments permitted counties to levy in excess of the 15c limitation "for a special purpose and with the special approval of the General Assembly, which may be done by special or general act".<sup>76</sup> For years after the 1868 provisions, the court proceeded on the assumption that this "special approval" had to be by special act and consistently held that an act of the General Assembly in general terms authorizing "any county", or "all counties", in the state to levy in

<sup>70</sup> *University R. R. v. Holden*, 63 N. C. 410, 431 (1869). "I have purposely refrained," said Justice Rodman, "from discussing any of the questions . . . which might arise in case the Legislature should wantonly absorb the full limit of taxation for State purposes, leaving no margin to the counties for their necessary objects." See also Justice Rodman's discussion in Appendix, 66 N. C. 655, 658 (1872).

<sup>71</sup> 107 N. C. 110, 12 S. E. 190 (1890). For the year 1889, the state had authorized the following taxes: for ordinary state purposes, 28c on \$100 of property; for the support of the public schools, 12½c on \$100 of property—making a total state tax of 40½c, and leaving a margin for county taxation for ordinary county purposes of only 26⅓c. The board of county commissioners of Currituck County, however, refused to allow the collection of the 12½c state school tax in that county. Alleging that the 26⅓c margin was not enough for ordinary county purposes, it levied and collected a county tax of 41½c. The court, however, allowed the county board of education to recover the revenue produced by a 12½c rate.

<sup>72</sup> *Id.* at 113, 12 S. E. at 190.

<sup>73</sup> N. C. CONST. art. V, §6.

<sup>74</sup> N. C. PUB. LAWS 1931, c. 427, §492.

<sup>75</sup> N. C. CONST. art. V, §6: ". . . Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution. . . ."

<sup>76</sup> N. C. CONST. art. V, §6.

excess of the limitation if and when necessary to do so, was not the "special approval" required by the constitution.<sup>77</sup> In *Southern Railway Company v. Cherokee County*, where the court clearly held that special approval had to be given by a special act, there was a dissenting opinion which pointed out that while the express words of the constitution had always required "special approval", the requirement that this special approval be given by a special act had simply been a judicial assumption without warrant in the constitution, and that there was nothing in the constitution to prevent this special approval being given by general as well as special act.<sup>78</sup> This dissenting opinion became the majority opinion in a series of cases decided the following year.<sup>79</sup>

This changing viewpoint of the court may have been influenced by the constitutional amendment of 1917 prohibiting legislation in certain fields by special act, thus seemingly running afoul of the court's opinion that special approval had to be by special act.<sup>80</sup> It may have been in-

<sup>77</sup> *Brodnax v. Groom*, 64 N. C. 244 (1870); *Simmons v. Wilson*, 66 N. C. 336 (1872); *Halcombe v. Commissioners*, 89 N. C. 346 (1883); *Barksdale v. Commissioners*, 93 N. C. 472 (1885); *Board of Education of Bladen County v. Commissioners*, 111 N. C. 578, 16 S. E. 621 (1892); *Bennett v. Commissioners*, 173 N. C. 625, 92 S. E. 603 (1917); *Southern Ry. v. Cherokee County*, 177 N. C. 86, 97 S. E. 758 (1919), where the court, in holding invalid a statute which authorized "any county . . . to levy a special tax in excess of the constitutional limitation . . . to provide for any deficiency in the necessary expenses . . .," said: Article V, §§1 and 6, "must be considered and read together with the purpose in view of giving effect to both, and a construction must be avoided which will make one destructive of the other, which would be the result if the commissioners could exceed the constitutional limitation under authority of section 6 for general purposes, and under general laws, because . . . the General Assembly could levy a State tax up to the limitation under section 1, and then pass a general law under section 6 allowing the counties to levy the same tax for county expenses." *Id.* at 90, 97 S. E. at 760.

<sup>78</sup> *Id.* at 102, 97 S. E. at 766.

<sup>79</sup> *Parvin v. Commissioners*, 177 N. C. 508, 99 S. E. 432 (1919), where a comprehensive state statute of 1917 empowered any county, township or road district, upon a favorable vote of the people, to issue bonds for the purpose of constructing, repairing, etc. public roads, and to levy a special tax therefor for the purpose of maintaining same. Pursuant to this statute, Beaufort County authorities issued \$1,000,000 of bonds, and levied a special tax in excess of the constitutional limit to pay them. The court held that the general state statute was sufficient approval of the General Assembly to authorize a levy of the tax which exceeded the constitutional limitation under Article V, §1. *Martin County v. Wachovia Bank & Trust Co.*, 178 N. C. 26, 35, 100 S. E. 134, 140 (1919); *Commissioners v. Wachovia Bank & Trust Co.*, 178 N. C. 170, 174, 100 S. E. 421, 423 (1919), where the court said: "The objection that permission to levy taxes in excess of the constitutional limitation can be granted under Art. V, sec. 6, only by 'special approval' of the General Assembly, and that . . . such approval could not be given by a general act, was fully met . . . in *Parvin v. Comrs.* . . . which held that 'special approval' is not required to be given by a 'special act' restricted to a single county, but may be by general statute giving an option to any county which shall see fit to avail itself of such permission."

