1933 SUPPLEMENT
TO THE
NORTH CAROLINA CODE
OF 1931

ANNOTATED

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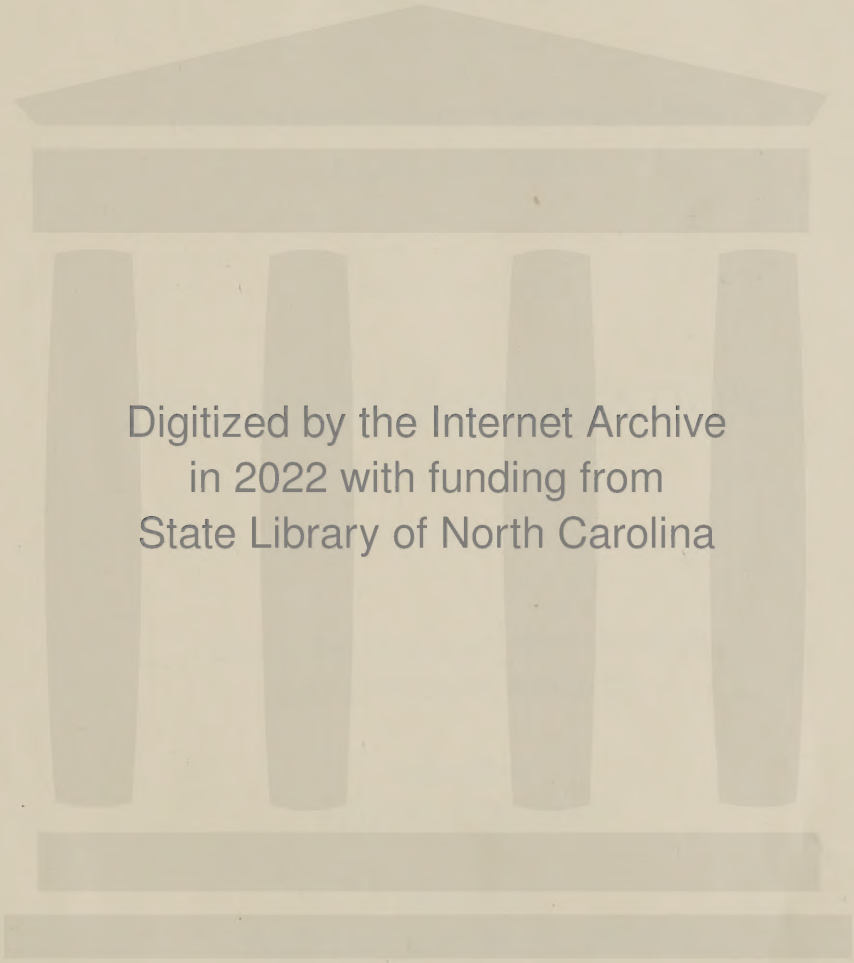

1933 Supplement

TO THE

NORTH CAROLINA CODE *of* 1931

CONTAINING ALL THE GENERAL
LAWS OF 1933

COMPLETE ANNOTATIONS

UNDER THE EDITORIAL SUPERVISION OF
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Preface

This compilation constitutes a complete supplement to the North Carolina Code of 1931. It contains all of the general laws enacted at the 1933 session of the Legislature, and the amended rules of court. The annotations are full and comprehensive. They begin where the Code of 1931 left off and continue until the date of publication.

The index is confined to new laws. Amendments of former statutes are inserted under the same section numbers appearing in the Code of 1931. And this numbering applies to the Revenue and Machinery Acts of 1933 which supersede the 1931 enactments.

The same standard of skillful editorial work which contributed to the popularity of the North Carolina Code of 1931 is maintained throughout this volume. Special attention is directed to the editors' notes, pointing out the changes effected by the Acts of 1933. It is believed that these notes will prove invaluable and will save the lawyer from laborious comparisons.

Table of Contents

	PAGE
Preface	III
Code of North Carolina	1
Constitution of North Carolina	321
Rules of Court	334
Table Showing Codification of Laws	336
Index	343

1933 SUPPLEMENT
TO THE
NORTH CAROLINA CODE OF 1931

CHAPTER 1

ADMINISTRATION

Art. 1. Probate Jurisdiction

§ 1. Clerk of superior court has probate jurisdiction.

Cross Reference.—As to appellate review of exercise of power of clerk in appointing administrators or executors, see § 4139 and the note thereto. As to review of clerk's power in removing executors and administrators, see § 31 and the note thereto.

Character of Duties.—See In re Styers, 202 N. C. 715, 164 S. E. 123, affirming Edwards v. Cobb, 95 N. C. 4, appearing under this catchline in the Code of 1931.

Art. 3. Right to Administer

§ 10. Divorce a vinculo or felonious slaying is forfeiture.

Where a husband has taken out a policy of life insurance on his own life with his wife as beneficiary and has feloniously killed his wife and then himself, under this section and sections 137, 2522, his heirs may not claim under him the proceeds of the policy since the law will not allow a man or those claiming under him to benefit by his own wrong, and the proceeds of the policy are descendible to the next of kin of the wife and not to his heirs at law. Parker v. Potter, 200 N. C. 348, 157 S. E. 68.

§ 15. Failure to apply as renunciation.

Effect of Appointment by Clerk.—Where the clerk has appointed an administrator under this section a debtor of the estate cannot maintain the position that the appointment of a public administrator was necessary to receive payment of the debt. Brooks v. Clement Co., 201 N. C. 768, 161 S. E. 403.

Art. 4. Public Administrator

§ 20. When to obtain letters.

Prior Right of Others after Six Months.—
After the expiration of six months, should the public administrator fail to apply, the field is open to the clerk of the superior court to treat all right of preference as renounced and to appoint, in the exercise of his discretion, some suitable person to administer the estate. Brooks v. Clement Co., 201 N. C. 768, 771, 161 S. E. 403.

Art. 6. Collectors

§ 24. Appointment of collectors.—When, for any reason, a delay is necessarily produced in the admission of a will to probate, or in granting letters testamentary, letters of administration, or letters of administration with the will annexed, the clerk may issue to some discreet person or persons, at his option, letters of collection, authorizing the collection and preservation of the property of the decedent. When, for any reason, a delay is necessary in the production of positive proof of the death of any one who may have disappeared under circumstances indicating death of such person, any person interested in the estate of such person so disappearing as heir at law, prospective heir at law, a creditor, a next friend, or any other person or persons interested, either directly or indirectly, in the estate of such person so disappearing, may file with the clerk of the superior court of the county in which the person so disappearng last resided, or in case such person so disappearing was at the time of his disappearance a nonresident of the State of North Carolina, with the clerk of the superior court of any county in which any property was or might have been located at the time of such disappearance, a petition for the appointment of a collector of the estate of such person so disappearing, or the property of such person so disappearing, located within the county of the clerk to whom application is made, which petition shall set forth the facts and circumstances surrounding the disappearance of such person, and which petition shall be duly verified and supported by affidavit of persons having knowledge of the circumstances under which such person so disappeared, and if from such petition and such affidavits it should appear to the clerk that the person so disappearing is probably dead, then it shall be the duty of the clerk to so find and to issue to some discreet person or persons, at his option, letters of collection authorizing the collection and the preservation of the property of such person so disappearing. (Rev., s. 22; Code, s. 1383; C. C. P., s. 463; R. C., c. 46, s. 9; 1924, c. 43.)

Art. 7. Appointment and Revocation

§ 31. Letters revoked on application of surviving husband or widow or next of kin, or for disqualification or default.

Appeal from Order of Clerk.—The powers of the clerk to remove executors and administrators, conferred by this section, are reviewable on appeal to the judge of the Superior Court of the county. Wright v. Ball, 200 N. C. 620, 158 S. E. 192.

Where the Superior Court judge, upon appeal from the order of the clerk of the court in removing executors or administrators of an estate, has exercised his discretion in retaining the cause in the Superior Court instead of remanding it to the clerk, the exercise of this discretion is not reviewable on appeal to the Supreme Court. Id.

Art. 9. Notice to Creditors

§ 45. Advertisement for claims.

Editor's Note.—
Public Laws 1933, c. 414, made the amendment of 1931, which was applicable in Nash and Edgecombe, applicable in Nash alone.

Art. 10. Inventory

§ 49. Compelling the inventory.—If the inventory and account of sale specified in the preceding section are not returned as therein prescribed, the clerk must issue an order requiring the executor, administrator or collector to file the same within the time specified in the order, which shall not be less than twenty days, or to show cause why an attachment should not be issued against him. If, after due service of the order, the executor, administrator, or collector does not, on the return day of the order, file such inventory or account of sale, or obtain further time to file the same, the clerk shall have power to vacate the office of administrator, executor or collector. And under all proceedings provided for in this section, the defaulting executor, admin-

istrator or collector shall be personally liable for the costs of such proceeding to be taxed against him by the clerk of the superior court, or deducted from any commissions which may be found due such executor, administrator or collector upon final settlement of the estate. And the sheriffs of the several counties to whom a process is directed under the provisions of this section shall serve the same without demanding their fees in advance. (Rev., s. 43; Code, s. 1397; 1868-9, c. 113, s. 9; 1929, c. 9, s. 1; 1933, c. 100.)

Editor's Note.—
Public Laws 1933, c. 100 added the last sentence of this section as it now reads.

Art. 11. Assets

§ 65(a). Payment to clerk of sums not exceeding $300 due and owing intestates.—Where any person dies intestate and at the time of his or her death there is a sum of money owing to the said intestate not in excess of three hundred dollars, such sum may be paid into the hands of the clerk of the superior court, whose receipt for same shall be a full and complete release and discharge for such debt or debts, and the said clerk of the superior court is authorized and empowered to pay out such sum or sums in the following manner: First, for satisfaction of widow's year's allowance, after same has been assigned in accordance with law, if such be claimed; second, for payment of funeral expenses, and if there be any surplus the same to be disposed of as is now provided by law. This section shall apply to the counties of Guilford, Edgecombe, Randolph, Cabarrus, Iredell, Moore, Anson, Watuaga, Wilson, Cumberland, Johnston, Rutherford, Stanly, Davidson, Currituck, Yadkin, Alexander, Stokes, Clay, Greene, Wayne, Franklin, Macon, Beaufort, Swain, Haywood, Caldwell, Burke, Gates, Rockingham, Graham, Lee, Person, Catawba, Dare, Tyrrell, Perquimans, Transylvania, Duplin, Hyde, Pender, Alamance, Lincoln, Chowan, Forsyth, Hoke, Lee, Vance, Robeson, Davidson, Durham, Wake, Mecklenburg, Harnett, Onslow, Nash, Halifax, Hertford, Pasquotank, Rowan and Martin. (1921, c. 93; Ex. Sess. 1921, c. 65; 1924, cc. 15, 58; 1927, c. 7; 1929, cc. 63, 71, 121; 1931, c. 21; 1933, cc. 16, 49.)

Editor's Note.—
By Public Laws 1933, cc. 16, 94, Wilson, Onslow and Nash counties were added to the list of those to which the section applies.

Art. 13. Sales of Real Property

§ 76. Lands conveyed by heir within two years sold.

Conditionally Void.—
Conveyances of real property within two years from the grant of letters are only void as to creditors and personal representatives, and as to them, only in case the personal assets are insufficient to pay the debts and costs of administration; they are not void—they never cease to operate as to the parties to them. Jefferson Standard Life Ins. Co. v. Buckner, 201 N. C. 78, 81, 159 S. E. 1.

§ 84. Notice of sale as on execution.—Notice of sale under this proceeding shall be the same as for the sale of real estate by sheriffs on execution: Provided, however, that in case a re-sale of such real property shall become necessary under such proceeding, that such real property shall then be re-sold only after notice of re-sale has been duly posted at the courthouse door in the county for fifteen days immediately preceding the re-sale and also published at any time during such fifteen day period once a week for two successive weeks of not less than eight days in some newspaper published in the county, if a newspaper is published in the county, but if there be no newspaper published in said county the notice of re-sale must be posted at the courthouse door and three other public places in the county for fifteen days immediately preceding the re-sale. (Rev., s. 81; Code, s. 1445; 1868-9, c. 113, s. 50; 1933, c. 187.)

Editor's Note.—All of the proviso, now appearing in this section, was added by Public Laws 1933, c. 187.

Art. 15. Accounts and Accounting

§ 106. Clerk may compel account.—If any executor, administrator or collector omits to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such executor, administrator or collector to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such executor, administrator or collector fail to appear or refuse to exhibit such account, the clerk may issue an attachment against him for a contempt and commit him till he exhibit such account, and may likewise remove him from office. And the sheriffs of the several counties to whom a process is directed under the provisions of this section shall serve the same without demanding their fees in advance. (Rev., s. 100; Code, s. 1400; C. C. P., s. 479; 1933, c. 99.)

Editor's Note.—The last sentence of this section as it now reads was added by Public Laws 1933, c. 99.

§ 135. Suits for accounting at term.

In Nature of Bill in Equity.—A suit by the beneficiaries under a will to have the executor account for mismanagement of the estate is in the nature of a bill in equity to surcharge and falsify the executor's account. Thigpen v. Farmers' Banking, etc., Co., 203 N. C. 291, 165 S. E. 720.

Art. 16. Distribution

§ 137. Order of distribution.

Cross Reference.—As to inheritance under insurance policy where insured has killed beneficiary and himself, see note to § 10.

Clause 6.—

Right of Action for Mutilation of Child's Dead Body. — A father's relation to his minor child and the consequent duties imposed on him by law clothes him with a preferential right of action over the mother of the child to bring an action to recover damages for the mutilation of its dead body, and the provisions of this section do not affect the result. Stephenson v. Duke University, 202 N. C. 624, 163 S. E. 698.

§ 140. Illegitimates next of kin to mother and to each other.

Brothers and Sisters of Bastard's Mother Do Not Inherit.—Under this section the mother and brothers and sisters of a bastard may inherit from him, but the rule extends no further, and the brothers and sisters of the bastard's mother may not inherit from him. Sharpe v. Carson, 204 N. C. 513, 168 S. E. 829.

Art. 17. Settlement

§ 150. Representative must settle after two years. — No executor, administrator, or collector, after two years from his qualification, shall hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements and such debts as he shall legally

pay; but all such estate so remaining shall, immediately after the expiration of two years, be divided and be delivered and paid to the person to whom the same may be due by law or the will of the deceased; and the clerk of the superior court in each county shall require settlement of the balance in hand due distributees as shown by the final account of any administrator, executor, or guardian, and shall audit same: Provided, that upon petition of any executor, administrator or collector, and after notice in writing by registered mail to all devisees, legatees, or other parties in interest, at his, her or their last known post office address, posted not less than thirty days prior to the hearing upon such petition, the clerk of the superior court, for good and sufficient cause shown, may extend the time for filing the final settlement of any estate, from year to year, for a total period not to exceed an aggregate of five years from and after the date of the qualification of such executor, administrator or collector, which said order of the clerk of the superior court shall not become effective until approved by the resident judge of the superior court. (Rev., s. 147; Code, s. 1488; 1868-9, c. 113, s. 59; 1919, c. 69; 1933, c. 188.)

Editor's Note.—
The proviso at the end of the section, giving the clerk power to extend the time, was added by Public Laws 1933, c. 188.

§ 157. Commissions allowed representatives.

Dower as an "Interest in the Estate". — Manifestly, a claim of dower is an "interest" in the estate. Hence the wording of this section lends direct support to a judgment giving priority to commissions due executors, reasonable attorney's fees and costs. Parsons v. Leak, 204 N. C. 86, 92, 167 S. E. 563.

Art. 18. Action by and against Representative

§ 160. Death by wrongful act; recovery not assets; dying declarations.—When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured party had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their executors, administrators, collecters or successors, shall be liable to an action for damages, to be brought within one year after such death, by the executor, administrator or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, but shall be disposed of as provided in this chapter for the distribution of personal property in case of intestacy.

In all actions brought under this section the dying declarations of the deceased as to the cause of his death shall be admissible in evidence in like manner and under the same rules as dying declarations of the deceased in criminal actions for homicide are now received in evidence. (Rev., s. 59; Code, ss. 1498, 1500; 1868-9, c. 113, ss. 70, 72, 115; R. C., c. 46, ss. 8, 9; 1919, c. 29; 1933, c. 113.)

I. IN GENERAL.

Editor's Note.—
The exception as to burial expenses to the exemption of the amount from payment of debts was inserted by Public Laws 1933, c. 113.

II. LIMITATION OF THE ACTION.

In General.—The limitation of the section is stated in Devis v. Norfolk Southern R. Co., 200 N. C. 345, 157 S. E. 11.

Condition Affecting Cause.—
See Mathis v. Camp Mfg. Co., 204 N. C. 434, 435, 168 S. E. 515, following the rule stated under this catchline in the Code of 1931.

After Nonsuit.—
See Swainey v. Great Atlantic, etc., Tea Co., 204 N. C. 713, 715, 169 S. E. 618, following the rule stated under this catchline in the Code of 1931.
See § 415 and notes thereto.

III. PARTIES TO THE ACTION.

Action by Administrator of Child against Parents.—An unemancipated child living with his parents may not maintain an action in tort against them, nor can the administrator of the child recover damages against them for the child's wrongful death, as this section gives a right of action for wrongful death only where the injured party, if he had lived, could have maintained such action. Goldsmith v. Samet, 201 N. C. 574, 160 S. E. 835.

Joinder of Employer with Employee.—The right to maintain an action for the wrongful death of a deceased rests exclusively upon this section, and where the death is caused by the negligence of an employee while acting within the scope of his authority the employer may be joined as a defendant under the doctrine of respondent superior. Brown v. Southern R. Co., 202 N. C. 256, 162 S. E. 613.

Action by Administrator of Employee Who Has Received Workman's Compensation.—When an administratrix of a deceased employee who has received compensation for the employee's death under the provisions of the Workmen's Compensation Act is thereby barred from prosecuting any other remedy for the injury, she may, under this section, pending the hearing before the Industrial Commission, institute an action against a third person whose negligent acts caused the death of the intestate. Phifer v. Berry, 202 N. C. 388, 163 S. E. 119.

§ 161. Damages recoverable for death by wrongful act.

Nature and Quantum of Damages Recoverable.—
In an action for wrongful death under this section the jury may consider evidence of the plaintiff's intestate's age, habits, industry skill, means and business, and the admission of testimony that the deceased had a 200-acre farm, a comfortable home, and a plenty for his family to eat and wear, was not error. Hicks v. Love, 201 N. C. 773, 161 S. E. 394.

Art. 19. Representative's Powers, Duties and Liabilities

§ 176(a). Power to renew obligation; no personal liability.—In all cases where a decedent is the maker or one of the makers, a surety or one of the sureties, an endorser or one of the endorsers, a guarantor or one of the guarantor's of any note, bond or other obligation for the payment of money which is due or past due at the death of said decedent, or shall thereafter become due prior to the settlement of the estate of said decedent, the administrator, executor or collector of said decedent's estate is hereby authorized and empowered to execute as such administrator, executor or collector a new note, bond or other obligation for the payment of money, in the same capacity as decedent was obligated for the same amount or less but not greater than the sum due on the original obligation which shall be in lieu of the original obligation of the decedent, whether made payable to the original holder or another, and is authorized and empowered to renew said note, bond or other obligation for the payment of money from time to time, and said note, bond or other obligation for the payment of money so executed by said administrator, executor or collector shall be binding upon the estate of said decedent to the same extent and in the same manner and with

the same effect that the original note, bond or other obligation for the payment of money so executed by the decedent was binding upon his estate: Provided, the time for final payment of the note, bond or other obligation for the payment of money, or any renewal thereof by said administrator, executor or collector shall not extend beyond a period of two years from the qualification of the original administrator, executor or collector as such upon the estate of said decedent: Provided, however that if it shall be made to appear to the court that it is for the best interest of the estate that said time for final payment extend for a longer period than two years, then the court in its discretion may empower and authorize the administrator, executor or collector of said estate to renew the note, bond or other obligation for the payment of money, or any renewal or extension thereof by said administrator, executor or collector for such period as the court may deem best or for a period of time not exceeding two years: Provided, further that when the time for final settlement of the estate of said decedent has been extended from year to year for a longer period by order of the clerk of the superior court, approved by the resident judge of the superior court, such note, bond or other obligation for the payment of money or any renewal thereof by the said administrator, executor or collector may likewise be extended but not beyond the period authorized by the court for the final settlement of the estate of said decedent. The executor of any note, bond or other obligation for the payment of money mentioned in this section by the administrator, executor or collector of the decedent shall not be held or construed to be binding upon said administrator, executor or collector personally. (1925, c. 86; 1933, cc. 161, 196, 498.)

Editor's Note.—Public Laws 1933, cc. 161, 196, 498, inserted the words "a guarantor or one of the guarantor's" near the beginning of the section, and added the provisos giving the administrator power to extend and renew obligations. The part of this section beginning with words "unless it shall be made to appear," and continuing to the end of the first sentence, does not apply in Mecklenburg and Pamlico counties. See § 2 of the Act of 1933.

CHAPTER 2

ADOPTION OF MINORS

§§ 182-191. Repealed by Public Laws 1933, c. 207, s. 1.

§ 191(1). Petition for adoption. — Any proper adult person or husband and wife, jointly, who have legal residence in North Carolina may petition the superior court of the county in which he or they have legal residence, or the county in which the child resides, or of the county in which the child had legal residence when it became a public charge, or of the county in which is located any agency or institution operating under the laws of this state having guardianship and custody of the child, for leave to adopt a child and for a change of the name of such child: Provided, that in every instance the child and his parent or parents have legal residence in this state. Such petition for adoption shall be filed in duplicate on standard form, to be supplied by the state board of charities and public welfare, one form to be held in the files of the said superior court, and the other to be returned to said state board of charities and public welfare to be held a permanent record. (1933, c. 207, s. 1.)

§ 191(2). Investigation by county superintendent of public welfare.—Upon the filing of a petition for the adoption of a minor child the court shall instruct the county superintendent of public welfare, or a duly authorized representative of a child-placing agency, licensed by the state board of charities and public welfare, to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed foster home is a suitable one for the child. The county superintendent of public welfare or the duly authorized representative of such agency described hereinbefore shall make a written report of his findings to the court of adoption. (1933, c. 207, s. 2.)

§ 191(3). Parent or guardian necessary party.—The parent or guardian, or the persons having charge of such child, or with whom it may reside, must be a party of record in this proceeding. (1933, c. 207, s. 3.)

§ 191(4). Tentative approval of petition; completion of adoption after one to two years.—Upon the filing of the written report of the superintendent of public welfare or of a duly authorized representative of said agency described hereinbefore and with the consent of the parent or parents if living or of the guardian, if any, or of the person with whom such child resides, or who may have charge of such child, except in cases hereinafter provided for, the court, if it be satisfied that the petitioner is a proper and suitable person and that the adoption is for the best interests of the child, may tentatively approve the adoption and issue an order giving the care and custody of the child to the petitioner. Within two years thereafter, but not earlier than one year from date of such order, the court, at its discretion, may complete the adoption by an order granting letters of adoption and effect of adoption shall be retroactive to date of application. During this interval the child shall remain the ward of the court and shall be subject to such supervision as the court may direct. (1933, c. 207, s. 4.)

§ 191(5). Relation of parent and child established; right of inheritance.—Such order granting letters of adoption, when made, shall have the effect forthwith to establish the relation of parent and child between the petitioner and the child during the minority or for the life of such child, according to the prayer of the petition, with all the duties, powers and rights belonging to the relationship of parent and child, and in case the adoption be for the life of the child, and the petitioner die intestate, such order shall have the further effect to enable such child to inherit the real estate and entitle it to the personal estate of the petitioner in the same manner and to the same extent such child would have been entitled to if such child had been the actual child of the person adopting it. The child shall not inherit and be entitled to the personal estate if the petitioner especially sets forth in his petition such to be his desire and intention. Any proceedings conducted under this

section to which the adopting parent shall be a party shall be binding upon such party, regardless of lack of jurisdiction as to the other persons or any irregularities in the proceedings. (1933, c. 207, s. 5.)

§ 191(6). Change of name of child; report to bureau of vital statistics; entries on birth certificate.—For proper cause shown the court may decree that the name of the child shall be changed to that of the adopting parent: Provided, that whenever the name of any child is so changed, the court shall immediately report such change to the bureau of vital statistics of the state board of health, authorizing said bureau to enter change of name on the original birth certificate of the child and to issue upon request a certificate of birth bearing the new name of a child as shown in the decree of adoption, the name of the foster parents of said child, age, sex, date of birth, but no reference in any certified copy of the birth certificate shall be made to the adoption of the said child. However, original registration of birth shall remain a part of the record of the said bureau of vital statistics. The provisions of this section shall apply to all minors heretofore adopted in accordance with the laws existing at the time of such adoptions in as full a manner as to adoptions hereunder. (1933, c. 207, s. 6.)

§ 191(7). Bond of petitioner where child with estate is without guardian.—When the court grants the petitioner the custody of the child, if the child is an orphan and without guardian and possesses any estate, the court shall require from the petitioner such bond as is required by law to be given by guardians. (1933, c. 207, s. 7.)

§ 191(8). Recordation or revocation of order of adoption.—The order granting letters of adoption shall be recorded in a book entitled "Clerk's Record of Orders and Decrees" in the office of the clerk of the superior court in the county in which the adoption is made, and may be revoked at any time within two years after date of order by the court for good cause shown. On issuing such order granting letters of adoption, the clerk of the superior court of the county in which order is issued shall send copy of such order to the state board of charities and public welfare and likewise a copy of revocation of order to said board to be held as a permanent record. (1933, c. 207, s. 8.)

§ 191(9). Abandonment or unfitness of parents deemed forfeiture of rights.—In all cases where the parent or parents of any child has willfully abandoned the care, custody, nurture and maintenance of the child to kindred, relatives or other persons, and in all cases where a court of competent jurisdiction has declared the parent or parents or guardians unfit to have the care and custody of such child, such parent or parents or guardian shall be deemed to have forfeited all rights and privileges with respect to the care, custody and services of such child, and upon finding of such fact by the court, shall not be necessary parties to any action or proceeding under this chapter. (1933, c. 207, s. 9.)

§ 191(10). Past adoption orders validated.—All proceedings for the adoption of minors in courts of this state are hereby validated and confirmed, and the orders and judgments therein are declared to be binding upon all parties to said proceedings and their privies and all other persons, until the orders or judgments shall be vacated as provided by law. (1933, c. 207, s. 10.)

§ 191(11). Parent whose rights have been forfeited and who takes child guilty of crime.—Any parent whose rights and privileges have been forfeited as provided by section 191(9) who shall procure the possession and custody of such child, with respect to whom his rights and privileges are forfeited, otherwise than by law provided, shall be guilty of a crime, and shall be punished as for abduction. (1933, c. 207, s. 11.)

