

2-1-1941

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Recommended Citation

Albert Coates, *The Battle of Exemptions*, 19 N.C. L. REV. 154 (1941).

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THE BATTLE OF EXEMPTIONS

ALBERT COATES*

In the year 1665, the Lords Proprietors authorized "equall taxes and assessments eqyally to rayse Moneyes or goods upon all Lands (excepting the lands of us the Lords Propyators before settling) or persons within the severall precincts Hundreds Parishes Manors or whatsoever other denizons shall hereafter be made and established in ye said Countyes as oft as necessity shall require and in such manner as to them shall seems most equall and easye for ye said Inhabitants in order to the better supporting of the publick Charge of the said Government, and for the mutuaall safety defense and security of ye Countyes."¹

In 1868 the North Carolina Constitutional Convention provided that "Laws shall be passed, taxing by a uniform rule 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. The general assembly may also tax trades, professions, franchises, and incomes: Provided, that no income shall be taxed when the property from which the income is derived is taxed."²

The 1868 convention also provided that "Property belonging to the State, or to municipal corporations, shall be exempt from taxation. The general assembly may exempt cemeteries, and property held for educational, scientific, literary, charitable, or religious purposes; also, wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, to a value not exceeding three hundred dollars."³

The constitutional basis of property tax exemptions has many times been broadened: in 1876 a constitutional amendment permitted the general assembly to exempt "any other personal property" up to \$300 in value, in addition to the specific items enumerated;⁴ an amendment in 1918 *required* the general assembly to *exempt* "from taxes of every kind" notes, mortgages, and all other evidence of indebtedness, made to run for not less than five nor more than twenty years, given in good faith *for the purchase price of a home*, when the purchase price does not exceed three thousand dollars, and the interest rate does not exceed five and one-half per cent;⁵ an amendment in 1924 extended the 1918

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¹ THORPE, AMERICAN CHARTERS, CONSTITUTIONS AND ORGANIC LAWS (1909) 2758.

² N. C. CONST. (1868) art. V, §3.

³ N. C. CONST. (1868) art. V, §5.

⁴ N. C. CONST. (1876) art. V, §5.

⁵ N. C. CONST. (1918) art. V, §3.

mandatory exemption to fifty per cent of an eight thousand dollar value, and further broadened this exemption at some points and narrowed it at others;⁶ an amendment in 1936 removed the requirement that the general assembly *must exempt this particular property* and substituted the provision that the general assembly *may classify all types of property* for taxation purposes, so long as the taxes are uniform within each class.⁷

Thus the problem of who and what to tax, or exempt from tax, so baldly stated in the 1665 authorization to tax "all lands, excepting the lands of us the Lords Propriators", has continued throughout the two hundred and seventy-five years from that day to this. For the past few years the problem has been, and perhaps still is, acute with reference to "property belonging to the state or to municipal corporations"; it is at fever heat today with reference to income producing property held by charitable organizations. This article undertakes to inquire into the background, development, and present status of these property tax exemptions, in the effort to throw light on existing controversies. It outlines (1) the property taxed, (2) the taxing methods as affecting the twin problems of taxation and exemptions, and (3) the property exempt from taxes.

II

PROPERTY TAXES

When the 1868 convention wrote into the constitution of North Carolina the requirement that "Laws shall be passed, taxing by a uniform rule 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,"⁸ it gave expression to a policy which had been evolving out of the experience of Proprietors, King, and People for nearly two hundred years—from days when taxation was the exception and exemption was the rule, to days when taxation was the rule, and exemption the exception.

Lands. Throughout colonial days the Lords Proprietors (1663-1729), followed by the Crown (1729-1776), collected "quit rents" at varying rates per acre of land,⁹ to cover the small costs of government. The laws of 1715 imposed "a tax upon land";¹⁰ and as lands were developed throughout the years this tax expanded to include all "houses" thereon,¹¹ all "buildings and structures thereon",¹² all "improvements and permanent fixtures" thereon,¹³ and all "rights and privileges belong-

⁶ N. C. CONST. (1924) art. V, §3.

⁷ N. C. CONST. (1936) art. V, §3.

⁸ N. C. CONST. (1868) art. V, §3.

⁹ MACON, A FISCAL HISTORY OF NORTH CAROLINA (1932) 87.

¹⁰ N. C. PUB. LAWS 1715, c. 63, §1.

¹¹ N. C. PUB. LAWS 1777, c. 2, §2.

¹² N. C. PUB. LAWS 1782, c. 7, §1.

¹³ N. C. PUB. LAWS 1939, c. 310, §2(30).

ing or in anywise appertaining thereto".¹⁴ Thus, the tax on land has expanded to include a tax on things affixed to land, and both land and things affixed to land are steadily expanding in volume and in value as new discoveries bring new uses: as the discovery of electricity turns flowing streams into potential sources of electric power, and is followed by power dams, lakes and reservoirs, transmission lines from power plants to market places and the machinery for transmuting a river of water into light; as the invention of motor vehicles gives new values to oil lands, turns appropriate locations into potential sites for manufacturing plants, garages and service stations; and so on in multiplying illustrations.

Personal Property: Tangible. The tax on tangible personal property started with a tax on a few specifically enumerated items and spread to others: in 1777 it was a tax on "slaves, stock in trade, horses and cattle";¹⁵ in 1851 it was a tax on gold and silver plate, ornamental jewelry, pleasure vehicles, gold and silver watches, harps and piano fortes used by the owner, pistols, bowie knives, dirks and sword canes;¹⁶ the laws of 1863 added household and kitchen furniture, horses, mules, cattle, hogs and other livestock kept for sale, cotton and tobacco, with scattered exemptions of specific items;¹⁷ the laws of 1867 added wagons and other farming utensils, agricultural products, ships, barges, boats and other watercraft, with scattered exemptions;¹⁸ the laws of 1869 taxed "all personal property".¹⁹ Thus the transition was complete from the days when all personal property was exempt unless specifically taxed to the day when all was taxed unless specifically exempted.

Intangible. The tax on intangible personal property also began with a few specifically enumerated items, and spread to others: in 1777 it was a tax on "money and interest";²⁰ in 1851 it was a tax on interest due from solvent debtors, on money invested in slave trade, in stocks of any kind, in shares in any trading company, mortgages and deeds of trust;²¹ the laws of 1867 expanded solvent credits to include all claims or demands owned by the taxpayer whether due or not, and added investments in public bonds, shares of stocks in National Banks located in this state, and money invested in any trade or business;²² the laws of 1869 taxed "all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise".²³ Again the transition was complete

¹⁴ *Ibid.*

¹⁵ N. C. PUB. LAWS 1777, c. 2, §2.

¹⁶ N. C. PUB. LAWS 1850-51, c. 121, §§2, 5.

¹⁷ N. C. PUB. LAWS 1862-63, c. 57, §1.

¹⁸ N. C. PUB. LAWS 1866-67, c. 72, Schedule A.

¹⁹ N. C. PUB. LAWS 1868-69, c. 108, Class 1.

²⁰ N. C. PUB. LAWS 1777, c. 2, §2.

²¹ N. C. PUB. LAWS 1850-51, c. 121, §§1, 2.

²² N. C. PUB. LAWS 1866-67, c. 72, Schedule A.

²³ N. C. PUB. LAWS 1868-69, c. 108, Class 1.

from the days when all intangible property was exempt unless specifically taxed to the day when all was taxed unless specifically exempted.

Thus, the tax on personal property has expanded from a tax on tangibles to a tax on intangibles also, and the volume and value of both tangibles and intangibles steadily increases as new discoveries bring new uses: as the telegraph, telephone, and radio, along with electric power and motor power and other sources of property flowing from inventive genius bring into existence new types of personal property unknown before.

III

TAXING METHODS AS RELATED TO EXEMPTIONS

A. "TAXING BY A UNIFORM RULE"

Land. There is evidence that land was sometimes classified in colonial days for the payment of quit rents to the King. A report in 1773 shows payments on one class of lands at the rate of twelve pence per hundred acres, another class at the rate of six pence, and another at the rate of four pence.²⁴ In 1784 a legislative committee proposed that land be divided for taxation into three classes according to fertility but this proposal was defeated.²⁵ Two years later a different form of classification was proposed and enacted: land east of the Blue Ridge Mountains was taxed at one rate; land between the Blue Ridge and Cumberland Mountains at two-thirds of this rate; land lying beyond the Cumberland Mountains at one-third.²⁶ The desire to attract and hold settlers beyond the mountains succeeded where the desire to equalize land taxes at home had failed.

The legislative refusal during the next three quarters of a century to exercise its freedom to classify lands crystallized in the constitutional requirement of 1868 that all property be taxed by a uniform rule.²⁷ This uniform rule prevented classification, in theory at least, for another three quarters of a century until the 1936 amendment to the constitution restored the legislative power to classify lands for taxes so long as the taxes were uniform within each class.²⁸

Pursuant to the 1936 amendment, the legislature began to exercise its newly restored freedom to classify by declaring it to be the "policy of this state so to use its system of real estate taxation as to encourage the conservation of natural resources and the beautification of homes and roadsides, and all tax assessors are hereby instructed to make no increase in the tax valuation of real estate as a result of the owner's enterprise in adopting any one or more of the following progressive

²⁴ 9 SAUNDERS, COLONIAL RECORDS OF NORTH CAROLINA 368.

²⁵ 19 CLARK, STATE RECORDS OF NORTH CAROLINA 598.

²⁶ 24 CLARK, STATE RECORDS OF NORTH CAROLINA 952.

²⁷ N. C. CONST. (1868) art. V, §3.

²⁸ N. C. CONST. (1936) art. V, §3.

policies: (1) Planting and care of lawns, shade trees, shrubs and flowers for non-commercial purposes, (2) Repainting buildings, (3) Terracing or other methods of soil conservation, to the extent that they preserve values already existing, (4) Protection of forests against fire, (5) Planting of forest trees on vacant land for reforestation purposes (for ten years after such planting)."²⁹ But throughout the period from 1868 to 1936 neither constitutional mandate nor legislative fiat completely prevented listtakers and assessors from exercising a discretionary power denied them by the law and substituting an extra legal classification according to their own individual conceptions of social policy; and the 1936 amendment simply allowed all listtakers and assessors to do legally what many had long been doing without authority.

Personal Property. From the beginnings of law making in North Carolina the legislature exercised its freedom to classify personal property for tax purposes: by taxing some classes of personal property and not taxing others;³⁰ by taxing different classes at different rates;³¹ by taxing different items at different rates;³² by classifying and re-classifying tangible and intangible personal property at will.³³ In theory the legislature lost the power to classify tangible or intangible personal property when the 1868 constitution prescribed that all property be taxed by a uniform rule. And, in practice, it adhered to uniformity except in the instance of certain forms of intangible property.³⁴ The 1936 amendment to the constitution restored the legislative power to classify personal property for taxation.³⁵ Open classification of intangibles reappeared, as the general assembly in 1937 levied a tax of ten cents on the hundred dollars value of bank deposits; twenty cents on the hundred dollars of money in hand; twenty-five cents on accounts receivable, and certain matured insurance, annuities and trust funds; thirty cents on corporate stocks; forty cents on bonds, notes, mortgages and other evidences of debt.³⁶

As between real and personal property the legislature continually used its classifying power. At one time it fixed the tax on intangibles at one rate and the tax on land and tangibles at another.³⁷ Later it re-

²⁹ N. C. PUB. LAWS 1939, c. 310, §500. ³⁰ N. C. PUB. LAWS 1777, c. 2, §2.

³¹ N. C. REV. STAT. (1836-37) c. 102; N. C. REV. CODE (1854) c. 99.

³² *Ibid.*

³³ N. C. PUB. LAWS 1777, c. 2, §2; N. C. PUB. LAWS 1782, c. 7, §1; N. C. PUB. LAWS 1784, c. 1, §1.

³⁴ N. C. PUB. LAWS 1868-69, c. 74, §13(6), provided that "stocks in any incorporated company . . . and their estimated value" shall be listed for taxation, "but the stock shall not be taxed if the property of the company pays a tax". N. C. PUB. LAWS 1868-69, c. 74, §12, taxed solvent credits but allowed the taxpayer to deduct from the value of such credits the amount owed by him.

³⁵ N. C. CONST. (1936) art. V, §3.

³⁶ N. C. PUB. LAWS 1937, c. 127, Schedule H.

³⁷ N. C. PUB. LAWS 1781, c. 3, §2.

moved the tax on intangibles altogether and continued the tax on lands and tangibles.³⁸ Again it removed the tax on tangible personal property and continued the tax on lands.³⁹ This power to classify property into real and personal was lost in the constitution of 1868,⁴⁰ and restored in 1936.⁴¹

Thus, after an intermission of sixty-eight years, the general assembly is again as free as it was from 1663 to 1868 to classify for taxation purposes all property whether real or personal and whether tangible or intangible.

B. "ACCORDING TO ITS TRUE VALUE IN MONEY"

Throughout Colonial days and, with a short intermission through the Revolution, up into the second decade of the nineteenth century, land was taxed by quantity and not by value.⁴² The owners of nature's favored acres were North Carolina's favored sons. As early as 1756 the town of Wilmington abandoned the quantity theory and levied a tax of two cents on the \$100 value of every house in town.⁴³

In 1778, under the stress and strain of war the general assembly in a memorable enactment levied its property taxes on specific items according to value: "Whereas it is necessary . . . that the Treasury be as soon as possible supplied with money . . . and nothing can answer such purposes so effectually, and with such convenience and advantage to this state, as *a general tax in proportion to the ability of each individual citizen throughout the same.* . . ."⁴⁴ (Italics ours.) When the war was over this limited tax levied according to value was discarded for an acreage tax reminiscent of Colonial days. The ad valorem land tax did not return to stay until 1814.⁴⁵

In 1854 the argument for a general property tax was advanced by Governor Reid on the theory that it would tend to equalize the tax burden between the various classes.⁴⁶ This fight was apparently won when the constitution of 1868 required the taxation of all real and personal property, by a uniform rule and "according to its true value in money".⁴⁷

But the fiat of the constitutional convention was not accepted without further struggle. In *Pullen v. Raleigh*, the first case involving this constitutional provision to come before the court, the city of Raleigh sought to levy a tax on the solvent credits of a resident. The taxpayer pointed out (1) that the city charter authorized taxation of eight

³⁸ N. C. PUB. LAWS 1782, c. 7, §1.

³⁹ N. C. PUB. LAWS 1784, c. 1, §1.

⁴⁰ N. C. CONST. (1868), art. V, §3.

⁴¹ N. C. CONST. (1936) art. V, §3.

⁴² MACON, A FISCAL HISTORY OF NORTH CAROLINA (1932) 92 *et seq.*, 105 *et seq.*

⁴³ 23 CLARK, STATE RECORDS OF NORTH CAROLINA 45.

⁴⁴ N. C. PUB. LAWS 1778, c. 26, §1.

⁴⁵ MACON, A FISCAL HISTORY OF NORTH CAROLINA (1932) 250 *et seq.*

⁴⁶ Governor's message 1854, p. 16.

⁴⁷ N. C. CONST. (1868) art. V, §3.

specific items not including solvent credits, (2) that Article 9, Section 7, of the state constitution limited the taxing power of cities and towns to "property", at most, and that the word "property" did not include solvent credits, and (3) that neither charter nor constitution authorized the tax. The court in accepting this argument observed: "The word 'property' about which so much was said on the argument, is not used in that enumeration of the subject of taxation [in the city charter]. In regard to that word, by the bye, we see that the Constitution does not make it include 'money, credits, investments in bonds', etc. 'Real and personal property' is used in a sense to exclude such 'credits and investments'. Art. 5, sec. 3".⁴⁸ Fourteen years later the court accepted this limited definition of the word "property", even under a charter authorizing the town to tax "all personal property" therein.⁴⁹

Curiously enough a conflicting interpretation of this constitutional provision was developing in the same court at the same time. Three years after the pronouncement in *Pullen v. Raleigh*, another case involving the same constitutional provision came before the court.⁵⁰ The general assembly had authorized the city of Charlotte to tax "all real and personal property", and the city had levied a tax on the solvent credits of the plaintiff taxpayer. Counsel repeated the once successful argument, but here the court rejected it on the theory that Article 5, Section 3, authorized the state to tax solvent credits and all "personal property", that the state had authorized the city of Charlotte to tax solvent credits and all "personal property", that Article 9, Section 7, was a limitation of taxing method and not of taxing power, and that even if it were a limitation of taxing power the word "property" included solvent credits.