<sup>80</sup> See *Parvin v. Commissioners*, 177 N. C. 508, 510, 99 S. E. 432, 433 (1919) and *Martin County v. Wachovia Bank & Trust Co.*, 178 N. C. 26, 36, 100 S. E. 134, 140 (1919), where the argument was advanced that as Article V, §6, requires the "special approval" of the General Assembly to exceed the limit, which may be given only by "special act", and as Article II, §29 prohibits a special act, this would prevent such approval being given in any case. This argument had

fluenced by changing circumstances which had shifted county requests for special approval from the exception to the rule; thus making it more convenient to grant this approval in one act for all counties instead of in separate acts for each. In any event, the 1920 amendment adopted the later view of the court and authorized special approval by general or special act.

*"Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution."* Following the Constitutional Convention of 1868, the court held that schools were not a necessary expense for which taxes might be levied without a vote of the people. It also held that schools were not a special purpose for which counties might exceed the double of the state tax with the special approval of the General Assembly. From this position between the upper and nether millstones the schools escaped through judicial construction of Article IX, Section 3, to the effect that, although not a necessary expense and not a special purpose, they were not subject to the equation or limitation provisions of the constitution.<sup>81</sup> The 1920 amendment simply preserved this status already won through judicial decision.

*Special purpose.* The 1868 limitation could be exceeded where the county property tax was "levied for a special purpose, and with the special approval of the General Assembly". The 15c limitation of 1920 may be exceeded in the same manner. What is a "special purpose" is a question that has troubled the counties, the legislature, and the courts from 1868 to this day.

Is it for the legislature or the court to decide what is a special purpose? The decisions have at times furnished some basis for an inference that a special purpose was whatever the legislature said it was. This was a not unreasonable view as long as the court could proceed on the assumption that the constitution makers had provided for normal operating expenses within constitutional limits, with leeway to meet unusual situations given in the power to exceed these limits for special purposes, and with the safeguard against abuse of this leeway in the requirement of special approval in each case by the General Assembly. "The first

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been answered in part in *Brown v. Commissioners*, 173 N. C. 598, 92 S. E. 502 (1917) and *Mills v. Commissioners*, 175 N. C. 215, 95 S. E. 481 (1918), where the court held that Article II, §29, was never intended to prohibit legislation authorizing the raising of proper funds by the sale of bonds or by taxation, for measures required for the public good, though such funds should be for improvements in some fixed place determined by local authorities in pursuance of general laws on the subject. It was further answered by the court in holding that the "special approval" could be given by general as well as special acts.

<sup>81</sup> *Collie v. Commissioners*, 145 N. C. 170, 59 S. E. 44 (1907), overruling *Barksdale v. Commissioners*, 93 N. C. 472 (1885) and *Board of Education of Bladen County v. Commissioners*, 111 N. C. 578, 16 S. E. 621 (1892).



section 'was inserted in the Constitution of 1868 as a guarantee to the property holders of the State that they would not be oppressed by inordinate taxes laid by representatives elected by the newly enfranchised blacks . . .', said Justice Allen,<sup>82</sup> speaking for the court in 1918, "and section 6 for the purpose of providing for an emergency that could not be reasonably anticipated, and as a safeguard against increasing taxation hastily and without due consideration, and to furnish publicity, a special act stating the special purpose is required." Again, Justice Clark, dissenting in *Williams v. Commisisoners*<sup>83</sup> had said: "Indeed, as the county can not go beyond the constitutional limitation in levying taxation without special permit of the Legislature, when the sum raised by the ordinary rate is not enough to pay the current expenses, the only relief is to apply to the Legislature for authority to exceed the limit. . . . And this has been the course pursued ever since the Constitution of 1868 was adopted whenever the current receipts of a county have not been sufficient to pay its current expenses." This assumption might furnish a partial explanation of the early decisions of the court that this "special approval" of the General Assembly had to be given by a special act, which would permit a consideration of each case on its merits. But such a foundation for this view largely disappeared as first the court and then the constitution permitted this special approval to be given by general as well as special act, and as the legislature in the twenties turned to a program of strict state supervision of local units of government. Certainly, in recent decisions the court has gone out of its way to emphasize that it is for the court and not the legislature to determine a special purpose. "As a 'special purpose' for which an unlimited tax may be levied with the special approval of the General Assembly and without a vote of the people must also be a 'necessary expense' . . .," said Chief Justice Stacy, in *Glenn v. Commissioners*,<sup>84</sup> "which latter includes both law and fact, and, as used in the Constitution and municipal resolutions, is a matter for judicial, rather than legislative, determination . . . , it follows that what constitutes a special purpose within the meaning of the Constitution, must ultimately be decided by the courts."