CHAPTER 4

ATTORNEYS AT LAW

Art. 1. Licenses and Qualifications of Attorneys; Unauthorized Practice of Law

§ 198. Persons disqualified.—No clerk of the superior or supreme court, nor deputy or assistant clerk of said courts, nor register of deeds, nor sheriff nor any justice of the peace, nor county commissioner shall practice law. Persons violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars. This section shall not apply to Confederate soldiers. (Rev., ss. 210, 3641; Code ss. 27, 28, 110; 1870-1, c. 90; 1883, c. 406; 1871-2, c. 120; 1880, c. 43; C. C. P., s. 424; 1919, c. 205; 1933, c. 15.)

Editor's Note.—Registers of deeds were, by Public Laws 1933, c. 15, added to the list of these excluded from practice. For act permitting attorneys to act as justices of the peace in Burke County, see Public Laws 1933, c. 135.

Art. 3. Arguments

§ 203. Court's control of argument.

Reading Dissenting Opinion as Law of Case.—It is not permissible for counsel, in his argument to the jury, to read a dissenting opinion by a Justice of the Supreme Court as the law of the case over the defendant's objection, and where this has been done a new trial will be awarded on the defendant's exception thereto. It is the duty of the trial court, either to direct counsel not to read the dissenting opinion or to plainly and unequivocally instruct that the dissenting opinion had no legal bearing upon the case. Conn v. Seaboard Air Line R. Co., 201 N. C. 157, 159 S. E. 331.

Art. 4. Disbarment

§§ 204-207. Repealed by Public Laws 1933, c. 210, s. 20.

Art. 5. Proceedings for Disbarment

§§ 208-215. Repealed by Public Laws 1933, c. 210, s. 20.

Art. 6. North Carolina State Bar

§ 215(1). Creation of North Carolina state bar as an agency of the state.—There is hereby created as an agency of the state of North Carolina, for the purposes and with the powers hereinafter set forth, the North Carolina state bar. (1933, c. 210, s. 1.)

§ 215(2). Membership and privileges. — The membership of the North Carolina state bar shall consist of two classes, active and honorary.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling

them to practice law in the state of North Carolina. No person other than a member of the North Carolina state bar shall practice in any court of the state, except foreign attorneys as provided by statute.

The honorary members shall be (a) the chief justice and associate justices of the supreme court of North Carolina; (b) the judges of the superior courts of North Carolina; (c) all former judges of the above-named courts resident in North Carolina, but not engaged in the practice of law; (d) judges of the district courts of the United States and of the circuit court of appeals resident in North Carolina.

Only active members shall be required to pay annual membership fees, and shall have the right to vote. A member shall be entitled to vote at all annual or special meetings of the North Carolina state bar, and at all meetings of and elections held by the bar of each of the judicial districts in which he resides: Provided, that if he desires to vote with the bar of some district in which he practices, other than that in which he resides, he may do so upon filing with the resident judge of the district in which he desires to vote, and with the resident judge of the district in which he resides (and, after the North Carolina state bar shall have been organized as hereinafter set forth, with the secretary-treasurer of the North Carolina state bar), his statement in writing that he desires to vote in such other district: Provided, however, that in no case shall he be entitled to vote in more than one district. (1933, c. 210, s. 2.)

§ 215(3). Government.—The government of the North Carolina state bar shall be vested in a council of the North Carolina state bar, hereinafter referred to as the "council," consisting of one councillor from each judicial district of the state, to be appointed or elected as hereinafter set forth, and the officers of the North Carolina state bar, who shall be ex officio members during their respective terms of office. Notwithstanding any provisions of this act as to the voting powers of members, the council shall be competent to exercise the entire powers of the North Carolina state bar in respect of the interpretation and administration of this article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other matters, except as otherwise directed or overruled, as in section sixteen hereof provided. The councillors elected shall serve as follows: Those elected from the first, fourth, seventh, tenth, thirteenth, sixteenth, and nineteenth districts shall serve for one year from the date of their elections; those elected from the second, fifth, eighth, eleventh, fourteenth, seventeenth, and twentieth districts shall serve for two years from the date of their election; and those elected from the third, sixth, ninth, twelfth, fifteenth, and eighteenth districts shall serve for three years from the date of their election: Provided, that upon the election of successors to the councillors first elected, the term of office and the period for which such councillors are elected shall be three years from the date of election.

All councillors elected from any additional judicial districts shall be elected for a term of three years.

Neither a councillor nor any officer of the council or of the North Carolina state bar shall be deemed as such to be a public officer as that phrase is used in the constitution and laws of the state of North Carolina. (1933, c. 210, s. 3.)

§ 215(4). Election of councillors. — Within thirty days after this article shall have gone into effect the judge of each judicial district shall, by notice posted at the front door of each courthouse within his district and by such other means as he shall think desirable, call a meeting of the attorneys residing within his district, and any others who may declare in writing their desire to be affiliated with that district, as hereinabove provided, for the purpose of organizing the bar of the district, the said meeting to be held at a place deemed by the judge to be convenient, on a day fixed, not less than twenty nor more than thirty days from posting of notice. At that meeting such attorneys as attend shall constitute a quorum, and shall forthwith form such organization herein referred to as the "district bar," as they may deem advisable, of which organization all active members of the North Carolina state bar entitled to vote in that district shall be members. The district bar shall be the subdivision of the North Carolina state bar for that judicial district, and shall adopt such rules, regulations and by-laws not inconsistent with this article as it shall see fit, a copy of which shall be transmitted to the secretary-treasurer of the North Carolina state bar when organized; and copies of any amendments of such rules, regulations, and by-laws shall likewise be sent to said secretary-treasurer. The district bar so formed shall, at the time of its formation, elect a councillor to represent that district, and all subsequent elections of councillors, whether for regular terms or to fill vacancies, shall be held as provided by the said rules, regulations, and by-laws so adopted by the district bar. In case the judge of any judicial district, by reason of physical disability or otherwise, shall fail to call the meeting aforesaid within thirty days after this article shall have gone into effect, the same may be called within thirty days thereafter by any two attorneys residing in said district, by written notice signed by them and delivered to the clerk of the court of each county in the district to be posted at the front door of each courthouse as aforesaid, the said meeting to be held on a day fixed not less than twenty nor more than thirty days after the posting of said notice; and thereupon the same proceedings shall take place as though the meeting had been called by the judge as aforesaid. Any clerk to whom any such notice shall be delivered to be posted shall immediately post the same and shall write upon the said notice the exact date and time when the same is so posted. In case more than one notice shall be posted hereunder by different groups of attorneys, that posted first in point of time shall prevail and be deemed to be the notice provided for under this article. Pending the organization of the council as hereinafter provided, notification of the election of each councillor shall be sent within five days after such election by the secretary of the district bar to the clerk of the supreme court of North Carolina; but after the organization of the council such notices shall be sent to its secretary-

treasurer. In case neither the judge nor any two members shall call a meeting as aforesaid, a councillor for the said district, residing therein, shall be named at a meeting of such members of the council as shall have been elected in accordance herewith, to serve until such district bar shall be organized under the provisions of this article (except as to the time for calling meetings), either on the call of the judge of the district court or of two members of the bar, and shall have elected a councillor to serve for the unexpired term of the councillor so named. (1933, c. 210, s. 4.)

§ 215(5). Change of judicial districts.—In the event that a new district shall hereafter be carved out of an existing district, the councillor for the old district shall remain in office and continue to represent the district constituting that portion of the old district in which he resides or with which he has elected to be affiliated; and within thirty days after the division of the old district shall have become effective, or so soon thereafter as practicable, the same procedure shall be followed for the organization of the North Carolina state bar, constituting the remaining and unrepresented portion of the old district, and for the election of a councillor to represent the same, as is prescribed by section 215(4); and if a new district or more than one new district shall be formed by a recombination or reallocation of the counties in more than one existing district, the same procedure shall be followed as is prescribed by section 215(4), in said new district, or in each of them if there be more than one, within thirty days after the election or appointment of the judge or judges thereof; but in that event the office of councillor for each of the old districts the counties in which shall have been so recombined into or reallocated to such new district or districts shall cease, determine, and become vacant so soon as the bar or bars of such new district, or all of such new districts if there shall be more than one, shall have been organized and shall have elected a councillor or councillors therefor, but not earlier: Provided, that if at such time any councillor whose office shall thus become vacant be actually serving upon a committee before which there is pending any trial of a case of professional misconduct or malpractice, he shall, notwithstanding the election of a new councillor, continue to serve as councillor for the purpose of trying such case until judgment shall have been rendered therein. (1933, c. 210, s. 5.)

§ 215(6). Compensation of councillors. — The members of the council and members of committees sitting upon disbarment proceedings shall receive such compensation, not exceeding ten ($10.00) dollars per day for the time spent in attending meetings, as shall be determined by the council, to be paid by the secretary-treasurer of the North Carolina state bar, on statements certified by the members presenting them, from the funds collected by him as hereinafter set forth. (1933, c. 210, s. 6.)

§ 215(7). Organization of council; publication of rules, regulations and by-laws.—Upon receiving notification of the election of a councillor for each judicial district, or, if such notification shall not have been received from all said districts, within one hundred and twenty (120) days after this article shall have gone into effect, the clerk of the supreme court of North Carolina shall call a meeting of the councillors of whose election he shall have been notified, to be held in the city of Raleigh not less than twenty days nor more than thirty days after the date of said call; and at the meeting so held the councillors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councillors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this article. The regular term of all officers shall be one year, but those first elected shall serve until the first day of January, one thousand nine hundred thirty-five. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and by-laws, not inconsistent with this article, as it shall deem necessary or expedient for the discharge of its duties, the secretary-treasurer shall file with the clerk of the supreme court of North Carolina a certificate, to be called the "certificate of organization," showing the officers and members of the council, with the judicial districts which the members respectively represent, and their post office addresses, and the rules, regulations and by-laws adopted by it; and thereupon the chief justice of the supreme court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this article have not been complied with, shall return the said certificate to the secretary-treasurer with a statement showing in what respects the provisions of this article have not been complied with; and the said certificate shall not be again presented to the chief justice of the supreme court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this article have been complied with, or (b) if for any reason the chief justice or judge should not act thereon within thirty days, then, after the lapse of thirty days from the presentation to the chief justice or judge, as the case may be, of any certificate of organization hereinabove required to be presented by the secretary-treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this article has not been complied with, the organization of the council shall be deemed to be complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate

of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina Reports. The rules and regulations set forth in the certificate of organization, and all other rules and regulations which may be adopted by the council under this article, may be amended by the council from time to time in any manner not inconsistent with this article. Copies of all such rules and regulations adopted subsequently to the filing of the certificate of organization, and of all amendments so made by the council, shall be certified to the chief justice of the supreme court of North Carolina, entered by it upon its minutes, and published in the next ensuing number of the North Carolina Reports: Provided, that the court may decline to have so entered upon its minutes any of such rules, regulations and amendments which in the opinion of the chief justice are inconsistent with this article. (1933, c. 210, s. 7.)

§ 215(8). Officers and committees of the North Carolina state bar. — The officers of the North Carolina state bar shall be a president, a vice-president, and a secretary-treasurer, who shall be deemed likewise to be the officers, with the same titles, of the council. Their duties shall be prescribed by the council. The president and vice-president shall be elected by the members of the North Carolina state bar at its annual meeting, and the secretary-treasurer shall be elected by the council. All officers shall hold office for one year and until their successors are elected and qualified. The officers need not be members of the council. (1933, c. 210, s. 8.)

§ 215(9). Powers of council. — Subject to the superior authority of the general assembly to legislate thereon by general laws, and except as herein otherwise limited, the council is hereby vested, as an agency of the state, with control of the discipline and disbarment of attorneys practicing law in this state: Provided, that from any order suspending an attorney from the practice of law and from any order disbarring an attorney, an appeal shall lie, as of right in the manner hereinafter provided, to the superior court judge regularly holding the courts of the county wherein the attorney involved resides. The council shall have power to administer this article; to formulate and adopt rules of professional ethics and conduct; to publish an official journal concerning matters of interest to the legal profession, and to do all such things necessary in the furtherance of the purposes of this article as are not prohibited by law. (1933, c. 210, s. 9.)

§ 215(10). Admission to practice. — The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the supreme court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this article.

For the purpose of examining applicants and providing rules and regulations for admission to the bar including the issuance of license therefor, there is hereby created the board of law examiners, which shall consist of (1) such member of the supreme court of North Carolina as that court from time to time may select and commission for such special purpose, and (2) six members of the bar, elected by the council of the North Carolina state bar, who need not be members of the council. No teacher in any law school, however, shall be eligible. The members of the board of law examiners elected from the bar shall each hold office for a term of three years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.

The member of the supreme court selected and commissioned for such special purpose shall be and act as chairman ex-officio of the board, and the secretary of the North Carolina State bar shall be the secretary of the board, and serve without additional pay.

The examination shall be held in such manner and at such times as the board of law examiners may determine, but no change in the time or place shall become effective within one year from the date upon which the change is determined.

The fees for examination shall be the same as now provided by law and shall be paid in the same manner. After the payment of the expenses of the examination, as by this article provided, the remaining sum paid in by reason of application for admission to practice shall be paid to the supreme court for the same use and purposes as such funds are now used.

The board of law examiners subject to the approval of the council, shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the bar as in their judgment shall promote the welfare of the state and the profession: Provided, that any change in the educational requirements for admission to the bar shall not become effective within two years from the date of the adoption of such change.

All such rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in section seven of this article in relation to the certificate of organization and the rules and regulations of the council.

For conducting each examination, the members of the board of law examiners participating therein shall each receive such compensation, not exceeding the sum of fifty ($50.00) dollars, as shall be determined by the council. (1933, c. 210, s. 10; c. 331.)

§ 215(11). Discipline and disbarment. — The council or any committee of its members appointed for that purpose shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation of professional ethics, made against any member of the North Carolina state bar; may administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes: 1. Commission of a criminal offense showing professional unfitness; 2. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney; 3. Soliciting professional business; 4. Conduct involving willful deceit or fraud or any other unprofessional conduct; may invoke the processes of the courts in any case in which they deem it desirable to do so; and shall formulate rules of

procedure governing the trial of any such person. Such rules shall provide for notice of the nature of the charges and opportunity to be heard; for a complete record of the proceedings for purposes of appeal, and, in the event that the penalty adjudged be suspension from the practice, or disbarment, for an appeal, as of right to the superior court judge regularly holding the courts of the county wherein the attorney involved resides on the record made before the council, or the committee, as the case may be; upon appeal to the judge of the superior court, the accused shall have the right to have his cause heard by a jury. From the decision of the superior court judge hearing the appeal or the jury, the council (or committee) and the accused attorney shall each have the right of appeal to the supreme court of North Carolina. Trials shall be held in the county in which the accused member resides: Provided, however, that the committee conducting the hearing shall have power to remove the same to any county in which the offense, or part thereof, was committed, if in the opinion of such committee the ends of justice or convenience of witnesses require such removal. In hearings before the council (or committee) and in all appeals the procedure shall conform as near as may be to the procedure now provided by law for hearings upon the report of referees in references by consent. (1933, c. 210, s. 11.)

§ 215(12). Concerning evidence and witness fees.—In any investigation of charges of professional misconduct the council and any committee thereof shall have power to summon and examine witnesses under oath, and to compel their attendance, and the production of books, papers, and other documents or writings deemed by it necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary-treasurer or the president of the council or the chairman of the committee appointed to hear the charges, and shall have the force and effect of a summons of subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the council or its committee, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings; but the council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the state be brought before it. Witnesses giving testimony under a subpoena before the council or any committee thereof or by deposition shall be entitled to the same fees as in civil actions.

In cases heard before the council or any committee thereof, if the party shall be convicted of the charges against him, he shall be taxed with the cost of the hearings: Provided, however, that such bill of costs shall not include any compensation to the members of the council or committee before whom the hearings are conducted. (1933, c. 210, s. 12.)

§ 215(13). Rights of accused person. — Any person who shall stand charged with an offense cognizable by the council or any committee thereof shall have the right to invoke and have exercised in his favor the powers of the council and its committees in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13.)

§ 215(14). Designation of prosecutor; compensation.—Whenever charges shall have been preferred against any member of the bar, and the council shall have directed a hearing upon the charges, it shall also designate some member of the bar to prosecute said charges in such hearings as may be held, including hearing upon appeals in the superior and supreme courts. The council may allow the attorney performing such services at its request such compensation as it may deem proper. (1933, c. 210, s. 14.)

§ 215(15). Records and judgments and their effect.—In the case of persons charged with an offense cognizable by the council or any committee thereof, a complete record of the proceedings and evidence taken before the council or any committee thereof shall be made and preserved in the office of the secretary-treasurer, but the council may, upon sufficient cause shown and with the consent of the person so charged, cause the same to be expunged and destroyed. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court of the county wherein the accused resides, and also upon the minutes of the supreme court of North Carolina; and such judgment shall be effective throughout the state.

Whenever any attorney has been deprived of his license under the provisions of this article, the council, in its discretion, may restore said license upon due notice being given and hearing had and satisfactory evidence produced of proper reformation of the licentiate before restoration. (1933, c. 210, s. 15.)

§ 215(16). Annual and special meetings.—There shall be an annual meeting of the North Carolina state bar, open to all members in good standing, to be held at such place and time after such notice (but not less than thirty days) as the council may determine, for the discussion of the affairs of the bar and the administration of justice; and special meetings of the North Carolina state bar may be called, on not less than thirty days' notice, by the council, or on the call, addressed to the council, of not less than twenty-five per cent of the active members of the North Carolina state bar; but at special meetings no subjects shall be dealt with other than those specified in the notice. Notice of all meetings, whether annual or special, may be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina state bar. The North Carolina state bar shall not take any action in respect of any decision of the council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action, save after notice in writing of the action of the council or committee proposed to be directed or overruled, which notice shall be given

to the secretary-treasurer thirty days before the meeting, who shall give, by mail, at least fifteen days notice to the members of the North Carolina state bar, and unless at the meeting two-thirds of the members present and voting shall favor the motion to direct or overrule. At any annual or special meeting ten per cent of the active members of the bar shall constitute a quorum; but there shall be no voting by proxy. (1933, c. 210, s. 16.)

§ 215(17). Membership fees and list of members.—Every active member of the North Carolina state bar shall on or before the first day of January, nineteen hundred and thirty-four, pay to the secretary-treasurer, without demand therefor, in respect of the calendar year nineteen hundred and thirty-three, a membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with and including the year nineteen hundred and thirty-four, pay to the secretary-treasurer, in respect of the calendar year in which such payment is herein directed to be made, an annual membership fee of three dollars; and in every case the member so paying shall notify the secretary-treasurer of his correct postoffice address. The said membership fee shall be regarded as a service charge for the maintenance of the several services prescribed in this article, and shall be in addition to all fees now required in connection with admissions to practice, and in addition to all license taxes now or hereafter required by law. The said fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this article shall have gone into effect until the first day of July of the second calendar year (a "calendar year" for the purposes of this article being treated as the period from January first to December thirty-first) following that in which he shall have been licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The said fees shall be disbursed by the secretary-treasurer on the order of the council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the council, publish an account of the financial transactions of the council, in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and postoffice addresses forwarded to him and from any other available sources of information a list of members of the North Carolina state bar and furnish to the clerk of the superior court in each county, not later than the first day of October of each year, a list showing the name and address of each attorney for that county who has complied with the provisions of this article, and thereafter shall notify the clerk of the name and address of any additional attorney resident in that county who shall have complied with the provisions of this article. The names and addresses of such attorneys so certified shall be kept available to the public. The commissioner of revenue is hereby directed to supply the secretary-treasurer, from his record of license tax payments, with any information for which the secretary-treasurer may call in order to enable him to comply with this requirement. (1933, c. 210, s. 17.)

§ 215(18). Saving as to North Carolina bar association.—Nothing in this article contained shall be construed as affecting in any way the North Carolina bar association, or any local bar association. (1933, c. 210, s. 18.)

CHAPTER 5

BANKS

Art. 1. Definitions

§ 216(a). "Bank," "surplus," "undivided profits," and other words defined.

The definition of "insolvency" of a bank as set forth in this section is correct. State v. Shipman, 202 N. C. 518, 163 S. E. 657.

Art. 2. Creation

§ 217(m) 1. Reorganization of closed banks.—The board of directors of any banking institution whose aggregate property (in the opinion of such board) shall not be sufficient in amount to pay its debts or which (in the opinion of such board) may be unable to pay its debts in the ordinary course of business as they mature or which may be in the possession of the commissioner of banks for liquidation, or which shall be without authority to conduct an unrestricted banking business, may formulate and propose a plan of reorganization. Such reorganization may provide for the continuance of the business of such existing institution, the formation of a new banking institution, state or national, or other corporations, or the consolidation of two or more banking institutions and may provide for the transfer of all or a part of the assets of the existing institution to such new or consolidated institution or corporation or to trustees, for such consideration in money, securities or evidences of debt or interest of any kind approved by such board. (1933, c. 271, § 1.)

§ 217(m) 2. Approval by commissioner of banks; certification to clerk of superior court.—The plan of reorganization shall be filed with the commissioner of banks. He shall make such study and investigation of said plan as he may deem necessary; and no hearing before him shall be required. If the commissioner approves the plan, he shall cause a written outline under his hand and seal thereof to be filed in the office of the clerk of the superior court of the county in which the existing banking institution has its principal place of business, and shall at the same time deliver to the said clerk of the superior court at least one hundred copies of such outline which shall be available for inspection. The commissioner of banks shall also promptly file one hundred copies of such outline in the office of the clerk of the superior court of each county in which the banks shall have a place of business. The said outline shall, among other things, contain a statement of the amount due depositors and other creditors of the existing institution, as shown on its books as of the close of business on the last day on which it was open for unrestricted banking business or, if it still be open for such business, on the day next preceding the date of filing of the said outline with the commissioner of banks. (1933, c. 271, § 2.)

§ 217(m) 3. Notice of reorganization; objections.—The commissioner of banks shall cause to be published, at least once a week for two weeks,

in at least one newspaper in every county in which the institution maintains an office or place of business a notice briefly summarizing the plan of reorganization, stating where the outline has been filed in accordance with section 217(m) 2, and admonishing all stockholders, depositors, creditors and other interested persons to file with the clerk of the superior court of the county where the principal place of business of the institution is located, within thirty days from the date of first publication, any objection which they or any of them may have to said plan of reorganization. If there is no daily newspaper published in any county in which such bank has an office or place of business, it will be sufficient for such publication to be made in a daily newspaper generally circulating in said county. The affidavits of the publishers of the respective newspapers in which said notices are published, when filed in the office of the clerk of superior court of the county where the principal office of the institution is located, shall be prima facie evidence of compliance with this section. (1933, c. 271, s. 3.)

§ 217(m) 4. Notice of plan to stockholders, depositors and creditors. — The commissioner of banks shall also require the banking institution filing said plan to cause a copy of the published notice to be mailed or sent, within seven days from the first date of publication, to all stockholders, depositors and other creditors of such banking institution at their respective addresses shown on the records of the institution. The president or other proper officer of such banking institution shall file in the office of the clerk of the superior court of the county where the principal office of the institution is located a certificate to the effect that copies of such notice have been mailed; and said certificate shall be prima facie proof that the provisions of this section have been complied with. Any failure of any particular stockholder, depositor, creditor or other interested party to receive such notice shall not affect the validity of the reorganization. (1933, c. 271, s. 4.)

§ 217(m) 5. Filing objections to reorganization; determination of value of claims of objectors.— Any depositor, creditor, stockholder or other interested person who shall not approve the plan, may, within thirty days from the first publication of the notice provided for by section 217(m) 3, file with the clerk of the superior court of the county in which the principal place of business of said banking institution is located an objection to said plan and an application for the ascertainment of the fair liquidating value of his claim, stock or other interest. At the end of the period within which such objections and application must be filed, the judge of the superior court, resident in the district in which said county is located (or if such judge be not available, the judge holding the courts of such district) shall determine the present cash value of the interest of each party filing such objection on the basis of a judicial liquidation of said institution. (1933, c. 271, s. 5.)

§ 217(m) 6. Payment of claims thus valued; apportionment of assets to objectors. — The court may order such liquidating value paid in cash or, in lieu thereof, paid in kind. In the event such payment is ordered in kind, assets divisible in kind shall be so apportioned. With respect to assets indivisible in kind, the court may apportion said assets by allotting to the objecting party securities or certificates of interest issued by the institution or by a corporation or by a trustee, such securities or certificates of interest to reasonably and fairly represent the share of such non-assenting party in such indivisible assets. The entire amount allotted to such non-assenting parties shall be delivered and paid to the commissioner of banks as receiver for liquidation for the benefit of the non-assenting parties. (1933, c. 271, s. 6.)

§ 217(m) 7. Reorganization binding on all unless objected to by one-third of interested parties. —If, within said period of thirty days, less than thirty-three and one-third percent in interest of the depositors and other creditors of such banking institution (as shown on the outline filed in the office of the clerk of the superior court as provided in section 217(m) 2) shall file such objection and application with the clerk of the said superior court, the plan of reorganization shall be binding upon all such depositors and other creditors as fully as if they had assented to said plan. If, within said period of thirty days, less than thirty-three and one-third per cent in interest of the stockholders of said institution shall have made objection and application to the said clerk of the superior court, said plan shall be binding upon all stockholders as fully as if they had assented to said plan. No stockholders, depositors, or other parties in interest in said banking institution shall, however, be subjected by such plan of reorganization to any personal liability without their express consent. (1933, c. 271, § 7.)

§ 217(m) 8. Rights of objectors preserved.— The provisions of section 217(m) 7 shall not deprive the objecting stockholders, depositors, creditors and other interested parties of the right of valuation of their interest as provided in sections 217(m) 5 and 217(m) 6. Such valuation shall not, however, postpone or delay consummation of such reorganization plan. If the same is consummated prior to the expiration of said thirty-day period, the reorganized or new institution shall be liable and responsible for the performance of the decree in said proceedings. Such reorganized or new institution may, however, at any time within seven days after such decree, abandon said plan of reorganization as it applies to any particular institution and restore said property to such institution. (1933, c. 271, s. 8.)

§ 217(m) 9. Two or more banks may reorganize together; branch banks allowed; subscription to capital stock.—Any one or more banking institutions, for the purpose of continuing all or a portion of its business or segregating its new from its old depositors, or for the purpose of otherwise promoting the interest of its stockholders, depositors, creditors and other interested parties, may, with the approval of the commissioner of banks, organize one or more new banking institutions, either state or national, with such capital and upon such terms as the board of directors of such existing institutions may determine. Any such banking institution which may take part in the organization of such new banking institution and any other banking institution with similar approval, may subscribe to the capital stock of

such new banking institution and pay for said subscription with its funds or assets, and thereafter hold and exercise all the rights of stockholders. (1933, c. 271, s. 9.)