Later in the same year the question came again before the court.⁵¹ Under authority to tax the "real estate" of its inhabitants, Elizabeth City had levied a tax on real estate only. An objecting taxpayer argued that Article 9, Section 7, required that taxes be levied on "all property", real and personal, including solvent credits; and the court so held. At the same term, the court went even further and upheld a tax imposed by the city of Fayetteville on shares of stock even though the power to tax this specific item was not mentioned in the city charter.⁵² "It is

⁴⁸ 68 N. C. 451, 456 (1873).

⁴⁹ *Vaughan v. Murfreesboro*, 96 N. C. 317, 2 S. E. 676 (1887).

⁵⁰ *Wilson v. Charlotte*, 74 N. C. 748 (1876).

⁵¹ *Cobb v. Elizabeth City*, 75 N. C. 1 (1876).

⁵² *Kyle v. Commissioners*, 75 N. C. 445 (1876). "It is admitted", said Justice Bynum, "that the town of Fayetteville possesses the power of taxation for corporate purposes, by virtue of its charter and the general laws of the state. . . . This concession, we think, is decisive of the case before us. For whenever the power is exercised, all taxes whether state, county or town, by force of the constitution, must be imposed upon all the real and personal property, money, credits, investments in bonds, stock, joint-stock companies, or otherwise, situate in the state, county or town, except property exempted by the constitution." *Id.* at 446.

the provision, and was the purpose of the Constitution", said Justice Bynum, "that thereafter there should be no discrimination in taxation in favor of any class, person or interest, but that everything, real and personal, possessing value as property, and the subject of ownership, shall be taxed equally and by a uniform rule. In this respect the present constitution shows no favors and allows no discretion. If, then, the town of Fayetteville has the power to tax, the constitution steps forward and commands that *all* property shall be taxed and by a uniform rule. Shares in a national bank are investments in stock, and comprise the largest portion of the moneyed wealth of the country."⁵³

These conflicting viewpoints developing in the same court at the same time clashed in the decisive case of *Redmond v. Commissioners of Tarboro*.⁵⁴ The general assembly had authorized the town of Tarboro to "levy a tax on all real and personal property" in the town. The town levied a tax on "all property . . . both real and personal, including all moneys, credits in bonds, stocks, joint stock companies or otherwise." A taxpayer owning solvent credits protested and appealed to the court. It was there argued for the taxpayer⁵⁵ (1) that far from prohibiting classification of property the constitution itself had resorted to four distinct classifications: first, a capitation tax; second, a tax on moneys, credits, investments in bonds, stocks, joint stock companies or otherwise "which must be taxed according to a uniform rule"; third, a tax on all real and personal property according to its true value in money; fourth, a tax on trades, professions, franchises and incomes; (2) that the general assembly therefore had the power to classify personal property into tangibles and intangibles, and the power to authorize the town of Tarboro to do so, and when it authorized Tarboro to levy a tax upon "all real and personal property" it was using the words in the restricted sense excluding solvent credits.

The court overruled this argument and held:⁵⁶ (1) That the constitution commands that *all* property be taxed. "In the absence of constitutional limitations," said Justice Shepherd, "there is, it is said, no restraint whatever upon the Legislature, and it may discriminate in favor of or against a particular class of persons or property, and pass

⁵³ *Id.* at 447.

⁵⁴ 106 N. C. 122, 10 S. E. 845 (1890). ⁵⁵ *Id.* at 143, 10 S. E. at 851 *et seq.*

⁵⁶ *Id.* at 125, 10 S. E. at 846. "The check upon such an abuse of power", continued Justice Shepherd, "is in the influence of the constituents over their representatives; and the weight of authority is that the courts have no right to interfere with this exercise of the legislative will. Thus it is seen that a wide field is open for a war between different classes of property, in that one class may be taxed to the exclusion or to the prejudice of another, and that under the forms of a free government, an excited partisan legislative majority may commit wrongs against the rights of property as flagrant and oppressive as those which have disgraced the reigns of the most despotic rulers."

laws in violation of every principle of just government, by an unequal distribution of the public burdens. . . ."

(2) The court further held⁵⁷ that the word "property" includes moneys, credits, investments and other choses in action because the spirit of the constitution requires it. "Clear and convincing indeed, then, must be the reasoning which gives a restricted meaning to the word 'property' when used in reference to municipal taxation, while, as to all other taxation, it is to be taken in its natural and general sense. Upon what principle can it be contended that one who has no tangible property, but who owns a hundred thousand dollars in solvent credits, may enjoy all of the conveniences, safeguards and other benefits of town life, and contribute nothing whatever in the payment of common expenses? Yet such will be the effect if the restricted interpretation contended for is to prevail. . . . No good reason can be assigned in support of such an unjust discrimination, while every principle of justice and common fairness sternly forbids it."

Thus, the uniform and ad valorem requirements for a general property tax, fought for from colonial days, put periodically into the statute law thereafter, and embodied in the constitution of 1868, was in 1890 made to stick at least in theory. In taxing certain classes of intangibles, however, the state did not go as far in practice as it went in theory. The general assembly prior to 1868 allowed the taxpayer to deduct the amount of his debts from the total value of his solvent credits;⁵⁸ in 1869 it allowed him to deduct the rent due for the current year on taxable property;⁵⁹ and this policy of deductions was continued without interruption, in varying forms, in the years that followed. In 1918 a constitutional amendment⁶⁰ made a further dent in the theory and practice by requiring the general assembly to *exempt* "from taxes of every kind": notes, mortgages, and all other evidence of indebtedness, made to run for not less than five nor more than twenty years, given in good faith *for the purchase price of a home*, when the purchase price does not exceed three thousand dollars, and the interest rate does not exceed five and one-half per cent. Another constitutional amendment in 1924⁶¹ extended the 1918 exemption (1) to fifty per cent of the value of notes, mortgages and all other evidence of indebtedness, *or any renewal thereof*, (2) given in good faith *to build, repair or purchase a home*, (3) when said loan does not exceed eight thousand dollars . . . provided, (4) the holder thereof resides in the county where the land lies and there lists it for taxation, and (5) "provided further that when said notes and mortgages are held and taxed in the county where the house is situated, then the

⁵⁷ *Id.* at 130, 10 S. E. at 848.

⁵⁸ N. C. PUB. LAWS 1866-67, c. 72, Schedule A, Class 1.

⁵⁹ N. C. PUB. LAWS 1868-69, c. 74, §12.

⁶⁰ N. C. CONST. (1918) art. V, §3. ⁶¹ N. C. CONST. (1924) art. V, §3.

owner of the house shall be exempt from taxation of every kind for fifty per cent of the value of said notes or mortgages". This exemption was nullified by the constitutional amendment of 1936,⁶² and the general assembly in 1937 washed away the words of the statutes giving effect to it.

Also, in taxing corporate stocks the general assembly's practice did not always square with constitutional theory. In 1869 it did not tax corporate stocks when the property of the corporation was taxed,⁶³ though the courts all along recognized corporate stocks as property in the hands of the shareholder apart from the property of the corporation; in 1874 it went all the way and taxed stock in the hands of the shareholder as well as the property in the hands of the corporation;⁶⁴ in 1881 it permitted the shareholders a deduction from the value of their shares proportioned to that part of the value of the corporate property on which the corporation had already paid a tax to this state;⁶⁵ in 1887 it lifted this tax from the individual shareholder and put it on the corporation in form of a tax on capital stock;⁶⁶ in 1929 it exempted the individual shareholder if the corporation paid either a tax on capital stock or a franchise tax;⁶⁷ in 1935 it repealed the "capital stock" or "corporate excess" tax as to ordinary domestic business corporations, but left shares of stock in such corporations tax exempt if the corporation paid a franchise tax;⁶⁸ today, it taxes all shares of stock owned by residents of this state or having a business, commercial or taxable situs here, with exemption for shares in corporations which pay a franchise tax, together with a tax on net income.⁶⁹ In 1917 the general assembly lifted the tax from holders of stock in foreign corporations if two-thirds of such corporations' property was taxed in North Carolina, and if the corporation paid a franchise tax on all its capital stock;⁷⁰ in 1919 it further lightened this tax,⁷¹ and in 1923 exempted shares of stock in foreign corporations altogether;⁷² in 1931, it resumed taxation of such shares but gave the shareholder an alternative of paying a flat income

⁶² N. C. CONST. (1936) art. V, §3.

⁶³ N. C. PUB. LAWS 1868-69, c. 74, §13(6).

⁶⁴ N. C. PUB. LAWS 1873-74, c. 133, §9(6).

⁶⁵ N. C. PUB. LAWS 1881, c. 117, §9(6).

⁶⁶ N. C. PUB. LAWS 1887, c. 137, §§14, 42.

⁶⁷ N. C. PUB. LAWS 1929, c. 344, §306(9).

⁶⁸ N. C. PUB. LAWS 1935, c. 417, §306(9); c. 371, §215(d).

⁶⁹ N. C. PUB. LAWS 1939, c. 158, §§215(4), 705.

⁷⁰ N. C. PUB. LAWS 1917, c. 231, §4.

⁷¹ N. C. PUB. LAWS 1919, c. 90, §4, provided that an individual stockholder in a foreign corporation need not pay a property tax on his shares if either (1) two-thirds in value of the issuing corporation's property was taxed in North Carolina, or (2) the issuing corporation had tangible assets in this state which exceeded in value the aggregate par value of the total stock owned by residents of this state, and also paid a franchise tax to this state on its entire capital stock.

⁷² N. C. PUB. LAWS 1923, c. 4, §4.

tax of 6 per cent on all dividends received on the stock;⁷³ in 1937 it continued taxation of such shares but exempted the shareholder if the issuing corporation paid both a franchise and an income tax to this state.⁷⁴

This legislative policy did not pass unquestioned in the courts. In *Person v. Watts*,⁷⁵ a taxpayer sought to compel the listing of shares of stock in the hands of the individual shareholder as well as the capital stock of the corporation on the theory that the exemption violated the constitutional requirement that all property be taxed by a uniform rule and according to its true value in money. The court, however, rejected this argument, and in saying by way of *dicta* that the exemption was valid, reasoned as follows:⁷⁶ The constitution requires "that laws be passed taxing by a uniform rule all moneys, credits, *investments* in bonds, stocks . . . or otherwise. . . . It is the investment that is to be taxed, not necessarily the shares or certificates of stock. . . . The truth is, the certificate of stock represents the shareholder's investment in the corporation as the land owner's deed represents his investment in the land. If the land is taxed, why tax the deed? If the capital stock is taxed, why tax the certificates which represent the capital stock? No doubt the Legislature possesses the power to repeal the statute and to tax both . . . but if the constitution does not require it, why should the additional burden be imposed?"

Chief Justice Clark dissented:⁷⁷ "The constitution forbids expressly the exemption of stocks and bonds, but it is clearly violated. There is no more reason that the owners of the stocks which the corporations have sold . . . should be exempted from taxation than that their bonds . . . should be exempt. . . ." Payment of a franchise tax, which is analogous to a license tax paid by lawyers, merchants, and others for the privilege of carrying on business, he continued, is no ground, as our court has often held, to grant exemption to stockholders. Neither is it "double taxation" to tax the shares in the hands of shareholders

⁷³ N. C. PUB. LAWS 1931, c. 427, §215(g).

⁷⁴ N. C. PUB. LAWS 1937, c. 127, §§215(d)-(e), 706. The 1937 act levied 30c on every \$100 in excess of \$300 value on all shares of stock, whether of a domestic or foreign corporation, held by a resident, *except shares in corporations which paid a franchise and income tax to this state*.

N. C. PUB. LAWS 1939, c. 158, §705, limited this exemption somewhat by exempting shares entirely *only when* the issuing corporation pays a franchise tax to this state on its *entire capital stock or gross receipts, together with a tax upon all of its net income*. When the issuing corporation pays a franchise tax on *only part of its capital stock or gross receipts and on only part of its total net income*, then there is exempted that portion of the value of the shares of the individual shareholder "as is represented by the percentage of net income on which tax is paid to this state". The 1939 act also repealed the \$300 exemption noted in the 1937 act.

⁷⁵ 184 N. C. 499, 115 S. E. 336 (1922).

⁷⁶ *Id.* at 508, 115 S. E. at 342.

⁷⁷ *Id.* at 552 *et seq.*, 115 S. E. at 350 *et seq.*

when taxes have been laid upon the tangible property and capital stock of the corporation itself—this has been held repeatedly by both the Court of the United States and this state.

Again in *Person v. Doughton*,⁷⁸ the plaintiff sought to invalidate a statute exempting from taxation all shares of stock in foreign corporations held by residents of this state. The court reiterated its former opinion over an even stronger dissent of Chief Justice Clark⁷⁹ to the effect that here with the corporation located outside the state neither the corporate property nor the shares would be taxed and thus less ground existed for upholding this statute than in the *Watts* case, where the corporate property was taxed at least to the corporation.

Thus, it is apparent that the 1868 constitutional idea of property taxation "by a uniform rule, and according to its true value in money" may have been measurably achieved in the taxation of real property, and in the taxation of tangible personal property, but not in the taxation of intangible personal property. The song of classification ended with the constitution of 1868, but the melody lingered on for sixty-eight years, and came back with a fresh burst of song in the amendment of 1936. Whether classification may be carried to the exemption point is as yet undecided by the court. The probabilities will be discussed in the following sections dealing with tax exemptions.

IV

PROPERTY EXEMPT FROM TAXES

From the foregoing discussions it is obvious that for a great part of the period from 1663 to 1868, and for many types of property, exemption was the rule and taxation the exception; it is equally obvious that multiplying governmental units and expanding governmental services gradually extended the specifically enumerated items of property subject to taxation until they covered so nearly all items that it was an easy transition from the exemption of all property unless specifically taxed to the taxing of all property unless specifically exempted—making taxation the rule and exemption the exception.

The first specific exemptions, already indicated, appeared in the Concessions of 1665⁸⁰ and covered the lands of "us the Lords Propriators". Later, exemptions from all taxes for one year and then for ten years were offered to influence settlers to come here to live.⁸¹ Later, in the interest of internal development it became the fashion to exempt

⁷⁸ 186 N. C. 723, 120 S. E. 481 (1923).

⁷⁹ *Id.* at 727, 120 S. E. at 483.

⁸⁰ 5 THORPE, AMERICAN CHARTERS, CONSTITUTIONS AND ORGANIC LAWS (1909) 2758.

⁸¹ CONNOR, NORTH CAROLINA: REBUILDING AN ANCIENT COMMONWEALTH 96; 1 SAUNDERS, COLONIAL RECORDS 183-7.

the property of certain internal improvement companies. To illustrate: In 1834 the general assembly chartered the Bank of Cape Fear and in the charter imposed a tax of twenty-five cents on each share of bank stock with the provision that "the said bank shall not be liable to any further tax".⁸² In 1830 it chartered the Petersburg Railroad Company, providing that "all machines, wagons, vehicles and carriages purchased with the funds of the company, and all works constructed under authority of this act, and all profits which shall accrue from the same . . . shall be exempt from all public charge or tax whatsoever . . .";⁸³ in 1852 it chartered the Raleigh and Gaston Railroad providing that "all the property thereof of any description shall be exempt from any public charge or tax whatsoever for the term of fifteen years and thereafter the legislature may enforce a tax not exceeding five cents per annum on each share of the capital stock held by individuals whenever the annual profits shall exceed eight per cent."⁸⁴

These exemptions became embarrassing as the property of these companies accumulated and complaints of tax paying property owners increased. When the general assembly sought to withdraw these exemptions the court interfered. "This cannot be. It would be in direct violation of the pledged faith of the state."⁸⁵ Later the court began to construe these express provisions more strictly. "It is equally well settled", said the court in *Raleigh Gaston Railroad Company v. Reid*,⁸⁶ "that contracts made by the state with individuals, in granting charters, are not to be construed by the same rules as contracts between individuals. In the latter, the rule of the common law, which is the same as common sense, is 'words are to be taken in the strongest sense against the party using them'; on the idea that self-interest induces a man to select words most favorable for himself. It is otherwise when the state is a party; for it is known that in obtaining charters, although the sovereign is presumed to use the words, in point of fact the bills are drafted by individuals seeking to procure the grant, and that 'the promoters', as they are styled in England, or the 'lobby members', as they

⁸² N. C. PUB. LAWS 1833-34, c. 1, §11.