<sup>82</sup> *Southern-Ry. v. Cherokee County*, 177 N. C. 86, 91, 97 S. E. 758, 760 (1919).

<sup>83</sup> 119 N. C. 520, 524, 26 S. E. 150, 152 (1896); *Collie v. Commissioners*, 145 N. C. 170, 187, 59 S. E. 44, 50 (1907) (Clark, C. J., concurring). In *Barksdale v. Commissioners*, 93 N. C. 472, 485 (1885), Justice Merrimon, dissenting, argued as follows: The legislature has power, subject to the constitution, to create, enlarge, abridge, or abolish the powers of the several counties, and it can prescribe by statute what shall be their purpose, ordinary, special, and otherwise.

<sup>84</sup> 201 N. C. 233, 241, 159 S. E. 439, 442 (1931). For language to like effect, see *Nantahala Power & Light Co. v. Clay County*, 213 N. C. 698, 704, 197 S. E. 603, 607 (1938).

Since 1868 the court in the exercise of this judicial function has specifically held the following to be special purposes within the meaning of Article V, Section 6, for which counties might levy taxes in excess of the constitutional limitation (15c on the \$100 of property since 1920): building and repair of roads,<sup>85</sup> bridges,<sup>86</sup> and ferries;<sup>87</sup> building, repair, and upkeep of courthouses,<sup>88</sup> jails,<sup>89</sup> county homes and farms, and other county buildings;<sup>90</sup> county aid and county poor relief gen-

<sup>85</sup> *Herring v. Dixon*, 122 N. C. 420, 29 S. E. 368 (1898), where a special county tax in excess of the constitutional limit for constructing, repairing, maintaining, and discontinuing public roads and bridges, was levied; *Tate v. Commissioners*, 122 N. C. 812, 30 S. E. 352 (1898), where a special county tax was levied in excess of the constitutional limit, in part for the purpose of providing implements, teams, wagons, camp outfit, and quarters for the use and safekeeping of a convict force, etc., to be used for constructing and repairing roads; *Board of Education of Macon County v. Commissioners*, 137 N. C. 310, 49 S. E. 353 (1904); *Crocker v. Moore*, 140 N. C. 429, 53 S. E. 229 (1906); *Moose v. Commissioners*, 172 N. C. 419, 90 S. E. 441 (1916); *Wagstaff v. Central Highway Comm. of Person County*, 177 N. C. 354, 99 S. E. 1 (1919); *Parvin v. Commissioners*, 177 N. C. 508, 99 S. E. 432 (1919); *Norfolk Southern R. R. v. McArtan*, 185 N. C. 201, 116 S. E. 731 (1923); *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490 (1936).

<sup>86</sup> *Brodnax v. Groom*, 64 N. C. 244 (1870) (building and repairing bridges); *Williams v. Commissioners*, 119 N. C. 520, 26 S. E. 150 (1896) ("maintaining the free public ferries of the county" and "maintaining, constructing and repairing the bridges" in said county); *Herring v. Dixon*, 122 N. C. 420, 29 S. E. 368 (1898); *Martin County v. Wachovia Bank & Trust Co.*, 178 N. C. 26, 100 S. E. 134 (1919); *Norfolk Southern R. R. v. McArtan*, 185 N. C. 201, 116 S. E. 731 (1923).

<sup>87</sup> *Williams v. Commissioners*, 119 N. C. 520, 26 S. E. 150 (1896), cited *supra* note 86.

<sup>88</sup> *Halcombe v. Commissioners*, 89 N. C. 346 (1882) (construction of county courthouse); *Black v. Commissioners*, 129 N. C. 121, 39 S. E. 818 (1901); *Norfolk Southern R. R. v. Forbes*, 188 N. C. 151, 124 S. E. 132 (1924) (improvement of county courthouse); *Southern Ry. v. Cherokee County*, 195 N. C. 756, 143 S. E. 467 (1928) (special tax to pay principal and interest on courthouse and jail bonds).

<sup>89</sup> *Castevens v. Stanly County*, 209 N. C. 75, 183 S. E. 3 (1935) (erection of county jail); *Southern Ry. v. Cherokee County*, 195 N. C. 756, 143 S. E. 467 (1928) *semble*, cited *supra* note 88; see *Norfolk Southern R. R. v. Reid*, 187 N. C. 320, 324, 121 S. E. 534, 536 (1924) (constructing, maintaining and repairing county jails).