§ 217(m) 10. Stockholders not relieved.—Nothing contained in this article shall be construed to relieve any stockholder of any banking institution, who is such of record at the time of the passage of this article from the liability imposed by law. (1933, c. 271, s. 10.)

§ 217(m) 11. Trust business preserved upon reorganization; transfer of trust estates. — If, pursuant to any plan of reorganization provided for under this article, the trust business of any banking institution be transferred to a new or other banking institution, state or national, having authority to act in fiduciary capacities, such plan of reorganization, upon being consummated and carried into effect, shall operate to transfer to such new or other banking institution and its successor or successors any and all appointments of the transferor banking institution in any fiduciary capacity, whether made by order of any court, or independently of any court, including all appointments of such transferor banking institution in any fiduciary capacity made by any will or other instrument executed prior to the said plan of reorganization being consummated and carried into effect, as effectually as if said new or other banking institution had been appointed by a court of competent jurisdiction as successor to the transferor banking institution in each fiduciary capacity in which said transferor banking institution had theretofore been acting, or to which it might have been appointed by will or other instrument theretofore executed. If a new banking institution is organized pursuant to any plan of reorganization provided for under this article, or, in case of a national bank if reorganized under the provisions of the act of congress of March 9, 1933, known as the "bank conservation act," any of said existing banking institutions subscribing to its capital stock may transfer to such institution all its existing trust estates and property held in a fiduciary capacity, and all the appointments of the transferor institution in any fiduciary capacity, whether made by order of any court or independently of any court, including all appointments of such transferor institution in any fiduciary capacity made by any will or other instrument executed prior to said transfer, as effectively as if said new institution had been appointed by a court of competent jurisdiction as successor to the transferor institution in each fiduciary capacity in which said transferor institution had theretofore been acting or to which it might have been appointed by will or other instrument theretofore executed. (1933, c. 271, s. 11; c. 499.)

§ 217(m) 12. Rules and regulations. — The commissioner of banks, with the approval of the advisory banking commission, shall have the power to make and promulgate from time to time such rules and regulations as he may deem necessary or advisable to carry out the provisions of this article. (1933, c. 271, s. 12.)

§ 217(m) 13. Purpose and intent of statute; time limit for reorganization.—This article is enacted in view of the banking emergency which has arisen and which has been accompanied by wide-spread unemployment, decreased values, untimely withdrawals of deposits, and other conditions beyond the control of the state; and the purpose of this article is to serve the welfare of the state as a whole and the depositors and creditors of banking institutions, and to promote justice, prevent distress and discrimination, and to establish an orderly method of reconstruction and further to carry out the purposes of sections 220(a) 1; 220(gg) bill 943 enacted by the general assembly of nineteen thirty-three [§§ 220-(gg), 222(l)-222(n), 222(o) 1, 264(a)-264(l) of this code]. Therefore, this article shall apply only to plans of reorganization presented to the commissioner of banks for approval prior to January 1, 1935. (1933, c. 271, s. 13.)

Art. 3. Dissolution and Liquidation

§ 218(a). Voluntary liquidation.

Approval of Stockholders Not Necessary to Sale to Bank. —For a valid sale of assets to another bank the approval of the stockholders of the selling bank is not required by this section and the section is not invalid for that reason. Planters' Sav. Bank v. Earley, 204 N. C. 297, 299, 168 S. E. 225.

§ 218(c). Liquidation of banks; when commissioner to take possession.

(12) List of Claims Presented and Deposits; Copies; Proviso.—Upon the expiration of the time fixed for presentation of claims, the chief state bank examiner, or the duly appointed agent, shall make a full and complete list of the claims presented and of the deposits as shown, including and specifying any claims or deposits which have been rejected by him, and shall file one copy in the office of the clerk of the superior court in the pending action, and shall keep one copy on file with the inventory in the office of the bank for examination. Any indebtedness against any bank which has been established or recognized as a valid liability of said bank before it went into liquidation, for which no claimant has filed claim, and/or any liability for which claim has been filed and disapproved, shall be listed in the office of the clerk of the superior court of the county in which the bank is located, by the liquidating agent, and the dividends accruing thereto shall be paid into the said office and shall be held for a period of three months after said liquidation is completed, and shall then be paid to the escheator of the University of North Carolina. Any claim which may be presented after the expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the bank in the hands of the corporation commission, and undistributed at the time the claim is presented: Provided, that when it is made to appear to the judge of the superior court, resident or presiding in the county, that the claim could not have been filed within said period, said judge may permit those creditors or depositors who subsequently file their claim to share as other creditors.

(15) Deposit of Funds Collected.—All funds collected by the commissioner of banks, in liquidating any bank, shall be deposited from time to time in such bank or banks as may be selected by him, and shall be subject to the check of the

commissioner of banks. The payment of interest on the net average of such sums on deposit shall be controlled by the governor and council of state, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. (Acts 1927, c. 113; 1921, c. 4, s. 17; 1931, c. 243, s. 5, c. 385, c. 405; 1933, c. 175, s. 2, c. 546.)

As to individual liability of stockholders see § 219(a) and annotations thereunder.

Editor's Note.—

By c. 546 of Public Laws 1933 subsection (12) of this section was amended by the addition of the second sentence relating to dividends on unclaimed deposits in closed banks. Prior to the Amendment of 1933, P. L. c. 175, s. 2, subsection 15, required a deposit a net average of three per cent per annum.

As the two subsections shown above were the only ones affected by the 1933 acts they are the only ones set out in this supplement.

For an act regulating the time limit of liquidation of banks in Rutherford County, see Public Laws 1933, c. 567. As to act, applicable only in Buncombe County, providing that stockholders of closed banks shall be required to pay only one assessment, see Acts 1933, c. 27, p. 21.

In General.—

The functions of the Commissioner of Banks are not limited to the provisions of this section, and the courts of equity have inherent power to permit the Commissioner of Banks to exercise the functions of a chancery receiver in matters which are not inconsistent with his statutory duties. Blades v. Hood, 203 N. C. 56, 164 S. E. 828.

Preferences.—

The words "or otherwise" in subsec. 14 of this section, are to be construed in connection with the other parts of the statute, meaning any mode of transportation analogous to those specified in the statute, requiring "remitting" or "sending" the money to the payee of the check. Morecock v. Hood, 202 N. C. 321, 162 S. E. 730.

Same—Cashier's Check.—Where a bank debits an account with the amount of a check drawn by the depositor and issues its cashier's check for the amount but is placed in a receiver's hands before remitting the proceeds to a third person as instructed to do by the depositor, the cashier's check does not constitute a preference as defined by this section. Board of Education v. Hood, 204 N. C. 353, 168 S. E. 522.

If a depositor in a bank takes a cashier's check for his deposit, and thereafter surrenders the cashier's check, purchasing with the proceeds, a draft for the purchase price of Liberty Bonds, and the bank is closed before the draft is paid, such transaction does not constitute a preference as defined by this section. In re Bank of Pender, 204 N. C. 143, 144, 167 S. E. 561.

Same—Draft on Another Bank.—Under subsec. 14 of this section a depositor who presents his check for payment over the counter of a bank which charges his account with the amount thereof and gives him a draft drawn on another bank which he deposits in a third bank, and the draft is returned unpaid, is not entitled to a preference in assets of the bank drawing the draft, the transaction not coming within the provisions of the statute for a preference when a bank receives a check by "mail," express or otherwise . . . with request that remittance be made therefor." Morecock v. Hood, 202 N. C. 321, 162 S. E. 730.

Right to Repudiate Subscription for Fraud.—Even if it be conceded that this section undertook to deal solely and exclusively with the methods of distribution of special funds arising from stockholders' assessments, nevertheless, the stockholder has the right to repudiate his stock subscription procured through the fraud of his own corporation, even after insolvency or bankruptcy. Hood v. Martin, 203 N. C. 620, 166 S. E. 793.

Appeal from Assessment.—Where an appeal to the Superior Court is taken from an assessment made according to the provisions of this section, ordinarily the only issues of fact which may be raised in the Superior Court are whether the appellant was in fact a stockholder, and if so, the number of shares owned by him. Corporation Comm. v. McLean, 202 N. C. 77, 161 S. E. 854.

§ 218(c) 1. Sale by commissioner of banks of corporate stocks in banks being liquidated.—The banking commission, when liquidating any defunct bank or trust company, having among its assets stock in resident corporations, joint stock companies or limited partnerships, shall sell such stock at public auction at the courthouse door of the county wherein such bank or trust company was doing business, after first advertising the stock for sale at the courthouse door and in some newspaper, if published, in said county for a period of four successive weeks next preceding the sale thereof: Provided, that if, in the opinion of the commissioner of banks, the said stock fails to bring a fair and reasonable price at such sale, he shall not recommend the confirmation of such sale to the court but within ten days from the date of sale shall by written notice to the purchaser reject the bid and shall cause the stock to be re-advertised for sale for a period of two weeks next preceding the date of sale, as hereinbefore provided, and he may continue to re-advertise and offer for sale such stock in the aforesaid manner until the same shall bring a fair and reasonable price: Provided however, that this act shall not apply to stocks and bonds listed on New York stock exchange or any other stock exchange. (1933, c. 238.)

§ 218(e). Statute relating to receivers applicable to insolvent banks.

Effect in General.—This section serves to confer upon the commissioner of Banks possession and the right to possession of all property, rights, etc., with certain enumerated powers together with such incidental powers as are necessary to a sale of the insolvent bank's assets Blades v. Hood, 203 N. C. 56, 164 S. E. 828.

§ 218(p) 1. Commissioner to report to secretary of state certain matters relative to liquidation of closed banks; publication.—The commissioner of banks of the state of North Carolina shall on or before the first day of June, 1933, and on the first day of January and July of each year thereafter file with the secretary of the state of North Carolina a report showing all banks under liquidation in the state of North Carolina, and the names of any and all auditors together with the amounts paid to them for auditing each of said banks, and the names of any and all attorneys employed in connection with the liquidation of said banks together with the amount paid or contracted to be paid to each of said attorneys. If any attorney has been employed on a fee contingent upon recovery said report must state in substance the contract.

Within five days from the receipt of said report the secretary of the state of North Carolina shall cause same to be published one time in some newspaper published in each county in which a bank or banks are under liquidation, if there be a newspaper published in said county. If not, the secretary of the state of North Carolina shall cause a copy of said report to be posted at the courthouse door in said county. (1933, c. 483.)

Art. 3A. Reopening of Closed Banks

§ 218(u). Fiduciaries authorized to enter depositors' agreements. — All executors, administrators, guardians, trustees, commissioners, and others, occupying and acting in fiduciary capacities be and they are hereby authorized and empowered to sign in their fiduciary capacities any agreement offered to depositors intended and designed to enable any bank, national or state,

doing business in North Carolina prior to March sixth, nineteen hundred and thirty-three, to reopen: Provided the plan for the reopening of such bank has been first approved by the comptroller of the currency in the case of national banks, by the commissioner of banks in the case of state banks, and: Provided further, that such fiduciary first obtain the consent and approval of the clerk of the superior court of the county in which such fiduciary was appointed and of the resident judge, or the judge holding the courts of the judicial district in which such county is situate, such consent and approval to be entered upon the original record of the appointment of such fiduciaries in the counties in which such fiduciaries were appointed: Provided, that nothing in this act shall be construed to release the bondsman of any such guardian, ward or other fiduciary signing such release. (1933, c. 267.)

Art. 3B. Sale of Deposits in Closed Banks

§ 218(v). Purchasers may offset against debts due bank.—Any person, firm or corporation, society or organization, by whatsoever name designated, having any moneys or funds on deposit in any bank in Buncombe, Cherokee, Craven, Halifax, Haywood, Henderson, Jackson, Johnston, Macon, Robeson, Rutherford, Sampson, Stanly, Wilson and Transylvania, Alexander, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Catawba, Chatham, Chowan, Cleveland, Duplin, Edgecombe and all the municipalities therein with the exception of the town of Pine Tops, Gaston, Gates, Hertford, Hoke, Jones, Lee, Lenoir, Lincoln, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Pamlico, Pasquotank, Perquimans, Pitt, Polk, Richmond, Rockingham, Scotland, Stokes, Tyrrell, Wayne, Wilkes Counties, North Carolina, that is now closed, which has been closed eighteen months or longer prior to the ratification of the amendment of this section, and which has not paid its depositors and other creditors in full, shall, from and after the ratification of this act, have authority to sell and convey such accounts or deposits to any person, firm or corporation that may desire to purchase same and who owe such closed banks any money, and such person, firm or corporation purchasing such account or deposit shall be entitled to apply such account or deposit to the discharge of any debts owing by them to such closed banks at the full face value of such account or deposit. (Public Local Laws 1933, c. 344; 1933, c. 540, s. 1.)

Editor's Note.—Public Local Laws 1931, c. 344 applicable only to Buncombe County was amended by Public Laws, c. 540, s. 1, ratified May 15, 1933, so as to apply to the other counties named, and to banks which had been closed eighteen months or longer.

For act applicable only to Robeson County, see Public Laws 1933, c. 541, amending c. 540, s. 2.

Art. 4. Stockholders

§ 219(a). Stockholders, individual liability of.—The stockholders of every bank organized under the laws of North Carolina, whether under the general law or by special act, shall be individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stocks therein at par value thereof, in addition to the amount invested in such shares, except as otherwise provided. The term stockholders, when used in this chapter, shall apply not only to such persons as appear by the books of the corporation to be stockholders, but also to every owner of stock, legal or equitable, although the same may be on such books in the name of another person; but shall not apply to a person who may hold the stock as collateral for the payment of a debt. (1921, c. 4, s. 21; 1933, c. 159.)

Editor's Note.—

Public Laws 1933, c. 159 added the words "except as otherwise provided," appearing at the end of the first sentence of the section.

Entry on Books as Evidence of Ownership.—

The books of a bank establish, prima facie, who are stockholders therein, and those whose names appear thereon as stockholders are ordinarily liable, upon the bank's becoming insolvent, for the statutory liability imposed upon them by this section. Corporation Comm. v. McLean, 202 N. C. 77, 161 S. E. 854

Defenses.—

Same—Tranfers.—See § 219(d) and notes thereto.

Return of Assessment to Stockholders.—By reason of the liability under this section, stockholders are not entitled to a return to them of any part of the amounts which they have paid to the commissioner of banks, in discharge of such liability, until all the claims of depositors and other creditors against the bank, including interest, on the amounts of such claims from the date on which the said commission took possession of the assets of the insolvent bank for liquidation, have been paid. Hackney v. Hood, 203 N. C. 486, 489, 166 S. E. 323.

§ 219(a) 1. New state banks to set up surplus fund in lieu of double assessment. — The stockholders of any bank hereafter organized under the laws of the state of North Carolina shall pay in, in cash, a surplus fund in lieu of the additional liability imposed upon such stockholders by section 21, chapter 4, Public Laws of 1921 or section 1, chapter 121, Public Laws of 1925 [§§ 219(a) and 225(o) of this Code], which surplus fund shall equal fifty per centum of its capital stock, and said bank shall from the funds then in its hands purchase bonds of the state of North Carolina or the United States of America equal in face value to fifty per centum of the par value of the capital stock of such bank, which bonds shall be deposited with a federal reserve bank or other bank approved by the commissioner of banks for such purpose, and such bonds and all bonds substituted or exchanged therefor shall be held by the receiving bank for the sole benefit of the creditors of said depositing bank in case of liquidation. The federal reserve bank or other bank shall issue its receipt therefor in the manner and form to be provided for by the commissioner of banks. The interest on the said bonds shall be invested in bonds of the state of North Carolina or the United States of America until the original investment and subsequent investments shall equal, in face value of such bonds, the total amount of the capital stock of such bank, after which time the interest on such bonds shall be paid to the bank. Whenever any substitution or exchange is made in the bonds deposited, such substitution or exchange shall be of bonds of the state of North Carolina or the United States of America of equal par value. (1933, c. 159, s. 2.)

§ 219(a) 2. Existing banks may make same provision. — Any bank organized and operating under the laws of the state of North Carolina upon the date of the ratification of this act, may provide, in lieu of the additional or double liabil-

ity of its stockholders provided in section 21, chapter 4, Public Laws 1921 or section 1, chapter 121, Public Laws 1925 [§§ 219(a) and 225(o) of this Code], a fund for the purpose of purchasing bonds of the state of North Carolina or of the United States of America for deposit as hereinbefore provided for new banks organized under the laws of the state of North Carolina in the following manner:

(a) Whenever the commissioner of banks shall certify that in his opinion its unimpaired capital and surplus funds equal one hundred and fifty per centum of the par value of its capital stock, the stockholders at a regular meeting or at a special meeting called for the purpose may, by a majority vote, approve such action.

(b) Notice of such action on the part of the stockholders shall be published in some newspaper published in the city or town where the bank is located or if no paper is published in the city or town, then in a newspaper published in the county or in a newspaper having general circulation in said county, once each week for a period of ninety days immediately following such action by the stockholders.

(c) Upon completion of the publication herein provided the board of directors may approve such action of the stockholders and thereupon file with the commissioner of banks certified copy of (1) the action of the stockholders, (2) the notice, (3) affidavit of publication, and (4) action of the board of directors.

(d) The commissioner of banks shall, having first determined that the financial condition of such bank will not be weakened by such action, issue his order to the board of directors of the bank, which shall be recorded in the office of the clerk of the superior court of the county where the bank operates, authorizing such action and investment.

The investment, when made, shall be in like manner and for the same purposes as provided herein in the case of the organization of new banks, and shall be held and maintained as in such cases herein provided. (1933, c. 159, s. 3.)

§ 219(a) 3. Provisions mandatory on banks hereafter organized.—No new bank organized under the laws of the state of North Carolina shall be permitted to operate until it has complied with the provisions hereof. The stockholders of any bank organized and operating under the laws of the state of North Carolina upon the date of the ratification of this act which shall fully comply with the provisions hereof, shall be by such full compliance relieved of the stockholders' additional or double liability imposed by section 21, chapter 4, Public Laws of 1921, or section 1, chapter 121, Public Laws of 1925 [§§ 219(a) and 225(o) of this Code]. The compliance herewith shall be deemed to be complete upon the acceptance by the commissioner of banks of the receipt herein provided for. (1933, c. 159, s. 4.)

§ 219(a) 4. Supervision of commissioner of banks.—Any advertisement, on the part of any bank now or hereafter to be organized and operating under the laws of the state of North Carolina, having reference to the surplus fund herein provided for, shall be subject to the approval and regulation of the commissioner of banks. (1933, c. 159, s. 5.)

§ 219(c). Executors, trustees, etc., not personally liable.

Extent of Section.—

See Corporation Comm. v. Latham, 201 N. C. 342, 343, 160 S. E. 295, following the statement under this catchline in the Code of 1931.

§ 219(d). Transferrer not liable, when.

A transfer of bank stock to an infant does not relieve the transferer of his statutory liability, under this section, an infant being incapable of making a binding contract. In re Goldsboro Sav., etc., Co., 203 N. C. 238, 165 S. E. 705.

Trust Created in Good Faith.—Where the owner of shares of stock in a bank transfers some of his stock to his sons in trust for his grandchildren, but there is nothing on the books of the bank to indicate for whom the trust was created, and the transfer is regularly made in good faith when the bank was solvent, Held: upon the bank becoming insolvent the transferer is not liable under this section for the statutory assessment against the stock. Corporation Comm. v. Latham, 201 N. C. 342, 160 S. E. 295.

Where the owner of bank stock has had the shares transferred on the books of the bank to a trustee for the benefit of a minor, and the transfer is made in good faith when the bank is solvent: Held, the transferer is not liable for the statutory assessment of the stock upon the bank's insolvency, the trustee being of full age and qualified to perform all the duties required of him in his fiduciary capacity. In re Goldsboro Sav., etc., Co., 203 N. C. 238, 165 S. E. 705.

Art. 5. Powers and Duties

§ 220(a). General powers.—In addition to the powers conferred by law upon private corporations, banks shall have the power:

1. To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, by loaning money on personal security or real and personal property. Such corporations at the time of making loans or discounts may take and receive interest or discounts in advance.

2. To adopt regulations for the government of the corporation not inconsistent with the constitution and laws of this state.

3. To purchase, hold, and convey real estate for the following purposes:

(a) Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other apartments to rent as a source of income, which investment shall not exceed fifty per cent of its paid-in capital stock and permanent surplus: Provided, that this provision shall not apply to any such investment made before the ninth day of March, one thousand nine hundred and twenty-one. Provided further, that the commissioner of banks may in his discretion authorize the continuance of investments made prior to the first day of February, one thousand nine hundred and twenty-five, of the character described in this paragraph: Provided, further, that the commissioner of banks may, in his discretion, authorize any bank located in a city having a population of more than ten thousand according to the last United States census, to invest more than fifty percent of its capital and permanent surplus in its banking house, furniture, and fixtures.

(b) Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.

(c) Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subsection shall be sold by such bank within one year after it is acquired, unless, upon application by the board of directors, the commissioner of banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this chapter, are hereby repealed.

4. Nothing contained in this section shall be deemed to authorize banking corporations to engage in the business of dealing in investment securities, either directly or through subsidiary corporations: Provided, however, that the term "dealing in investment securities" as used herein, shall not be deemed to include the purchasing and selling of securities without recourse, solely upon order, and for the account of, customers; and provided further, that "investment securities," as used herein, shall not be deemed to include obligations of the United States, obligations of the state of North Carolina, and/or obligations of any political subdivision thereof, or of cities, towns, or other corporate municipalities in the state of North Carolina. Any provision in conflict with this subdivision contained in the Articles of Incorporation heretofore issued to any banking corporation is hereby revoked. (1921, c. 4, s. 26; 1923, c. 148, s. 5; 1924, c. 67; 1925, c. 279; 1927, c. 47, s. 5; 1931, c. 243, s. 5; 1933, c. 303, ss. 1, 2.)

Editor's Note.—
Public Laws 1933, c. 303 added paragraph 4 of this section, relating to dealings in securities.

§ 220(b). Limitations on investments or securities.—The investment of any bonds or other interest-bearing securities of any one firm, individual or corporation, unless it be the interest-bearing obligations of the United States, state of North Carolina, city, town, township, county school district, or other political subdivision of the state of North Carolina, shall at no time be more than twenty per cent of the unimpaired capital and permanent surplus of any bank to an amount not in excess of two hundred and fifty thousand dollars; and not more than ten per cent of the unimpaired capital and permanent surplus in excess of two hundred and fifty thousand dollars: Provided, that nothing in this section shall be construed to compel any bank to surrender or dispose of any investment in the stock or bonds of a corporation owning the lands or buildings occupied by such bank as its banking home, if such stocks or bonds were lawfully acquired prior to the ratification of this act. (1921, c. 4, s. 27; 1927, c. 47, s. 6; 1931, c. 243, s. 5; 1933, c. 359.)

Editor's Note.—
By Public Laws 1933, c. 359, provisos, formerly appearing in the section, permitting restricted investments in stock or bonds of a corporation owning the building or land occupied by the bank, were omitted.

§ 220(d). Loans, limitations of.

Loss of Assets Must Result.—In an action against the managing officials of a bank for wrongful depletion of assets in mismanagement of the affairs of the bank in making loans in excess of the limit set forth in this section, the evidence is insufficient to be submitted to a jury, if it appears that no loss to the assets of the bank has been caused by the acts of the officials. Gordon v. Pendleton, 202 N. C. 241, 162 S. E. 546.

§ 220(e). Investment and loan limitation, suspension of.—The board of directors of any bank may, by resolution duly passed at a meeting of the board, request the commissioner of banks to temporarily suspend the limitations on loans and investments as same may apply to any particular loan or investment, which said bank desires to make in excess of the provisions of sections 220(b), 220(c), and 220(d). Upon receipt of a duly certified copy of such resolution, the commissioner of banks may, in his discretion, suspend the limitation on loans and investments in so far as it would apply to loans or investments which such bank desires to make: Provided further, that the power granted to the commissioner of banks in this section shall not be exercised by him on and after the first day of January, one thousand nine hundred and thirty-four, except in the following instances and manner: Where an excessive loan is paid, one-half of the excess during the year one thousand nine hundred and thirty-four and the balance of the excess during the year one thousand nine hundred and thirty-five, the commissioner of banks shall have authority to permit the bank to carry such excessive loan. The commissioner of banks may approve the carrying of an excessive loan for not more than one hundred and twenty days and when such excessive loan is amply secured. (1921, c. 4, s. 30; 1931, c. 243, s. 5; 1933, c. 239, s. 1.)

Editor's Note.—
The proviso at the end of this section, relating to power of commissioner over excessive loans, was added by Public Laws 1933, c. 239.

§ 220(r). Establishment of branches.—Any bank doing business under this chapter may establish branches in the cities in which they are located, or elsewhere, after having first obtained the written approval of the commissioner of banks, which approval may be given or withheld by the commissioner of banks, in his discretion, and shall not be given until he shall have ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch. Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier and such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee shall be responsible for the conduct and management of said branch, but not of the parent bank or of any branch save that of which they are officers, managers, or committee: Provided, that the commissioner of banks shall not authorize the establishment of any branch, the paid-in capital stock of whose parent bank is not sufficient in an amount to provide for the capital of at least twenty-five thousand dollars for the parent bank, and at least twenty-five thousand dollars for each branch which it is proposed to establish in cities or towns of three thousand population or less; nor less than thirty thousand dollars in cities and towns whose population exceeds three

thousand, but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand, but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns whose population exceeds twenty-five thousand. All banks operating branches prior to February 18, 1921, shall, within a time limit to be prescribed by the commissioner of banks, cause said branch bank to conform to the provisions of this section: Provided, however, that any bank with a capital stock (including both common and preferred) of one million ($1,000,000.00) dollars or more which qualifies for non-assessable stock under the provisions of sections 219(a) 1 et seq., may without additional capital establish and operate such number of branches or agencies in the state of North Carolina as the commissioner of banks may in his discretion permit; but a bank operating branches under this proviso shall at all times maintain an unimpaired capital of at least one million ($1,000,000.00) dollars: Provided further, that the commissioner of banks shall not permit the establishment of additional branches, and/or agencies unless said bank maintains its capital stock and surplus in ratio of one to ten to its deposits. (1921, c. 4, s. 43; Ex. Sess 1921, c. 56, s. 2; 1927, c. 47, s. 8; 1931, c. 243, s. 5; 1933, c. 451, s. 1.)

Editor's Note.—
The two provisos at the end of this section were added by Public Laws 1933, c. 451.