⁸³ N. C. PUB. LAWS 1830-31, c. 56, §17.

⁸⁴ N. C. PUB. LAWS 1852, c. 140, §8.

⁸⁵ *Bank of Cape Fear v. Edwards*, 27 N. C. 516, 517 (1845). Accord: *Bank of Cape Fear v. Denning*, 29 N. C. 55 (1846); *State v. Petway*, 55 N. C. 396 (1856); *Attorney General v. Bank of Charlotte*, 57 N. C. 287 (1858).

⁸⁶ 64 N. C. 155, 158 (1870). Accord: *Richmond & Danville R. R. v. Commissioners*, 74 N. C. 506 (1876); *Richmond & Danville R. R. v. Commissioners*, 76 N. C. 212 (1877); *Petersburg R. R. v. Commissioners*, 81 N. C. 487 (1879); *Belo v. Commissioners*, 82 N. C. 415 (1880); *Richmond & Danville R. R. v. Commissioners*, 84 N. C. 504 (1881); *Atlantic, Tennessee & Ohio R. R. v. Commissioners*, 87 N. C. 129 (1882); *Raleigh & Gaston R. R. v. Commissioners*, 87 N. C. 414 (1882); *Cheraw & Salisbury R. R. v. Commissioners*, 88 N. C. 519 (1883); *Worth v. Wilmington & Weldon R. R.*, 89 N. C. 291 (1883); *Worth v. Petersburg R. R.*, 89 N. C. 301 (1883); *Wilmington & Weldon R. R. v. Alsbrook*, 110 N. C. 137 (1892).

are styled on this side of the Atlantic, have the charters or acts of incorporation drafted to suit their own purposes; and a matter of this kind, instead of being, in its strict sense, a *contract*, is more like the act of an indulgent head of a family dispensing favors to its different members, and yielding to importunity. So the courts, to save the old gentleman from being stripped of the very means of existence, by sharp practice have been forced to reverse the rule of construction, and to adopt the meaning most favorable to the *grantor*."

The constitutional limitation of exemptions in 1868 prevented this type of exemption for the future, but did not eliminate exemptions already granted; however, the court allowed the general assembly increasing freedom to levy other types of taxes than property taxes until the exemptions became less and less valuable and finally were surrendered altogether.

A. PROPERTY THE GENERAL ASSEMBLY *Must* EXEMPT

When the 1868 convention wrote into the constitution the provision that the general assembly *must exempt* (1) "property belonging to the state or to municipal corporations", and the provision that it *might exempt* (2) "cemeteries, and property held for educational, scientific, literary, charitable, or religious purposes; also (3) wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, to a value not exceeding three hundred dollars",⁸⁷ it was again giving expression to a policy which had evolved out of experience reaching back to the beginning of the province of North Carolina.

"Property Belonging to the State or to Municipal Corporations"

Revenue acts had long exempted "all lands or other property belonging to this State", or to "any county in this State"; "all town halls, market houses and other public structures and edifices, and all lots or squares kept open for health, use or ornament, belonging to any city, town or village"; "all fire engines and other implements used for the extinguishment of fire, with the buildings exclusively used and necessary for the safekeeping thereof".^{87a} The 1868 constitution simply summed up this legislative policy, broadened it, and converted a permissive into a mandatory exemption. For nearly twenty years thereafter the general assembly followed with almost literal exactness the wording of the constitution by exempting property "belonging to . . . the State, or any county, or incorporated city or town".^{87b} In 1885 it

⁸⁷ N. C. CONST. (1868) art. V, §5.

^{87a} N. C. PUB. LAWS 1866-67, c. 72, §8.

^{87b} N. C. PUB. LAWS 1868-69, c. 74, §14(1); N. C. PUB. LAWS 1881, c. 117, §12(1).

limited the exemption to property "used for public purposes".⁸⁸ Did it exceed its authority in so doing?

While this constitutional exemption was taking statutory form, two opposing viewpoints were developing in the court. The 1868 constitutional provision was first called to the court's attention eight years after its adoption in *Atlantic & N. C. R. R. v. Commissioners*⁸⁹ where the county levied a tax on the property of a railroad two-thirds of whose stock was owned by the state. The railroad claimed that the two-thirds interest owned by the state was exempt under the constitution. The county claimed that the state "stood on a footing with the private stockholders in said company". The court said:⁹¹ "We do not think the exemption in the constitution embraces the interest of the state in business enterprises, but applies to the property of the state held for state purposes. . . . But where the state steps down from her sovereignty and embarks with individuals in business enterprises, the same considerations do not prevail." Neither counsel nor court appeared to rely on the obvious fact that the property taxed was property belonging to the railroad and not "property belonging to the state". Rather they proceeded on the theory that the property belonged to the state and was exempt from taxation only if "held for state purposes".

Fifty-five years later, in *Latta v. Jenkins*,⁹² the North Carolina court uttered a diametrically opposing *dictum*: "The mandatory constitutional provision that property belonging to or owned by the state or municipal corporations shall be exempt from taxation, is in language so clear and free from ambiguity that ordinarily there is not room for construction, as to its application to specific property." At the same term of court the same Justice emphasized his former meaning by stating that such property was exempt without regard to the purpose for which it was acquired and held, and that if the Machinery Act meant otherwise it was unconstitutional and void.⁹³ Thus a clash of *dicta* ushered in the battle of exemptions.

The issues involved in this battle of exemptions have been before the court in six cases in the last ten years. The battle clouds gathered in all of them; thunder rolled in four; lightning flashed in three; and in the last, a suffering acquiescence gave a semblance of calm to a situation which one member of the court described as an impermanent victory.

In one of these cases the property belonged to the state.⁹⁴ In five

⁸⁸ N. C. PUB. LAWS 1885, c. 177, §16(1).

⁸⁹ N. C. PUB. LAWS 1905, c. 590, §63(1).

⁹⁰ 75 N. C. 474 (1876). ⁹¹ *Id.* at 476.

⁹² 200 N. C. 255, 258, 156 S. E. 857, 859 (1931).

⁹³ *Andrews v. Clay County*, 200 N. C. 280, 282, 156 S. E. 855, 857 (1931).

⁹⁴ *Weaverville v. Hobbs*, Commissioner, 212 N. C. 684, 194 S. E. 860 (1937).

of them it belonged to municipal corporations.⁹⁵ And in all five cases these municipal corporations were cities and towns and the taxes were levied by counties. In three cases the city owned property in the county in which the city was located;⁹⁶ in two it was in adjoining counties.^{97a} In the single case of state owned property a city levied the taxes.

The first of the cases⁹⁷ dealing with municipally owned property involved a town plant which the town of Andrews built and used to generate electricity for lighting its streets and municipal buildings and for domestic and commercial uses of its inhabitants. The second case^{97a} involved a building which the city of Asheville acquired, through proceedings to realize on collateral security for its deposits in a defunct bank, and rented out for business purposes. The third⁹⁸ involved lots acquired by the town of Benson, through foreclosure for non-payment of taxes, and rented out for business purposes. The fourth⁹⁹ involved a hall which the town of Warrenton acquired, through foreclosure to protect its own investment, and operated as a business enterprise. The fifth¹⁰⁰ involved lots and pieces of real estate acquired by Winston-Salem, through foreclosure to protect its street assessment and tax liens, some of which were rented out for business purposes, and some of which were unrented, but all of which were held for resale. The single case of state owned property involved a house and lot acquired by the North Carolina Veterans' Loan Fund through foreclosure for non-payment of a loan to a World War veteran.

Municipally owned property. In the *Town of Andrews* case¹⁰¹ the court held the municipally owned power plant exempt without a dissenting vote, and the Justice writing the opinion reached back for support to the *dictum* expressed in *Latta v. Jenkins*—that property belonging to a municipal corporation is exempt "because of its ownership and without regard to the purpose for which such property was acquired and held. . . ." Four years later, in the *Asheville* case the court held the municipally owned office building taxable without a dissenting vote,

⁹⁵ *Andrews v. Clay County*, 200 N. C. 280, 156 S. E. 855 (1931); *Board of Financial Control v. Henderson County*, 208 N. C. 569, 181 S. E. 636 (1935); *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6 (1935); *Warrenton v. Warren County*, 215 N. C. 342, 2 S. E. (2d) 464 (1939); *Winston-Salem v. Forsyth County*, 217 N. C. 704, 9 S. E. (2d) 381 (1940).

⁹⁶ *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6 (1935); *Warrenton v. Warren County*, 215 N. C. 342, 2 S. E. (2d) 464 (1939); *Winston-Salem v. Forsyth County*, 217 N. C. 704, 9 S. E. (2d) 381 (1940).

^{97a} *Andrews v. Clay County*, 200 N. C. 280, 156 S. E. 855 (1931); *Board of Financial Control v. Henderson County*, 208 N. C. 569, 181 S. E. 636 (1935).

⁹⁷ *Andrews v. Clay County*, 200 N. C. 280, 156 S. E. 855 (1931).

^{97a} *Board of Financial Control v. Henderson County*, 208 N. C. 569, 181 S. E. 636 (1935).

⁹⁸ *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6 (1935).

⁹⁹ *Warrenton v. Warren County*, 215 N. C. 342, 2 S. E. (2d) 464 (1939).

¹⁰⁰ *Winston-Salem v. Forsyth County*, 217 N. C. 704, 9 S. E. (2d) 381 (1940).

¹⁰¹ 200 N. C. 280, 282, 156 S. E. 855, 856 (1931).

and the Justice writing the opinion reached back for support to the *dictum* expressed in *Atlantic and N. C. R. R. v. Commissioners*, and asked:¹⁰² "Can the city acquire business property in another county, hold and rent it, without the payment of taxes in that county? We think not. The property is not held or used for any governmental or necessary public purpose, but for purely business purposes." We are not overruling the *Andrews* case, said the Justice, we are distinguishing it—cutting down the scope of the language used—taking some of the wind out of its sails. The power plant was held for a public purpose and on that ground is exempt; the office building was held for a business purpose and on that ground is not exempt. This viewpoint prevailed the following year in the *Town of Benson* case,¹⁰³ where the court decided that a municipally owned house and lot held for rent was held for a business purpose and therefore taxable; later in the *Town of Warrenton* case^{103a} when it decided that a hotel, municipally owned and operated, was likewise taxable because held for a business purpose; and finally in the *Winston-Salem* case¹⁰⁴ when it held that vacant lots and other real estate, some rented for business purposes and some not, but all held for resale, was also taxable because held for business purposes.

This presently prevailing viewpoint has grown in clarity of statement and intensity of feeling with the years and has picked up votes on the way. To illustrate: in 1876 Justice Rodman expressed it as follows:¹⁰⁵ "When the state steps from her sovereignty and embarks with individuals in business enterprises, she cannot claim exemptions fully allowed when she engages in governmental enterprises." In 1935 Justice Clarkson brought it forward:¹⁰⁶ "If a municipal corporation can go into a rental business and escape taxation, it would have a special privilege not accorded to others who are in a like business"; and later stated it with even stronger feeling:¹⁰⁷ "Since Chief Justice Marshall, in 1819, laid down the fundamental that 'the power to tax involves the power to destroy' . . . we have come to recognize another truth—the power to exempt from taxation also involves the power to destroy. Used by governments as a shield, it operates as a subsidy of governmental excursions into the field of private enterprise thus placing the

¹⁰² 208 N. C. 569, 571, 181 S. E. 636, 638 (1935).

¹⁰³ 209 N. C. 751, 185 S. E. 6 (1935).

^{103a} 215 N. C. 342, 2 S. E. (2d) 464 (1939).

¹⁰⁴ 217 N. C. 704, 9 S. E. (2d) 381 (1940).

¹⁰⁵ *Atlantic & N. C. R. R. v. Commissioners*, 75 N. C. 474, 475 (1876).

¹⁰⁶ *Board of Financial Control v. Henderson County*, 208 N. C. 569, 571, 181 S. E. 636, 638 (1935).

¹⁰⁷ *Weaverville v. Hobbs, Commissioner*, 212 N. C. 684, 693, 194 S. E. 860, 865 (1937).

private competitor, who bears his share of taxes, at such a disadvantage that he is fortunate if he is able to survive."

It finds its latest expression in the words of Chief Justice Stacy in 1939:¹⁰⁸ "It is only when they step over into the field of private enterprise that the question of taxation arises. . . . Exemption is granted in the Capitol and in the city halls. Taxation is required in the market place. . . . When the entity thus clothed with immunity departs from the land of immunity and goes into the imperative field of taxation it sheds its immunity, for in this latter country, it operates neither in the territory nor in the character of its immunity."

State owned property. The constitution draws no distinction for tax exemption purposes between property belonging to the state and to municipal corporations.¹⁰⁹ The general assembly apparently desired no such distinction: when it introduced the "public purpose" limitation in 1885,¹¹⁰ it put state and municipally owned property on the same bottom by exempting property "belonging . . . to this state, or any county, incorporated city or town, and used for public purposes"; today it exempts¹¹¹ "real property, if directly or indirectly owned by . . . this state, however held, and real property owned by the state for the benefit of any general or special fund of the state, and real property lawfully owned and held by counties, cities, townships, or school district, used wholly and exclusively for public or school purposes". Does the court construe constitution or statute so as to exempt *in toto* property belonging to the state, but property belonging to municipal corporations only in so far as it is held for a public purpose? In *Town of Weaverville v. Hobbs*,¹¹² the court held that a house and lot acquired by the North Carolina Veterans' Loan Fund, through foreclosure for non-payment of a loan to a World War veteran, was exempt from taxation. But the Justice writing the majority opinion drew no distinction between state and municipally owned property. No one of the seven Justices now on the court has drawn any such distinction in any of the cases involving this issue; and one of them has expressly pointed out the absurdity of any attempt to do so:¹¹³ "The exemption of Federal and State property is stated in the same sentence with that of local governments without even a period or a semicolon separating the provision as to Federal and State government property from that dealing with the property of local units. Apparently the phrase 'used wholly and exclusively for public or school purposes' was intended to apply equally

¹⁰⁸ *Warrenton v. Warren County*, 215 N. C. 342, 354, 2 S. E. (2d) 464, 471 (1939).

¹⁰⁹ N. C. CONST. (1936) art. V, §5.

¹¹⁰ N. C. PUB. LAWS 1885, c. 177, §16(1).

¹¹¹ N. C. PUB. LAWS 1939, c. 310, §600(1).

¹¹² 212 N. C. 684, 194 S. E. 860 (1937).

¹¹³ *Id.* at 690, 194 S. E. at 864.

to the property of the Federal, State, and local governments. Certainly there is no clear indication that the General Assembly intended to create two distinct classes of exemptions. The phrase 'however held' does not affect this interpretation . . . it is not to be supposed that the General Assembly intended to lay down two rules with respect to the exemption of governmental property. The contrary view would result in a holding to the effect that the General Assembly laid down a more liberal rule for the Federal and State governments than for local governments, and to this extent discriminated against the latter. The reasoning of such a view is not convincing."