<sup>90</sup> *Norfolk Southern R. R. v. Reid*, 187 N. C. 320, 121 S. E. 534 (1924), where, pursuant to a general state statute authorizing the various counties to levy a tax in excess of the constitutional limit for the purpose of the upkeep of county buildings, county homes for the aged and infirm, and other similar institutions, the county commissioners levied a 3c tax for the special purpose of maintaining the home for the aged and infirm; *Norfolk Southern R. R. v. Forbes*, 188 N. C. 151, 124 S. E. 132 (1924) (improvement of county home); *Atlantic Coast Line R. R. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931), where the county commissioners, pursuant to the statute set out in *Norfolk Southern Railroad Company v. Reid*, *supra*, levied a tax of 5c on the \$100 of property, in excess of the constitutional limit, for the purposes of supporting the county home, the county farm, county aid and poor relief; *held*, this statute constitutes special legislative approval of special county levies for the purposes of "maintaining county homes for the aged and infirm and other similar institutions", including "county aid and poor relief". *Nantahala Power & Light Co. v. Clay County*, 213 N. C. 698, 197 S. E. 603 (1938), where the county commissioners levied a special tax of 5c for the "upkeep county buildings, courthouse, county home, poor

erally,<sup>91</sup> and hospital care of indigent sick and afflicted poor;<sup>92</sup> county health activities;<sup>93</sup> pensions to widows of Confederate soldiers;<sup>94</sup> farm agent's salary;<sup>95</sup> county accountant's salary;<sup>96</sup> and apparently "floating indebtedness incurred for necessary expenses".<sup>97</sup>

Since 1868 the court has specifically held the following not to be special purposes: schools,<sup>98</sup> "current operating expenses",<sup>99</sup> "floating

and paupers, and incidental purposes"; *held*, as this does not indicate what the incidental purposes are, whether necessary or unnecessary expenses, or for general or special purposes, the inclusion of the term "incidental purposes" condemns the entire item.

<sup>91</sup> *Atlantic Coast Line R. R. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931), cited *supra* note 90; *cf.* *Southern Ry. v. Cherokee County*, 195 N. C. 756, 143 S. E. 467 (1928), where special taxes of "4 cents for aged and infirm", "3 cents for feeding county prisoners and providing for their welfare", levied by the county commissioners in July, 1926, were held invalid as without the "special approval" of the legislature, even though the legislature in its 1927 session passed an act endeavoring to validate the levy. In holding the tax invalid the court said, "Are these special purposes, or are they such running current expenses for general county purposes for which the Constitution provides a levy of 15 cents to meet? . . . These are current expenses of the county. Public-Local Laws 1927, ch. 201 . . . cannot validate a void levy. . . . It may be that the General Assembly could pass a special act or general law allowing a levy for special purposes of this kind in emergency cases." *Id.* at 759, 143 S. E. at 468.

<sup>92</sup> *Martin v. Commissioners*, 208 N. C. 354, 180 S. E. 777 (1935), where a special tax for the purpose of paying \$10,000 per year, under a thirty year contract, to a hospital for the medical treatment and care of the indigent sick and afflicted poor, was levied pursuant to the special approval of the General Assembly.

<sup>93</sup> *Atlantic Coast Line R. R. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931), where a special county tax was levied pursuant to N. C. CODE ANN. (Michie, 1939) §7075, authorizing each county to levy a special tax for the "preservation of the public health".

<sup>94</sup> *Norfolk Southern R. R. v. Forbes*, 188 N. C. 151, 124 S. E. 132 (1924), where the county commissioners, pursuant to a general state statute, levied a special tax of 1c in excess of the 15c limit for the purpose of increasing the pensions to widows of Confederate soldiers.

<sup>95</sup> *Nantahala Power & Light Co. v. Clay County*, 213 N. C. 698, 197 S. E. 603 (1938), where, pursuant to N. C. CODE ANN. (Michie, 1939) §§4666, 4689(a), 1297(40), and N. C. Public-Local Laws 1935, c. 41, §5, the county commissioners levied a special tax of 4c, in excess of the 15c limit, for the county farm agent's salary.

<sup>96</sup> See note 95, *supra*. Pursuant to the County Fiscal Control Act and N. C. Public-Local Laws 1935, c. 41, §4, the county commissioners levied a special tax of 5c in excess of the 15c limit for the county accountant's salary.

<sup>97</sup> *McCless v. Meekins*, 117 N. C. 34, 23 S. E. 99 (1895); *Smathers v. Commissioners*, 125 N. C. 480, 34 S. E. 554 (1899), where a special act authorized the county commissioners to issue bonds and levy an annual tax in excess of the constitutional limit for the purpose of funding an outstanding floating indebtedness incurred for necessary county expenses; *Black v. Commissioners*, 129 N. C. 121, 39 S. E. 818 (1901); *Jones v. Commissioners*, 137 N. C. 579, 50 S. E. 291 (1905); *Commissioners v. Assell, Goetz & Moerlein, Inc.*, 194 N. C. 412, 140 S. E. 34 (1927); *Brooks v. Avery County*, 206 N. C. 840, 175 S. E. 199 (1934). The purpose is special provided it is not shown that the floating indebtedness was originally incurred for "current operating expenses" or for "deficiencies in the general fund". *Cf.* *Glenn v. Commissioners*, 201 N. C. 233, 159 S. E. 439 (1931).