§ 220(gg). Governor empowered to proclaim banking holidays.—The governor is hereby authorized and empowered, by and with the advice and consent of the council of state, to name and set apart such day or days, as he may from time to time designate, as banking holidays. During such period of holidays, all the ordinary and usual operations and business of all banking corporations, state or national, in this state shall be suspended, and during such period no banking corporation shall pay out or receive deposits, make loans or discounts, transfer credits, or transact any other banking business whatsoever: Provided, however, that during any such holiday, including the holiday validated in this section, the commissioner of banks, with the approval of the Governor, may permit any or all such banking institutions to perform any or all of the usual banking functions. The banking holiday heretofore proclaimed by the governor of this state for Monday, Tuesday and Wednesday, March sixth, seventh and eighth, one thousand nine hundred and thirty-three, be, and it is hereby approved and validated, and the said days are hereby declared to be banking holidays in the state of North Carolina. (1933, c. 120, s. 1.)

Art. 6. Officers and Directors

§ 221(g). Depositaries, designation by directors.

Editor's Note.—
For an act providing for the organization of cash depositories in Guilford county, see Public Laws 1933, c. 568.

§ 221(n). Officers and employees may borrow, when.

Loss of Assets Must Result.—See note to § 220(d).

Art. 7. Commissioner of Banks and Banking Department

§ 222(l). Other powers of commissioner of banks.—In addition to all other powers conferred upon and vested in him, the commissioner of banks, with the approval of the governor, is hereby authorized, empowered and directed, whenever in his judgment the circumstances warrant it:

(a) To authorize, permit, and/or direct and require all banking corporations under his supervision, to extend for such period and upon such terms as he deems necessary and expedient, payment of any demand and/or time deposits.

(b) To direct, require or permit, upon such terms as he may deem advisable, the issuance of clearing house certificates or other evidences of claims against assets of such banking institutions.

(c) To authorize and direct the creation, in such banking institutions, of special trust accounts for the receipt of new deposits, which deposits shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separate in cash or on deposit in such banking institutions as he shall designate or invested in such obligations of the United States and/or the state of North Carolina as he shall designate.

(d) To adopt for such banking institutions such regulations as are necessary in his discretion to enable such banking institutions to comply fully with the federal regulations prescribed for national or state banks. (1933, c. 120, s. 3.)

§ 222(m). Orders of commissioner to be observed; right of appeal.—The commissioner of banks is hereby authorized, empowered and directed to make all necessary rules and regulations, and to give all necessary instructions with respect to such banking corporations which he may authorize, permit and/or direct and require to be conducted under the provisions of this act. And it shall be the duty of all such banking corporations and their officers, agents and employees, to comply fully with any and all such rules, regulations and instructions, established and promulgated by the commissioner of banks with respect to such banking corporations under the terms of this act; and such orders, rules, and regulations shall have the same force and effect as rules, regulations and instructions promulgated under the existing banking laws. The right of appeal provided in section 221(o) shall apply to all such rules, regulations and instructions adopted and issued by the commissioner of banks. (1933, c. 120, s. 4.)

§ 222(n). Commissioner need not take over banks failing to meet deposit demands.—The commissioner of banks is authorized and directed not to take possession of any banking corporation under his supervision for failure to meet its deposit liabilities during the period in which such banking corporation is operating under the terms of section 222(l), paragraph (a); and he is hereby relieved from any and all liability for permitting such banking corporations to continue operations under the terms hereof. (1933, c. 120, s. 5.)

§ 222(o) 1. Additional powers with relation to deposits.—The commissioner of banks is hereby authorized and empowered in addition to other powers, vested in him, whenever in his judgment the circumstances warrant it, to authorize any bank, trust company, savings bank, industrial bank, or other institution under his supervision having the power to receive or which is receiving money on deposit:

(A) To extend for such period as he deems necessary and expedient payment of any time deposits where notice of withdrawal has been given or may hereafter be given.

(B) To postpone the payment of demand deposits for such time and to such extent as he deems necessary and expedient.

(C) To permit such bank to receive new deposits (after the time of the granting of the authority for the postponement of the payment of time and demand deposits) but such deposits so received shall not under any circumstances be subjected to any limitations as to payment or withdrawal and such deposits shall be segregated and held and used solely to meet such new deposit liabilities: Provided, that all sums received from such new deposits shall be invested, deposited and administered in all respects under the orders and directions of the commissioner of banks and said commissioner of banks shall have absolute power in regard to the handling of such new deposits and providing methods of checking against same and said commissioner of banks shall have absolute power to at any time withdraw the permission to receive such new deposits. All costs in connection with the receiving, handling and administering the proceeds of such new deposits shall be borne by the bank receiving the same and no part of such expenses shall be charged against such new deposits that can in any way prevent the payment of such new deposits in full.

In order that any institution may avail itself of the privileges herein granted, it shall accept such terms as the commissioner of banks from time to time impose upon it.

The commissioner of banks is authorized and directed not to take possession of any institution under his supervision for failure immediately to meet its deposit liabilities if it shall accept the terms imposed in accordance with the provisions of this section, and he is hereby relieved of any and all liability for permitting such institution to continue operations.

Nothing herein contained shall be construed or interpreted as in any manner abating any of the powers granted to and exercised by the commissioner of banks under existing law.

The commissioner of banks is given full power and authority to make rules and regulations and to impose terms in regard to the management and administration of all banks which shall be permitted to, or which, under the direction of the commissioner of banks, is being conducted in any way under the provision of this section. (1933, c. 103.)

Art. 9. Penalties

§ 224(e). Misapplication, embezzlement of funds, etc.

The intent and purpose of this section is to prevent the deception of the officers of a bank or the depletion of its assets or injury of its business by falsification of the bank's books by its officers or employees, and an indictment for the offense is not sufficient which merely charges such falsification without showing that the false entries were material or affected the interests of the bank or deceived its officers. State v. Cole, 202 N. C. 592, 163 S. E. 594.

A specific intent to deceive or to defraud is not necessary to a conviction of a bank officer or employee of making false entries on the books of the bank under the provisions of this section, it being sufficient if the defendant wilfully made such false entries, the performance of the act expressly forbidden by statute constituting an offense in itself without regard to the question of specific intent. State v. Lattimore, 201 N. C. 32, 158 S. E. 741.

In a prosecution under this section for wilfully making false entries on the books of a bank an instruction which was intended to stress and in effect did stress the necessity of proving that the false entries were wilfully and not inadvertently made, will not be held for error. Id.

Allegation That All Defendants Were Officers.—It is not necessary for an indictment charging a conspiracy to violate the provisions of this section, to allege that all of the defendants were officers or employees of the bank, the indictment being sufficient if it alleges that some of the defendants were officers or employees of the bank and that the other defendants conspired with them to do the unlawful act. State v. Davis, 203 N. C. 13, 14, 164 S. E. 737.

Variance as to Some Items.—In a prosecution of an officer of a bank for publishing a false report of the bank's condition in violation of this section, a variance between the allegations and proof as to some of the items of the report will not be fatal when there is no variance with respect to all the items, it being sufficient for conviction if the report as published was false in any particular as alleged in the indictment and was published with knowledge of such falsity and with a wrongful or unlawful intent. State v. Davis, 203 N. C. 47, 48, 164 S. E. 732.

§ 224(g). Insolvent banks, receiving deposits in.

Meaning of Insolvent.—

A bank is insolvent within the meaning of this section, when the actual cash market value of its assets is not sufficient to pay its liabilities to its depositors or other creditors. State v. Brewer, 202 N. C. 187, 188, 162 S. E. 363.

How Knowledge Determined.—

Same—Admissions.—Upon the trial of an officer of an insolvent bank under this section the officer's admissions that he knew of the insolvency of the bank at the time in question with his explanation thereof is competent testimony. State v. Brewer, 202 N. C. 187, 188, 162 S. E. 363.

Certified Accountant as Witness.—Upon the trial of a bank official under the provisions of this section testimony of a certified public accountant who had had experience in such matters and who had examined the books of the bank and had obtained from the directors, collectively and individually, information as to the value of its assets including lands and collateral, that the bank was insolvent at the time in question is not objectionable. State v. Brewer, 202 N. C. 187, 162 S. E. 363.

Art. 10. Industrial Banks

§ 225(o). Stockholders, individual liability of.—The stockholders of every industrial bank organized under the laws of North Carolina, whether under the general law or by special act, shall be individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stocks therein at par value thereof, in addition to the amount invested in such shares, except as otherwise provided. The term stockholders, when used in this act, shall apply not only to such persons as appear by the books of the corporation to be stockholders, but also to every owner of stock, legal or equitable, although the same may be on such books in the name of another person, but shall not apply to a person who may hold the stock as collateral for the payment of a debt. (1925, c. 121, s. 1; 1933, c. 159, s. 1.)

See § 219(a) 1.

Editor's Note.—

Public Laws 1933, c. 159, added the words, "except as otherwise provided," at the end of the first sentence of this section.

Art. 12. Conservation of Bank Assets and Issuance of Preferred Stock

§ 264(a). Provision for bank conservators; duties and powers.—Whenever he shall deem it necessary, in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the commissioner of banks may (with

the approval of the governor), appoint a conservator for such bank and require of such conservator such bond with such security as he may deem necessary and proper. The conservator, under the direction of the commissioner of banks, shall take possession of the books, records and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all such rights, powers and privileges, subject to the commissioner of banks, now possessed by or hereafter given to the commissioner of banks under Section 218(c), Consolidated Statutes, as amended, as are necessary to conserve the assets of said bank. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto, shall be the same as those provided in Section 218(c), consolidated statutes, as amended. All expenses of any such conservator shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this article or otherwise. The conservator shall receive as salary an amount no greater than that paid at the present time to employees of departments of the state government for similar services. (1933, c. 155, s. 1.)

§ 264(b). Examination of bank.—The commissioner of banks shall cause to be made such examination of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank. (1933, c. 155, s. 2.)

§ 264(c). Termination of conservatorship.—If the commissioner of banks shall become satisfied that it may safely be done, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business, subject to such terms, conditions, restrictions and limitations as he may prescribe. (1933, c. 155, s. 3.)

§ 264(d). Special funds for paying depositors and creditors ratably; new deposits.—While such bank is in the hands of the conservator appointed by the commissioner of banks, the commissioner of banks may require the conservator to set aside from unpledged assets and make available for withdrawal by depositors and payment to other creditors on a ratable basis, such amounts as, in the opinion of the commissioner of banks, may safely be used for this purpose; and the commissioner of banks, may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator (as well as special or trust deposits received by any bank, under the orders of the commissioner of banks, since March 2, 1933), shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of said bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator, as well as the special or trust deposits received since March 2, 1933, shall be kept on hand in cash or on deposit with a federal reserve bank. In being transmitted to the federal reserve bank, said deposits shall be so marked and designated as to indicate to such federal reserve bank that they are special deposits. (1933, c. 155, s. 4.)

§ 264(e). Reorganization on agreement of depositors and stockholders.—By the agreement of (a) depositors and other creditors of any bank representing at least seventy-five per cent in amount of its total deposits and other liabilities as shown by the books of the banks, or (b) stockholders owning at least two-thirds of each class of its outstanding capital stock as shown by the books of the bank, or (c) both depositors and other creditors representing at least seventy-five per cent in amount of the total deposits and other liabilities, and stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank, any bank may effect such reorganization with the consent and approval of the commissioner of banks as by such agreement may be determined: Provided, however, that claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the per cent thereof as above provided.

When such reorganization becomes effective, all books, records and assets of such bank shall be disposed of in accordance with the provisions of the plan, and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the commissioner of banks. In any reorganization which shall have been approved, and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of organization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization: Provided, however, that no reorganization shall affect the lien of secured creditors. (1933, c. 155, s. 5.)

§ 264(f). Segregation of recent deposits not effective after bank turned back to officers; notice of turning bank back to officers. — After fifteen days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in section 264(e) hereof, the provisions of section 264(d) with respect to the segregation of deposits received while it is in the hands of the conservator, and with respect to the use of such deposits to liquidate the indebtedness of such bank, shall no longer be effective: Provided, that before the conservator shall turn back the affairs of the bank to its board of directors, he shall cause to be published in a newspaper published in the city, town or county in which such bank is located, and if no newspaper is published in such city, town or county, in a newspaper to be selected by the commissioner of banks, a notice in form approved by the commissioner of banks, stating the date on which the affairs of the bank will be returned to its board of directors, and that the said provisions of section 264(d) will not be effective after fifteen days after such date; and on the date of publica-

tion of such notice, the conservator shall immediately send to every person who is a depositor in such bank under section 264(d) a copy of such notice by registered mail, addressing it to the last known address of such persons shown by the records of the bank; and the conservator shall send similar notice in like manner to every person making deposit in such bank under section 264(d) after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors. (1933, c. 155, s. 6.)

§ 264(g). Issuance of preferred stock. — Notwithstanding any other provision of this article or any other law, and notwithstanding any of the provisions of its articles of incorporation or by-laws, any bank may, with the approval of the commissioner of banks, and by vote of stockholders owning a majority of the stock of such bank, upon not less than two days' notice given by registered mail pursuant to action taken at a meeting of its board of directors (which may be held upon not less than one days' notice) issue preferred stock in such amount and with such par value as shall be approved by said commissioner of banks. A copy of the minutes of such directors' and stockholders' meetings, certified by the proper officer and under the corporate seal of the bank, and accompanied by the written approval of the commissioner of banks shall be immediately filed in the office of the secretary of state, and when so filed, shall be deemed and treated as an amendment to the articles of incorporation of such bank.

No issue of preferred stock shall be valid until the par value of all stock so issued shall have been paid for in full in cash or in such manner as may be specially approved by the commissioner of banks. (1933, c. 155, s. 7.)

§ 264(h). Rights and liabilities of preferred stockholders.—The holders of such preferred stock shall be entitled to cumulative dividends payable at a rate not exceeding six per centum per annum, but shall not be held individually responsible as such holders for any debts, contracts or engagements of such bank, and shall not be liable for assessments to restore impairments in the capital of such banks as now provided by law with reference to holders of common stock in banks. Notwithstanding any other provisions of law, the holders of such preferred stock shall have such voting rights and such stock shall be subject to retirement in such manner and on such terms and conditions as may be provided in the articles of incorporation or any amendment thereto, with the approval of the commissioner of banks.

No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and if the bank is placed in liquidation, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock and all accumulated dividends. In the event the bank is placed in liquidation, the commissioner of banks shall, if necessary, levy an assessment under existing laws, upon the holders of common stock for the purpose of paying the par value of the preferred stock and accumulated dividends. (1933, c. 155, s. 8.)

§ 264(i). Limitations of preferred stock; not to be used as collateral for loans.—Wherever in existing banking law, the words "stock," "stockholders," "capital" or "capital stock" are used, the same shall not be deemed to include preferred stock: Provided that no bank issuing preferred stock under the provisions hereof, shall be permitted at any time to make loans upon such preferred stock. (1933, c. 155, s. 9.)

§ 264(j). Rights and liabilities of conservator.—The conservator appointed pursuant to the provisions of this article shall be subject to the provisions of and to the penalties prescribed by sections 220(a), 224(e) and 224(f), Consolidated Statutes, as amended. (1933, c. 155, s. 10.)

§ 264(k). Naming of conservator not liquidation.—No power conferred in this article upon the commissioner of banks, when exercised, shall be deemed an act of possession for the purposes of liquidation; and whenever the commissioner of banks shall, with reference to any bank for which a conservator is appointed, deem that liquidation is necessary, he shall exercise the powers for the purposes of liquidation as provided in section 218(c) as amended. (1933, c. 155, s. 11.)

§ 264(l). Right of appeal.—The provisions of section 221(o) with reference to the right of appeal from actions taken by the commissioner of banks shall be applicable to actions taken by the commissioner of banks under the provisions of this article. (1933, c. 155, s. 12.)

CHAPTER 6

BASTARDY

§§ 265-276: Repealed by Public Laws 1933, ch. 228, codified as §§ 276(a) et seq.

§ 276(a). Non-support of bastard child by parents made misdemeanor.—Any parent who willfully neglects or who refuses to support and maintain his or her illegitimate child shall be guilty of a misdemeanor and subject to such penalties as are hereinafter provided. A child within the meaning of sections 276(a)-276(i) shall be any person less than ten years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain if such child were the legitimate child of such parent. (1933, c. 228, s. 1.)

§ 276(b). Place of birth of child no consideration. — The provisions of sections 276(a)-276(i) shall apply whether such child shall have been begotten or shall have been born within or without the state of North Carolina: Provided, that the child to be supported is a bona fide resident of this state at the time of the institution of any proceedings under this act: Provided, the provisions of this act shall not apply to pending litigation or accrued actions. (1933, c. 228, s. 2.)

§ 276(c). Action must be commenced within three years after birth.—Proceedings under §§ 276-(a)-276(i) may be instituted at any time within three years next after the birth of the child and not thereafter. (1933, c. 228, s. 3.)

§ 276(d). Parties plaintiff; indictments; death of mother no bar; determination of fatherhood.—Proceedings under sections 276(a)-276(i) may be

brought by the mother or her personal representative, or, if the child is likely to become a public charge, the superintendent of public welfare or such person as by law performs the duties of such official in said county where the mother resides or the child is found. Indictments under sections 276(a)-276(i) may be returned in the county where the mother resides or is found, or in the county where the putative father resides or is found, or in the county where the child is found. The fact that the child was born outside of the state of North Carolina shall not be a bar to indictment of the putative father in any county where he resides or is found, or in the county where the mother resides or the child is found. The death of the mother shall in no wise affect any proceedings under sections 276(a)-276(i). Preliminary proceedings under sections 276(a)-276(i) to determine the paternity of the child may be instituted prior to the birth of the child but when the judge or court trying the issue of paternity deems it proper, he may continue the case until the woman is delivered of the child. When a continuance is granted, the courts shall recognize the person accused of being the father of the child with surety for his appearance, either at the next term of the court or at a time to be fixed by the judge or court granting a continuance, which shall be after the delivery of the child. (1933, c. 228, s. 4.)

§ 276(e). Mother not excused on ground of self-incrimination; not subject to penalty; not compellable to testify against accused.—No mother of an illegitimate child shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a subpoena of any court, in any suit or proceeding based upon or growing out of the provisions of §§ 276(a)-276(i), but no such mother shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, she may so testify, nor shall she be forced or compelled to testify against the accused party against her will. (1933, c. 228, s. 5.)

§ 276(f). Jurisdiction of inferior courts; orders.—Proceedings under this act may be instituted in any court inferior to the superior court in any county wherein such proceedings may be instituted under the provisions of sections 276(a)-276(i).

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the particular child who is the object of the proceedings. The court in fixing this sum shall take into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his or her willingness to coöperate for the welfare of the child. The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. Compliance by the defendant with any or all of the further provisions of this act or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof. (1933, c. 228, s. 6.)

§ 276(g). Power of court to modify orders; suspend sentence, etc.—Upon the determination of the issues set out in the foregoing section and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his or her willingness to coöperate, to make an order or orders upon the defendant and to modify such order or orders from time to time as the circumstances of the case may in the judgment of the court require. The order or orders made in this regard may include any or all of the following alternatives:

(a) Commit the defendant to prison for a term not to exceed six months;

(b) Suspend sentence and continue the case from term to term;

(c) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;

(d) Apprentice the defendant to the superintendent of the county home to be employed there at a salary to be fixed by the board of county commissioners, or to some other person who will give bond for compliance with sections 276(a)-276(i), at a salary to be fixed by the board of county commissioners, the proceeds of his earnings to be paid to such person as the court may direct for the support, maintenance and education of the said child; and

(e) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;

(f) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this act. (1933, c. 228, s. 7.)

§ 276(h). Bond for future appearance of defendant.—At the preliminary hearing of any case arising under sections 276(a)-276(i) it shall be the duty of the court, if it finds reasonable cause for holding the accused for a further hearing, to require a bond in the sum of not less than one hundred dollars, conditioned upon the reappearance of the accused at the further hearing under sections 276(a)-276(i). This bond and all other bonds provided for in sections 276(a)-276(i) shall be justified before, and approved by, the court or the clerk thereof. (1933, c. 228, s. 8.)

§ 276(i). Title.—This statute shall be referred to as "An act concerning the support of children of parents not married to each other." (1933, c. 228, s. 11.)

§ 279. Legitimation by subsequent marriage.

Irregularity in divorce proceedings is not, by virtue of this section, ground for declaring children by a subsequent marriage illegitimate. Reed v. Blair, 202 N. C. 745, 164 S. E. 118.

CHAPTER 8
BONDS

Art. 2. Bonds in Surety Company

§ 339. Surety company sufficient surety on bonds and undertakings.

Same Liability as an Individual.—A surety corporation allowed by this section to give guardian bonds, is held to the same liability on a bond given by it as an individual would be, and is responsible to the ward when the guardian's failure to properly perform his duties causes loss to the ward's estate. Roebuck v. National Surety Co., 200 N. C. 196, 156 S. E. 531.

§ 344. On presentation of proper bond officer to be inducted.

Although the failure of the treasurer to sign a bond was an irregularity under this section, both the treasurer and the surety recognized their liability thereon by offering a second bond in substitution, and both were estopped to deny the validity of the first bond on the ground of such irregularity. State v. Inman, 203 N. C. 542, 166 S. E. 519.

Art. 4. Actions on Bonds

§ 354. On official bonds injured party sues in name of state; successive suits.

Cross Reference.—As to surety waiving his rights under this section and §§ 353, 355 by appearing and answering in a summary proceeding, see § 356 and the note thereto.

§ 356. Summary remedy on official bond.

Demand Not Necessary. — In a proceeding by the state, against a clerk of the Superior Court and the surety on his bond to recover sums embezzled by the clerk, the plaintiffs have the right to pursue the summary remedy under this section, upon their motion after due notice, and demand upon the clerk is not necessary. State v. Gant, 201 N. C. 211, 159 S. E. 427.

Waiver by Appearance. — Where a summary proceeding under this section has been instituted against a clerk of the superior court and the surety on his bonds to recover sums embezzled by the clerk, and the surety has entered a general appearance and filed answer, etc., the surety has waived its rights, if any it had, under §§ 353, 354, 355, to object that the plaintiffs could not maintain a summary proceeding under this section. State v. Gant, 201 N. C. 211, 159 S. E. 427.

§ 357. Officer unlawfully detaining money liable for damages.

Effect of Waiver of Interest from Date of Defalcation.—Where, in an action against a clerk of the superior court and his surety to recover sums embezzled by the clerk, the state waives the interest from the date of the actual defalcations, but does demand the 12 per cent from the date of the expiration of each term of office; a judgment awarding damages at 12 per cent, under the provisions of this section, on the sums defaulted from the expiration of each term is not error, the amount being within the penalty of the bond. State v. Gant, 201 N. C. 211, 213, 159 S. E. 427.

CHAPTER 9
BOUNDARIES

§ 361. Special proceeding to establish.

Effect of Binding Agreement.—Where in proceedings to establish the disputed boundaries between adjoining lands, a binding executed agreement between the parties has been established by uncontradicted evidence, the plaintiff is estopped from proceeding under this section, and there is no error in the court's holding that the completed agreement of arbitration operated as an estoppel as a matter of law. Lowder v. Smith, 201 N. C. 642, 643, 161 S. E. 223.

CHAPTER 11
CITIZENSHIP RESTORED

§ 386. When and where petition filed.—At any time after the expiration of two years from the date of discharge of the petitioner, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide resident, or in the superior court of the county, at term, where the indictment was found upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different counties, the petition shall be filed in the superior court of that county where the last indictment was found. (Rev., s. 2676; Code, ss. 2940, 2941; 1897, c. 110; R. C., c. 58, ss. 3, 4; 1840, c. 36, s. 3; 1933, c. 243.)

Editor's Note.—Prior to the amendment by Public Laws 1933, c. 243, the petition was permitted to be filed after "four years from the date of conviction," instead of "two years from the date of discharge" as is now permitted.

CHAPTER 12
CIVIL PROCEDURE
SUBCHAPTER II. LIMITATIONS

Art. 3. Limitations, General Provisions

§ 407. Disabilities.

Cross Reference.—As to insanity permitting the commencing of suit after expiration of statute of limitations see § 443 and the note thereto.

§ 411. Defendant out of state; when action begun or judgment enforced.

Applicable to Enforce Resulting Trust.—Where a cause of action to enforce a resulting trust has existed for more than ten years, but subtracting the length of time the trustee thereof had been out of the state, the elapsed time is less than ten years, then, under this section, the cause of action is not barred by the ten-year statute. Miller v. Miller, 200 N. C. 458, 157 S. E. 604.

§ 415. New action within one year after nonsuit, etc.

The words "new action," "new suit," and "original suit" indicate a difference in the two actions though the causes may be identical. Cooper v. Crisco, 201 N. C. 739, 161 S. E. 310.

Actions to Which Applicable.—

The cause of action in the first suit may be identical with the cause in the second, but it does not follow that the prosecution bond, the bond of indemnity, or the leave given by the Attorney-General in the first action can avail the defendant in the action last instituted. Cooper v. Crisco, 201 N. C. 739, 161 S. E. 310.

Where a foreign receiver, under the mistake that special permission was necessary for him to sue in the courts of our state, has taken a voluntary nonsuit, and obtains permission to sue in our courts, and brings the identical action again within one year from the nonsuit, if the former action has not been barred by a statute of limitations applicable, the second action is in time if brought within one year from the time of the voluntary nonsuit. Van Kempen v. Latham, 201 N. C. 505, 506, 160 S. E. 759.

Where a proceeding for compensation is instituted before the Industrial Commission, and the proceeding is dismissed, an action thereafter begun in the Superior Court by the widow as administratrix against the employer to recover for the employee's wrongful death will not be considered a continuation of the proceedings before the Industrial Commission so as to relate back to the time of the institution of such proceedings, and the action instituted in the Superior Court is barred if not brought within one year from the employee's death, there being a distinction between dismissal of proceedings under the compensation act and a nonsuit entered in an action instituted in the Superior Court

entitling plaintiff to institute a new action within one year. Mathis v. Camp Mfg. Co., 204 N. C. 434, 168 S. E. 515.

Section as Extension of Time.—

The time is extended because the new action is considered as a continuation of the former action, and they must be substantially the same, involving the same parties, the same cause of action, and the same right. Van Kempen v. Latham, 201 N. C. 505, 513, 160 S. E. 759.

Effect of Agreement Not to Plead Statute.—An agreement in the original action not to plead the statute of limitations does not apply to the new action. Citizens' Sav., etc., Co. v. Warren, 204 N. C. 50, 167 S. E. 494.

Parol Evidence to Prove Nature of Action.—See Drinkwater v. Western Union Tel. Co., 204 N. C. 224, 168 S. E. 410, following the statement under this catchline in the Code of 1931.

Application Where Statute Not One of Limitation—Actions for death by Wrongful Act.—

A new action for wrongful death commenced within one year from the date of nonsuit falls within the provisions of this section notwithstanding the provisions of § 160, and the fact that the plaintiff has been assessed with additional costs upon motion for reassessment made in the second action and has not paid the cost so reassessed is immaterial. Swainey v. Great Atlantic, etc., Tea Co., 204 N. C. 713, 169 S. E. 618. See notes to § 160.