The same Justice expresses this viewpoint in even stronger language in the latest case bearing on this problem:¹¹⁴ "'Property belonging to the state or to municipal corporations, shall be exempt from taxation' clearly means that property belonging (1) to the state, or (2) to municipal corporations shall be exempt from taxation on the same basis and by the same rule. Here is a sentence with one subject, one verb, one verb phrase, and one participle, the latter taking two prepositional phrases as objects, the one relating to the 'State' and the other to 'municipal corporations'. Elementary rules of grammar compel the admission, it seems to me that this sentence in our constitution laid down a simple fundamental proposition, equally applicable to the State and to municipal corporations. The expressed intent to 'feed out of the same spoon' the State and all municipal corporations seems clear."

"However", continued the Justice, "our cases do not so hold. The rule of *Benson v. Johnston County*, *supra*, permits the taxation of municipal property not used for a public purpose, while the rule of *Weaverville v. Hobbs*, *supra*, exempts all state property from taxation irrespective of the character of the use. To speak boldly, this is discrimination, and discrimination of a type for which I can find no justification in our constitution. . . . In my opinion, the majority opinion here should so amplify the rule of *Benson v. Johnston County*, *supra*, as to make it plain that the soundness of the rule of *Weaverville v. Hobbs*, *supra*, may hereafter be open to serious question, and thus put officials and taxing authorities on notice that the rule in the *Weaverville* case, *supra*, may hereafter be the subject of a close scrutiny at the hands of this court."

If the opinion of this Justice is the opinion of the court on this point and state and municipally owned property stand on the same bottom, it follows from the *Warrenton* case that property belonging to the state, even as property belonging to municipal corporations, is not exempt from taxation unless it is held for a public purpose; and that the

¹¹⁴ *Warrenton v. Warren County*, 215 N. C. 342, 349, 2 S. E. (2d) 464, 467 (1939).

Warrenton case overrules the *Weaverville* case unless it appears that the property in the *Weaverville* case was held for a public purpose. Granting that no distinction is drawn between state and municipally owned property for tax exemption purposes, how can it be said that an office building held by a city for rent, as in the *Asheville* case, is held for a business purpose even if the rents are applied to city purposes; or that a house and lot held by a city for rent, as in the *Benson* case, is held for a business purpose even if the rents are applied to city purposes; or that a hotel owned and operated by a city is held for a business purpose, even if the rents are applied to city purposes; but that a house and lot held by a state agency for rent is held for a public purpose merely because the rent is applied to state purposes? It is true that the Justice writing the opinion in the *Weaverville* case¹¹⁵ says that "the facts on which the decisions of this court [in the *Asheville* and *Benson* cases] were based, are distinguishable from those in the case at bar", and argues that the state owned house and lot was held for a public purpose; but it is equally true that this opinion, the concurring opinion, and the opinions from which they quote rest on the underlying philosophy that all property belonging to the state or to municipal corporations is exempt from taxation, and not on whether a particular purpose is a public or a business purpose. It is also true that the majority opinion in the *Warrenton* case disavows any intent to overrule the *Weaverville* case.¹¹⁶ "The instant case is distinguishable from *Andrews v. Clay County*, and *Weaverville v. Hobbs, Commissioner* . . . , relied upon by the appellant, in that in both of these cases the property sought to be taxed was owned and used for governmental or public purposes, in the former case for the erection of a power plant to generate electricity to light, and otherwise serve the owner, a municipality, and in the latter case for the purpose of assisting World War veterans in the acquisition of homes." It is to be noted, however, that three of the Justices concurring in the result reached in the majority opinion obviously avoid any effort to distinguish the *Warrenton* and *Weaverville* cases on the theory that the property in one is held for a business purpose and in the other for a public purpose; and that a fourth Justice concurring in the result flatly says it can't be done.¹¹⁷ "It [the majority opinion] attempts to distinguish the *Weaverville* case, *supra*, from the instant majority opinion by pointing out that in the *Weaverville* case, *supra*, the money received from the property went to the World War Veterans' Fund and in the present case the receipts are put in the *Warrenton* treasury. In the *Weaverville* case, *supra*, the dwelling was

¹¹⁵ 212 N. C. 684, 688, 194 S. E. 860, 862 (1937).

¹¹⁶ 215 N. C. 342, 344, 2 S. E. (2d) 464, 465 (1939).

¹¹⁷ *Id.* at 349, 2 S. E. (2d) at 467.

rented by the state; here the hotel is rented by the town. The distinction appears to be one without a difference. Certainly the factual similarity of the two cases is striking, and one inviting the application of the same rule. In dissenting in the *Weaverville* case, *supra*, I there urged the application of the rule of the instant case; the *Chief Justice* and the *Justice* who here speaks for the majority, indicated views in the *Weaverville* case, *supra*, in accord with those which I there urged and now repeat. I am more strongly convinced than ever, in the light of facts of the instant case, that the result here reached is correct and that the decision in *Weaverville v. Hobbs*, *supra*, was incorrect."

Public Purpose. With tax exemption of municipally owned property thus expressly limited, and of state owned property limited by implication, to property held for a public purpose, client, counsel and court are brought face to face with another disturbing problem—what is a public purpose? This problem is complicated by variation of statement by the court: it has limited the exemption to property held for a "public use or purpose", for a "governmental and public purpose", and for a "governmental and necessary public purpose". Certainly purposes which the court has held to constitute "necessary expenses" would come without question within the scope of public purpose.¹¹⁸ It is obvious, however, that "public purposes" for which public money may be spent cover a much larger ground than "necessary expenses" for which taxes may be levied and money borrowed without the direct approval of a majority of the qualified voters. It is less obvious but perhaps accurate to say that they include many, but not all, of those things which have been held to be non-necessary but not non-governmental purposes.¹¹⁹

¹¹⁸ For a full discussion of the problems concerning "necessary expenses" see Coates and Mitchell, *Necessary Expenses* (1940) 18 N. C. L. Rev. 93. The following items have been held to be necessary expenses: (1) the ordinary expenses of government, including salaries and wages and office expense (decisions specifically mention salaries of mayor, treasurer, city attorney, janitor, county commissioners' pay, county attorney, sheriff's salary and expense of sheriff's office, register of deeds' salary and expense of office, clerk superior court's salary and expense of office, county accountant's salary, police, jurors' fee, feeding and care of prisoners, tax listing expense, expense of holding elections, etc.); (2) the building and repair of municipal buildings such as city halls, county courthouse, guard-houses and jails, fire alarm systems, fire stations and sites thereof, police station, office rent for suitable headquarters, etc.; (3) the building and repair of public roads, streets, and bridges; (4) the building and repair of market houses; (5) the building and repair of county homes and the maintenance of the poor; (6) furnishing adequate water supply, including the digging of wells, contracting for water supply, building of waterworks plants; (7) the building of sewerage systems; (8) the building of electric light plants; (9) performing autopsy, maintenance of the public peace, and other phases of the administration of justice; (10) fire insurance for school buildings; (11) incinerators; (12) parks and playgrounds; (13) professional services in refunding bonds; (14) contract with hospital for care of indigent sick and afflicted poor; (15) jetties; (16) abattoir; (17) county farm agent's salary; and (18) cemeteries.

¹¹⁹ *Ibid.* The following items have been held to be non-necessary expenses: (1) liquor dispensary; (2) county stock fence; (3) chamber of commerce; (4) wharves and docks; (5) cotton platform; (6) county and city hospital; (7) munic-

Is public purpose still broader and co-extensive with all things the general assembly may now or in the future authorize the state or local units to do? Justice Seawell pointedly raised this question in the *Warrenton* case:¹²⁰ "Article VII, section 7, of the constitution clearly recognizes that municipalities may carry on activities unessential to government and that proprietary ownership of facilities for that purpose may legitimately take place. Under the provisions of the constitution, as a consequence easily foreseen at the time of its adoption, municipalities have been permitted, under appropriate legislative authority, to acquire, hold, and use property, which this court now declares not to be within contemplation of a co-ordinate clause of the same document which exempts, upon its face, all property of municipalities, comprehensively and without distinction. That property of this sort might be acquired and held and might come within the protective provision of this clause, as well as other clauses of the constitution likewise general in their nature, was as well known, both presumptively and actually, to those who phrased the constitution and those who adopted it as it is to us. . . ."

The court has long pointed out that public money can be spent only for a public purpose. In *Wood v. Oxford*,¹²¹ Chief Justice Smith in a concurring opinion said: "If the matter of the present action were *res integra*, and the question involved in the appeal an open one, I should be reluctant to give assent to the proposition that a municipal corporation, even under legislative sanction and with an approving popular vote, may make a donation of its bonds to a railroad company in aid of its work, and impose taxes for their payment. It certainly cannot do this to advance any mere business enterprise not of a public nature, for the incidental and substantial benefits its successful prosecution may confer upon a community in the midst of which it is carried on. . . ."

But what is the test to be applied in determining a "public purpose"? In drawing the line between public purposes and business purposes for tax exemption, will the court adopt the distinction between governmental and proprietary functions used to determine municipal liability for torts? Or the distinction between a public use and a private use in eminent domain cases, determining whether private property may be taken for public use with compensation? Or assuming rejection of the view that all purposes for which public money may be spent are public purposes,¹²² will draw a narrower line, suggested by its own opinions

ipal airport; (8) city auditorium; (9) schools; (10) public library; (11) land and buildings for athletic and recreational purposes; (12) railroads; and (13) "fire drill tower".

¹²⁰ 215 N. C. 342, 363, 2 S. E. (2d) 464, 476 (1939).

¹²¹ 97 N. C. 227, 234, 2 S. E. 653, 656 (1887).

¹²² The court has specifically held that public purposes for which public money

in tax exemption cases, and exclude from the area of public purpose all property held and used in competition with private business enterprise? This latter test leads into still deeper water. Suppose private enterprise opens a field of enterprise which state and municipal corporations later decide to enter, as happened in the instance of schools, waterworks, electricity, and other activities, where governmental activity has sometimes eliminated private competition and in others still continues it—should property owned by the state and municipal corporations be exempt from taxation while engaged in these enterprises? Conversely, if the government initiates activity and private enterprise follows on its heels, should the government lose its tax exemption when private enterprise invades the field?¹²³

may be spent include: the State Fair, *Briggs v. Raleigh*, 195 N. C. 223, 141 S. E. 597 (1928); port terminal facilities, *Webb v. The Port Commission*, 205 N. C. 663, 172 S. E. 377 (1933); railway terminal facilities, *Hudson v. Greensboro*, 185 N. C. 502, 117 S. E. 629 (1923); public housing under federal housing acts, *Wells v. Housing Authority*, 213 N. C. 744, 197 S. E. 693 (1938); World War Veterans' Loan Fund, *Hinton v. Lacy*, State Treasurer, 193 N. C. 496, 137 S. E. 669 (1927); a state park, *Yarborough v. Park Commission*, 196 N. C. 284, 145 S. E. 563 (1928); a public auditorium, *Adams v. Durham*, 189 N. C. 232, 126 S. E. 611 (1925); State Teachers' Training School, *Cox v. Commissioners*, 146 N. C. 584, 60 S. E. 516 (1908); and aid to railroads, *Wood v. Oxford*, 97 N. C. 227, 2 S. E. 653 (1887). What tests underlie these conclusions? "A chief purpose of counties, cities and towns", said the court in *Wood v. Oxford*, *supra*, "is to secure public advantage and convenience, and then public prosperity by means of public works and enterprises, set on foot and projected through themselves, or individuals, or corporations, and it can make no difference whether such works are encouraged by a county or town by taking the capital stock of a corporation, or by a donation of money or credit to it." In *Briggs v. Raleigh*, *supra*, the court says: "Many objects may be public in the general sense that their attainment will confer a public benefit or promote the public convenience but not be public in the sense that the taxing power of the state may be used to accomplish them. . . . After mature reflection, we are constrained to place the present proposition (State Fair) in the category of a public municipal purpose, though it is confessed that much might be said in favor of locating it in another field. . . ." In *Wells v. Housing Authority*, *supra*, "It is not questioned that it is a proper function of government to promote the health, safety, and morals of its citizens. . . . The state cannot enact laws, and cities and towns cannot pass effective ordinances forbidding disease, vice and crime to enter into the slums of overcrowded areas, there defeating every purpose for which civilized government exists, and spreading influences detrimental to law and order; but experience has shown that this result can be more effectively brought about by the removal of physical surroundings conducive to these conditions. This is the objective of the act, and these are the means by which it is intended to accomplish it." The court will be called upon to draw finer distinctions than these in order to determine what property is held for a "public purpose" in tax exemption cases.

¹²³ There is one remaining question to be faced under the constitutional provisions exempting from taxation the property belonging to the state and to municipal corporations: What is a municipal corporation? In N. C. PUB. LAWS 1868-69, c. 74, §1, the legislative exemption applied to counties and incorporated cities and towns, and in N. C. PUB. LAWS 1905, c. 590, §63(1), school districts were added—all clearly within the meaning of the term "municipal corporations". But "Drainage districts", said the court in *Drainage Commissioners v. Webb*, 160 N. C. 594, 596, 76 S. E. 552, 553 (1912), "do not come within the definition of 'municipal corporations' in Constitution Article V, section 5". Thereafter the legislature labeled as municipal corporations: drainage districts, N. C. CODE ANN. (Michie, 1939) §5312; electric membership corporations, N. C. PUB. LAWS 1935, c. 291,

The foregoing analysis is not intended to convey the impression that the battle of exemptions is finally won by the present court majority. A dissenting Justice looking back over the successive contests says:¹²⁴ ". . . this series of cases will probably, in a minor way, go down in legal history classed with those differences within the court where the opposing forces have surged from this side to that of the juridical battlefield, with varying success to impermanent victory."

Nor is it intended to convey the impression that all the argument is on the side of the presently winning group. The Chief Justice in speaking for the group says:¹²⁵ "It must be conceded that the current of authority on the question here presented is wanting in clarity, if not in consistency. A definitive decision is perhaps devoutly to be wished. But again it is discovered that we have studied the same books and learned different lessons; read the same lines and construed them not alike."

Nor is it intended to convey the impression that successions of somersaults have been turned by members of the present court. Much of the confusion, which the court admits, is due to changing personnel and not to changing viewpoints of individual Justices. To illustrate: when the *Andrews* case was decided without dissent in 1931, the court included Chief Justice Stacy, and Justices Adams, Clarkson, Connor and Brogden. When the *Asheville* case was decided with dissent in 1935, limiting the scope of the exemption, as set forth in the *Andrews* case to property held for a public purpose, Justice Schenck had succeeded Justice Adams on the court. When the *Benson* case was decided in 1936, reaffirming the limitation imposed in the *Asheville* case, Justice Devin, who had succeeded Justice Brogden, dissented. When the *Warrenton* case was decided in 1938 Justice Seawell had succeeded Justice Connor and Justices Barnhill and Winborne had been added to the court. Justice Clarkson who wrote the majority opinions in the *Asheville* and *Benson* cases and Chief Justice Stacy and Justice Schenck who had voted with him, were joined by newly appointed Justices Barnhill and Winborne to make a majority of five, while Justice Devin was joined by newly appointed Justice Seawell to make a minority of two. Thus, so far as the exemption of municipally owned property is concerned the position of majority and minority Justices has been perfectly consistent from the *Asheville* decision to date and may be reasonably expected to continue in the future. When the *Weaverville* case, concerning the

§14; and housing authorities, N. C. PUB. LAWS 1935, c. 456, §9. But is legislative characterizations conclusive? Clearly the judiciary is the final arbiter. But here again the court has drawn no clear dividing line between municipal corporations and other agencies.

¹²⁴ *Warrenton v. Warren County*, 215 N. C. 342, 358, 2 S. E. (2d) 464, 472 (1939).