<sup>98</sup> See note 81, *supra*.

<sup>99</sup> *Williams v. Commissioners*, 119 N. C. 520, 26 S. E. 150 (1896), where a public-local statute authorized a county to levy a special tax in excess of the constitutional limit for the purpose of "meeting the other current expenses of

indebtedness" incurred for "current operating expenses" or for "deficiencies in the general fund".<sup>100</sup>

The question of schools as a special purpose may be eliminated from the discussion in view of the fact already pointed out that the court in *Collie v. Commissioners*<sup>101</sup> took the sting out of its former holding by excepting the schools from the constitutional limitation to the extent of the constitutional term on the authority of Article IX, Section 3. This preferred status was preserved in the constitutional amendment of 1920.

But "current operating expenses" and "floating debt" bring on more talk. From the beginning, the court seems to have been consistent in its holdings that taxes levied for such blanket purposes as "to supplement the general fund", "meeting other current expenses", "to provide for any deficiency in the necessary expenses", or "to meet the current and necessary expenses" were not for "special purposes" within the

said county"; *Southern Ry. v. Cherokee County*, 177 N. C. 86, 97 S. E. 758 (1919), where the county commissioners, pursuant to a general state statute authorizing "any county . . . to levy a special tax in excess of the constitutional limitation . . . to provide for any deficiency in the necessary expenses and revenue of said respective counties which may be caused by . . . this act", levied a 2½c tax in excess of the 66⅔c limit "for the purpose of taking up a note . . . and other current expenses"; *Seaboard Air Line Ry. v. Commissioners*, 178 N. C. 449, 101 S. E. 91 (1919), where a public-local statute authorized a county to levy a special tax in excess of the constitutional limit "to meet the current and necessary expenses of the county"; *Nantahala Power & Light Co. v. Clay County*, 213 N. C. 698, 197 S. E. 603 (1938), where the county commissioners, pursuant to N. C. CODE ANN. (Michie, 1939) §1297(8½) authorizing any county to levy a special tax in excess of the constitutional limit "to supplement the general county fund", levied a tax of 5c in excess of the 15c limit for the upkeep of county buildings and incidental purposes. The court held that as "incidental purposes" could not be recognized as a "special purpose", and as the levy was inseparable, the whole would have to fall. See *Norfolk Southern R. R. v. Reid*, 187 N. C. 320, 324, 121 S. E. 534, 535 (1924), where the court, in construing N. C. CODE ANN. (Michie, 1939) §1297(8½), said that a tax "to supplement the general county fund" is not a tax for a special purpose.

Where it was shown that there was no special approval of the legislature, property taxes in excess of the 15c limit were restrained in the following cases: *Southern Ry. v. Cherokee County*, 194 N. C. 781, 140 S. E. 748 (1927); *Southern Ry. v. Cherokee County*, 195 N. C. 756, 143 S. E. 467 (1928) (4c for aged and infirm, 3c to pay jurors and state's witnesses, and 3c for feeding county prisoners and providing for their welfare); *Atlantic Coast Line R. R. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931) (1c for maintenance of the county court and the public welfare); *Nantahala Power & Light Co. v. Clay County*, *supra*, where taxes in excess of the 15c limit were restrained when levied for sheriff's salary and expense of office, register of deeds' salary, clerk superior court's salary, "miscellaneous expense of county government", county attorney's fees, and an "emergency tax" purported to be levied under N. C. Pub. Laws 1927, c. 146, §6.

The following particular expenditures have been held to be "current expenses" of the county, and not "special purposes" for which the 15c limit can be exceeded, even though the special approval of the legislature is obtained: commissioners' pay, expense and board, "running the county courthouse", "care of courthouse grounds", county attorney's fees, tax listing expense, expense of holding elections, expense of holding courts, and "caring for and feeding jail prisoners". *Nantahala Power & Light Co. v. Clay County*, *supra*.

<sup>100</sup> *Glenn v. Commissioners*, 201 N. C. 233, 159 S. E. 439 (1931).

<sup>101</sup> 145 N. C. 170, 59 S. E. 44 (1907).

meaning of Article V, Section 1, for which the constitutional limit could be exceeded, even with special legislative approval. Thus, in *Seaboard Air Line Railway v. Commissioners*<sup>102</sup> the legislature, by a public-local act, had authorized Bladen County to levy a special tax not exceeding 10c on the \$100 of property and 30c on the poll "to meet the current and necessary expenses" of the county. Pursuant to this act, the county commissioners levied a special tax of 5c on property, in excess of the constitutional limitation. In holding the tax invalid, Justice Allen said: "These authorities establish beyond controversy that the State and county taxes combined cannot exceed 66 $\frac{2}{3}$  cents on property . . . for ordinary expenses, and it would seem to require no discussion to show that 'current and necessary expenses,' for which the tax levied by the defendant proposes to provide, are ordinary expenses. . . .