§ 416. New promise must be in writing.

II. ACKNOWLEDGMENT OR NEW PROMISE.

Elements Necessary to Valid Promise.—

In order for a letter signed by the debtor to remove the bar of the statute of limitations it must contain an express, unconditional promise to pay or a definite, unqualified acknowledgment of the debt as a subsisting obligation, and a letter acknowledging the debt at the time defendant left plaintiff's city but claiming that it had been canceled by the creditor's action in selling the debtor's goods of a value greatly in excess of the debt, is not such an acknowledgment of a subsisting obligation as will repeal the statutory bar. Smith v. Gordon, 204 N. C. 695, 169 S. E. 634.

Must Be within Statutory Limit Itself.—The three-year statute of limitations bars a simple action for debt, and where a letter relied on as arresting the running of the statute is written more than three years before the commencement of the action it is ineffective. Smith v. Gordon, 204 N. C. 695, 169 S. E. 634.

Art. 4. Limitations, Real Property

§ 426. Possession presumed out of state.

Cross Reference.—As to admitting in evidence, to establish title by adverse possession, a deed insufficient to convey title, see § 430 and the note thereto.

§ 428. Seven years possession under colorable title.

II. NOTE TO SECTION 428

Sufficiency of Paper to Constitute Color—Void Deed.—

A wife's deed to her husband is color of title even if it be void, and his sufficient adverse possession for seven years, under this section, will ripen the fee-simple title in him. Potts v. Payne, 200 N. C. 246, 156 S. E. 499.

Effect on Lien of Judgment Creditor.—Adverse possession against a judgment debtor for a period of seven years under color of title does not affect the lien of a judgment creditor, the judgment creditor having no right of entry or cause of action for possession, but only a lien enforceable according to the prescribed procedure, and as to him the possession is not adverse. Moses v. Major, 201 N. C. 613, 160 S. E. 890.

§ 430. Twenty years adverse possession.

Effect of Exclusive Dominion after Dedication to Public.— Where the owner of land has platted and sold it by deeds referring to streets, parks, etc., according to a registered map, the grantees have an easement therein, but where he has later fenced off a part of the land so offered for dedication to the public and under known metes and bounds has exercised exclusive and adverse dominion over the enclosed lands, asserting absolute title, the statute of limitations will begin to run against the easements of the grantees thus acquired, which will ripen title to the enclosed lands in favor of the owner or his grantee under the provisions of this section, by twenty years adverse possession. Gault v. Lake Waccamaw, 200 N. C. 593, 158 S. E. 104.

§ 432. Possession follows legal title.

Presumption of Subordination.—

When the plaintiff in ejectment shows title to the locus in quo, and the defendant claims title by adverse possession, the latter must establish such affirmative defense by the greater weight of the evidence; otherwise, under this section, the defendants' occupation is deemed to be under and in subordination to the legal title. Hayes v. Cotton, 201 N. C. 369, 371, 160 S. E. 453.

§ 435. No title by possession of public ways.

Applies Only to Streets Acquired by Municipality.—The principle of law of this section applies only to such streets as the municipality has acquired and not to land offered to be dedicated by a private citizen for use as streets when such offer of dedication has not been accepted by the municipality before the offer has been unequivocally withdrawn. Gault v. Lake Waccamaw, 200 N. C. 593, 158 S. E. 104.

Art. 5. Limitations, Other than Real Property

§ 437. Ten years.

III. SUBS. (2) SEALED INSTRUMENTS.

Application to Sureties.—See Barnes v. Crawford, 201 N. C. 434, 437, 160 S. E. 464, following the statement under this catchline in the Code of 1931.

IV. SUBS. (3) MORTGAGE FORECLOSURE.

Effect of Payment of Interest.—This section will not bar foreclosure on a deed of trust when, although the debt was due more than 10 years ago, interest has been paid on the debt within 10 years. Dixie Gro. Co. v. Hoyle, 204 N. C. 109, 167 S. E. 469.

§ 437(a). Actions to recover deficiency judgments limited to within one year of foreclosure.— No action shall be maintained on any promissory note, bond, evidence of indebtedness or debt secured by a mortgage or deed of trust on real estate after the foreclosure of the mortgage or deed of trust securing the same, except within one year from the date of sale under such foreclosure or from the date of the ratification of this section, if such sale precedes its ratification; but this section shall not extend the time of limitation on any such action. (1933, c. 529, s. 1.)

§ 439. Six years.

See notes to § 441.

II. SUBSECTION ONE—PUBLIC OFFICERS.

When Statute Begins to Run.—

Ordinarily the statute begins to run from the time of the breach of the bond. Upon the termination of a sinking fund commissioner's term the law required him to account for funds in his hands and his failure to do so constituted a breach of his official bond giving rise to a cause of action thereon immediately. Washington v. Bonner, 203 N. C. 250, 165 S. E. 683.

§ 441. Three years.

I. IN GENERAL.

Where plaintiff has taken a voluntary nonsuit and brings the identical action again, if the former action has not been barred by this section, the second action is in time if brought within one year from the time of the voluntary nonsuit. Van Kempen v. Latham, 201 N. C. 505, 160 S. E. 759.

II. SUBSECTION ONE—CONTRACTS.

This section applies to sureties on a note under seal, and as to the sureties the right of action on the note is barred after the lapse of three years. Barnes v. Crawford, 201 N. C. 434, 160 S. E. 464.

Indemnity or Fidelity Bond.—Where the liability of the insurer is expressly limited in an indemnity or fidelity bond to losses occasioned and discovered during a specified time, this section will not extend the period of indemnity for this is a statute of limitations and can have no effect upon the valid contractual relations existing between the indemnitor and indemnitee. Hood v. Rhodes, 204 N. C. 158, 159, 167 S. E. 558.

A guaranty of the payment of a note is an obligation arising out of contract by which the guarantors assume liability for payment of the note in case the makers thereof do not pay same upon maturity, and right to sue upon such guaranty arises immediately upon failure of the makers to pay the note according to its tenor, and suit against the guarantors is barred by this section after three years from the

maturity of the note. Wachovia Bank, etc., Co. v. Clifton, 203 N. C. 483, 166 S. E. 334.

Accrual of Cause.—A cause of action did not accrue at the date of the warranty, but at the date on which it was finally determined that a plant was not free from all defects and flaws. Heath v. Moncrieff Furnace Co., 200 N. C. 377, 381, 156 S. E. 920.

VIII. SUBSECTION EIGHT—CLERK FEES.

Not Applicable to Referee.—The claim of a referee for payment of services rendered in a cause which is still pending in the courts upon exceptions to his report is not barred by this section. Farmers' Bank v. Merchants', etc., Bank, 204 N. C. 378, 168 S. E. 221.

IX. SUBSECTION NINE—FRAUD OR MISTAKE.

Applies to Actions at Law and Suits in Equity.—While this subsection originally applied only to actions for relief on the ground of fraud in cases solely cognizable by courts of equity, by statutory amendment and the decisions of our courts it now applies to all actions for relief on the ground of fraud or mistake. Stancill v. Norville, 203 N. C. 457, 166 S. E. 319.

When Statute Begins to Run.—

Where a clerk of the Superior Court embezzles funds and such fraud is not discovered until about 90 days prior to the institution of proceedings against the clerk and the surety on his bonds, and such fraud could not have been discovered earlier by reasonable diligence, this section and not § 439 applies. State v. Gant, 201 N. C. 211, 159 S. E. 427; State v. American Surety Co., 201 N. C. 325, 160 S. E. 176.

Where Purchaser Did Not Participate in Fraud.—Where there is no allegation or proof that a purchaser fraudulently concealed the fact of sale or participated in any fraud in connection therewith, then as to him the action is barred by the lapse of three years, this section not applying as to the action against him. Johnson Cotton Co. v. Sprunt & Co., 201 N. C. 419, 160 S. E. 457.

§ 442. Two years.—Within two years—

1. All claims against counties, cities and towns of this state shall be presented to the chairman of the board of county commissioners, or to the chief officers of the cities and towns, within two years after the maturity of such claims, or the holders shall be forever barred from a recovery thereon.

2. An action to recover the penalty for usury.

3. The forfeiture of all interest for usury: Provided, however, this section shall not apply to the counties of Cherokee and Clay. (Rev., s. 396; Code, ss. 756, 3836; 1874-5, c. 243; 1876-7, c. 91, s. 3; 1895, c. 69; 1931, c. 231; 1933, c. 318, s. 1.)

Editor's Note.—The proviso exempting Cherokee and Clay Counties from the operation of the section was added by Public Laws 1933, c. 318. As to limitation on vouchers and script issued in Carteret and Haywood Counties, see Public Laws 1933, c. 386.

I. SUBSECTION ONE—POLITICAL SUBDIVISIONS OF STATE.

Purpose of Section.—See Moore v. Charlotte, 204 N. C. 37, 39, 167 S. E. 380, following the statement under this section in the Code of 1931.

II. SUBSECTION TWO—PENALTY FOR USURY.

Bar of Counterclaim.—Where more than two years has elapsed from the payment of alleged usury until the institution of an action on the debt alleged to have been tainted with usury, the defendant's counterclaim for twice the amount of usury charged is barred. Farmers' Bank, etc., Co. v. Redwine, 204 N. C. 125, 167 S. E. 687.

III. SUBSECTION THREE—FORFEITURES OF ALL INTEREST FOR USURY.

Editor's Note.—

This section is prospective only, and is applicable only to a forfeiture under § 2306, which has occurred, or shall occur, since its ratification on April 1, 1931. Farmers' Bank, etc., Co. v. Redwine, 204 N. C. 125, 130, 167 S. E. 687.

§ 443. One year.

Subsection Three—Disability Preventing Bar.—An action for assault and battery is barred upon the plea of this section, if not commenced within one year, but if the plaintiff alleges and shows that he could not sooner have brought the action because of his mental condition or insanity, the time of such disability will be deducted from the running of the statute. Hayes v. Lancaster, 200 N. C. 293, 156 S. E. 530.

§ 444.

Editor's Note.—

For an act, applicable only in Cleveland and Rutherford Counties, providing limitation in action against one purchasing crops with lien thereon, see Public Laws 1933, c. 167.

SUBCHAPTER III. PARTIES

Art. 6. Parties

§ 446. Real party in interest; grantees and assignees.

I. REAL PARTIES IN INTEREST.

A. In General.

Question Cannot Be Raised on Appeal.—Where an action is instituted by a corporation on the theory that it was a duly substituted trustee of an active trust, under § 449, and the plaintiff's right to sue is not raised in the lower court, the question of whether the plaintiff is the real party in interest may not be raised by the defendant for the first time in the Supreme Court. Asheville Safe Deposit Co. v. Hood, 204 N. C. 346, 168 S. E. 524.

B. Personal Actions.

The assignee of a chose in action may bring an action thereon in his own name, under this section, and a bond given to indemnify a bank from any loss it might sustain by reason of its taking over the assets and discharging the liabilities of another bank is assignable. North Carolina Bank, etc., Co. v. Williams, 201 N. C. 464, 160 S. E. 484.

Claim under Workmen's Compensation Act.—It is required by this section, that an action be prosecuted in the name of the real party in interest, and where a statute names a person to receive funds and authorizes him to sue therefor, only the person named may litigate the matter, and where a claim under the Workmen's Cimpensation Act is litigated in the name of the deceased the proceeding is a nullity and will be dismissed on appeal to the Supreme Court. Hunt v. State, 201 N. C. 37, 158 S. E. 703.

C. Actions Concerning Realty.

Reformation of Deed of Trust.—Where a substituted trustee brings an action to reform a deed of trust and certain mortgage notes which are negotiable, the holders of the notes are necessary parties. First Nat. Bank v. Thomas, 204 N. C. 599, 169 S. E. 189.

§ 447. Suits for penalties.

Applied, in fixing penalty for illegal weighing of cotton, in State v. Briggs, 203 N. C. 158, 165 S. E. 339.

§ 449. Action by executor or trustee.

Question Cannot Be Raised on Appeal.—See note to § 446.

§ 450. Infants, etc., sue by guardian or next friend.

Designation Guardian Instead of Next Friend.—It would have been more regular if the representative of infants had been designated in a proceeding as next friend, rather than as guardian, but as he did not undertake to represent the infants otherwise than as next friend, it is immaterial that he was designated as guardian and not as next friend. Ex parte Huffstetler, 203 N. C. 796, 798, 167 S. E. 65.

§ 451. Infants, etc., defend by guardian ad litem.

Applied to Action to Foreclose for Taxes.—In an action under § 8037 the delinquent shall be made a defendant, and if a minor he must defend by a guardian, either general, testamentary, or ad litem. Forsyth County v. Joyce, 204 N. C. 734, 738, 169 S. E. 655.

§ 456. Who may be defendants.

Before allotment of dower is made in the lands of a deceased husband dying intestate his heirs at law should be made parties plaintiff or defendant. Holt v. Lynch, 201 N. C. 404, 160 S. E. 469.

Surety.—Where a contractor gives a surety bond for the faithful performance of a contract for the cutting of timber, it is not necessary to first ascertain by action or otherwise the amount of the liability of the contractor before uniting his surety as a party to an action for damages for its breach, the surety being a proper party for the complete

determination or settlement of the question involved. Watson v. King, 200 N. C. 8, 156 S. E. 93.

Review on Appeal.—The action of the trial judge in making necessary parties to an action is reviewable on appeal, and the making of proper parties is addressed to his sound discretion and not reviewable. Williams v. Hooks, 200 N. C. 419, 157 S. E. 65.

§ 457. Joinder of parties; action by or against one for benefit of a class.—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint. When the question is one of a common or general interest of many persons, or where the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. Any and/or all unincorporated, beneficial organizations, fraternal benefit orders, associations and/or societies, or voluntary fraternal beneficial organizations, orders, associations and/or societies issuing certificates and/or policies of insurance, foreign or domestic, now or hereafter doing business in this state, shall have the power to sue and/or be sued in the name commonly known and/or used by them in the conduct of their business to the same extent as any other legal entity established by law, and without naming any of the individual members composing it: Provided, however, this section shall apply only in actions concerning such certificates and/or policies of insurance. (Rev., s. 411; Code, s. 185; C. C. P., s. 62; 1933, c. 182.)

Editor's Note.—The last sentence of this section, relating to unincorporated, beneficial organizations, fraternal orders, etc., was added by Public Laws 1933, c. 182.

§ 460. New parties by order of court; intervener.

In General.—

This section serves to confer upon the trial court the power if not as a matter of right, then as a matter in his discretion, to allow an intervener to claim property while it is still in custodia legis. Unaka, etc., Nat. Bank v. Lewis, 203 N. C. 644, 166 S. E. 800.

SUBCHAPTER IV. VENUE

Art. 7. Venue

§ 463. Where subject of action situated.

II. ACTIONS RELATING TO REAL PROPERTY.

Polution of Stream.—An action for damages caused by the pollution of a stream resulting in forcing the plaintiff to shut down his clay mining machine appears to be a transitory one and is not such as contemplated by this section. Harris Clay Co. v. Carolina China Clay Co., 203 N. C. 12, 164 S. E. 341.

§ 464. Where cause of action arose.

Trial of Whole Controversy in County Where Offense Occurred.—Where in an action against the clerk of the Superior Court of one county and the sheriff of another county the clerk makes motion for removal of the cause as to him to the county of his office under this section, the motion should have been denied in order to avoid the possibility of conflicting verdicts and judgments and to dispose of the controversy in one action, the spirit of this section being effected in such instances by trial of the whole controversy in the county where the offense occurred. Kellis v. Welch, 201 N. C. 39, 158 S. E. 742.

§ 466. Domestic corporations.

Cross Reference.—As to foreign corporations after domestication see § 1181 and the note thereto.

Applied in Eastern Cotton Oil Co. v. New Bern Oil, etc., Co., 204 N. C. 362, 168 S. E. 411.

Cited in Occidental Life Ins. Co. v. Lawrence, 204 N. C. 707, 169 S. E. 636.

§ 470. Change of venue.

I. IN GENERAL.

Section Relates to Venue Not Jurisdiction.—

Under the present practice, venue may be waived because it is not jurisdictional, and is available to the objecting party, not by demurrer, but by motion in the cause. Shaffer v. Morris Bank, 201 N. C. 415, 418, 160 S. E. 481.

§ 471. Removal for fair trial.

Discretion of Trial Judge.—

See State v. Davis, 203 N. C. 13, 26, 164 S. E. 737, following statement in Code of 1931.

§ 473. Additional jurors from other counties instead of removal.—Upon suggestion made as provided by the second section preceding, or on his own motion, the presiding judge, instead of making order of removal may cause as many jurors as he deems necessary to be summoned from any county in the same judicial district or in an adjoining district by the sheriff or other proper officer thereof, to attend, at such time as the judge designates, and serve as jurors in said action. The judge may direct the required number of names to be drawn from the jury box in said county in such manner as he may direct, and a list of the same to be delivered to the sheriff or other proper officer of the county, who shall at once summon the jurors so drawn to appear at the time and place specified in the order. In case a jury is not obtained from those so summoned the judge may, in like manner, from time to time, order additional jurors summoned from any county in the same judicial district or in an adjoining district, or from the county where the trial is being held, until a jury is obtained. These jurors are subject to challenge for cause as other jurors, but not for nonresidence in the county of trial, or service within two years, or not being freeholders, and all jurors so summoned are entitled to compensation for mileage and time, to be paid by the county to which they are summoned, at the rate now provided by law for regular jurors in the county of their residence. Provided, that when the judge shall determine that it is necessary to have a special venire drawn from an adjoining county, instead of directing the jurors to appear at the courthouse in the county where the trial is pending, he may order them to appear at the courthouse of their own county and in lieu of their receiving mileage in going from their own county to the county in which the trial is held, it shall be optional with the county where the trial is held to provide transportation to said jurors from their own county seat to the place of trial and return instead of paying mileage to the jurors in going from their county seat to the place of trial. This proviso shall not apply to Ashe County and Durham County. (1913, c. 4, ss. 1, 2; 1931, c. 308; 1933, c. 248, s. 1.)

Editor's Note.—

The proviso at the end of this section relating to special venires to save mileage allowance, was added by Public Laws 1933, c. 248.

Discretion of Judge.—

Under this section the granting of a solicitor's motion that the jury be drawn from the body of another county is within the court's discretion. State v. Shipman, 202 N. C. 518, 163 S. E. 657.

SUBCHAPTER V. COMMENCEMENT OF ACTIONS

Art. 8. Summons

§ 475. Civil actions commenced by.

Effect of Nonsuit.—Where certain named individuals, direc-

tors of a corporation, are served with summons as trustees, and as to them the plaintiff takes a voluntary nonsuit and moves that the corporation be made the defendant in the action, and the complaint amended, the effect of the motion is to commence a new action against the corporation, and not to amend the original complaint. Jones v. Vanstory, 200 N. C. 582, 157 S. E. 867.

§ 476. Contents, return, seal.

Cross Reference.—As to amendment when a summons fails to comply with the requirement of the instant section, see § 547 and the note thereto.

§ 483. Service by copy.—The summons shall be served by delivering a copy thereof in the following cases:

1. If the action is against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof. Any person receiving or collecting money in this state for a corporation of this or any other state or government is a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property, or the cause of action arose, or the plaintiff resides, in this state, or when it can be made personally within the state upon the president, treasurer or secretary thereof.

2. If against a minor under the age of fourteen years, to the minor personally, and also to his father, mother or guardian, or if there are none within the state, to any person having the care and control of the minor, or with whom he resides, or in whose service he is employed.

3. If against a person judicially declared of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee or guardian has been appointed, to such committee or guardian, and to the defendant personally. If the superintendent or acting superintendent of an insane asylum informs the sheriff or other officer who is charged with the duty of serving a summons or other judicial process, or notice, on an insane person confined in such asylum, that the summons, or process, or notice, cannot be served without danger of injury to the insane person, it is sufficient for the officer to return the same without actual service, but with an endorsement that it was not personally served because of such information; and when an insane person is confined in a common jail it is sufficient for an officer charged with service of a notice, summons, or other judicial process, to return the same with the endorsement that it was not served because of similar information as to the danger of service on such insane person given by the physician of the county in which the jail is situated.

4. Every unincorporated, fraternal, beneficial organization, fraternal benefit order, association and/or society issuing certificates and/or policies of insurance, whether foreign or domestic, now or hereafter doing business in this state, shall be subject to service of process, in the same manner as is now or hereafter provided for service of process on corporations: Provided, this paragraph shall only apply in actions concerning such certificates and/or policies of insurance. (Rev., s. 440; Code, s. 217; C. C. P., s. 82; 1874-5, c. 168; 1889, c. 89; 1933, c. 24.)

I. IN GENERAL.

Editor's Note.—
Public Laws 1933, c. 24 added paragraph 4 of this section, relating to service on unincorporated, fraternal, beneficial organizations, fraternal orders, etc.

II. SERVICE ON CORPORATIONS.

A. Corporations Generally.

Requirement Mandatory.—
The provisions of this section must be strictly followed, and a separate copy of the summons must be served on and left with the agent for each corporate defendant. Hershey Corp. v. Atlantic Coast Line R. Co., 203 N. C. 184, 165 S. E. 550.

The provisions of this section as to service of summons on private corporations must be observed, and where individuals, directors of a corporation, are served with process as trustees, it will not be effectual as service on the corporation, but only on the individuals named. Jones v. Vanstory, 200 N. C. 582, 157 S. E. 867.

B. Foreign Corporations.

Travelling Auditor of a Foreign Corporation.—See Blades Lbr. Co. v. Finance Co., 204 N. C. 285, 168 S. E. 219, following Higgs & Co. v. Sperry, etc., Co., 139 N. C. 299, 51 S. E. 1020, and holding also that the fact that such agent received money for the corporation on a single instance does not alter this result.

§ 484. Service by publication.

See note to § 491.

I. IN GENERAL.

Affidavit Not Required in Proceedings to Foreclose Tax Certificate.—Where the summons in proceedings to foreclose a tax certificate of the sale of lands in the action against the listed owner of the lands has been returned the defendant "not to be found," it is not required as under the provisions of this section, that this fact be made to appear by affidavit to the satisfaction of the court in order for valid service by publication. Orange County v. Jenkins, 200 Mass. 202, 203, 156 S. E. 774.

III. SERVICE BY PUBLICATION ON NONRESIDENT WITH PROPERTY WITHIN STATE.

In General.—
Where the summons has been duly returned "defendant not to be found in the State," and at the time of its issuance it was alleged in a verified complaint and in supporting affidavits that the cause of action was for money had and received, and that the defendant was beyond the limits of the State, and was a resident of another State, this section has been substantially complied with and the validity of the service is upheld. Bethell v. Lee, 200 N. C. 755, 158 S. E. 493.

§ 491. Personal service on nonresident.

Application.—
Where from the verified pleadings of a party the location of the defendant is determined and personal service has been made, an exception to the validity of the service on the ground that the place of residence of defendant in another state was not made to appear by affidavit to the clerk prior to the mailing of the summons cannot be sustained, the provisions of this section having been substantially complied with. Fidelity, etc., Co. v. Green, 200 N. C. 535, 157 S. E. 797. But a different rule applies to § 484, relating to service by publication where the defendant's rights may be lost through lack of knowledge and lapse of time.

SUBCHAPTER VI. PLEADINGS

Art. 12. Complaint

§ 507. What causes of action may be joined.

I. IN GENERAL.

No Undue Increase of Cost or Inconvenience.—Under the provisions of this section where there is but one subject-matter of the suit or action in which several parties have divergent interests, and they may all be united in one suit without undue increase of cost or inconvenience to the parties, a motion to dismiss for multifariousness and misjoinder of parties is properly denied. Craven County v. Investment Co., 201 N. C. 523, 524, 160 S. E. 753.

Former Equity Practice Followed.—In interpreting this section with regard to multifariousness and misjoinder of parties our courts will take into consideration the principles of the old practice formerly existing exclusively in suits in

equity. Craven County v. Investment Co., 201 N. C. 523, 524, 160 S. E. 753.

Each Cause Must Belong to Same Class.—

Under this section, if the complaint states a connected story, forming a general scheme and tending to a single end, the plaintiff may unite in the same complaint several causes of action. Shaffer v. Morris Bank, 201 N. C. 415, 419, 160 S. E. 481.

III. CAUSES OF ACTION IN CONTRACT.

Action for Rescission and breach.—Plaintiff may not unite in the same complaint an action for the recission of a contract and one for its breach. The rights are opposed and the remedies inconsistent. Lykes & Co. v. Grove, 201 N. C. 254, 159 S. E. 360.

Art. 13. Defendant's Pleadings

§ 509. Demurrer and answer.

Extension of Time.—

This section does not affect the right of the Superior Court judge to allow an extension of time under section 536. Washington v. Hodges, 200 N. C. 364, 156 S. E. 912.

§ 510. Sham and irrelevant defenses.

Appeal.—

The action of the judge of the Superior Court in passing upon the judgment of the clerk of the court in refusing to strike out the defendant's answer as sham and frivolous, under this section, is upon a matter of law requiring exception thereto and an appeal to the Supreme Court. Wellons v. Lassiter, 200 N. C. 474, 157 S. E. 434.

The Superior Court has the power and authority to determine on appeal the order of the clerk of the court in refusing a motion under this section to strike out the defendant's answer on the ground that it was sham and frivolous. Wellons v. Lassiter, 200 N. C. 474, 157 S. E. 434.

Art. 14. Demurrer

§ 511. Grounds for.

I. IN GENERAL.

All Demurrers Special.—Under our practice all demurrers are special and may be pleaded only for the causes specified in this section. Shaffer v. Morris Bank, 201 N. C. 415, 417, 160 S. E. 481.

II. LACK OF JURISDICTION.

Plea That Industrial Commission Has Jurisdiction.—In an action by an administrator to recover for the wrongful death of his intestate, a plea to the jurisdiction of the court on the ground that the industrial commission had exclusive jurisdiction of the cause is in effect a demurrer to the complaint, and where it does not appear from the complaint that the defendant regularly employed more than five employees in this state, the plea to the jurisdiction should be overruled. Southerland v. Harrell, 204 N. C. 675, 169 S. E. 423.

V. DEFECT OF PARTIES.

How Taken Advantage of.—See Sims v. Dalton, 202 N. C. 249, 162 S. E. 550, affirming Lanier v. Pullman Co., 180 N. C. 406, 105 S. E. 21; Yonge v. New York Life Ins. Co., 199 N. C. 16, 153 S. E. 630; Wiggins v. Harrell, 200 N. C. 336, 156 S. E. 9.

Lack of Necessary Parties.—Where a substituted trustee brings an equitable action to reform a deed of trust and certain mortgage notes which are negotiable and the holders of these notes are not parties plaintiff a demurrer under this section will be sustained. First Nat. Bank v. Thomas, 204 N. C. 599, 169 S. E. 189.