¹²⁵ *Id.* at 345, 2 S. E. (2d) at 465.

exemption of state owned property, was decided in 1938, Justices Devin and Connor were joined by Justices Barnhill and Winborne to make a majority of four voting for exemption; while Justices Connor and Devin maintained the position they had held from the beginning, Justice Devin in the majority opinion injected the further ground of decision that the property was held for a public purpose—a position that dissenting Justices Stacy, Clarkson and Schenck refused to accept, but which may have influenced Justices Barnhill and Winborne in reaching their decision. When a case involving exemption of state owned property comes before the court: On the basis of existing decisions, therefore, Chief Justice Stacy and Justices Clarkson and Schenck may reasonably be expected to adhere to their long standing position that state owned property, like municipally owned property, is not exempt unless held for a public purpose; Justices Devin and Seawell may reasonably be expected to adhere to their established positions that state and municipally owned property alike is exempt regardless of the purpose for which it is held; if Justices Barnhill and Winborne, who have not yet specifically set forth their views, accept the full implications and underlying philosophy of Chief Justice Stacy's opinion in the *Warrenton* case in which they joined, they, too, may be expected to vote with Justices Stacy, Clarkson and Schenck, making a five to two majority for taxing state owned property unless it is held for a public purpose. It is needless to point out to any lawyer that the foregoing observations at best are predictions only; and that although there may be some question as to whether the voice of the people is the voice of God, there is no question but that the voice of the Justices is the voice of the law so far as this tax exemption issue is concerned.

This analysis is intended to convey the impression: (1) That this conflict in the court cannot be resolved by efforts to discover the intention of the constitution makers in 1868. The evidence is too conflicting. One side can rightly point to the *dictum* in the *Carteret County* case as evidence that when the exemption provision was adopted eight years before, the constitution makers intended to limit it to property held for public purposes and give point to the argument with the fact that Justice Rodman who uttered the *dictum* was a member of the convention committee that drafted the provision and therefore knew what its makers intended. The other side can point to the fact that the general assembly put no such construction on the exemption provision for nearly twenty years after its embodiment in the constitution, as evidence that the constitution makers had no such intent, especially since many members of the constitutional convention sat in the general assembly in those years and they, too, knew what its makers intended.

(2) That it cannot be resolved by resort to the language of the

exemption provision of the constitution and technical rules for the construction thereof on the one hand as against the spirit of the whole constitution on the other. One side can argue that the other has riveted its attention on a single sentence of the constitution and forgotten to observe its surroundings and its setting, so that the forest is obscured by the trees. The other side can quote poetry in reply to metaphor, "The forest takes from every tree, its individuality," and go on to suggest that the adversary, by going into other sections of the constitution in search of a limitation on exemptions not found in the exemption provision, has gone into the forest and got lost in the woods. One side can point to the next sentence in the constitution authorizing the general assembly to exempt property held for charitable purposes only, as evidence that the constitution makers intended a like limitation to apply to property belonging to the state or to municipalities. The other side can point to the same fact as evidence that the constitution makers intended it to apply in the one instance and not in the other. As one Justice said:¹²⁶ "All this, however, leads to fruitless discussion, since the majority of the court has the same power to overrule . . . *Weaverville v. Hobbs*, as they have to distinguish it from the case at bar and reinstate the *dictum* of a twice overruled case and the net result is the same."

(3) That the conflict is as fundamental as the clash of social forces over the mutual relations of individual initiative and governmental enterprise in our governmental structure. One side sees the picture of multiplying governmental agencies, expanding governmental functions, intruding governmental action in the field of private enterprise, with increasing volumes of property coming off the tax books and decreasing volumes carrying the taxing load, and says that so far as judicial construction of tax exemption provisions may affect the balance between those contending forces the dye should be cast to make them complete and equal terms. The other side points out that the acquisition of foreclosed property by governmental units is a "matter of compulsion rather than of choice", that the policy of the state toward its municipalities does not justify the fear that they will grow rich through the acquisition of tax exempt property or thus disturb the equitable balance of taxation, and adds:¹²⁷ "There is a danger not entirely speculative that the principle laid down in this decision may react against progress, and the implication in the concurring opinion that municipal ownership of property should be cut back to a strictly governmental purpose is discouraging to those who wish to see more put into government than the dry cogs of its necessary operative machinery. . . ."^{127a}

¹²⁶ *Id.* at 358, 2 S. E. (2d) at 472.

¹²⁷ *Id.* at 369, 2 S. E. (2d) at 479.

^{127a} Though the underlying philosophy of tax exemption appears to be established, its application to concrete issues remains to be worked out as new cases

B. PROPERTY THE GENERAL ASSEMBLY *May* EXEMPT

Property which the general assembly *may exempt* apparently falls into three classes:¹²⁸ (1) "cemeteries, and property held for educational, scientific, literary, charitable, or religious purposes", *which it may exempt to any amount*; (2) "also, wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments", and, by constitutional amendment in 1876, "any other personal property", *which it may exempt "to a value not exceeding three hundred dollars"*; (3) "property held and used as the place of residence of the owner", *which it may exempt to a value not exceeding \$1000*.

CLASS 1

"Cemeteries and property held for educational, scientific, literary, charitable or religious purposes"

Under this provision of the constitution the general assembly may exempt all property held for all, part, or none of these purposes. "The

arise and come before the court. To illustrate: While it is clear that a municipally owned power and light system would be tax exempt as for a public purpose if used to light public buildings of the city, or to supply light and power to the inhabitants living within the corporate limits, suppose the city extended its lines outside the corporate limits to serve the surrounding territory—would the power lines and property thus used be tax exempt? Or, though it be a "public purpose" to serve the persons within the corporate limits, does it cease to be such the moment the city limit is reached, and hence, render the property taxable? Is it any less a public service to furnish a citizen with power and lights merely because he happens to live just outside the city limits? If so, has not the legislature the power to extend the city limits for this special purpose alone, and declare it to be a "public purpose" with respect to taxation? But if it is held not to be a "public purpose" for tax purposes to serve the inhabitants of the territory surrounding the city limits, what part of the power system would be taxable and what part non-taxable? That is, if under the statute, the property must be used "wholly and exclusively" for public purposes, would the use of one plant to generate power for both the city and surrounding territory render the whole plant taxable as not being used exclusively for public purposes? Or would a main transmission line which simultaneously supplied power and lights to people both within and without the city limits be wholly taxable for the same reason? By analogy, these same problems arise with respect to municipally owned water systems and sewerage systems, used to serve citizens living both within and without the city limits.

Are the tests used by the court to determine what is a "public purpose" for tax purposes applied in the same manner to city, county, special districts and state? That is, though a particular function be a public purpose for a city, need it necessarily be a public purpose for a county, a special district, or the state? Suppose the legislature creates a special drainage district, or sewerage district, or rural electrification authority, or housing authority, or port authority, declaring their respective functions to be "public purposes"—would this legislative declaration alone conclusively establish their tax status?

Must the governmental unit carry on the public function itself, or is the use of the governmental property for public functions by other agencies sufficient? That is, suppose a city or county loaned a lot or building to a civic organization, rent-free, to be used as a playground, public swimming pool, community house, or public library, etc.—would this render it tax free? Suppose the governmental unit leased the land to organizations for such purposes—how much weight should be given the element of profit?

¹²⁸ N. C. CONST. (1936) art. V, §5.

Constitution, Article V, section 5", said Justice Clark¹²⁹ in the first case construing this provision, "empowers the Legislature to exempt from taxation 'property held for educational, scientific, literary, charitable or religious purposes'. This is the limit. The Legislature can exercise this power to the full extent, or in part, or decline to exempt at all. It can exempt one kind of property held for such purposes, either realty or personalty, and tax other kinds. It can exempt partially, as for instance up to a certain value, and tax all above it. It can exempt the property held for one or more of those purposes and tax that held for others—as, for instance, it may exempt churches or other property held for religious purposes, and tax buildings or other property held for scientific or literary purposes, for the constitutional provision is in the disjunctive, and authorizes the Legislature to exempt property held for educational, scientific, literary, charitable or religious purposes. . . . Whether the Legislature can discriminate in the same class", continued the court, "by exempting to a large value the property of a college or university, and to a smaller amount the property of an academy or high school, is a large question which is not before us, for there is here no attempt to discriminate between corporations holding property for the same purpose, and any expression of opinion on that point would be *obiter dictum*."

It follows from this classifying power that the general assembly may exempt property held for "educational, scientific, literary, charitable or religious purposes" when it is held by or for educational, scientific, literary, charitable or religious organizations and tax it when it is held by or for any other type of organization. This is what the general assembly has done. Any organization claiming exemption, therefore, must bring itself within the statutory type as well as within the constitutional purpose.

Who may claim exemption. Property held for the above mentioned purposes was to some extent exempt before the 1868 convention. To illustrate: "existing legislative policy exempted graveyards belonging to churches, religious societies, cities, towns or counties";¹³⁰ and property belonging to "colleges, institutions, academies, and schools for the education of youth",¹³¹ or set apart for "divine worship",¹³² or for "the

¹²⁹ *United Brethren of Salem v. Commissioners*, 115 N. C. 489, 493, 20 S. E. 626 (1894). For cases in which the court construes other laws passed pursuant to article V, section 5 of the constitution, consult: *Charlotte Building and Loan Association v. Commissioners*, 115 N. C. 410, 20 S. E. 526 (1894); *Davis v. Salisbury*, 161 N. C. 56, 76 S. E. 687 (1912); *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18 (1914); *Trustees of Lees-McRae Institute v. Avery*, 184 N. C. 469, 114 S. E. 696 (1922); *Tarboro v. Forbes*, 185 N. C. 59, 116 S. E. 81 (1923); *Central Bank & Trust Co. v. Commissioners*, 195 N. C. 678, 143 S. E. 252 (1928); *Latta v. Jenkins*, 200 N. C. 255, 156 S. E. 857 (1930); *Catholic Society v. Gentry*, 210 N. C. 579, 187 S. E. 795 (1936).

¹³⁰ N. C. PUB. LAWS 1858-59, c. 25, §25.

¹³¹ *Ibid.*

¹³² *Ibid.*

propagation of the gospel or used as parsonages",¹³³ or "for the support of the poor and afflicted".¹³⁴

Since 1868 the general assembly has utilized the convenient vagueness of constitutional sanctions and tempered the wind to many a lamb, shorn and unshorn. To illustrate: Under constitutional authority to exempt "cemeteries" it approved and extended the pre-existing exemption applying to those owned by "churches, religious societies, cities, towns or counties", to include those owned by all persons or agencies not holding for speculation or profit.¹³⁵ It has extended the definition of "educational" institutions from "The University of this State"¹³⁶ to all colleges, academies, industrial schools, seminaries, public libraries or other institutions of learning.¹³⁷ It has extended the definition of "religious" institutions to include all churches and religious bodies.¹³⁸ It

¹³³ N. C. PUB. LAWS 1860-61, c. 32, §1.

¹³⁴ N. C. PUB. LAWS 1858-59, c. 25, §25.

¹³⁵ N. C. PUB. LAWS 1939, c. 310, §600(2).

¹³⁶ N. C. REV. STAT. 1836-37, c. 102, §1.

¹³⁷ N. C. PUB. LAWS 1939, c. 310, §§600(4), 601(3). From 1868 to the present time the legislature has varied from a policy of exempting the property of only certain designated types of educational institutions to one of exempting "all" educational institutions.

In N. C. PUB. LAWS 1868-69, c. 74, §14(2), the legislature extended the exemption to (1) the University, (2) colleges, (3) academies, (4) schools for education of youths and (5) institutes. In N. C. PUB. LAWS 1881, c. 117, §12(2), the "institutes" was broadened to "institutions of learning"; in N. C. PUB. LAWS 1901, c. 7, §60(4), the legislature added "public library associations organized under the laws of this state". In N. C. PUB. LAWS 1905, c. 590, §631(4), it became more specific and extended the exemption only to (1) churches, (2) public libraries, (3) "incorporated colleges, academies, industrial schools, seminaries, or other corporate institutions of learning", and (4) the buildings on the lands of such educational institutions which are used as residences by the officers or instructors of the institutions. Before an exemption could be claimed for personal property, including endowment funds, from 1905 to 1911, the legislature also required the institution not to be a corporation having shares of stock or otherwise owned by individuals, and not to be conducted for the profit of any person or corporation, directly or under any pretense whatsoever. This apparently did not apply to real property exemptions, and the whole requirement was removed in 1911. To the above list the legislature, in N. C. PUB. LAWS 1917, c. 234, §72(2), added the "teachers of public schools of this state", exempting only their private libraries. In exempting real and personal property held for investment purposes the legislature has used broader terms than it has in exempting property actually used by the institution. In N. C. PUB. LAWS 1933, c. 204, §304(4-a), it exempted real property held for income producing purposes, of "educational", "literary" and "historical" institutions; and in N. C. PUB. LAWS 1937, c. 291, §60(5), it adopted the same terms in exempting the "endowment and invested funds" of the institutions; these terms are used in the present statute.

¹³⁸ N. C. PUB. LAWS 1939, c. 310, §§600(4), 601(2). The legislature in the past has put very little emphasis on the type of institutions which could claim tax exemption for property used for religious purposes; it has usually been sufficient if the organization was a church or other religious association. For the most part, however, it has been careful to require that the religious body itself own the property for which exemption was claimed. In 1869 the legislature did not limit the exemption to any particular type of religious institution; the property simply had to be "set apart for and appropriated to the exercise of Divine worship, or the propagation of the gospel, or used as parsonages". N. C. PUB. LAWS 1868-69, c. 74, §14(2). Apparently, under this first statute both private owners and churches could claim the exemption, provided the property was devoted to the

has extended the definition of "literary, scientific, charitable" institutions to include: in 1870, the Masonic fraternity, Order of Odd Fellows, Good Templars and Friends of Temperance;¹³⁹ in 1872, the Knights of Pythias;¹⁴⁰ in 1875, the Patrons of Husbandry and asylums;¹⁴¹ in 1877, the Independent Order of Mechanics;¹⁴² in 1879, the Knights of Honor, Good Samaritans, Brothers and Sisters of Love and Charity;¹⁴³ in 1881, the Royal Archanum;¹⁴⁴ in 1883, the Hibernian Benevolent Society of Wilmington;¹⁴⁵ in 1885, the Israel and Priscilla Tent of Wilmington;¹⁴⁶ in 1897, the Farmers Mutual Fire Insurance Association;¹⁴⁷ in 1905, Y. M. C. A.'s and similar associations, reformatories, hospitals and nunneries not conducted for profit;¹⁴⁸ in 1923, the "American Legion or Post of the American Legion";¹⁴⁹ and in 1929, "any benevolent, patriotic, historical" association;¹⁵⁰ until today it has phrased the exemption in somewhat overlapping language to include: (1) Young Men's Christian Associations and similar religious associations, orphanages or similar homes, hospitals and nunneries not conducted for profit,¹⁵¹ (2) the American Legion, any post of the American Legion, or any benevolent, patriotic, historical or charitable association.¹⁵²

Thus the blanket words "educational, religious, scientific, literary, charitable" have been extended to cover a multitude of charities and

required uses. But in N. C. PUB. LAWS 1871-72, c. 49, §11(2), the legislature required the property to be owned by "any religious denomination or society" before the exemption could be claimed. It continued to require the religious body claiming the exemption to own the property, in N. C. PUB. LAWS 1905, c. 590, §63(2)-(3), as well as in subsequent years up to date, even though the specific items of property exempted were enumerated, including land, buildings, furniture and furnishing. There are some variations from this policy, however. In N. C. PUB. LAWS 1919, c. 92, §72(3), when the legislature first began to extend exemptions to buildings and lands held for investment purposes, if the income therefrom was used for religious purposes, it required the religious body to own and hold such property *through gift or will*, but two years later it removed this requirement, it being sufficient if the property was owned by the religious body; in N. C. PUB. LAWS 1933, c. 204, §304(4-a), and up to the present statute, it exempted property held for investment purposes if such property either belonged to or was "held for the benefit" of "churches and religious societies". Since N. C. PUB. LAWS 1905, c. 590, §63(2)-(3), the legislature has exempted the private libraries of ministers, apparently whether owned by the religious body or the minister himself.

¹³⁹ N. C. PUB. LAWS 1869-70, c. 225, §11(2).

¹⁴⁰ N. C. PUB. LAWS 1871-72, c. 49, §11(2).

¹⁴¹ N. C. PUB. LAWS 1874-75, c. 184, §12(2).

¹⁴² N. C. PUB. LAWS 1876-77, c. 155, §12(2).