"If the General Assembly can authorize the levy of a tax in excess of the constitutional limitation for the ordinary expenses of a county . . . Art. V, sec. 1 . . . which was intended to protect the people against excessive taxation, would be a 'dead letter' and of no effect."

Has the court ever gone so far, however, as to hold that the aforementioned purposes were transformed into "special purposes" by the simple device of shifting from the present tense to the past tense? From anticipated expense into "floating indebtedness"? Can anything which is not a "special purpose" for the levying of taxes become a "special purpose" for the payment of debts? Dissenting members of the court have frequently taunted the majority with such performance. "If the act had authorized the special levy for the purpose of supplying 'a deficiency in the current expenses of the county,'" said Justice Clark, dissenting in *Williams v. Commissioners*,<sup>103</sup> "we find nothing in the Constitution to forbid it. . . . A county need not first get into debt and then get permission to levy the tax. The Legislature in its discretion may authorize the extra taxation whenever satisfied that it is necessary, of which necessity the General Assembly is the sole judge. . . .

"Neither sound principles of political economy nor any provision of the Constitution requires that indebtedness for such necessary expenses should be incurred at a heavy discount . . . before the Legislature will authorize a tax levy to pay it. It is as much a 'special purpose' if the Legislature, being satisfied that the current rate of taxation is insufficient to pay the current expenses of a county, authorizes by a special act the special tax in the beginning of the inevitable deficit, as after it has

<sup>102</sup> 178 N. C. 449, 454, 101 S. E. 91, 93 (1919).

<sup>103</sup> 119 N. C. 520, 524, 26 S. E. 150, 152 (1896). Similar dissenting opinions were written in *Southern Ry. v. Cherokee County*, 177 N. C. 86, 99, 97 S. E. 758, 764 (1919), and *Seaboard Air Line Ry. v. Commissioners*, 178 N. C. 449, 455, 101 S. E. 91, 94 (1919).

been incurred." These dissenting opinions follow a great deal of legislative practice as evidenced by numerous local acts authorizing particular counties to issue bonds to fund "floating indebtedness", or "outstanding indebtedness", or "lawful indebtedness incurred for necessary expenses", and to levy a special tax to pay the interest and principal thereon, but seldom specifying that such claims must originally have been incurred for "special purposes". To illustrate: The Public Laws of 1883 contained several of such statutes, authorizing counties to issue bonds to fund their "floating indebtedness" and to levy a special tax therefor.<sup>104</sup> It might be said that this practice has been further supported by decisions of the court upholding bonds issued and special taxes levied pursuant to such statutes.<sup>105</sup> The court has assumed that the floating indebtedness was incurred for special purposes when there was no proof to that effect—only an absence of proof to the contrary. "The record does not disclose," said Justice Clarkson in *Commissioners v. Assell, Goetz & Moerlein, Inc.*,<sup>106</sup> "that the \$50,000 indebtedness was for current or general county expenses. If it did the bonds to fund same would be invalid, as the levy for such purpose could not exceed, under the constitutional limitation, 15 cents on the \$100 valuation of property. The record does show that the proposed bond issue was for necessary expenses of the county and a valid and legal obligation of the county. The subject or subjects of the necessary expense or expenses for special county purposes are not set forth, and nothing else appearing, it is taken for granted that they were for one or more special necessary purposes and funding permissible under Constitution, Art. V, sec. 6, and the County Finance Act. The special approval has been given by the general act."

But "Is the county tax to be deemed levied for a special purpose where the debt to be funded *may have been incurred for ordinary current expenses?*" was the question asked upon a rehearing of this case.<sup>107</sup> Although this question was not answered in the rehearing for the reason that "it was not . . . presented by the record", it seems to be answered in part by the court in *Glenn v. Commissioners*.<sup>108</sup> There the county commissioners, pursuant to the County Finance Act,<sup>109</sup> sought to issue \$65,000 of county bonds "for the purpose of funding

<sup>104</sup> N. C. Pub. Laws 1883, cc. 72, 85, 204, 229, 262, and 347.

<sup>105</sup> See note 97, *supra*.

<sup>106</sup> 194 N. C. 412, 418, 140 S. E. 34, 37 (1927).

<sup>107</sup> *Commissioners v. Assell, Goetz & Moerlin, Inc.*, 195 N. C. 719, 143 S. E. 474 (1928). In view of the fact that the bonds to be issued in this case were to fund a \$50,000 floating indebtedness in the "General County Fund", it is altogether likely that part of the indebtedness was originally incurred for "current expenses", and not for "special purposes".