VI. MISJOINDER OF SEVERAL CAUSES OF ACTION.

Applied in Grady v. Warren, 201 N. C. 693, 161 S. E. 319.

VII. FAILURE TO STATE SUFFICIENT FACTS.

Applied in Grady v. Warren, 201 N. C. 693, 161 S. E. 319.

§ 515. Procedure after return of judgment.

Discretion of Court.—See McKeel v. Latham, 202 N. C. 318, 162 S. E. 747, affirming Morris v. Cleve, 197 N. C. 253, 148 S. E. 253, appearing in Code of 1931.

A motion for leave to amend a complaint under this section addressed to the sound discretion of the trial court, and his order denying the motion is not subject to review on appeal in the absence of gross abuse of this discretion. McKeel v. Latham, 203 N. C. 246, 165 S. E. 694.

Under this section where an action has been dismissed for misjoinder of parties and causes the action is not pending and the court has no power to allow a motion to amend the pleadings. Grady v. Warren, 202 N. C. 638, 163 S. E. 679.

§ 517. Grounds not appearing in complaint.

Pendency of Another Suit.—

See State v. Gant, 201 N. C. 211, 229, 159 S. E. 427, following the rule stated in the Code of 1931.

§ 518. Objection waived.

Lack of Jurisdiction.—The defendant by filing an answer to the complaint in the Superior Court did not waive his right to demur ore tenus to the complaint on the ground that the court had no jurisdiction of the action and that the complaint does not state facts sufficient to constitute a cause of action. Finley v. Finley, 201 N. C. 1, 3, 158 S. E. 549.

Art. 15. Answer

§ 519. Contents.

II. DENIALS.

A. General and Specific Denials.

Where the only controverted fact has no bearing on the rights of the parties, judgment may be rendered on the pleadings upon the facts admitted. Jeffreys v. Boston Ins. Co., 202 N. C. 368, 162 S. E. 761.

§ 521. Counterclaim.

I. IN GENERAL.

B. General Constructions.

More Comprehensive than Old Set Off.—

See Aetna Life Ins. Co. v. Griffin, 200 N. C. 251, 253, 156 S. E. 515, following Smith & Co. v. French, 141 N. C. 1, 53 S. E. 435, set out under this catchline in the Code of 1931.

§ 523. Contributory negligence pleaded and proved.

Applied in Farrell v. Thomas, etc., Co., 204 N. C. 631, 169 S. E. 224.

Art. 17. Pleadings, General Provisions

§ 533. When verification omitted; use in criminal prosecutions.

Applied in State v. Dula, 204 N. C. 535, 168 S. E. 836.

§ 534. Items of account; bill of particulars.

Cited in Hood v. Love, 203 N. C. 583, 166 S. E. 743.

§ 535. Pleadings construed liberally.

In Favor of Pleader.—The court is required on demurrer to construe the complaint liberally "with a view to substantial justice between the parties," under this section, and, contrary to the common-law rule, every reasonable intendment is to be made in favor of the pleader. Joyner v. Woodard, 201 N. C. 315, 317, 160 S. E. 288.

Statement of Cause of Action.—See Farrell v. Thomas, etc., Co., 204 N. C. 631, 633, 169 S. E. 224, following first statement under this catchline in Code of 1931.

§ 537. Irrelevant, redundant, indefinite pleadings.

Cross Reference.—

As to power of Superior Court to determine on appeal order of clerk refusing motion to strike out answer as frivolous see § 510 and the note thereto.

Cited in Hood v. Love, 203 N. C. 583, 166 S. E. 743.

§ 542. Pleadings in libel and slander.

Sufficient Publication.—Under this section where the complaint in an action for libel alleges that the defendant sent the plaintiff an open post card through the mails containing libelous matter, without an allegation that such matter was read by some third person, the allegation of publication is insufficient. McKeel v. Latham, 202 N. C. 318, 162 S. E. 747.

§ 543. Allegations not denied, deemed true.

Admissions as Evidence in Other Actions.—The paragraph under this catchline is quoted and Michie's Code of 1931 is cited in Lowder v. Smith, 201 N. C. 642, 648, 161 S. E. 223.

Art. 18. Amendments

§ 545. Amendment as of course.

Cross Reference.—As to allowing an amendment to make the defense plea more specific, see § 547 and the note thereto.

Form and Notice of Motion to Amend.—After the time for answering has expired it has been the uniform practice to apply to the court for permission to amend. This application may be oral or written, but notice of such motion is required unless made during a term of court at which the action stands for trial. Carolina Discount Corp. v. Butler, 200 N. C. 709, 712, 158 S. E. 249.

§ 547. Amendments in discretion of courts.

I. IN GENERAL.

After Reversal.—Under this section upon the receipt of a certificate of reversal of judgment overruling a demurrer, the lower court may allow an amendment of the summons and complaint in accordance with the opinion. Commissioner of Banks v. Harvey, 202 N. C. 380, 162 S. E. 894.

V. AMENDMENTS OF PROCESS.

Absence of Clerk's Signature.—Under this section the absence of the clerk's signature on a summons is a defect of a formal character which may be waived by general appearance and is therefore remediable by amendment. Hooker v. Forbes, 202 N. C. 364, 368, 162 S. E. 903.

VI. AMENDMENTS AS TO PARTIES.

Substitution of Corporation for President Thereof. — The trial judge has the power to allow the substitution of the company as the party plaintiff for the president of the company, the character or nature of the action not being substantially changed thereby. Street v. McCabe, 203 N. C. 80, 164 S. E. 329.

Making Trustee Party.—Where money is borrowed to pay off a prior mortgage and the lender takes another mortgage to secure the money so borrowed which is later declared invalid for improper acknowledgment, and the lender brings action to foreclose under the first mortgage under the doctrine of equitable subrogation: Held, the trustee can be made a party by amendment if it should be necessary. Investment Securities Co. v. Gash, 203 N. C. 126, 164 S. E. 628.

VIII. SPECIFIC INSTANCES.

After Plea of Contributory Negligence.—Where, in an action involving the issue of negligence, contributory negligence is pleaded in substance by defendant, an amendment allowed defendant to make his allegation more specific is not held reversible error. Gholson v. Scott, 200 N. C. 429, 157 S. E. 64.

§ 551. Supplemental pleadings.

It is within the discretionary power of the trial court to allow the filing of a supplemental complaint. Speas v. Greensboro, 204 N. C. 239, 167 S. E. 807.

SUBCHAPTER VII. TRIAL AND ITS INCIDENTS

Art. 19. Trial

§ 560. Continuance during term.

Continuance Discretionary with Judge.—See In re Bank, of Whiteville, 202 N. C. 251, 162 S. E. 568, affirming Dupree v. Virginia Home Ins. Co., 92 N. C. 418, appearing under this catchline in the Code of 1931.

To Prove Bad Character of Witnesses.—Where defendant has asked for a continuance under this section without complying with the requirements and the purpose given for seeking the continuance is to secure depositions as to the bad character of the State's witnesses when defendant has already been permitted to cross-examine the witnesses and they admitted being prosecuted for criminal offenses, refusal of the trial judge to grant the continuance is not an abuse of discretion. State v. Banks, 204 N. C. 233, 167 S. E. 851.

§ 564. Judge to explain law, but give no opinion on facts.

II. OPINION OF JUDGE.

A. General Consideration.

Purpose and Effect of Section.—

An expression of an opinion by the judge as to an essential fact involved in an issue is condemned by this section. Abernethy v. State Planters' Bank, etc., Co., 202 N. C. 46, 49, 161 S. E. 705.

C. Illustrative Cases.

1. Remarks Held Not Erroneous.

d. Miscellaneous Remarks.

Matters Subject to Mathematical Calculation.—Where the answers to the issues as to the amounts recoverable, in case the defendants were found liable to the plaintiffs, is merely a matter of mathematical calculation, peremptory instructions in regard thereto do not constitute prejudicial or reversible error under this section. State v. Gant, 201 N. C. 211, 212, 159 S. E. 427.

III. EXPLANATION OF LAW AND EVIDENCE.

B. Explanation Required.

1. In General.

Rule Stated.—

Where the trial court in his charge to the jury explains the law applicable and gives the contention of the parties, but fails to instruct the jury as to the application of the law to the substantial features of the case, the charge is insufficient to meet the requirements of this section and a new trial will be awarded. Com'r of Banks v. Florence Mills, 202 N. C. 509, 163 S. E. 598.

Contentions of Parties.—Although it is not required by this section that the trial judge should state the contentions of the parties to the jury, the practice has grown up in our courts as a helpful and accepted procedure, and a fair statement of the contentions of a party will not be held for error upon exception. Rocky Mount Sav., etc., Co. v. Aetna Life Ins. Co., 204 N. C. 282, 167 S. E. 854.

Explanation of Subordinate Features of Case.—The charge of the court did not fail to comply with the provisions of this section if it sufficiently pointed out and explained the substantive features of the case, and as to subordinate features the prisoner should have aptly tendered prayers for special instructions. State v. Ellis, 203 N. C. 836, 167 S. E. 67.

2. Statement of Evidence.

In General.—All that is required of a charge by this section is that the essential evidence offered at the trial be stated in a plain and correct manner, together with an explanation of the law arising thereon. State v. Fleming, 202 N. C. 512, 514, 163 S. E. 453; In re Beale, 202 N. C. 618, 163 S. E. 684.

By virtue of this section where the charge of a trial court fails to state the evidence of a party relative to a material point and which directly bears on the amount recoverable, a new trial will be awarded. Myers v. Foreman, 202 N. C. 246, 162 S. E. 549.

Slight inaccuracies in the statement of the evidence in the instructions of the court to the jury will not be held for reversible error when not called to the attention of the judge at the time and the charge substantially complies with this section. State v. Sterling, 200 N. C. 18, 19, 156 S. E. 96.

Weight and Credibility.—Where the trial judge gives the contentions of the State and of the defendant, clearly stating that they are but contentions in a trial for unintentional manslaughter, and correctly charges the law arising upon the evidence, objection that he has therein impinged upon the provisions of this section, in expressing his opinion upon the weight and credibility of the evidence, is untenable. State v. Durham, 201 N. C. 724, 726, 161 S. E. 398.

§ 567. Demurrer to evidence.

Plaintiff Entitled to Benefit of Inferences.—For cases following the rule as set out under the first paragraph under this catchline in the Code of 1931, see Smith v. Raleigh Granite Co., 202 N. C. 305, 162 S. E. 731; Pearson v. Standard Garage, etc., Co., 202 N. C. 14, 161 S. E. 536; Almond v. Oceola Mills, 202 N. C. 97, 161 S. E. 731; Sampson v. Jackson Bros. Co., 203 N. C. 413, 166 S. E. 181; Puckett v. Dyer, 203 N. C. 684, 167 S. E. 43; Pendergraft v. Royster, 203 N. C. 384, 166 S. E. 285; Tuttle v. Bell, 203 N. C. 154, 165 S. E. 333; Thigpen v. Jefferson Standard Life Ins. Co., 204 N. C. 551, 168 S. E. 845; Lynch v. Carolina Tel., etc., Co., 204 N. C. 252, 257, 167 S. E. 847; Holton v. Northwestern Oil Co., 201 N. C. 744, 746, 161 S. E. 391; Broadway v. Gate City Life Ins. Co., 201 N. C. 639, 640, 161 S. E. 71; Sanders v. Atlantic Coast Line R. Co., 201 N. C. 672, 676, 161 S. E. 320; Nance v. Merchants' Fertilizer, etc., Co., 200 N. C. 702, 158 S. E. 486; Hunt v. Meyers Co., 201 N. C. 636, 637, 161 S. E. 74; Smithwick v. Colonial Pine Co., 200 N. C. 519, 157 S. E. 612; Moore v. Atlantic Coast Line R. Co., 201 N. C. 26, 158 S. E. 556.

Evidence which raises only a mere suspicion or conjecture

of the issue to be proved is insufficient to be submitted to the jury. Sutton v. Herrin, 202 N. C. 599, 163 S. E. 578; Shuford v. Scruggs, 201 N. C. 685, 687, 161 S. E. 315; Shuford v. Brown, 201 N. C. 17, 18, 158 S. E. 698.

It is well settled that evidence which does no more than raise a suspicion, that a fact material to the cause of action alleged in the complaint, may be as alleged therein, is not sufficient for submission to the jury as tending to sustain the allegation of the complaint. Broughton v. Standard Oil Co., 201 N. C. 282, 288, 159 S. E. 321.

Not Allowed after Verdict.—

Where the court reserves his rulings on motions of nonsuit until after rendition of a verdict the court may not set aside the verdict for insufficiency of the evidence as a matter of law, and grant the motion for judgment as of nonsuit made at the close of all the evidence. Batson v. City Laundry Co., 202 N. C. 560, 163 S. E. 600.

Waiver.—

Where the defendant in a civil action does not comply with the provisions of this section, in making a motion for judgment as of nonsuit he waives the question of the sufficiency of the evidence. Harris v. Buie, 202 N. C. 634, 163 S. E. 693.

A motion for dismissal or for judgment of nonsuit made, under this section at the close of the plaintiff's evidence and not renewed at the close of all the evidence is waived. Debnam v. Rouse, 201 N. C. 459, 460, 160 S. E. 471.

Where a defendant makes a motion as of nonsuit at the close of the plaintiff's evidence, and upon the motion being overruled, introduces evidence in his own behalf, he waives his right to present the question of the sufficiency of the evidence to go to the jury by failing to renew his motion at the close of all the evidence, and his appeal will be regarded as if no motion had been made by him. Lee v. Penland, 200 N. C. 340, 157 S. E. 31.

Evidence Sufficient for Jury—Same—Illustrative Cases.—

Evidence tending to show a definite contract by deceased to devise his property to plaintiff, and upon the death of the deceased intestate, is sufficient to be submitted to the jury in plaintiff's action against deceased's administrator for breach of the contract and motion as of nonsuit was properly refused. Hager v. Whitner, 204 N. C. 747, 169 S. E. 645.

Where the plaintiff brought suit on a policy of accident insurance in which she was named beneficiary, and which provided for the payment of a certain sum if the assured was killed by being struck by a gasoline propelled vehicle: the evidence that the assured met his death by being struck by a vehicle propelled by gasoline was sufficient to be submitted to the jury and motion for nonsuit was properly refused. Colboch v. Independent Life Ins. Co., 204 N. C. 716.

Where the answer pleads a counterclaim the plaintiff may not take a voluntary nonsuit over the defendant's objection. Aetna Life Ins. Co. v. Griffin, 200 N. C. 251, 156 S. E. 515.

When Nonsuit Proper.—

Where there is no evidence tending to sustain the plaintiff's cause of action the defendant's exceptions to the refusal of the trial court to grant his motion of nonsuit or his request for a directed verdict will be sustained on appeal. Ferguson v. Glenn, 201 N. C. 128, 159 S. E. 5.

Setting Aside after Refusal of Motion.—Where the trial court has refused to grant the defendant's motion as of nonsuit, he may not set aside the verdict on the ground of the insufficiency of the evidence as a matter of law, but may do so only as a matter within his discretion. Lee v. Penland, 200 N. C. 340, 157 S. E. 31.

§ 569. Findings of fact and conclusions of law by judge.

Separate Conclusions of Facts and Law.—See Walker v. Walker, 204 N. C. 210, 167 S. E. 818, following the first paragraph of the statement in the Code of 1931.

Art. 20. Reference

§ 573. Compulsory.

II. GENERAL CONSIDERATION.

What Constitutes a "Long Account."—There is no statutory or judicial definition of a "long account," but a correct conclusion as to whether an account was "long" would depend upon the facts and circumstances of a given case, and the account in controversy was correctly classified as a "long account." Dayton Rubber Mfg. Co. v. Horn, 203 N. C. 732, 167 S. E. 42.

Exception to Order of Court.—

A party who would preserve his right to a jury trial in a compulsory reference must object to the order of reference at the time it is made, and on the coming in of the report of the referee, if it be adverse, he should reasonably file exceptions to particular findings of fact made by the referee, tender appropriate issues based on the facts pointed out in the exceptions and raised by the pleadings, and demand a jury trial on each of the issues thus tendered. Marshville Cotton Mills v. Maslin, 200 N. C. 328, 329, 156 S. E. 484.

Applied in Marshville Cotton Mills v. Maslin, 200 N. C. 328, 156 S. E. 484.

§ 578. Report; review and judgment.

When Decisions Reviewable.—

Under this section the Superior Court, on exceptions taken to the referee's report, may affirm, set aside, make additional findings, modify, or disaffirm the report. Wallace v. Benner, 200 N. C. 124, 156 S. E. 795. But the findings of fact of a referee approved by the trial judge cannot be reviewed upon appeal if supported by any competent evidence. Id.

Upon the filing of the report of the referee in a consent reference, as well as in a compulsory one, the trial court has the power to affirm, amend, modify, set aside, make additional findings and confirm, in whole or in part, or disaffirm the report of the referee, and where the court has made additional findings and there is evidence to sustain them the action of the court will be given the effect of a verdict of a jury and will not ordinarily be disturbed on appeal. Thigpen v. Farmers' Banking, etc., Co., 203 N. C. 291, 165 S. E. 720.

The referee's findings are subject to review by the District Judge and where exceptions are not filed in the District Court to the admission of testimony before the referee, they will not be considered by the Circuit Court of Appeals. Fruit Growers' Exp. Co. v. Plate Ice Co., 59 F. (2d) 605.

§ 579. Report, contents and effect.

Cross Reference.—As to reviewing, on appeal, findings of fact by referee, see § 578 and the note thereto.

Art. 21. Issues

§ 582. Of fact.

Pleading Must Raise Issues.—

The refusal to submit issues tendered is not error when the issues tendered are not raised by the pleadings. Ellis Motor Co. v. Belcher, 204 N. C. 769.

Art. 22. Verdict

§ 591. Motion to set aside.

Discretion of Judge.—

The trial court has the power at any time during the term to set aside the verdict and grant a new trial in the exercise of his sound legal discretion, and no appeal will lie therefrom. Strayhorn v. Fidelity Bank, 203 N. C. 383, 166 S. E. 312.

Where, under the provisions of this section, the trial court sets aside a verdict in his discretion as being contrary to the weight of the evidence his action is not reviewable on appeal in the absence of abuse of discretion. Goodman v. Goodman, 201 N. C. 808, 161 S. E. 686.

The trial judge has the discretionary power during the term to set aside a verdict as being against the weight and credibility of the evidence, and his action in so doing is not ordinarily reviewable, but an order setting aside the verdict on such grounds at a succeeding term of court upon a continuance of the defendant's motion therefor will be reversed on appeal where the record shows that the plaintiff did not consent to the continuance and did not waive his right to accept thereto. Manufacturers' Finance Accept. Corp. v. Jones, 203 N. C. 523, 166 S. E. 504.

SUBCHAPTER VIII. JUDGMENT

Art. 23. Judgment

§ 593. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.

Consent Judgment.—

The clerk of the Superior Court has jurisdiction under this section to sign a consent judgment in an action even while the action is pending before a referee. Weaver v. Hampton, 204 N. C. 42, 167 S. E. 484.

§ 600. Mistake, surprise, excusable neglect.

I. IN GENERAL.

Excusable Neglect and Meritorious Defense.—See Hender-

son Chevrolet Co. v. Ingle, 202 N. C. 158, 162 S. E. 219, following the first paragraph under this catchline in the Code of 1931.

The action of the trial court in setting aside the judgment for surprise and excusable neglect, etc., and placing the parties in statu quo, will be upheld on appeal, under this section, the record disclosing that the answer of the defendant set up a meritorious defense. Cagle v. Williamson, 200 N. C. 727, 158 S. E. 391.

The court's order setting aside the judgment by default against the corporation that had not been properly served with summons on the ground of excusable neglect was not error, the motion having been made in apt time and a meritorious defense also being found as a fact upon supporting evidence. Hershey Corp. v. Atlantic Coast Line R. Co., 203 N. C. 184, 165 S. E. 550.

Meritorious Defense Must Be Shown.—See Fellos v. Allen, 202 N. C. 375, 162 S. E. 905, following the first paragraph in the Code of 1931.

Under this section a verification of a complaint which is in substantial compliance with the law is not a sufficient ground for setting aside a judgment entered by default. Fellos v. Allen, 202 N. C. 375, 376, 162 S. E. 905.

Where the trial court upon conflicting evidence finds as a fact that the summons in the action was in fact served on the defendant, the finding is conclusive. Hooker v. Forbes, 202 N. C. 364, 162 S. E. 903.

Applied in Anderson v. National Union Fire Ins. Co., 202 N. C. 835, 162 S. E. 922.

III. APPLICATION OF PRINCIPLES.

A. Neglect of Party.

Under this section wife's neglect to file answer upon assurances of her husband that he would do so is excusable in joint action against them. Wachovia Bank, etc., Co. v. Turner, 202 N. C. 162, 162 S. E. 221.

Applied in Colt Co. v. Martin, 201 N. C. 354, 160 S. E. 287.

B. Neglect of Counsel.

Where a defendant has employed a licensed, reputable attorney of good standing, residing in one county of the state, to defend an action brought in another county, and has put him in possession of the facts constituting his defense, and the attorney has prepared and duly filed an answer, and the case has been calendared and called for trial without notice to the defendant or his attorney, upon a judgment being obtained by default against the defendant, the defendant may, upon his motion aptly made, have the judgment set aside for surprise, excusable neglect, etc., under this section upon a showing of a meritorious defense, the negligence of the attorney, if any, not being imputed to the client, and the latter being without fault. Meece v. Commercial Credit Co., 201 N. C. 139, 159 S. E. 17.

This section has no bearing on a case of neglect to file answer to a summons and complaint. Washington v. Hodges, 200 N. C. 364, 156 S. E. 912.

§ 601. Stands until reversed.

Applied in Myers v. Wilmington-Wrightsville, etc., Causeway Co., 204 N. C. 260, 167 S. E. 858.

§ 610. In action for recovery of personal property.

In General.—Where the defendant in claim and delivery replevies the property, the form of the judgment against him should be for the possession of the property with damages for its detention and costs, or for the value thereof if delivery cannot be had and damages for its detention. Boyd v. Walters, 201 N. C. 378, 160 S. E. 451.

§ 614. Where and how docketed; lien.

I. IN GENERAL.

Applied in Dillard v. Walker, 204 N. C. 67, 167 S. E. 632.

II. CREATION OF THE LIEN AND PRIORITIES.

B. Priorities.

Between Lien and Subsequent Purchaser.—Upon the docketing of a judgment it becomes a lien on all the land to which the judgment debtor has title for a period of ten years from the time of its docketing, under this section, and the land is not relieved of the judgment lien by a subsequent transfer of title by the judgment debtor. Moses v. Major, 201 N. C. 613, 160 S. E. 890.

A judgment creditor or his assignee has a lien on the lands of the judgment debtor, and where the judgment is duly docketed, under this section, the lien exists against a subsequent purchaser from the judgment debtor, carrying with it the right to subject the property and improvements thereto to the satisfaction of the debt, but the judgment creditor or his assignee has no title or estate in the lands. Byrd v. Pilot Fire Ins. Co., 201 N. C. 407, 160 S. E. 458.

IV. ISSUING EXECUTION.

Leave of court is not necessary for execution upon a judgment after the lapse of three years where the execution is issued after the effective date of the act of 1927, which repealed § 668, and within ten years from the date of the docketing of the judgment. Moses v. Major, 201 N. C. 613, 160 S. E. 890.

§ 615(a). Fees for filing transcripts of judgments by clerks of superior courts.

The fee for filing, docketing and indexing transcripts of judgments in the offices of the several clerks of the superior court in North Carolina shall be the same fee charged for filing, docketing and indexing transcripts of judgments in the office of the clerk of the superior court of the county from which the transcript of judgment is sent to said county. (1933, c. 435, s. 1.)

§ 618. Payment by one of several; transfer to trustee for payor.

Contribution between Joint Tort Feasors.—This section seems to abrogate the well-settled rule, that, subject to some exceptions (Gregg v. Wilmington, 155 N. C. 18, 70 S. E. 1070), there can be no contribution between joint tort-feasors. Lineberger v. Gastonia, 196 N. C. 445, 146 S. E. 79, 82, citing Raulf v. Elizabeth City Light, etc., Co., 176 N. C. 691, 97 S. E. 236.

Surety Cannot Raise Question of Liability after Judgment.—By paying the whole judgment, one joint tort-feasor, under this section, can lose no right it has against the other tort-feasor or its surety. If the surety is a party to the judgment and bound thereby it cannot thereafter raise the question of its liability to the defendant, when it pays the judgment in full and requires the transfer of said judgment to a trustee by virtue of the provision of this section. Hamilton v. Southern R. Co., 203 N. C. 468, 471, 166 S. E. 392.

Art. 24. Confession of Judgment

§ 624. Debtor to make verified statement.

Section Strictly Construed.—

It is essential to the validity of a judgment by confession that it be confessed and entered of record according to the provisions of this section. These are essential matters required by the section to confer jurisdiction on the court, and to insure validity of the judgment. Farmers' Bank v. McCullers, 201 N. C. 440, 160 S. E. 494.

Where a judgment confessed by a wife in favor of her husband shows only that it was based upon a sum alleged to be due on account of money advanced by the husband from time to time to take care of obligations due at the banks by the wife, and fails to state the items constituting the claim, when advanced and to whom, and that the advancements were not gifts to the wife, the judgment is insufficient to meet the requirements of the statute, and is void. Farmers' Bank v. McCullers, 201 N. C. 440, 441, 160 S. E. 494.

Art. 25. Submission of Controversy without Action

§ 626. Submission, affidavit, and judgment.

Editor's Note.—

The purpose of this section, is to enable parties to a question in difference, which might be the subject of a civil action, where they agree as to the facts involved, to submit the facts to the court, for its decision of the question in difference, and for its judgment in accordance therewith, without the expense and formalities required for a civil action. Hicks v. Greene County, 200 N. C. 73, 76, 156 S. E. 164.

Where the parties submit to the court questions of law arising upon facts agreed, without showing that they have rights involved in the questions, upon which they would be entitled to judgment, in a civil action the court is without jurisdiction, under this section, and should decline to consider the questions submitted for its decision. Id.

SUBCHAPTER IX. APPEAL

Art. 26. Appeal

§ 630. Certiorari, recordari, and supersedeas.

Applied in Hamilton v. Southern R. Co., 203 N. C. 468, 166 S. E. 392.

§ 637. Judge determines entire controversy; may recommit.

Appointment of Administrator.—On appeal from the order of a clerk appointing an administrator the Superior Court may reverse the order but the case should then be remanded. In re Styers, 202 N. C. 715, 164 S. E. 123.