¹⁴³ N. C. PUB. LAWS 1879, c. 71, §13(2).

¹⁴⁴ N. C. PUB. LAWS 1881, c. 117, §12(2).

¹⁴⁵ N. C. PUB. LAWS 1883, c. 363, §17.

¹⁴⁶ N. C. PUB. LAWS 1885, c. 177, §16(2).

¹⁴⁷ N. C. PUB. LAWS 1897, c. 169, §20(2).

¹⁴⁸ N. C. PUB. LAWS 1905, c. 590, §63(5).

¹⁴⁹ N. C. PUB. LAWS 1923, c. 12, §66(6).

¹⁵⁰ N. C. PUB. LAWS 1929, c. 344, §304(6).

¹⁵¹ N. C. PUB. LAWS 1939, c. 310, §§600(5), 601(5).

¹⁵² N. C. PUB. LAWS 1939, c. 310, §§600(6), 601(6).

related things and the expansion still goes on as existing types multiply their kind and as new types are created and through legislative processes seek safety from taxation in the shelter of the constitutional arms.

Types of property for which the aforementioned organizations may claim exemption. Under the constitutional authority to exempt "cemeteries", the general assembly has extended the exemption from "graveyards or burial lots" to include real property, tombs, vaults, and mausoleums set apart for burial purposes, unless owned and held for rental or sale.¹⁵³

It does not call for much stretching of the imagination or straining of the constitution to conclude that "tombs, vaults, and mausoleums" at the grave, or on the way to it, fall within the scope of the word "cemeteries", no less than the graveyard itself. At any rate, since 1868 the court has had no occasion to draw any such distinction. Neither constitution nor statute distinguishes between publicly owned and privately owned cemeteries.

Today the general assembly authorizes the aforementioned organizations to claim exemption for the following types of real property: buildings, the lands actually occupied by them, and adjacent lands reasonably necessary for the building's convenient use belonging to them and by them used exclusively (1) for educational purposes or for residences by the officers or instructors of educational institutions,¹⁵⁴ or (2) for religious purposes or for residences of ministers of churches or religious bodies,¹⁵⁵ or (3) for the purposes of charitable organizations, including

¹⁵³ N. C. PUB. LAWS 1939, c. 310, §600(1).

¹⁵⁴ N. C. PUB. LAWS 1939, c. 310, §600(4). From 1868 to 1875 the legislature used only the blanket term "property" in describing the property exempt when used for educational purposes, apparently exempting real property and personal property, both tangible and intangible; in N. C. PUB. LAWS 1874-75, c. 184, §12(2), it continued using the term "property" but expressly provided that the exemption should not apply to "solvent credits"; twelve years later in N. C. PUB. LAWS 1887, c. 137, §21(2), it again extended the exemption to "solvent credits", but continued using the term "property" until 1905. In N. C. PUB. LAWS 1905, c. 590, §63(4), it exempted (a) buildings and land actually occupied by educational institutions, together with additional adjacent land, (b) furniture and furnishings, (c) books and instruments, and (d) endowment funds; in N. C. PUB. LAWS 1933, c. 204, §304(4-a), it extended the exemption to any real property, land, buildings or otherwise, where such property was producing income and the income was applied to designated purposes. No new types of property have been added since that time.

¹⁵⁵ N. C. PUB. LAWS 1939, c. 310, §600(3). From 1868 to 1874 the legislature used the term "property" without further qualification, apparently exempting real property and personal property, both tangible and intangible; in N. C. PUB. LAWS 1874-75, c. 184, §11(2), it continued using the term "property" but expressly provided that the exemption should not apply to "solvent credits"; twelve years later, N. C. PUB. LAWS 1887, c. 137, §21(2), it again extended the exemption to "solvent credits" by removing this prohibition and using the term "property"; in N. C. PUB. LAWS 1901, c. 7, §60(4), it exempted "real property" and "personal property"; in N. C. PUB. LAWS 1905, c. 590, §63(2)-(3), it narrowed the exemption provision, no longer using the blanket terms "real" and "personal" property, but providing expressly for the exemption of (1) buildings, (2) with the land they actually occupy, (3) together with the land adjacent thereto, (4) furniture and furnishings

Y. M. C. A.'s and similar religious associations, orphanages and similar homes, hospitals and nunneries, not conducted for profit but entirely and completely as charitable,¹⁵⁶ or (4) for lodge purposes of the American Legion or any benevolent, patriotic, historical or charitable association.¹⁵⁷

"What is meant by adjacent land?" asked Justice Winborn in *First Baptist Church v. Guilford County*,¹⁵⁸ and took his answer from Webster: "objects are adjacent when they lie close to each other, but not necessarily in actual contact. . . ." Applying this answer he held that a vacant lot five city blocks away from the church was "adjacent" land and therefore exempt from taxation when reasonably necessary for the convenient use of the church building. One may inquire whether the dictionary meaning is necessarily the legislative meaning. However, there appears to be no legislative definition of the word. Nor is there any judicial interpretation of the North Carolina statute inconsistent with Webster. An early North Carolina case raising a similar problem involved a different statute. In *Stewart v. Davis*,¹⁵⁹ the legislature exempted "all houses and lots or other real or personal estate appertaining thereto, set apart and appropriated to divine worship, or for the

of buildings, and (5) private libraries of ministers; in N. C. PUB. LAWS 1923, c. 12, §66(4), it added the above list (6) "endowment and invested funds"; no new types of property have been added since that time.

¹⁵⁶ N. C. PUB. LAWS 1939, c. 310, §600(5). From 1868 to 1875 the legislature used only the blanket term "property" in describing the property exempt when owned by charitable institutions, apparently exempting real and personal property, both tangible and intangible; in N. C. PUB. LAWS 1874-75, c. 184, §12(2), it continued using the term "property" but expressly provided that the exemption should not apply to "solvent credits"; twelve years later, in N. C. PUB. LAWS 1887, c. 137, §21(2), it struck out the exception as to "solvent credits" but continued using the term "property" until 1901; in N. C. PUB. LAWS 1901, c. 7, §60(4), it exempted "real property" and "personal property". In N. C. PUB. LAWS 1905, c. 390, §63(5), the legislature became more specific and exempted (1) "real estate", (2) "personal property", including "endowment funds", which became "endowment and invested funds" in 1923. These types of property are continued in the present statute.

¹⁵⁷ N. C. PUB. LAWS 1939, c. 310, §600(6). From 1868 to 1875 the legislature used only the blanket term "property" in describing the property exempt when owned by benevolent institutions and used for benevolent and charitable purposes, exempting real and personal property, both tangible and intangible; in N. C. PUB. LAWS 1874-75, c. 184, §12(2), it continued using the term "property" but expressly provided that the exemption should not apply to "solvent credits"; twelve years later, in N. C. PUB. LAWS 1887, c. 137, §21(2), it struck out the exception as to "solvent credits", but continued using the term "property" until 1901; in N. C. PUB. LAWS 1901, c. 7, §60(4), it exempted "real property" and "personal property". In N. C. PUB. LAWS 1905, c. 590, §63(5)-(6), the legislature became more specific and exempted (1) buildings, (2) lands, (3) profits arising from rents, leases or rooms in buildings, (4) furniture and furnishings of buildings and (5) other property; in N. C. PUB. LAWS 1923, c. 12, §66(4), it added "endowment and invested funds"; in 1937 it struck out the provision relating to profits arising from rents, leases and rooms, but apparently left other terms broad enough to include this type of property. The other types enumerated have remained in the act through the present statute.

¹⁵⁸ 218 N. C. 718 (1940).

¹⁵⁹ 7 N. C. 244, 245 (1819).

education of youth". The Newbern Academy claimed exemption on a lot not adjoining the academy, and the court denied the exemption, saying: "It was the design of this law to exempt from taxes only that property . . . exclusively set apart and appropriated to divine worship or education, and directly employed for either of these purposes; as the lot on which a church stands, which would include the church yard and the minister's residence, if the latter be an appurtenance to the principal lot; or an Academy and the lot on which it is built, and the grounds appurtenant to it, if employed in the purposes of education, as for the residences of the teachers, or towards the recreation or nourishment of the youth. . . . Whatever would pass under the name of an appurtenance, comes within the fair scope of its exemption. But a corporation may own . . . real property, which is rented out for sums more than sufficient to meet any demands arising from the objects of their incorporation; and if the Legislature intended to exempt *all* the property . . . from taxation, they would probably have used words of larger compass than those contained in this law."

What is meant by "reasonably necessary for the convenient use" of the building in question? In *United Brethren v. Commissioners*,¹⁰⁰ the court held that the statute exempting "property belonging to and set apart and exclusively used for" (various charitable agencies), exempted the church, the land on which it stood and the surrounding two acres (conceded to be reasonably necessary for its convenient use) and taxed the remaining eighteen acres in the plot and other lots not adjacent thereto. In 1940¹⁰¹ the court held that a vacant six acre lot "used only by Sunday school classes and organization of the church as place for holding outdoor meetings", was reasonably necessary for the convenient use of a church five blocks away and too small to house all church activities.

What is meant by "belonging to"? It is not always necessary that the organization claiming exemption should hold the technical legal title.¹⁰² "We are not inadvertent to the fact," said Justice Hoke in *Corporation Commission v. Oxford Seminary Construction Co.*,¹⁰³ "that the legal title to this property is in the corporation, and that the same

¹⁰⁰ 115 N. C. 489, 20 S. E. 626 (1894).

¹⁰¹ *Piedmont Memorial Hospital, Inc. v. Guilford County*, 218 N. C. 673 (1940).

¹⁰² But throughout the history of the exemptions of property used for educational, scientific, literary, charitable and benevolent, or religious purposes, from 1868 through the present statute, the Legislature has consistently required the property to belong to the institution claiming the exemption. One exception to this policy exists in the case of real property producing income when the income is applied to religious, charitable, educational or benevolent purposes; in N. C. PUB. LAWS 1933, c. 204, §304(4-a), the legislature provided that such property could be either "held for the benefit of" or "beneficially belong to" the institution and still be tax exempt; this has been continued through the present statute.

¹⁰³ 160 N. C. 582, 590, 76 S. E. 640, 644 (1912).

has been rented to F. P. Hobgood, who conducts and controls the school, and we are in full accord with the well-considered decisions which hold that the words 'used exclusively for school purposes' or 'wholly devoted to educational purposes' do not ordinarily apply to the case where an owner builds a schoolhouse and rents it to another for purposes of a school. . . . But looking through the form to the substance, it appears that for fifty years and more this school has been successfully conducted by F. P. Hobgood and his predecessors, . . . and it having become necessary to renew and enlarge the school buildings, resort was had to the form of incorporation in which F. P. Hobgood took 264 of the 543 shares and his friends and fellow citizens the remainder in small amounts, this being done by them in recognition of his worth and of the great benefit that such a school had been and promised to be to this community. The funds available not being sufficient, the corporation, in order to complete the buildings exclusively devoted to school purposes, borrowed \$10,000, secured by deed of trust on the property and the entire investment is turned over to the management and control of said F. P. Hobgood, to be used exclusively for school purposes, at a nominal rental of \$250, for the purpose of creating a sinking fund with which to discharge the principal of the money borrowed. The other incorporators have thus far neither received nor asked anything for their own benefit, and assuredly until the debt is paid and some return is received or demanded from this property regarded as an investment, we are of opinion that the ownership and control and management should be considered as one and the same, and that this property comes within the exemption established by the statute, the same being at present entirely dedicated to educational purposes."

What is meant by "used exclusively" for the above mentioned purposes? This requirement of "exclusive" use for the approved purpose has been included in one form of words or another in exemption provisions since 1868.¹⁶⁴ At times the general assembly has re-emphasized

¹⁶⁴ *Religious*: In N. C. PUB. LAWS 1868-69, c. 74, §14(2), the legislature required property to be (a) "especially set apart for and appropriated to the exercise of Divine Worship, or (b) the propagation of the Gospel, or (c) used as parsonages" before it could be exempt; in N. C. PUB. LAWS 1887, c. 137, §21(2), it added the requirement that such property be *used exclusively* for religious, charitable or educational purposes, and in N. C. PUB. LAWS 1889, c. 218, §23(2), that it *be not held for rent* or for the purpose of "speculating in the sale thereof". In N. C. PUB. LAWS 1893, c. 296, §20(2), it became more liberal by exempting property held for rent when the rental was applied exclusively to the support of the Gospel. In N. C. PUB. LAWS 1901, c. 7, §60(4), the legislature became more specific and exempted only when the property owned by religious bodies was used as follows: (a) Personal property was exempt if "used exclusively for the purposes of . . . (the religious) association; (b) the provision exempting property held for rent when the rental was applied exclusively to the support of the Gospel was removed, and "real property" was exempt only if not leased or otherwise used for pecuniary profit and if necessary for the location and convenience of the buildings of the religious association. The occasional leasing of the buildings

this requirement by specifically excluding from the exemption any

for schools, public lectures or concerts, however, did not render them taxable, and parsonages were exempted whether occupied by the pastor or rented for his benefit. In N. C. PUB. LAWS 1903, c. 251, §63(4), it extended exemption to real property held for rent if the rents were used exclusively for (a) charitable or benevolent purposes, or (b) to pay the interest upon the bonded indebtedness of the association. In N. C. PUB. LAWS 1905, c. 590, §63(2)-(3), the legislature became more specific still and exempted only if the property was used as follows: (a) Buildings with the land they actually occupy, together with the additional adjacent land reasonably necessary for the convenient use of the buildings, *if used exclusively for religious worship or for the residence of the minister*. The occasional leasing of the buildings did not render them liable to taxation but buildings and land held for rent were not exempt; (b) the furniture and furnishings of such buildings if used exclusively for religious worship or the residence of the minister; and (c) the private library of the minister. Fourteen years later, in N. C. PUB. LAWS 1919, c. 92, §72(3), it again extended exceptions to buildings and the land upon which they were located when the income was used exclusively for religious, charitable or benevolent purposes; in N. C. PUB. LAWS 1929, c. 344, §304(3), this exemption was extended to any land producing income whether buildings were located thereon or not; and, in N. C. PUB. LAWS 1933, c. 204, §304(4-a), it was extended to *any real property* belonging to religious societies where the rent, interest or income was either (a) used exclusively for religious, charitable, educational or benevolent purposes, or (b) to pay the interest upon the bonded indebtedness of the religious institution—this has continued on through the present statute. In N. C. PUB. LAWS 1923, c. 12, §66(4), the legislature also extended exemption to the endowment and invested funds of religious associations when the income from the funds was used wholly and exclusively for religious, charitable, educational or benevolent purposes. In N. C. PUB. LAWS 1937, c. 291, §601(5), this exemption was extended to such funds if the income also was used to pay the principal or interest of the indebtedness of the institution—these provisions have been continued in the present statute.