<sup>108</sup> 201 N. C. 233, 159 S. E. 439 (1931).

<sup>109</sup> N. C. CODE ANN. (Michie, 1939) §1334(8)(j).

. . . a like amount of indebtedness created by said county for its current necessary expenses" constituting a deficit in the "County Operating Expense Fund". In seeking to restrain a recitation in the bonds that "an unlimited tax would be levied to pay the principal and interest", the plaintiff directly presented the question as to whether the initial indebtedness must have been for "special purposes" and not "current expenses". "When a debt is originally created for a purpose properly denominated special, which is also a necessary expense of the county, its funding . . . may be declared a special purpose because of its initial character . . .," said the court,<sup>110</sup> "but when the debt arises from a deficiency in the general county fund, its funding . . . would not be 'for a special purpose' in the constitutional sense. . . . To say that the funding of . . . notes, given for money borrowed to meet the general expenses of the county . . . may itself be declared a special purpose would be to convert a note given for one purpose into . . . [a] special one by the simple expedient of renewing it and changing its name." From these decisions it may be deduced that if on the record the indebtedness was incurred for necessary county expenses, nothing to the contrary appearing, the court assumes it was for one or more "special purposes" within the meaning of Article V, Section 6; but if it is shown in the record that the deficit was in the general county fund and was incurred for general county expense, then the funding bonds will not be deemed for a "special purpose" for which the limit may be exceeded, even with the special approval of the legislature.

While the court has been consistent in holding taxes levied for purposes included under such descriptive phrases as "current operating expenses", "deficiency in general funds", "other current expenses", "to supplement the general fund", etc., not to be for a "special purpose" within the meaning of Article V, Section 6, it has not always seemed consistent in its view as to the specific items coming within the meaning of the term. To illustrate: In *Martin v. Commissioners*,<sup>111</sup> the court by way of dictum indicated that "providing for the poor and infirm" of the county would be a general county purpose, and, in *Southern Railway Company v. Cherokee County*,<sup>112</sup> that "4c for aged and infirm" would be for "current expenses", yet it has upheld a special tax for "county aid and poor relief" as for a special purpose in the constitutional sense.<sup>113</sup> Again in *Nantahala Power & Light Company v. Clay*

<sup>110</sup> *Glenn v. Commissioners*, 201 N. C. 233, 239, 159 S. E. 439, 442 (1931).

<sup>111</sup> 208 N. C. 354, 366, 180 S. E. 777, 784 (1935).

<sup>112</sup> 195 N. C. 756, 759, 143 S. E. 467, 468 (1928).

<sup>113</sup> *Atlantic Coast Line R. R. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931).

*County*,<sup>114</sup> the court indicated by way of dictum that the "expense of running" a courthouse and the "care of courthouse grounds" were general county expenses and not special purposes, yet it had previously held that the "upkeep of the courthouse and other county buildings" was a "special purpose".<sup>115</sup> It may be, however, that while the court, in different decisions, has used similar terms, it has had in mind substantially different types of expenditures.

From the first case decided under the 1868 constitution to the last case decided under the 1920 amendment, the court has often said that certain things were or were not special purposes without saying why. The recent case of *Nantahala Power & Light Company v. Clay County*<sup>116</sup> throws some light on the guiding considerations. In speaking of item 1, including: "County commissioners' pay, expense, and board, county courthouse and grounds, and county attorney's fees", the court said: ". . . all the expenses set forth therein are general. The board of county commissioners is the governing and tax levying authority. Its functions are general in every aspect, and the expenses of the board are constantly recurring. While the expense of building of courthouse may be special, the expense of running it after it is built is general. While the purchase of the courthouse grounds may be special, the care of the grounds is a general expense. Therefore, each of the purposes included in this item is a general expense and comes within the limitation of Article V, section 6, of the Constitution." The court continued:<sup>117</sup> ". . . the listing of taxes, holding of elections and holding of courts are general expenses recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government. Caring for and feeding jail prisoners is a general expense continuous and ever present. Under the well established principles hereinbefore stated, these are not special purposes. Taxes therefor may be levied only within the constitutional limitation. There may be circumstances under which these items would be expenses for special purposes, but such circumstances do not arise in the present case." In these expressions, the court apparently thinks of *special purposes* as distinguished from *general purposes*, with the line of demarcation being whether the expenditures are "recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government." It emphasizes this distinction with the illustrations: "While the

<sup>114</sup> 213 N. C. 698, 706, 197 S. E. 603, 608 (1938).

<sup>115</sup> *Atlantic Coast Line R. R. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931).

<sup>116</sup> 213 N. C. 698, 706, 197 S. E. 603, 608 (1938).