Upon appeal from an order of the clerk removing certain executors and administrators, c. t. a., and appointing others in their place, by virtue of this section, the Superior Court judge may, in the exercise of his discretional powers, retain the cause, reverse the order of the clerk and appoint other administrators or a receiver to administrate the estate subject to the orders of the court, the entire matter being before the Superior Court on appeal. Wright v. Ball, 200 N. E. 620, 621, 158 S. E. 192.

§ 643. Case on appeal; statement, service, and return.

II. GENERAL CONSIDERATION—COUNTER CASE.

Cited in McMahan v. Southern R. Co., 203 N. C. 805, 167 S. E. 225.

III. REQUISITES OF CASE ON APPEAL—EXCEPTIONS.

Narrowed to Substance and Amount.—When counsel come to prepare the statement of case on appeal, both record and briefs should be narrowed to matters of substance and moment. State v. Davis, 203 N. C. 13, 34, 164 S. E. 737.

§ 644. Settlement of case on appeal.

Cited in McMahan v. Southern R. Co., 203 N. C. 805, 167 S. E. 225.

§ 646. Undertaking on appeal; filing; waiver.

I. GENERAL CONSIDERATION.

Compliance with This Section or Section 649.—As to the necessity, for those desiring an appeal, of complying with either the provisions of this section or those of § 649, see annotations under the latter section.

§ 649. Appeals in forma pauperis; clerk's fees.

Section Mandatory.—Where a party to a civil action which has been tried in the Superior Court, desires to appeal from a judgment rendered at such trial to this court, without giving security as required by this section, he must comply strictly with the provisions of this section, which are mandatory. McIntire v. McIntire, 203 N. C. 631, 632, 166 S. E. 732.

Statement of Attorney.—See Hanna v. Timberlake, 203 N. C. 556, 557, 166 S. E. 733, following statement in Code of 1931.

Order Must Be Obtained within Statutory Time.—An order allowing an appeal in forma pauperis entered by the clerk after the expiration of the statutory time is beyond the clerk's authority and the Supreme Court is without jurisdiction to entertain the appeal and it will be dismissed, the provisions of this section being mandatory and not directory. Powell v. Moore, 204 N. C. 654, 169 S. E. 281.

§ 650. Undertaking to stay execution on money judgment.

Applied in Hamilton v. Southern R. Co., 203 N. E. 136, 164 S. E. 834; Hamilton v. Southern R. Co., 203 N. E. 468, 166 S. E. 392.

§ 653. How judgment for real property stayed.

Effect on Purchaser at Sale.—Where an appeal is taken from the order of confirmation of a sale under decree of a foreclosure of a deed of trust and an appeal bond is filed to stay execution, under this section and sections 654, 655, and the judgment of the lower court is reversed on appeal, the purchaser at the sale may be held liable to the mortgagor for the former's taking of immediate possession of the property after the confirmation appealed from. Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

§ 657. Judgment not vacated by stay.

Cited in Dixon v. Smith, 204 N. E. 480, 168 S. E. 683.

§ 659. Procedure after determination of appeal.

Applied in Hamilton v. Southern R. Co., 203 N. C. 136, 164 S. E. 834.

SUBCHAPTER X. EXECUTION

Art. 27. Execution

§ 673. Against the person.

Allegation and Proof.—Where plaintiff suggests fraud in defendant's affidavit of insolvency he must sufficiently allege and prove fraud or proceeding will be dismissed. Hayes v. Lancaster, 202 N. C. 515, 163 S. E. 602.

§ 677. Property liable to sale under execution.

Subsection Three.—

Interest of Cestui Que Trust.—Under this subsection and the one immediately following an execution will not lie against the interest of a cestui que trust in real property held by trustee in active trust. Patrick v. Beatty, 202 N. C. 454, 163 S. E. 572.

Art. 28. Execution and Judicial Sales

§ 687(a). Immediate advertisement; notice of sale and resale.—When any mortgage or deed of trust on real property shall be foreclosed by judicial proceedings it may be provided in the decree of foreclosure that the advertisement of the sale shall be begun at any time after the date of the decree of foreclosure, and such real property shall then be sold under judicial foreclosure proceedings only after notice of sale has been duly posted at the courthouse door in the county for thirty days immediately preceding the sale and also published at any time during such thirty day period once a week for four successive weeks of not less than twenty-one days in some newspaper published in the county if a newspaper is published in the county, but if there is no newspaper published in said county, the notice of such sale must be posted at the courthouse door and three other public places in the county for thirty days immediately preceding the sale: Provided, however, that in case a resale of such real property shall become necessary under such judicial foreclosure proceedings, that such real property shall then be resold only after notice of resale has been duly posted at the courthouse door in the county for fifteen days immediately preceding the resale and also published at any time during such fifteen day period once a week for two successive weeks of not less than seven days in some newspaper published in the county if a newspaper is published in the county, but if there be no newspaper published in said county, the notice of resale must be posted at the courthouse door and three other public places in the county for fifteen days immediately preceding the resale. (1929, c. 44, s. 1; 1933, c. 96, s. 1.)

Editor's Note.—By Public Laws 1933, c. 96, "twenty-two" was changed to "twenty-one" as it now appears in the thirteenth line of the section, and "eight" was changed to "seven" as it now appears in the seventh from the last line of the section.

§ 687(b). Minimum notice required in all sales.—In any sale of real property under execution, deed of trust, mortgage or other contracts, wherever any statute calls for publication of notice in a newspaper for four successive weeks or for two successive weeks, the duration of said period shall be not less than twenty-one days for the one period of publication and not less than seven days

for the period of the other publication. (1929, c. 44, s. 2; 1933, c. 96, s. 2.)

Editor's Note.—Prior to Public Laws 1933, c. 96, this section required publication for "twenty-one" days for one period and "eight" days for the other.

§ 687(c). Validation of certain sales.—All sales of real property under execution, deed of trust, mortgage or other contracts made since February 21, 1929, where the original sale was published for four successive weeks, and any re-sale published for two successive weeks shall be and the same are in all respects validated as to publication of notice: Provided, nothing in this validating section shall affect pending litigation. (1933, c. 96, s. 3.)

§ 690(a). Sales on other days validated. — All sales of real or personal property heretofore made by a sheriff of any county in North Carolina, in the manner provided by law for sale of real or personal property under execution, on any day other than the day now provided by law, be, and the same are hereby validated. (1933, c. 79, s. 1.)

Art. 30. Supplemental Proceedings

§ 711. Execution unsatisfied, debtor ordered to answer.

Purpose of Proceedings Supplemental.—
Supplemental proceedings are based upon an execution and may not be instituted against a defendant when there has been no execution issued within three years from the institution of such supplemental proceedings. International Harvester Co. v. Brockwell, 202 N. C. 805, 164 S. E. 322.

Same—Substitute for Creditor's Bill.—See Dillard v. Walker, 204 N. C. 67, 167 S. E. 632, following statement in Code of 1931.

§ 721. Debtor's property ordered sold.

Where supplemental proceedings are instituted upon return of execution unsatisfied on a judgment against a husband and wife, and it appears that the husband is totally and permanently disabled and has no property upon which execution could be levied, but is receiving the sum of three hundred dollars a month under disability insurance, the judgment debtor is entitled, under his personal property exemption, to the three hundred dollars each month if such amount is necessary for the support of himself and wife. Commissioner of Banks v. Yelverton, 204 N. C. 441, 168 S. E. 505.

SUBCHAPTER XI. HOMESTEAD AND EXEMPTIONS

Art. 31. Property Exempt from Execution

§ 730. Sheriff to summon and swear appraisers.

Editor's Note.—
Public Laws 1933, c. 37, makes the amendment of 1931 applicable also in Duplin, Graham and Martin counties. Public Laws 1933, c. 147, made the amendment of 1931 applicable in Onslow county.

SUBCHAPTER XII. SPECIAL PROCEEDINGS

Art. 32. Special Proceedings

§ 763. Reports of commissioners and jurors.

Power of Clerk.—The clerk has no power to confirm a sale reported by a commissioner until the expiration of twenty days from the date on which the report was filed. Vance v. Vance, 203 N. C. 667, 668, 166 S. E. 901.

§ 765. Commissioner of sale to account in sixty days.—In all actions or special proceedings when a person is appointed commissioner to sell real or personal property, he shall, within sixty days after the maturity of the note or bond for the balance of the purchase money of said property, or the payment of the amount of the bid when the sale is for cash, file with the clerk of the superior court a final account of his receipts and disbursements on account of the sale; and the clerk must audit the account and record it in the book in which the final settlements of executors and administrators are recorded. If any commissioner appointed in any action or special proceeding before the clerk fails, refuses or omits to file a final account as prescribed in this section, or renders an insufficient or unsatisfactory account, the clerk of the superior court shall forthwith order such commissioner to render a full and true account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such commissioner shall fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against said commissioner for a contempt and commit him till he exhibits such account, or files a bond for the amount held or unaccounted for as is prescribed by law for administrators, the premium for which is to be deducted from the commissioner's fee, earned by said commissioner in said action or special proceeding. (Rev., s. 725; 1901, c. 614, ss. 1, 2; 1933, c. 98.)

Editor's Note.—The last two sentences of this section, giving the clerk power to force a final settlement, were added by Public Laws 1933, c. 98.

SUBCHAPTER XIII. PROVISIONAL REMEDIES

Art. 33. Arrest and Bail

§ 768. In what cases arrest allowed.

Subdivision One.—
In General.—
A nonresident of the state may be arrested here in a civil action in like manner with a resident for sufficient cause under this section, but he may not be arrested and held to bail in a civil action instituted in this state for no cause other than that of nonresidence; to subject a nonresident to liability on the sole ground of his nonresidence would transgress his right of free ingress and egress and would abrogate his constitutional guaranty of immunity. Little v. Miles, 204 N. C. 646, 650, 169 S. E. 220.

§ 778. Defendant's undertaking.

Voluntary Appearance.—The condition of the undertaking that the defendant shall, at all times during the pendency of the action, render himself amenable to the process of the court is met when the defendant voluntarily appears in court upon the hearing of the motion against his surety. Stepp v. Robinson, 203 N. C. 803, 805, 167 S. E. 147.

§ 792. Surrender of defendant.

Cross References.—As to surrender of defendant when he appears upon motion against the surety, see § 794 and annotations thereunder.

§ 794. Proceedings against bail by motion.

Where the defendant, appeared in open court, in response to notice served upon his surety or bail, he was then "amenable to the process of the court," notwithstanding his refusal thus to surrender himself, and the court should have ordered execution against the person of the defendant, rather than hold the surety or bail, for failure to surrender him. Stepp v. Robinson, 203 N. C. 803, 804, 167 S. E. 147.

Art. 34. Attachment

§ 807. Execution, levy, and lien.

Enforceable against Subsequent Purchasers.—When the officer has complied with the provisions of this section, the plaintiffs have a lien on such property, which is enforceable against all subsequent purchasers from the defendant. Newberry v. Meadows Fert. Co., 203 N. C. 330, 338, 166 S. E. 79.

§ 816. All property liable to attachment.

In General.—
Under this section, all property in this state, whether real

or personal, tangible or intangible, owned by a nonresident defendant in an action to recover on any of the causes of action included within the provisions of § 798, is liable to attachment. Newberry v. Meadows Fert. Co., 203 N. C. 330, 337, 166 S. E. 79.

§ 819. Proceedings against garnishee.

Execution and Proceedings to Enforce.—Under this section no lien attaches to any specific property of the garnishee until the issuance of execution on the judgment and proceedings to enforce such execution. Newberry v. Meadows Fert. Co., 203 N. C. 330, 166 S. E. 79.

§ 827. Motion to vacate or increase security.

Motion May Be Made by One of Several Defendants.—Any one of several defendants whose property has been attached has such an interest in the action as to maintain a motion to vacate the attachment. Luff v. Levey, 203 N. C. 783, 166 S. E. 922.

Vacation in Case Increased Bond Is Not Filed.—The judge of the Superior Court has the power to order the plaintiff to give further security or an increased bond, under this section, but he may not add a condition to the order that the attachment be vacated ipso facto if the increased bond is not filed by a certain time, and it appearing that the time set by the court for filing the increased bond has expired, the plaintiff will be given a reasonbale time for filing the bond. Luff v. Levey, 203 N. C. 783, 166 S. E. 922.

Art. 35. Claim and Delivery

§ 836. Defendant's undertaking for replevy.

The recovery against the surety can in no event exceed the penalty of the bond. Boyd v. Walters, 201 N. C. 378, 160 S. E. 451.

Form of Judgment against Surety.—Where the defendant in claim and delivery replevies the property, giving bond for the retention to cover loss in the action, the form of the judgment against the surety on the bond should be for the full amount of the bond, to be discharged upon return of the property and the payment of damages and costs recovered by the plaintiff. Boyd v. Walters, 201 N. C. 378, 160 S. E. 451.

§ 840. Property claimed by third person; proceedings.—When the property taken by the sheriff is claimed by any person other than the plaintiff or defendant the claimant may interplead upon filing an affidavit of his title and right to the possession of the property, stating the grounds of such right and title; and upon his delivering to the sheriff an undertaking in an amount double the value of the property specified in intervenor or third person's affidavit, for the delivery of the property to the person entitled to it, and for the payment of all such costs and damages as may be awarded against him; this undertaking to be executed by one or more sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property. A copy of this undertaking and accompanying affidavit shall be served by the sheriff on the plaintiff and defendant at least ten days before the return day of the summons in the action, when the court trying it shall order a jury to be impaneled to inquire in whom is the right to the property specified in plaintiff's complaint. The finding of the jury is conclusive as to the parties then in court, and the court shall adjudge accordingly, unless it is reversed upon appeal. In a court of a justice of the peace he may try such issue unless a jury is demanded, and then proceedings are to be conducted in all respects as in jury trials before justices of the peace. In a court of a justice of the peace an interpleader shall not be required to serve on the plaintiff and defendant the affidavits and bonds required by this section, ten days before return day; but if said bond and affidavit are filed by any person owning the property when such case is called for trial, he shall be allowed to interplead: Provided that this section shall not be construed to prevent any such intervener or third person from intervening and asserting his claim to the property, or any part thereof, without giving bond as herein required, where such intervener or other third person does not ask for possession of the property pending the trial of the issue. (Rev., s. 800; Code, s. 331; C. C. P., s. 186; 1793, c. 389, s. 3; R. C., c. 7, s. 10; 1913, c. 188; 1933, c. 131.)

Editor's Note.—Public Laws 1933, c. 131, substituted the words "intervenor or third person," now appearing in the eighth and ninth lines, for the word "plaintiff." It also added the proviso at the end of the section, declaring bond not necessary.

Husband and Wife.—

Where the plaintiffs attach property and bring action against a husband and wife to have a deed from the husband to the wife set aside and to subject the property attached to the payment of the judgment, the wife has a right to set up her claim to the property attached, and the refusal of the trial court to require her to give an interpleader bond under this section is not error. Unaka, etc., Nat. Bank v. Lewis, 201 N. C. 148, 159 S. E. 312.

Art. 36. Injunction

§ 843. When temporary injunction issued.

II. GENERAL CONSIDERATIONS.

Increasing Bond.—Under this section the garnishees may be restrained and enjoined from making further payments on their indebtedness to the defendant, until the final determination of the action, but the defendant and the garnishees may move that the bond required of the plaintiffs shall be increased in amount, to the end that said defendant and the garnishees shall be fully protected against loss or damage resulting from the injunction. Newberry v. Meadows Fert. Co., 203 N. C. 330, 339, 166 S. E. 79.

Art. 37. Receivers

§ 860. In what cases appointed.

Effect of Instrument Giving Mortgagee Power of Appointment of Trustee.—The appointment of a receiver is an equitable remedy and the provisions of this and the following section enacted before the giving of a deed of trust upon lands may not be entirely supplanted by a provision in the instrument which gives the mortgagee or trustee the unequivocal right to the appointment of a receiver in the event of the happening of certain conditions so as to prevent our courts sitting in their equity jurisdiction from administering the equities to which the mortgagor is entitled under the facts. Woodall v. North Carolina Joint Stock Land Bank, 201 N. C. 428, 160 S. E. 475.

§ 861. Appointment refused on bond being given.

Applied in Woodall v. North Carolina Joint Stock Land Bank, 201 N. C. 428, 160 S. E. 475.

Art. 38. Deposit or Delivery of Money or Other Property

§ 865. Defendant ordered to satisfy admitted sum.

Where in an action on a note the defendants admit liability in a certain part thereof but deny liability for the balance: Held, an order directing that plaintiff recover the amount admitted to be due without prejudice to plaintiff's right to litigate the balance of the note is authorized by this section. Meadows Fert. Co. v. Farmers Trading Co., 203 N. C. 261, 165 S. E. 694.

SUBCHAPTER XIV. ACTIONS IN PARTICULAR CASES

Art. 39. Mandamus

§ 867. For money demand.—In application for a writ of mandamus when the plaintiff seeks to enforce a money demand, the summons, pleadings and practice are the same as prescribed for civil actions: "Provided that in all applications seeking a writ of mandamus to enforce a money demand

on actions ex contractu against any county, city, town or taxing district within the state, the applicant shall allege and show in the complaint that the claim or debt has been reduced to a final judgment establishing what part of said judgment, if any, remains unpaid, what resources, if any, are available for the satisfaction of the judgment, including the actual value of all property sought to be subjected to additional taxation and the necessity for the issuing of such writ. (Rev., s. 823; Code, s. 623; 1871-2, c. 75, s. 2; 1933, c. 349.)

Editor's Note.—
By Public Laws 1933, c. 349, the proviso, relating to mandamus against local units to enforce collection of judgments, was added.

Art. 40. Quo Warranto

§ 871. Action by private person with leave.

Interest of Public Is Paramount.—In proceedings under this and § 869 to try title to a public office the interest of the public is involved and is paramount to the rights of the relator, and the consent of the attorney-general, the filing of the bond, etc., as required by this section, is a prerequisite to the right of the relator to maintain the action. Cooper v. Crisco, 201 N. C. 739, 740, 161 S. E. 310.

Permission Essential.—
Same—Second Suit after Voluntary Nonsuit.—Common-law procedure by quo warranto, and proceedings by information in the nature thereof have been abolished by § 869 and the remedy in such matters is under the provisions of this section and where the relator has complied with these conditions and takes a voluntary nonsuit and within a year brings another action upon the same subject-matter against the same respondent, but fails to obtain permission to bring the second action or to file bond therefor until the day before judgment is signed, his delay is fatal and the action is properly dismissed, it being necessary that the provisions of the section be again complied with before the bringing of the second action. Cooper v. Crisco, 201 N. C. 739, 161 S. E. 310.

Art. 41. Waste

§ 891. Action by tenant against cotenant.

Applied in Daniel v. Tallassee Power Co., 204 N. C. 274, 168 S. E. 217.

SUBCHAPTER XV. INCIDENTAL PROCEDURE IN CIVIL ACTIONS

Art. 43. Compromise

§ 896. Tender of judgment.

Error to Dismiss.—Where on the admissions in the pleadings the plaintiff is entitled to recover any amount it is error for the trial court to dismiss the action as in case of nonsuit, and the fact that the defendant had tendered the amount admitted to be due with interest and cost to the time of filing answer, and had paid it into court subject to the plaintiff's order does not vary this result. Penn v. King, 202 N. C. 174, 162 S. E. 376.

Art. 44. Examination of Parties

§ 900. Adverse party examined.

Answers as Evidence.—Where a defendant has been examined after the filing of the complaint in the action, but before trial in accordance with this section, his answers to the questions propounded on the examination are competent as evidence at the trial. Swainey v. Great Atlantic, etc., Tea Co., 204 N. C. 713, 169 S. E. 618.

Art. 45. Motions and Orders

§ 912. Notice of motion.

Compliance with Section Required.—Notice of a motion to set aside a judgment must ordinarily be given as required by this section, and the pleadings in an action to reform a deed of trust upon allegations of mutual mistake are insufficient as notice of a motion to set aside the decree of foreclosure for irregularity and surprise, etc., the pleadings in the suit for reformation containing no allegations of irregularities in the foreclosure or of surprise. Virginia-Carolina Joint Stock Bank v. Alexander, 201 N. C. 453, 160 S. E. 462.

Ten Day Notice Required.—
Unless a verbal or written motion to amend a complaint after time for filing answer has expired be made at the trial term of the action, previous notice of ten days must be given the defendant unless the time is shortened by the court, and an order allowing the amendment to be made, entered without such notice, is irregular. Carolina Discount Corp. v. Butler, 200 N. C. 709, 158 S. E. 249.

CHAPTER 13
CLERK OF SUPERIOR COURT

Art. 1. The Office

§ 925. Judge of probate abolished; clerk acts as judge.

Jurisdiction.—
Although the clerks of the Superior Courts have no equity jurisdiction, they are given probate jurisdiction by this section, and in the exercise of their probate jurisdiction they may hear and rule on a petition of an executor for authorization to operate the estate's farms to preserve the property pending the determination of caveat proceedings. Hardy & Co. v. Turnage, 204 N. C. 538, 168 S. E. 823.

§ 927. Clerk's bond.

Liability on Bond.—
Where a clerk of the Superior Court has forged the signatures of Confederate pensioners to warrants issued by the State Auditor and sent to him for payment to the persons entitled, and has witnessed such signatures, cashed the warrants, and converted the funds to his own use, such sums are received by him by virtue of and under color of his office, and come within the terms of his bonds given under the provisions of this section, and the surety thereon is liable within the penalty of the bonds for the amount so embezzled. State v. Gant, 201 N. C. 211, 159 S. E. 427.

Effect Where Penalty of Bond Exceeds Amount Prescribed.—Although this section is directory and prescribes the penalty on the bond of a clerk of the Superior Court, both the clerk and his surety are presumed to know the provisions of the statute, and where the clerk has voluntarily executed a bond in a greater sum, and the surety has accepted premiums based on a bond in this amount, the surety is estopped to deny the validity of the bond, and the plaintiff may recover of the surety, upon a proper showing, to the full amount of the penalty of the bond. State v. Gant, 201 N. C. 211, 213, 159 S. E. 427.

Art. 1A. Assistant Clerks

§ 934(a). Appointment; oath; powers and jurisdiction; responsibility of clerks.

Funds of minors paid into the hands of the assistant clerk of the Superior Court, appointed guardian, were not paid into court, and the surety on the guardianship bond may not successfully contend that the clerk's bond was liable therefor. State v. Royal Indemnity Co., 203 N. C. 420, 166 S. E. 327.

Art. 5. Money in Hand; Investments

§ 962. Payment of money for indigent children and persons non compos mentis. — When any moneys in the amount of three hundred dollars or less are paid into court for any minor, indigent or needy child or children for whom no one will become guardian, upon satisfactory proof of the necessities of such minor, child or children, the clerk may upon his own motion or order pay out the same in such sum or sums at such time or times as in his judgment is for the best interest of said child or children, or to some discreet and solvent neighbor of said minor, to be used and faithfully applied for the sole benefit and maintenance of such minor indigent and needy child or children. The clerk shall take a receipt from the person to whom any such sum is paid and shall require such person to render an account of the expenditure of the

sum or sums so paid, and shall record the receipt and the accounts, if any are rendered by order of the clerk, in a book entitled, Record of Amounts Paid for Indigent Children, and such receipt shall be a valid acquittance for the clerk. That in all cases where a minor child is now or may hereafter be the beneficiary of any policy of life insurance and the sum due to said minor child by virtue of any such policy does not exceed three hundred dollars, the insurance company which issued said policy may pay the sum due thereunder to the clerk of the superior court of the county where said minor child resides whose duty it shall be to receive it, and said clerk shall issue and deliver to such insurance company his receipt for the sum so paid, which shall be a complete release and discharge of said company from any and all liability to said minor child under and by virtue of any such policy of insurance. Moneys so paid to said clerk shall be held and disbursed by him in the manner and subject to the limitations provided by this section. This section shall also apply to incompetent or insane persons, and it shall be the duty of any person or corporation having in its possession $300.00 or less for any minor child or indigent child, or incompetent or insane person to pay same in the office of the clerk of the superior court, and the clerk of the superior court is hereby authorized and empowered to disburse the sum thus paid into his office, upon his own motion or order, without the appointment of a guardian. (Rev., s. 924; 1899, c. 82; 1911, c. 29, s. 1; 1919, c. 91; 1924, c. 1, s. 1; 1927, c. 76; 1929, c. 15 s. 1; 1933, c. 363.)

Cross References.—As to application of section when judge does not provide for the disbursement upon an order confirming partition, see § 2180 and note thereto.

Editor's Note.—
The last sentence of the section, relating to payment of $300 or less held for a "minor child or indigent child, or incompetent or insane person," was added by Public Laws 1933, c. 363.

§ 962(a). Limitation on investment of trust funds.

Editor's Note.—For act applicable in Cleveland County only, see Public Laws 1933, c. 110.

§ 962(b). Investments prescribed; funds from lands of infants and persons non compos mentis.

Editor's Note.—For act applicable in Cleveland County only, see Public Laws, 1933, c. 110.

CHAPTER 15
COMMON LAW

§ 970. Common law declared to be in force.

General Consideration.—
So much of the common law as is in force by virtue of this section may be modified or repealed, but those parts of the common law which are imbedded in the Constitution are not subject to control. State v. Mitchell, 202 N. C. 439, 444, 163 S. E. 581.

CHAPTER 17
CONTEMPT

§ 981. Punishment.

Power of Industrial Commission.—The Industrial Commission proceeding under the Workmen's Compensation Act, being expressly given the authority to subpœna witnesses and have them give evidence at the hearing, acts in a judicial capacity in adjudging in contempt a witness who refuses to give material evidence, and in imposing a sentence or a fine or imprisonment under the provisions of this section. In re Hayes, 200 N. C. 133, 134, 156 S. E. 791.

CHAPTER 18
CONTRACTS REQUIRING WRITING

§ 987. Contracts charging representative personally; promise to answer for debt of another.

A promise by the president of a bank to become personally liable for a deposit when supported by a new and independent consideration constitutes an original undertaking by him, and the agreement does not come within the provisions of this section. Dillard v. Walker, 204 N. C. 16, 167 S. E. 636.

CHAPTER 19
CONVEYANCES

Art. 1. Construction and Sufficiency

§ 991. Fee presumed, though word "heirs" omitted.

Interpreted in Accord with Intent.—
The presumption of fee raised by this section is rebutted by the fact that the deed in this case intended to convey only a life estate which is manifest from the many restraining expressions contained therein. Boomer v. Grantham, 203 N. C. 230, 231, 165 S. E. 698.

Art. 2. Conveyances by Husband and Wife

§ 997. Instruments affecting married woman's title; husband to execute; privy examination.

II. EXECUTED BY BOTH HUSBAND AND WIFE.

C. Acknowledgment and Privy Examinations of Feme Covert.

Deed Void without Privy Examination.—
Where the private examination of a married woman is not taken to a deed of trust executed by her it is void. Boyett v. First Nat. Bank, 204 N. C. 639, 169 S. E. 231.