Educational: From 1868 to 1885 the legislature required property to be "set apart and exclusively used" for the University, colleges and other schools before it was exempt; in N. C. PUB. LAWS 1887, c. 137, §21(2), it added the requirement that the property be "used exclusively for religious, charitable or educational purposes"; and in N. C. PUB. LAWS 1889, c. 218, §23(2), it added the further requirement that the property be "not held for the purpose of speculating in the sale thereof or for rent", and in 1893, "or for investment". In N. C. PUB. LAWS 1901, c. 7, §60(2), the legislature dropped out all of the above provisos and simply provided that the property be set apart and exclusively used for the University, colleges and institutions of learning; in N. C. PUB. LAWS 1901, c. 7, §60(4), the legislature, for the first time extended exemption to public library associations, exempting both the real and personal property and the endowment funds either if such property was actually used, or the income of the property if invested was used, for library purposes; in 1905, however, though it continued to extend exemptions to libraries, it exempted only if actually used for library purposes, and not if invested or rented, as noted below. In N. C. PUB. LAWS 1905, c. 590, §63(4), it became more specific and exempted property of educational institutions only when used as follows: (a) Buildings with the land they actually occupy, together with such additional adjacent land of such institution as was reasonably necessary for the convenient use of the buildings, if exclusively occupied and used by the educational institution, and wholly devoted to educational purposes; (b) the "buildings thereon used as residences by the officers or instructors of such educational institutions"; (c) the furniture and furnishings, books and instruments contained in such buildings and wholly devoted to educational purposes and exclusively used by the educational institution. In N. C. PUB. LAWS 1917, c. 234, §72(2), it also extended the exception to private libraries of the teachers in public schools; in N. C. PUB. LAWS 1923, c. 12, §66(4), it extended the exemption to the "endowment and invested funds" of educational, historical and literary institutions if the income or interest should be used (1) exclusively for "religious, charitable, educational or benevolent purposes", or (2) as added in N. C. PUB. LAWS 1937, c. 291, §60(5), to pay the principal or interest of the

property held for investment, speculation, or rent.¹⁶⁵ The court has interpreted this requirement with equal strictness. In *United Brethren v. Commissioners*¹⁶⁶ the court applied it as follows: "The second piece of property is a parcel of land of about twenty acres in the town of Winston, known as 'The Reservation'. On the north side is a church, covering about one-third of an acre, situated on a lot fenced in of about two acres. Excluding these two acres, the reservation is found to be worth \$18,000. A number of lots have heretofore been sold off, leaving the tract of the present dimensions, and public notice has been given that lots were for sale. A part of it is now under lease. This property (leaving out the church enclosure) is certainly not in use for educational, charitable or religious purposes, and was properly held liable to taxation. (3) A tract of eighty acres in West Salem, chiefly in forest, and worth \$5,000. A schoolhouse stands on the eastern side. It is found as a fact that only about two acres were necessary for the use of the school. It was properly held that the remainder of the tract was liable to taxation. It would be advantageous, no doubt, to the corporation to hold the unused seventy-eight acres as an investment, and reap the benefit of the increased value which will come to real estate adjacent

indebtedness of such association. In N. C. PUB. LAWS 1933, c. 204, §304(4-a), the legislature extended the exemption to exempt any "property" of "educational" historical and literary" institutions, producing income if such rent, interest or income shall be used (1) exclusively for religious, charitable, educational or benevolent purposes, or (2) to pay the interest upon the bonded indebtedness of the institution. These provisions have been continued through the present statute.

Charitable and Benevolent: In N. C. PUB. LAWS 1868-69, c. 74, §14(2), the legislature required the property to be "set apart and exclusively used" for the particular institutions named; and, in N. C. PUB. LAWS 1887, c. 135, §21(2), added that the property be "used exclusively for . . . charitable . . . purposes"; and in N. C. PUB. LAWS 1889, c. 218, §23(2), added that the property be not "held for the purpose of speculating in the sale thereof or for rent". In N. C. PUB. LAWS 1901, c. 7, §60(4), it exempted (1) "personal property" used exclusively for the purposes of the association, (2) "real property", if not leased or used for pecuniary profit, necessary for the location and convenience of the buildings, and (3) parsonages occupied by the pastor or rented for his benefit; in N. C. PUB. LAWS 1903, c. 251, §63(4), exemption was also extended to real property when the rents therefrom shall be used exclusively for charitable or benevolent purposes or to pay the interest upon the bonded indebtedness; this last exemption was dropped out in 1905. In N. C. PUB. LAWS 1905, c. 590, §63, the legislature extended exemption to rents and profits arising from rental of the lodge and other buildings when such income was used exclusively for charitable and benevolent purposes; this specific provision disappeared in 1937, but this type of income and property seems to be covered by N. C. PUB. LAWS 1933, c. 204, §304(4-a) exempting "property" producing income when the income is used for charitable and benevolent purposes or to pay the interest on the bonded indebtedness. In N. C. PUB. LAWS 1923, c. 12, §66(4), it extended exemption to the "endowment and invested funds" of charitable and benevolent institutions when the income from such funds were used for . . . charitable . . . or benevolent purposes, and in N. C. PUB. LAWS 1937, c. 291, §601(5), to pay the principal or interest of the institution's indebtedness. These provisions have been maintained in the present statute.

¹⁶⁵ N. C. PUB. LAWS 1868-69, c. 74, §3; N. C. PUB. LAWS 2. 218, §23(2); N. C. PUB. LAWS 1893, c. 296, §20(2).

¹⁶⁶ 115 N. C. 489, 496, 20 S. E. 626, 627 (1894).

to a growing and prosperous town like Winston; but in the meantime such property must bear its share of the public burdens. The exemption is for property now used for religious, charitable or educational purposes, and not for property abstracted from all use or used to create a large fund in future, which fund when so created may be used for such purposes."

If the entire building is used exclusively for the approved purpose, it is obviously exempt. But suppose all floors but one are so used? or a bare majority of floors? or only one floor? If the *building* is taken as the unit, then the property is not used "exclusively" for the approved purpose. If the *floor* is taken as the unit, then the floors so used may be exempt. And suppose one room or a suite of rooms is so used?

Educational institutions operated for a profit. Neither constitution nor statute draws a distinction between educational institutions operated for a profit and those not operated for a profit. In either case it is held for "educational purposes". "We find nothing in the constitution or statute which distinguishes between public and private undertakings or between institutions which are in part conducted for the personal profit of the owner and proprietor and those which are run on a salary basis, using any profits which may arise in the extension of the work", said Justice Hoke in *Corporation Commissioners v. Oxford Seminary Construction Co.*¹⁶⁷ ". . . We may not approve the position that the exemption cannot be extended to cases where, as in this case, an incorporated college has for one of its objects the personal profit of the president and owner."

Hospitals operated for a profit. Both constitution and statutes draw a distinction between hospitals operated for a profit and those operated for charitable purposes; for a hospital may claim exemption for its property only when it is held for "charitable purposes", and a hospital operated for profit is not operated for charity, as the court points out in *Salisbury Hospital v. Rowan County*:¹⁶⁸ "The plaintiff is not a charitable association nor was its property used by it entirely for charitable purposes". This is true even though the hospital in fact makes no profit. Nor does the fact that it does some charity work bring it within the exempted class.

Following this decision the general assembly gave private hospitals doing charity work a measure of relief by providing:¹⁶⁹ "Private hospitals shall not be exempt from property taxes . . . , but in consideration of the large amount of charity work done by them, . . . commissioners . . . are authorized and directed to accept as valid claims against the

¹⁶⁷ 160 N. C. 582, 589, 76 S. E. 640, 643 (1912).

¹⁶⁸ 205 N. C. 8, 169 S. E. 805 (1933).

¹⁶⁹ N. C. PUB. LAWS 1933, c. 204, §304(5-A).

county, the bills of such hospitals for . . . services voluntarily rendered to afflicted or injured residents of the county who are indigent and likely to become public charges . . . and the same shall be allowed as payments on . . . all taxes which may become due . . . on properties strictly used for hospital purposes, but to that extent only will the county be liable for such hospital bills." The privilege was granted also as to municipal property taxes.

Thereafter the case of *Piedmont Memorial Hospital v. Guilford County* came before the court.¹⁷⁰ According to the agreed statement of facts "the plaintiff is a non-profit benevolent and charitable corporation, created . . . to conduct without profit, and entirely and completely for charitable and humane purposes, a general hospital. . .". The plaintiff, therefore, claimed exemption as a charitable organization holding its property for charitable purposes. The court, however, held that the above statute "deals specifically with private hospitals, and was apparently intended to embody the only provision relating to that particular class of property, and to afford a means of repayment for charitable services rendered the county's indigent sufferers, without exempting the property from taxation". Though "it appears that the plaintiff is a 'non-profit, benevolent and charitable corporation' . . . its seems clear that, as contradistinguished from a public hospital, in the sense of one supported, maintained and controlled by public authority, the plaintiff maintains a private corporation controlled by a self perpetuating board of trustees named by the corporation." It appears, therefore, that if the above statute had not been passed, or if it should be repealed, and with it "the legislative intent . . . to fix a separate and distinct classification for private hospitals", or if the general assembly should disclaim such "legislative intent", the plaintiff might qualify as a charitable organization and claim exemption for property held "entirely and completely" for charitable purposes. In determining whether such property is held "entirely and completely" for charitable purposes, the court is willing to divide the building into floors and take the floors as independent units rather than the building as a whole.

Today the legislature also authorizes the aforementioned organizations to claim exemption for the following types of personal property:

(1) Furniture and furnishings, books and instruments belonging to and used exclusively by educational institutions and contained in buildings wholly devoted to educational purposes, and private libraries of teachers in the public schools;¹⁷¹ (2) furniture and furnishings, books and instruments belonging to and used exclusively by churches or religious bodies for religious worship or for the residences of ministers, and private

¹⁷⁰ 218 N. C. 673 (1940).

¹⁷¹ N. C. PUB. LAWS 1939, c. 310, §601(3).

libraries of ministers;¹⁷² (3) personal property belonging to Y. M. C. A.'s and the like, orphanages and the like, reformatories, hospitals and nunneries not conducted for profit, and used exclusively for charitable and benevolent purposes;¹⁷³ (4) furniture, furnishings and other personal property belonging to the American Legion, or any patriotic, historical, benevolent or charitable association, used by them exclusively for lodge purposes and meeting rooms or for benevolent and charitable purposes.¹⁷⁴

If this statute is taken at its face value, the scope of the personal property exemption is not the same for all organizations concerned. It includes the "furniture, furnishings, books and instruments" of one group, the "furniture, furnishings and other personal property" of another, and the "personal property" of another. The court has not yet been called upon to say whether these verbal distinctions make a legal difference. There is a specific requirement that the personal property of educational institutions be contained in buildings wholly devoted to educational purposes in order to be exempt; but there is no such specific requirement as to other agencies, though in some instances it may be read in by implication. The private libraries of ministers and teachers in the public schools are exempt, but not the private libraries of officers of the other agencies.

The general assembly has gone further and exempted property beneficially belonging to or held for the benefit of, and the endowment and invested funds of, "churches, religious societies, charitable, educational, literary, benevolent, patriotic or historical institutions or orders," when the rent, interest or income from such investment is used exclusively (1) for religious, charitable, educational or benevolent purposes, or (2) to pay the principal or interest of the indebtedness of said institutions or orders.¹⁷⁵

When the general assembly exempted property of designated organizations used exclusively for constitutionally approved purposes, it was clearly within the bounds of the constitution. Was it still within these bounds when (1) it exempted such property when rented out for business uses with the income used for the approved purposes? And when (2) it went still further and exempted such property where neither the property itself nor the income therefrom is used for the approved purposes, but rather to pay the principal and interest on the indebtedness on such property, on the theory that the income will be used for the approved purposes as soon as the debt is paid? Is such property held for "educational, religious, scientific, literary or charitable purposes?"

For fifty years or more the general assembly has thought it could

¹⁷² N. C. PUB. LAWS 1939, c. 310, §601(2).

¹⁷³ N. C. PUB. LAWS 1939, c. 310, §601(5).

¹⁷⁴ N. C. PUB. LAWS 1939, c. 310, §601(6).

¹⁷⁵ N. C. PUB. LAWS 1939, c. 310, §600(7).

exempt such property. In 1893¹⁷⁶ it exempted property rented out by churches or religious bodies when the rental was "applied exclusively to the support of the gospel"; in 1903¹⁷⁷ it exempted real property of charitable and benevolent institutions if the rents were used exclusively for charitable or benevolent purposes or to pay the interest upon the bonded indebtedness of the institution; in 1905,¹⁷⁸ it repealed the exemption when the income was used to pay interest but continued the other exemption; in 1919,¹⁷⁹ it extended this exemption to religious institutions; in 1923¹⁸⁰ it exempted the endowment funds of religious, charitable, educational, literary, benevolent or historical institutions, when the income from such funds was used exclusively for religious, charitable, educational or benevolent purposes; and in 1933,¹⁸¹ it extended the exemption to "property" of such institutions where the rent should be used exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of the institutions claiming exemption. These provisions have been brought forward in the present statute.¹⁸²

The court thought the general assembly could exempt such property as early as 1894 when it said:¹⁸³ "It was, and is, competent for the Legislature to also exempt property whose rental is applied to educational or charitable purposes. . . . That matter rests in the Legislature's discretion". Forty-six years later, in the year 1940, it appears that the Justice uttering this *dictum* may have outrun his own headlights. In *Odd Fellows v. Swain*,¹⁸⁴ the plaintiff owned an office building in Raleigh, had lodge rooms on part of the tenth floor and rented the remainder of the building for commercial use as offices and stores; all income was expended for repairs, remodeling and payment on a mortgage indebtedness in excess of \$300,000, and none for charitable purposes. Wake County levied a tax on this property. The plaintiff claimed exemption as a charitable organization under the revenue acts in force, on the ground that "the rent, interest or income from its investment was used exclusively to pay the interest on its bonded indebtedness". The court refused to allow the exemption on the theory that property held for rent under those circumstances is not held for a charitable purpose, and therefore cannot be exempt under the constitution. It is to be noted in this case, however, that the Lodge had "at no time made any payments,

¹⁷⁶ N. C. PUB. LAWS 1893, c. 296, §20(2).

¹⁷⁷ N. C. PUB. LAWS 1903, c. 251, §63(4).

¹⁷⁸ N. C. PUB. LAWS 1905, c. 590, §63.

¹⁷⁹ N. C. PUB. LAWS 1919, c. 92, §72(3).

¹⁸⁰ N. C. PUB. LAWS 1923, c. 12, §66(4).

¹⁸¹ N. C. PUB. LAWS 1933, c. 204, §304(4-a).

¹⁸² N. C. PUB. LAWS 1939, c. 310, §§600, 601.

¹⁸³ *United Brethren v. Commissioners*, 115 N. C. 489, 495, 20 S. E. 626, 627 (1894).

¹⁸⁴ 217 N. C. 632, 9 S. E. (2d) 365 (1940).

donations or contributions to any charitable purpose from the operation of its building",¹⁸⁵ and that the payments on the principal and interest of its indebtedness were likely to absorb the rents and profits for some time and leave little or nothing for charitable purposes for years to come. "The statute", says the court, "has reference to a charity in fact as distinguished from one in theory or promise."¹⁸⁶

But the reasoning of the court goes far beyond the facts of the *Odd Fellows* case and, if followed to its logical conclusion would deny exemption to property rented out under similar circumstances even if the income is applied to charitable purposes. "Property held for any of these purposes [educational, scientific, literary, charitable or religious]", said the Chief Justice,¹⁸⁷ "is supposed to be withdrawn from the competitive field of commercial activity, and hence it was not thought a violation of the rule of equality or uniformity, to permit its exemption from taxation while occupying this favored position. But when it is thrust into the business life of the community, it loses its sheltered place, regardless of the character of the owner, for it is then held for profit or gain. . . . Conceding that the General Assembly may have placed a broader interpretation under Art. V, Sec. 5, of the Constitution than is warranted by its language, induced no doubt by *dicta* contained in some of our decisions, it does not follow that the pervading principle of the Constitution, which is equality, should *ergo* be abandoned, or that the discretionary power of exemption, contained therein, should be extended to property held and used for purposes other than those specifically mentioned. The grant is limited in its terms, and the power to exempt stops at the boundary of the grant."

A few months later, in *Piedmont Memorial Hospital v. Guilford County*,¹⁸⁸ the first and second floors of a building, rented out by the plaintiff charitable organization for "commercial and business purposes", produced an income which was in part used for annual payments on its debt and in part for charitable purposes presumably within the meaning of the constitution but not within the meaning of the particular statute. "As to that portion of the building, on the first and second floors, which is rented out for commercial and business purposes, the rule laid down by this Court in *Odd Fellows v. Swain* must be held applicable, and determinative of the question of exemption against the plaintiff. . . . Anything in Chapter 310, Public Laws, 1939, which attempts to exempt this portion of the building from taxation must be held in excess of the granted power of the General Assembly."

Thus, the court has held that the general assembly may not exempt property when the income is used solely for annual payments on out-

¹⁸⁵ *Id.* at 635, 9 S. E. (2d) at 267.