<sup>117</sup> *Id.* at 708, 197 S. E. at 610.



expense of building of courthouse may be special, the expense of running it after it is built is general. While the purchase of the courthouse grounds may be special, the care of the grounds is a general expense."<sup>118</sup>

But the court then holds that the levy for the county farm agent's salary is for a special purpose:<sup>119</sup> "The character of the work is in a special field . . . we see no reason why it should not be classified as a special purpose"; and the court also holds the levy for the county accountant's salary to be for a special purpose;<sup>120</sup> "The position and duties of county accountant were created under the County Fiscal Control Act. . . . The declared purpose of this act is 'to provide a uniform system for all the counties of the State by which the fiscal affairs of the county and subdivisions thereof may be regulated . . . to the end that every county in the State may balance its budget and carry out its function without incurring deficits.' The office of county accountant with prescribed duties was created with this special purpose in view. The duties of county accountant constitute a 'governor' by which the speed of the spending motor of county government is regulated. The duties are special in character, and are in addition to the functions of other offices pertaining to the ordinary operation of county government." In these expressions the court apparently thinks of *special purposes* as "work in a special field", or as work with "a special purpose in view", and of functions of recent origin as compared to traditional county functions.

This decision of the court is a distinct advance in this field in that it undertakes to formulate standards to guide officials in determining what is and what is not a "special purpose". It is breaking new ground; and the fact that the court leaves many questions unanswered does not mean that it does not answer the questions raised in the case before it. It adds to the list of things that are and are not special purposes; and its touchstones for the future are tentatives. To illustrate: "There may be circumstances," said the court, referring to items it held not to be for "a special purpose", "under which these items would be expenses for special purposes, but such circumstances do not arise in the present case."<sup>121</sup>

What is the line of demarcation between the salaries of the farm agent and county accountant, and the salaries of other county officers? Are they not all alike "recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government"? Are they not all alike "work in a special field" and with "a special purpose in view"?

What if a county takes on a new function? Continues it from year

<sup>118</sup> *Id.* at 706, 197 S. E. at 608.

<sup>120</sup> *Ibid.*

<sup>119</sup> *Id.* at 707, 197 S. E. at 609.

<sup>121</sup> *Id.* at 708, 197 S. E. at 610.

to year? Expands it? Builds a building to house it? Adds to the building? If new functions, new buildings, new grounds are special purposes, but their regularly recurring maintenance falls within the 15c limit, may not a county by this process create a load too heavy to carry? Is this the condition the constitutional limit was designed to prevent? "It is appropriate to say that counties must live within their income, and budget their general expenses to fit their income," says Justice Winborne.<sup>122</sup> "Counties must live within their income, as provided by the Constitution," said Justice Clarkson<sup>123</sup> before him. "If what are often miscalled the 'necessary expenses' of a county exceed the limitation prescribed by law, the necessity cannot justify the violation of the Constitution," said Justice Bynum<sup>124</sup> in 1876: "In such cases two remedies are open to the county. One is to apply to the Legislature, if the tax is required for a special purpose. . . . The other and better way, however, is to *reduce the expenditures*. The old proverb, 'cut the the garment according to the cloth,' has in it much practical wisdom." These commentaries, however, cover only one part of the picture. The constitution itself provides the way for counties to live beyond their "ordinary living expenses" whenever they take on "special purposes". And the court itself in determining what a "special purpose" is will determine how far beyond its "ordinary living expenses" a county may go.<sup>125</sup>

<sup>122</sup> *Ibid.*

<sup>123</sup> *Southern Ry. v. Cherokee County*, 195 N. C. 756, 759, 143 S. E. 467, 468 (1928).

<sup>124</sup> *French v. Commissioners*, 74 N. C. 692, 696 (1876).

<sup>125</sup> But suppose the legislature has given its special approval and the court has held the purpose of the tax to be a special purpose for which the county may levy taxes in excess of the 15c limit, is this the end of the matter? At this point the tax must run the gauntlet of Article VII, §7: "No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein." What does this mean? Suppose the approved special purpose is a necessary expense—the county may without further ado levy an unlimited tax. Suppose it is not a necessary expense—the county must have a vote of the people and obtain the approval of a majority of the qualified voters before it can levy a tax at all, either within or in excess of the constitutional limit.

The power of county authorities to levy taxes under the constitutional restrictions has often been summed up by the court in the following three rules:

1. Within the limitations fixed by Article V, §6, the county commissioners of the several counties may levy taxes for the necessary expenses of the county without a vote of the people or special legislative approval.

2. For special purposes and with the special approval of the General Assembly, the county commissioners may exceed the limitations of Article V, §6, without a vote of the people; provided, the special purposes so approved are for the necessary expenses of the county.

3. For purposes other than necessary expenses, whether special or other, taxes may not be levied by the county commissioners either within or in excess of the limitations fixed by Article V, §6, except by a vote of the people under special legislative authority—Article VII, §7. *Nantahala Power & Light Co. v. Clay County*, 213 N. C. 698, 703, 197 S. E. 603, 607 (1938), and cases cited.