¹⁸⁷ *Ibid.*

¹⁸⁶ *Id.* at 637, 9 S. E. (2d) at 368.

¹⁸⁸ 218 N. C. 673 (1940).

standing indebtedness as in the *Odd Fellows* case;¹⁸⁹ nor when the income is used in part for payment on debts and in part for charitable purposes, as in the *Piedmont Memorial Hospital* case.¹⁹⁰ The reasoning of the court in both cases apparently goes further than the facts in either case and indicates that property rented out for business purposes is not held for "educational, religious, scientific, literary or charitable purposes" even if the income is used exclusively for such purposes. Cases are now on the way to the court to test the full implications of these decisions.

In the meantime the court's reasoning in the *Odd Fellows* case and in the *Piedmont Hospital* case finds supporting analysis in the decisions dealing with the exemption of property belonging to municipal corporations. The constitution specifically exempts such property and the general assembly and court read into this exemption provision the limitation that the property must be held for public purposes. In support of this limitation the court has cited the succeeding sentence of the constitution authorizing the general assembly to exempt property held for charitable purposes and argued that if property belonging to charitable, etc., corporations may be exempt only if held for charitable, etc., purposes, property belonging to municipal corporations may be exempt only if held for public purposes and that this is the plain intent and meaning of the constitution.

The validity of this reasoning is open to question. There is considerable force in the dissenting opinion that the constitution makers looked on these classes of property differently, because: (1) they put the exemptions in separate sentences, (2) they required the general assembly to exempt the one to its full amount and permitted it to exempt the other in whole, in part, or not at all, (3) they made ownership by the municipal corporation the test of exemption in the one and the purpose for which it was held the test of exemption in the other. Under the terms of the constitution the general assembly apparently may exempt property held by business organizations for charitable, etc., purposes. The fact that since 1868 it has chosen to exempt such property only when belonging to charitable organizations, and since 1885 has added a provision limiting the exemption of municipally owned property to cases where it is held for a public purpose, is certainly evidence that the general assembly intends to put both types on the same basis, or even that it believes the constitution puts them on the same basis, but it is not necessarily proof that the constitution makers so intended.^{190a}

¹⁸⁹ 217 N. C. 632, 9 S. E. (2d) 365 (1940).

¹⁹⁰ 218 N. C. 673 (1940).

^{190a} Justice Seawell further questions the validity of the court's assumption that the constitution makers intended that municipal corporations adhere strictly to governmental functions in the strict sense: "Article VII, section 7, of the Con-

But grant the major premise of the court that the general assembly has given expression to the intent and purpose of the constitution to put municipal corporations, charitable, etc., organizations on the same basis for tax exemption purposes, and starting with the court's decisions that property belonging to municipal corporations is not held for a public purpose when rented out for business purposes even if the income is applied to public purposes, does it not follow that property belonging to charitable, etc., organizations is not "held for educational, scientific, literary, charitable, or religious purposes", when it is rented out for business purposes, even if the income is applied to the constitutionally approved purposes? And does it not follow that such property thus rented out is even farther removed from the constitutionally approved purposes when the income is applied to the payment of principal or interest on the indebtedness thereof?

Will the court go still further and hold that solvent credits of charitable, etc., organizations are not exempt when the income therefrom is applied exclusively to charitable purposes? At this point it may or may not accept the distinction drawn by Justice Clark nearly fifty years ago in construing a statute exempting property "set apart and used" for approved purposes. Solvent credits, he said,¹⁹¹ were "set apart and used" for charitable purposes, and therefore exempt from taxation when the interest on them was applied exclusively to charitable purposes: "It seems to us that the *corpus* of the fund is 'set apart and used exclusively' for such purposes. It is the only mode in which it can be so set apart and used, and it is therefore exempt until the Legislature shall declare its will to tax it. This fund is not held for investment in the meaning of the proviso [not exempting when property held for speculation, investment, or for rent], for that contemplates the holding of the property for the benefit of the corporation, to await enhancement or future use,

stitution clearly recognizes that municipalities may carry on activities unessential to government and that proprietary ownership of facilities for that purpose may legitimately take place. . . . At the time of the adoption of the Constitution of 1868 and its reconsideration in 1875, proprietary ownership of property by towns and cities had been common in North Carolina for at least one hundred years, during which time, as far as I am able to discover, no tax had been levied on it by the State or any other agencies. The constitutional provision was but the reiteration of a State policy that had been in force since colonial days. . . . The Convention of 1868 rejected a minority report that would have taxed municipal property and adopted a majority report which exempted it. . . . The Convention of 1875 discussed this clause and declined to amend it. . . . With this knowledge that proprietary ownership of property was well nigh universal in all the cities of the State of any importance, this provision was adopted by one Convention and considered and left intact by another without qualification or clarification." *Warrenton v. Warren County*, 215 N. C. 342, 363, 2 S. E. (2d) 463, 467 (1939).

¹⁹¹ *United Brethren v. Commissioners*, 115 N. C. 489, 495, 20 S. E. 626, 627 (1894) (italics supplied).

but here the whole use—the interest—is applied as received, for the purposes named. *Any part of such fund on which the interest is not so applied, but is allowed to accumulate, would not be exempt.*"

In support of this view counsel in a case now pending in the court observes:^{191a} "Endowment funds are surely for educational purposes. Their creation, the Constitution would encourage. We ask appellants where they shall be invested—in bonds or stocks, for developments elsewhere, or in mortgages for developments at home? And by process of law, such funds will at times necessarily acquire real estate. And is real estate to partake of a peculiar quality as the only kind of property which cannot be exempted?"

Since Justice Clark's opinion was written the general assembly has undertaken specifically to exempt not only property so "set apart and used", but also property the income from which is so applied.¹⁹² And though the legislative expression and purpose is different, the constitutional problem is the same. It is just as true now as then that there is no other way of "using" solvent credits for charitable purposes than to produce income for charitable purposes. But it is also true that an organization or institution thus lending money at interest is in the "competitive field of commercial activity" in common understanding, though it may not turn out to be within the scope of this term as used by the court.

The general assembly has gone still further and extended the foregoing exemptions to apply to real and personal property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders, when the property or the income therefrom is used exclusively for religious, charitable, educational or benevolent purposes within this state.¹⁹³ This enactment abolished the former provision construed by the court in *Catholic Society v. Gentry*¹⁹⁴ as withholding the exemption from foreign charitable organizations. Even this new enactment, according to the Attorney General's ruling,¹⁹⁵ withholds the exemption altogether if any part of the income from property in this state is used outside the state.

^{191a} Trustees of Guilford College v. Guilford County, Plaintiff Appellee's Brief, (1940), No. 680, p. 10.

¹⁹² N. C. PUB. LAWS 1939, c. 310, §§600(7), 601(4).

¹⁹³ N. C. PUB. LAWS 1939, c. 310, §§600(8), 601(7).

¹⁹⁴ 210 N. C. 579, 187 S. E. 795 (1936).

¹⁹⁵ N. C. Attorney General's Ruling in *Popular Government*, October, 1939, where the Attorney General advised that property held in trust, the income from which is used for the benefit of ten religious corporations, but only nine-tenths of such income is used within this state, one-tenth being used for a foreign religious corporation, would not be exempt from taxation either in whole or in part, under the 1939 Machinery Act.

CLASS II

Property the General Assembly May Exempt Up to \$300

*"Wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, scientific instruments, or any other personal property, to a value not exceeding three hundred dollars."*¹⁹⁶

In the years before 1868 most of these items of personal property had been occasionally taxed and occasionally exempt. Since 1868 the amount of the exemption has varied: from \$200 in 1869,¹⁹⁷ to \$300 in 1870,¹⁹⁸ to \$200 in 1871,¹⁹⁹ to \$100 in 1873,²⁰⁰ to \$25 in 1875,²⁰¹ and back to \$300 in 1921.²⁰² The items exempted have also varied, including from time to time such things as cotton, tobacco, turpentine, rosin, tar, brandy, whisky, musical instruments, goods, wares, merchandise, plated and silver ware, and watches and jewelry,²⁰³ until today they include: *"Wearing apparel, household and kitchen furniture, mechanical and agricultural implements of farmers and mechanics, libraries and scientific instruments, provisions and live stock, up to a value of \$300"*; and also all growing crops.²⁰⁴

All of the types of property enumerated in the constitution are also enumerated in the statute, except "all growing crops" and "provisions and livestock" which may be included under "any other personal property". Around the middle of the last century the general assembly exempted property set apart and used by agricultural societies for agricultural fairs.²⁰⁵ In 1901 it added "growing crops"²⁰⁶ to the enumeration, and in 1931 extended this exemption to "all" growing crops, apparently without limit in amount. Such exemption without limitation as to amount appears to exceed constitutional sanction.

CLASS III

Property Which the General Assembly May Exempt to \$1000

A 1936 amendment to the constitution authorized the general assembly to exempt property held by the owner as a place of residence up to \$1000 in value.²⁰⁷ Thus far there has been no exercise of this authority.

¹⁹⁶ N. C. CONST. (1936) art. V, §5. (Italics supplied.)

¹⁹⁷ N. C. PUB. LAWS 1868-69, c. 74, §5.

¹⁹⁸ N. C. PUB. LAWS 1869-70, c. 225, §11(5).

¹⁹⁹ N. C. PUB. LAWS 1870-71, c. 195, §11(5).

²⁰⁰ N. C. PUB. LAWS 1872-73, c. 115, §11(5).

²⁰¹ N. C. PUB. LAWS 1874-75, c. 184, §12(5).

²⁰² N. C. PUB. LAWS 1921, c. 38, §72(6).

²⁰³ See notes 197-202, *supra*.

²⁰⁴ N. C. PUB. LAWS 1939, c. 310, §601(8). See also N. C. PUB. LAWS 1939, c. 301, §602(b).

²⁰⁵ N. C. PUB. LAWS 1868-69, c. 74, §4. This exemption continued for ten years but was dropped in 1879.

²⁰⁶ N. C. PUB. LAWS 1901, c. 7, §60(6); N. C. PUB. LAWS 1931, c. 428, §306(8).

²⁰⁷ N. C. CONST. (1936), art. V, §5.

E. MISCELLANEOUS EXEMPTIONS

The statutes also provide for other exemptions not specifically mentioned in the constitution: property belonging to the United States;²⁰⁸ real property of Indians who are not citizens, except lands they hold by purchase;²⁰⁹ tangible personal property held at any seaport destined for and awaiting foreign shipment;²¹⁰ state and local bonds, and real property appropriated exclusively for public parks and drives, under C. S. 1123.²¹¹ The Federal Constitution gives rise to other exemption problems, such as exemption of federal bonds and interest therefrom, and property in transit in interstate commerce. Lack of space here necessitates their consideration in a subsequent note.

Prospect and Retrospect

The 1936 constitutional amendment struck out the 1868 requirement in Article V, Section 3, providing: "Laws shall be passed taxing by a uniform rule, 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";²¹² it also struck out the 1868 requirement in Article IX, Section 7, providing: "All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution."²¹³ In their stead was put the following provision:²¹⁴ "The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended, or contracted away. Taxes on property shall be uniform as to each class of property taxed. Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied."

Does this amendment extend the power of exemption under the guise of classification? This question has not been squarely presented to the court, but opposing *dicta* foreshadow another clash. In *Warrenton v. Warren County*, Chief Justice Stacy says:²¹⁵ "When two sections of the Constitution are to be harmonized, which shall be favored, the one which provides for uniformity of taxation or the one which grants immunity? The basic idea of the Constitution is equality. It eschews discrimination. Taxation is the rule; exemption the exception, with the strict construction applicable to the latter." In answer Justice Seawell says:²¹⁶ "It is a rule of construction applied to statutes where taxes

²⁰⁸ N. C. PUB. LAWS 1939, c. 310, §§600(1), 601(1).

²⁰⁹ N. C. PUB. LAWS 1939, c. 310, §600(9).

²¹⁰ N. C. PUB. LAWS 1939, c. 310, §601(10).

²¹¹ N. C. PUB. LAWS 1939, c. 310, §600(10).

²¹² N. C. CONST. (1930), art. V, §3.

²¹³ N. C. CONST. (1930), art. IX, §7.

²¹⁴ N. C. CONST. (1936), art. V, §3.

²¹⁵ 215 N. C. 342, 347, 2 S. E. (2d) 463, 466 (1939).

²¹⁶ *Id.* at 366, 2 S. E. (2d) at 468 (1939).

have been imposed and exceptions made. But here no note is taken of the fact that the 1936 amendment to the Constitution swept out of that document any requirement that property be taxed at all, by removing that feature from Article V and repealing Article VII, section 9, altogether. There is, therefore no 'general rule' or law left remaining in the Constitution to which the inhibition of Article V, section 5, cl. 1, against taxing the property of municipalities could form an exception." It is perhaps worth while to recall in this connection that the relatively few items of property taxed in the beginning of the state's activities gradually increased to the point that the constitution makers of 1868 took no violent jump in formulating the constitutional policy of taxing all property unless the constitution required or permitted its exemption. For long stretches of our early history, therefore, when governmental activities were few and governmental units were far between, it might be said that taxation was the exception, and exemption the rule; but the consecutive experience of the last three quarters of a century gives weight to the doubt that the 1936 amendments were intended to encroach on the constitutional policy making exemptions the exception and taxation the rule. This distinction may lose much of its difference through legislative classification of particular types of property at rates so low that the substance of exemption is achieved.

Since the present exemption provisions were written into the constitution in 1868 the number of city, county and state, and federal agencies in North Carolina has tremendously increased with a corresponding increase in the amount of property exempt from taxes under the limitations of even the strictest interpretation of the public purpose doctrine. Add to these multiplying governmental units the multiplying governmental activities of recent years and it is easy to understand the alarm which colors, if it does not create, the legislative and judicial declarations of the public purpose limitation. Since 1868, the number of educational, scientific, charitable and religious "purposes" and the number of organizations dedicated in whole or in part to these purposes have multiplied in corresponding proportions, and the great volume of property owned and used by them for constitutionally approved purposes is growing with geometrical progression. Add to these multiplying charitable organizations the multiplying charitable activities of recent years, and it is easy to understand the alarm which colors, if it does not create, the penetrating scrutiny the court is now turning on legislation extending the protecting shelter of tax exemption first to the property owned and used by them for charitable purposes, then to property rented out of them for business purposes when the income is applied to charitable purposes, and then to property when the income is applied to pay the principal and interest on the indebtedness of the property in the hope

that after the debts are paid the income may be applied to charitable purposes.

Shall property belonging to governmental units be favored over property belonging to charitable organizations by exempting the property of the one when it is held for any purpose and of the other when it is held for charitable purposes only? Shall the property belonging to and used by governmental units and for public and charitable purposes similarly be favored over property belonging to and used by business and commercial organizations for business and commercial purposes? Shall a constantly diminishing proportion of property bear a constantly increasing proportion of the tax load? And is this shifting of rates in any way counterbalanced by the tendency to shift the tax load from property to other things? What of the argument of private property owners that they ought not to be called upon to pay taxes to support governmental units and charitable organizations competing with them for business in the market place? And the argument that when this competition undermines the private business and cuts down its tax paying power, the state is killing the goose that lays the golden egg? Is it answered by the argument that after all, governments and charities are co-operative enterprises which lift from the backs of private property owners burdens that they would have to pay more heavily to carry by themselves? Or by the argument that these co-operative enterprises usually enter the picture after private enterprises fail to meet a need which should be met and sometimes to rescue private enterprises from ruin when golden eggs turn to leaden balls? Can the problem be solved by taking the sum total of all enterprises at any given point in time and space, allocating certain functions to public enterprise and certain others to private enterprise, and not allowing either to compete with the other? If so, what guiding principle shall put each in its place? And after it goes to, will it stay put? The battle of exemptions is not a battle of theories; it occupies one segment in the battle lines drawn by contending forces which are shifting the foundations and superstructures of our social and economic order. It is a condition as well as a theory that confronts us. It is not enough to point out the one or to invoke the other; each must be re-examined in the light of the other. In these cases, this re-examination is just beginning.