Art. 3. Fraudulent Conveyances

§ 1005. Conveyance with intent to defraud creditors void.

II. WHAT CONSTITUTES FRAUD.

C. Badges of Fraud.

Badges of Fraud Defined—Permitting Mortgagor to Remain in Possession and Sell Stock of Merchandise.—See Morris Plan Bank v. Cook, 55 F. (2d) 176, 179, following the statement in the Code of 1931.

§ 1013. Sales in bulk presumed fraudulent.—The sale in bulk of a large part or the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in regular and usual prosecution of the seller's business, shall be prima facie evidence of fraud, and void as against the creditors of the seller, unless the seller, at least seven days before the sale, make an inventory showing the quantity and, so far as possible, the cost price to the seller of such articles included in the sale, and shall seven days before the proposed sale notify the creditors of the proposed sale, and the price, terms and conditions thereof. If the owner of said stock of goods shall at any time before the sale execute a good and sufficient bond, to a trustee therein named, in an amount equal to the actual cash value of the stock of goods, and conditioned that the seller will apply the proceeds of the sale, subject to the right of the owner or owners to retain therefrom the personal property exemption or exemptions as are allowed by law, so far as it will go in payment of debts actually owing by the owner or owners, then the provisions of

this section shall not apply. Such sale of merchandise in bulk shall not be presumed to be a fraud as against any creditor or creditors who shall not present his or their claim or make demand upon the purchaser in good faith of such stock of goods and merchandise, or to the trustee named in any bond given as provided herein, within twelve months from the date of maturity of his claim, and any creditor who does not present his claim or make demand either upon the purchaser in good faith or on the trustee named in a bond within twelve months from the date of its maturity shall be barred from recovering on his claim on such bond, or against the purchaser, in good faith, of such stock of goods in bulk. Nothing in this section shall prevent voluntary assignments or deeds of trust for the benefit of creditors as now allowed by law, or apply to sales by executors, administrators, receivers or assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or by any public officers under judicial process. (1907, c. 623; 1913, c. 30, s. 1; Ex. Sess. 1913, c. 6, s. 1; 1933, c. 190.)

Editor's Note.—The words "seven days before the proposed sale," near the end of the first sentence, were substituted by Public Laws 1933, c. 190, for the words "within said time."

Purchaser Not Liable.—Under the provisions of this section a creditor, at most, would be entitled to have the transfer set aside, but not to hold the purchaser personally liable. Goldman & Co. v. Chank, 200 N. C. 384, 156 S. E. 919, discussing but not deciding whether sale was contrary to section.

CHAPTER 21

CORPORATION COMMISSION

Art. 1. Organization

§§ 1023-1034: Repealed by Acts 1933, ch. 134, codified as §§ 1112(a)-1112(q).

Art. 2. Corporations and Business within Control of Commission

§ 1035. Corporations and business within control of commission.

Subsection Two—Telephone Company Subject to State Control.—

A local telephone company having an arrangement for the transmission of long distance messages over the lines of another company for pay, is a public-service corporation and comes within the provisions of this section. Horton v. Interstate Tel., etc., Co., 202 N. C. 610, 163 S. E. 694.

Art. 8. Utilities Commission

§ 1112(a). Office of utilities commissioner created.—There is hereby created the office of utilities commissioner, who shall have general power and control over the public utilities and public-service corporations of the state, and such supervision as may be necessary to carry into full force and effect the laws regulating the companies, corporations, partnerships, and individuals hereinafter referred to, and to fix and regulate the rates charged the public for service, and to require such efficient service to be given as may be reasonably necessary. (1933, c. 134, s. 2.)

§ 1112(b). Supervisory powers. — Under the rules and regulations herein prescribed and subject to the limitations hereinafter set forth, the said utilities commissioner shall have general supervision over the rates charged and the service given, as follows, to wit:

(1) By railroads, street railways, steamboats, canals, express and sleeping-car companies, and all persons, firms or corporations engaged in the carrying of freight or passengers or otherwise engaged as common carriers;

(2) By telephone and telegraph companies and all other companies engaged in the transmission of messages, and by all firms and individuals owning or operating telephone or telegraph lines in the state;

(3) By electric light, power, water, and gas companies, and corporations, other than such as are municipally owned or conducted, and all other companies, corporations, or individuals engaged in furnishing electricity, electric light current, power, or in transmitting or selling the same or producing the same from the water courses of this state;

(4) By all water power and hydroelectric companies or corporations now doing business in this state or which may hereafter engage in doing business in this state, whether organized under the laws of this state or under the laws of any other state or country, and such companies and corporations are deemed to be public-service companies and subject to the laws of this state regulating the same;

(5) By flume companies, corporations, other than municipal corporations, or individuals owning or operating public sewerage systems in the state of North Carolina;

And the said utilities commissioner is hereby vested under this section with all power necessary to require and compel any public utility or public-service corporation of the kinds herein designated or any other class of public utility to provide and furnish to the citizens of this state reasonable service of the kind it underakes to furnish and fix and regulate the reasonable rates and charges to be made to the citizens of the state who may be entitled to use the same under such rules and regulations as may be lawfully prescribed. (1933, c. 134, s. 3.)

§ 1112(c). Governor to appoint commissioner; term of office.—On or before the first day of April, 1933, the governor, with the advice and consent of the senate, shall appoint a utilities commissioner who shall enter upon the duties of his office on the first day of January, 1934, and hold his said office until the first day of January, 1935, or until his successor has been elected and qualified.

In the general election in 1934 and quadrennially thereafter, there shall be elected a utilities commissioner whose term of office shall begin on the first day of January, 1935, and quadrennially thereafter, and continue for a term of four years or until his successor has been elected and qualified.

Any vacancy in the office of the utilities commissioner caused by death, resignation, removal, failure to qualify, or any incapacity to perform the duties of his office, or otherwise, shall be filled by appointment by the governor, and the person so appointed shall fill the office until the expiration of the term of office of the person whose vacancy he was appointed to fill, or until the first day of January following the general election, subject to the provisions hereinafter set out.

Should the vacancy occur as hereinbefore set

out more than sixty days prior to a general election, then at the next general election there shall be elected a utilities commissioner who shall serve for the unexpired term. In the event the vacancy should occur less than sixty days prior to a general election, the appointee of the governor shall serve until the expiration of the term of the person he was appointed to succeed. (1933, c. 134, s. 4.)

§ 1112(d). Salary; oath of office. — The utilities commissioner shall receive an annual salary of forty-five hundred ($4500.00) dollars, and before entering upon the duties of his office shall file with the secretary of state his oath of office to support the constitution and laws of the United States and the constitution and laws of the state of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any utility company or public-service corporation, or an employee thereof, and that he has no interest in any such company or corporation. (1933, c. 134, s. 5.)

§ 1112(e). Express and implied powers.—The utilities commissioner shall have, exercise, and perform all the functions, powers, and duties and have all the responsibilities conferred by this article, and all such other powers and duties as may be necessary or incident to the proper discharge of the duties of his office. (1933, c. 134, s. 6.)

§ 1112(f). Existing powers of corporation commission devolve upon utilities commissioner.—All the powers, duties, and functions, rights and responsibilities of any statute or law of this state heretofore conferred upon or vested in or exercised by the corporation commission in this state, or any member thereof, are hereby vested in the utilities commissioner, and shall from and after the dates herein specified be assumed, exercised, and performed by the utilities commissioner created by this article and his successor in office subject to the provisions of this article. Wherever and whenever, under any existing law, any report, petition, application, memorial, or communication is required or permitted to be made or addressed to the corporation commission, or any member thereof, concerning any of the matters, things, and subjects over which the said corporation commission may have heretofore exercised control, authority, or direction, such report, petition, application, or communication concerning the same shall be addressed to the utilities commissioner, and he shall have full power and supervision over the same and to act therein or thereon in such manner as was heretofore provided for the corporation commissioners or commission. (1933, c. 134, s. 7.)

§ 1112(g). Substitution of utilities commissioner for old designation.—Chapter twenty-one (21) of the Consolidated Statutes of 1919, chapter one hundred and forty-nine (149) of the Public Laws of 1927, all revenue and machinery acts of this state, and any and all acts and laws and clauses of laws amendatory thereof and supplemental thereto, and all laws and clauses of laws relating to the functions, powers, duties, rights, and responsibilities of the corporation commission, or any member thereof, be and they are hereby amended so that all functions, powers, duties, rights, and responsibilities prescribed to be done and performed by the corporation commission, or any member thereof, by any of said acts and laws, shall hereafter be done and performed by the utilities commissioner, and wherever in chapter twenty-one (21) of the Consolidated Statutes of 1919, or any act amendatory thereof, reference is made to "corporation commissioner," "corporation commission of the state of North Carolina," "corporation commission of North Carolina," "corporation commission of this state," "chairman of the corporation commission," or "securities commissioner," or other designation, the aforesaid chapter and laws amendatory thereof shall be amended by striking out the aforesaid "corporation commission," "chairman of the corporation commission of the state," "securities commissioner," or other designation words, and inserting in lieu thereof the words "utilities commissioner," and wherever in any sentence or clause any pronoun or any other word is used referring to the said commissioner, corporation commission of North Carolina, or securities commissioner, appropriate pronoun or reference word shall be substituted as the context may require to follow and carry out the purposes of this section. (1933, c. 134, s. 8.)

§ 1112(h). Pending investigations and hearings to be concluded by commissioner. — The utilities commissioner shall make all investigations and conduct all hearings with respect to the matters, things, and controversies which prior to the ratification of this article were under the control and required to be made by the corporation commission, or any member thereof, as set out in chapter twenty-one of the Consolidated Statutes, chapter one hundred and forty-nine of the Public Laws of 1927, revenue and machinery acts of this state, and all other acts, laws, and clauses of laws conferring the functions, duties, powers, rights, and responsibilities upon said corporation commission, or any member thereof, and the rulings, findings, judgments, and conclusions of said utilities commissioner with respect to such matters and things, made in accordance with the provisions of this article, shall have the same force and effect and validity as the findings and conclusions heretofore made or required to be made by the corporation commission, or any member thereof, or existent under the powers conferred upon said corporation commission or any member thereof prior to the ratification of this article, and for this purpose and to this end the said utilities commissioner and the associate commissioners hereinafter provided for shall be and they are hereby constituted a court of record, known as the "utilities commission" of the state of North Carolina, and shall adopt a seal and have all the powers and jurisdiction of a court of general jurisdiction as to all the subjects embraced in this article; and the commissioners and clerks thereto shall have full power to administer oaths, hear and take evidence, and said commission or commissioners shall render their decisions upon questions of law and of fact as other courts of similar jurisdiction. (1933, c. 134, s. 9.)

§ 1112(i). Commissioner to call in associates to determine questions of facts where amount involved exceeds $3,000.00.—Whenever in the performance of the duties herein prescribed any material issue of fact shall arise in any subject matter or controversy pending before the utilities commis-

sion, wherein the amount involved shall be three thousand ($3,000.00) dollars or more, or, in the opinion of the utilities commissioner, the interest of the public is concerned, the said commissioner shall, upon request of any party to the petition or proceeding, or upon his own motion, if he deem it advisable, and to the public interest, notify the associate commissioners hereinafter provided for, to sit with him for the purpose of hearing and determining such matters or issues of fact. The said associate commissioners shall be given ten days notice by the utilities commissioner of the time and place of such hearing, and a similar notice shall likewise be given to all parties interested in such proceeding or hearing. In all matters, controversies, or proceedings brought before said utilities commissioner wherein the amount involved is less than the sum of $3,000.00, and in the opinion of the commissioner the public interest is not concerned, the said utilities commissioner sitting alone shall hear the matter and proceed to judgment thereon, subject to the right of appeal to the superior court as now provided by law. (1933, c. 134, s. 10.)

§ 1112(j). Governor to appoint two associate commissioners.—As soon as practicable after the ratification of this article and before the same goes into effect, the governor, with advice and consent of the senate, shall appoint two associate commissioners who shall be residents of this state and otherwise qualified, one of whom shall hold office until the first day of January, 1935, or until his successor shall have been appointed and qualified, and one shall hold office until the first day of January, 1937, or until his successor shall have been appointed and qualified, who shall, when notified and called upon by said utilities commissioner, sit with him for the purpose of hearing and determining all controverted matters or issues of fact as hereinabove provided. At the expiration of each of the above named terms and quadrennially thereafter there shall be appointed in the same manner one associate commissioner who shall hold office for the term of four years.

The said associate commissioners shall receive as compensation for their services rendered hereunder the sum of twenty-five ($25.00) dollars per day and actual expenses while engaged in said hearings: Provided the total amount expended for such per diem for said associate commissioners shall not exceed the sum of eighteen hundred ($1800.00) dollars per year. In case of a vacancy in the office of commissioner from any causes, the unexpired term of such commissioner shall be filled by appointment of the governor: Provided said associate commissioners shall enter upon the duties of their office January 1, 1934. (1933, c. 134, s. 11.)

§ 1112(k). Judgments of commission.—The said utilities commissioner, in matters solely within his jurisdiction, and the said commissioner, together with the associate commissioners, when called upon as hereinabove provided, shall hear and determine such matter, thing, or controversy in dispute, pass upon and determine the issues of fact raised thereon, and the questions of law involved therein, and make and enter their findings and conclusions thereon as the judgment of the said utilities commissioner of North Carolina. From the decision of said utilities commissioner, or the said utilities commission, any party to said proceeding may appeal to the superior court at term as designated in and under the rules of procedure required by section (s) 1097, 1098, 1099, 1100, 1101, 1102, consolidated statutes, said appeal to be prosecuted and the said matter and controversy there to be heard and disposed of as is now provided by law, and upon such appeal being taken, it shall be the duty of the utilities commission to certify its decision and rulings to the said superior court as now provided by law. (1933, c. 134, s. 12.)

§ 1112(l). Public record of proceedings. — The utilities commissioner shall keep in his office at all times a record of his official acts, rulings, and transactions, which shall be public records of the state of North Carolina, and all rulings and determinations of said commission upon matters and things authorized to be passed upon by this article, and shall have and appoint a chief clerk, who shall be experienced in railroad and other public utilities statistics, transportation and public-service charges, and whose term of office shall be for a period of two years, and he shall file with the secretary of state the oath of office similar to that prescribed for the utilities commissioner. The utilities commissioner shall have power to remove such clerk for cause at any time. (1933, c. 134, s. 13.)

§ 1112(m). Clerical assistance. — The utilities commissioner shall be allowed such stenographic and other clerical assistance as he may require for the performance of the duties and functions of his said office, to be established and fixed by such department, bureau, or other state agency as may be charged by law with the duty of determining the extent of such assistance in said departments, all such stenographers, clerks, and assistants and special investigators so provided for to be appointed by the utilities commissioner and subject to removal or discharge by him. The salaries and compensation of such clerical assistants, special investigators, or other office force as may be allowed in the office of the utilities commission shall be fixed in the manner as now provided by law for fixing and regulating the salaries and compensation by other state departments. (1933, c. 134, s. 14.)

§ 1112(n). Seal of office; certificate.—In all cases where the seal is required on any document, the seal adopted as herein prescribed by the utilities commissioner shall be sufficient, and whenever any record, paper, or document is required to be certified or evidenced by the certificate of the utilities commissioner or his chief clerk or wherever any act or thing is required or permitted to be evidenced by such certificate, the certificate shall be made by the utilities commissioner, and shall have the valid force and effect now given by law to any such certificate which may have heretofore been required to be made by the corporation commission. (1933, c. 134, s. 15.)

§ 1112(o). Commissioner to keep himself informed as to utilities.—The said utilities commissioner shall at all times be required to keep himself-informed as to the public-service corporations hereinbefore specified and enumerated, their rates and charges for service, and the service supplied

to the citizens of the state and purposes therefor; and he shall at all times be empowered and required to inquire into such service and rates charged therefor, and to fix and determine as herein provided the reasonableness thereof, and upon petition or otherwise to make full inquiry into such rates and charges in behalf of the citizens of the state, and compel and require compliance with the regulations and charges, and final determination fixed therefor under the provisions of this article, and no corporation, association, partnership, or individual doing business in the state of North Carolina as a public-service corporation, or any corporation herein designated, shall be allowed to increase its rate and charge for service or change its classification in any manner whatsoever except upon petition duly filed with the utilites commission and inquiry held thereon and final determination of the reasonableness and necessity of any such increase change in classification or service: Provided, however, that nothing herein shall be construed to prevent any public-service corporation from reducing its rates either directly or by change in classification. (1933, c. 134, s. 16.)

§ 1112(p) Surrender of present quarters to commissioner. — The utilities commissioner shall occupy the offices now occupied by the corporation commission and the securities commissioner, or so much thereof as shall be necessary for the performance of the functions and duties herein prescribed, and such offices shall be turned over to the said utilities commission. Upon the induction into office of the utilities commissioner, the corporation commission shall turn over and deliver to him all books, records, papers, and documents and he shall be responsible for the safe keeping thereof. (1933, c. 134, s. 17.)

§ 1112(q). Continuance of present rate inquiry by corporation commission. — The corporation commission shall proceed as promptly as possible to investigate, determine and fix fair and equitable rates on telephone, telegraph and other public utility service in line with present economic conditions. (1933, c. 134, s. 18.)

Art. 9. Public Utilities Act of 1933

§ 1112(1). Definitions.—(a) The term "corporation," when used in this article, includes a private corporation, an association, a joint stock association or a business trust.

(b) The term "person," when used in this article, includes a natural person, a partnership or two or more persons having a joint or common interest, and a corporation as hereinbefore defined.

(c) The term "municipality," when used in this article, includes a city, a county, a village, a town, and any other public corporation existing, created or organized as a governmental unit under the constitution or laws of the State.

(d) The term "commission" shall mean the corporation commission.

(e) The term "public utility," when used in this article, includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for:

(1) Producing, generating, transmitting, delivering or furnishing gas, electricity, steam or any agency for the production of light, heat or power to or for the public for compensation;

(2) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation;

(3) Transporting persons or property by street, suburban or interurban railways for the public for compensation;

(4) Transporting persons or property by motor vehicles for the public for compensation, but not including taxicab, operating on call, or truck transfer service in cities or towns;

(5) Transporting or conveying gas, crude oil or other fluid substance by pipe line for the public for compensation;

(6) Conveying or transmitting messages or communications by telephone or telegraph, where such service is offered to the public for compensation;

(7) The term "public utility" shall for rate making purposes only include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others. The business of any public utility other than of the character defined in subdivisions 1 to 7, inclusive, of subdivision (e) of this section is not subject to the provisions of this act.

(f) The term "rate," when used in this article, means and includes every compensation, charge, fare, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service, product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, toll, rental or classification. (1933, c. 307, s. 1.)

§ 1112(2). Rates must be just and reasonable.— Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. (1933, c. 307, s. 2.)

§ 1112(3). Service. — Every public utility shall furnish adequate, efficient and reasonable service. (1933, c. 307, s. 3.)

§ 1112(4). To file rate schedules with commission.—Under such rules and regulations as the commission may prescribe, every public utility shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such rules and regulations as the commission may prescribe. (1933, c. 307, s. 4.)

§ 1112(5). Rates higher than schedule prohibited. —No public utility shall directly or indirectly, by any device whatsoever, or in any wise, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that

prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this act, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules. (1933, c. 307, s. 5.)

§ 1112(6). Discrimination prohibited.—No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The commission may determine any questions of fact arising under this section. (1933, c. 307, s. 6.)

§ 1112(7). Change of rates.—Unless the commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this article, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The utility shall also give such notice of the proposed changes to other interested persons as the commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The commission, for good cause shown, may allow changes in rates, without requiring the thirty days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

Whenever there is filed with the commission by any public utility any schedule stating a new rate or rates, the commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than ninety (90) days beyond the time when such rate or rates would otherwise go into effect unless the commission shall find that a longer time will be required, in which case the commission may extend the period for not to exceed six (6) months: Provided, and notwithstanding any such order of suspension, the public utility may put such suspended rate or rates into effect on the date when it or they would have become effective, if not so suspended, by filing with the commission a bond in a reasonable amount approved by the commission, with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission to the persons entitled thereto of the amount of the excess, if the rate or rates so put into effect are finally determined to be excessive; or there may be substituted for such bond, other arrangements satisfactory to the commission for the protection of the parties interested. If the public utility fails to make refund within thirty (30) days after such final determination, any person entitled to such refund may sue therefor in any court of this state of competent jurisdiction and be entitled to recover, in addition to the amount of the refund due, all court costs, but no suit may be maintained for that purpose unless instituted within two years after such final determination. Any number of persons entitled to such refund may join as plaintiffs and recover their several claims in a single action; in which action the court shall render a judgment severally for each plaintiff as his interest may appear. During any such period of suspension the commission may, in its discretion, require that the public utility involved shall furnish to its consumers or patrons a certificate or other evidence of payments made by them. (1933, c. 307, s. 7.)

§ 1112(8). Changing unreasonable rates after hearing.—Whenever the commission, after a hearing had after reasonable notice upon its own motion or upon complaint, finds that the existing rates in effect and collected by any public utility for any service, product, or commodity, are unjust, insufficient or discriminatory, or in any wise in violation of any provision of law, the commission shall determine the just, reasonable and sufficient rates to be thereafter observed and in force, and shall fix the same by order as hereinafter provided. (1933, c. 307, s. 8.)

§ 1112(9). Compelling telephone and telegraph companies to form continuous lines to certain points.—The commission may upon complaint, in writing, by any person, or on its own initiative after a hearing on reasonable notice, by order require any two or more telephone or telegraph companies whose lines or wires form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections or the joint use of equipment, or the transfer of messages at common points, between different localities which can not be communicated with or reached by the lines of either company alone, where such service is not already established or provided, to establish and maintain through lines within the state between two or more such localities. The rate for such service shall be just and reasonable and the commission shall have power to establish the same, and declare the portion thereof to which each company affected thereby is entitled and the manner in which the same must be secured and paid. All necessary construction, maintenance and equipment in order to establish such service shall be constructed and maintained in such manner and under such rules, with such division of expense and labor as may be required by the commission. (1933, c. 307, s. 9.)

§ 1112(10). Compelling efficient service after hearing.—Whenever the commission, after a hearing after reasonable notice had upon its own motion or upon complaint, finds that the service of any public utility is unreasonable, unsafe, inadequate, insufficient or unreasonably discriminatory, the commission shall determine the reasonable, safe, adequate, sufficient service to be ob-

served, furnished, enforced or employed and shall fix the same by its order, rule or regulation. (1933, c. 307, s. 10.)

§ 1112(11). Fixing standards, classifications, etc; testing service.—The commission may, after hearing upon reasonable notice had upon its own motion or upon complaint, ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all public utilities; ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any and all public utilities; prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement; and provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any public utility. (1933, c. 307, s. 11.)

§ 1112(12). Valuing and revaluing utility property.—The commission may, on hearing after reasonable notice, ascertain and fix the value of the whole or any part of the property of any public utility insofar as the same is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the value of all new construction, extension and additions to the property of every public utility. (1933, c. 307, s. 12.)

§ 1112(13). Establishment of accounting system.—The commission may establish a system of accounts to be kept by the public utilities, subject to its jurisdiction, or may classify said public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. (1933, c. 307, s. 13.)

§ 1112(14). Visitorial and inspection powers of commission.—The commissioners and the officers and employees of the commission may during all reasonable hours enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any power provided for in this article, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examination, tests and inspections. (1933, c. 307, s. 14.)

§ 1112(15). Annual reports.—The commission may require any public utility to file annual reports in such form and of such content as the commission may require and special reports concerning any matter about which the commission is authorized to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission. (1933, c. 307, s. 15.)

§ 1112(16). Investigation into management of utilities.—The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of public utilities or any particular utility. In conducting such investigations the commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the parties affected thereby a hearing. (1933, c. 307, s. 16.)

§ 1112(17). Permission of commission to pledge assets.—No public utility shall pledge its faith, credit, moneys or property for the benefit of any holder of its preferred or common stocks or bonds, nor for any other business interest with which it may be affiliated through agents or holding companies or otherwise by the authority of the action of its stockholders, directors, or contract or other agents, the compliance or result of which would in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, decrease or increase its liabilities or assets, without first making application to the commission and by order obtain its permission so to do; nor shall any such utility pay any fees, commissions or compensation of any description whatsoever, to any holding, managing, operating, constructing, engineering, financing, or purchasing company or agency including subsidiary or affiliated companies, for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the commission and obtaining its approval. (1933, c. 307, s. 17.)

§ 1112(18). Assumption of certain liabilities and obligations to be approved by commission.—No utility shall issue any securities, or assume any liability or obligation as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect to the securities of any other person unless and until, and then only to the extent that, upon application by the utility, and after investigation by the commission of the purposes and uses of the proposed issue, and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, the commission by order authorizes such issue or assumption. The commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object within the corporate purposes of the utility, (b) is compatible with the public interest, (c) is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public as such utility and will not impair its ability to perform that service, and, (d) is reasonably necessary and appropriate for such purpose. Any such order of the commission shall specify the purposes for which any such securities or the proceeds thereof may be used by the utility making such application. (1933, c. 307, s. 18.)

§ 1112(19). Commission may approve in whole or in part or refuse approval.—The commission, by its order, may grant or deny the application provided for in the preceding section as made, or may grant it in part or deny it in part or may grant it with such modification and upon such terms and conditions as the commission may deem necessary or appropriate in the premises and may, from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate and may, by

any such supplemental order, modify the provisions of any previous order as to the particular purposes, uses, and extent to which or the conditions under which any securities so theretofore authorized or the proceeds thereof may be applied; subject always to the requirements of the foregoing section. (1933, c. 307, s. 19.)

§ 1112(20). Contents of application for permission.—Every application for authority for such issue or assumption shall be made in such form and contain such matters as the commission may prescribe. Every such application and every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the utility by its president, a vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the utility. (1933, c. 307, s. 20.)

§ 1112(21). Applications to receive immediate attention; continuances.—All applications for the issuance of securities or assumption of liability or obligation shall be placed at the head of the commission's docket and disposed of promptly, and all such applications shall be disposed of in thirty (30) days after the same are filed with the commission, unless it is necessary for good cause to continue the same for a longer period for consideration. Whenever such application is continued beyond thirty (30) days after the time it is filed, the order making such continuance must state fully the facts necessitating such continuance. (1933, c. 307, s. 21.)

§ 1112(22). Notifying commission as to disposition of securities.—Whenever any securities set forth and described in any such application for authority or certificate of notification as pledged or held unincumbered in the treasury of the utility shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of, by the utility, such utility shall, within ten days after such sale, pledge, repledge, or make other disposition of, file with the commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the commission. (1933, c. 307, s. 22.)

§ 1112(23). No guarantee on part of state.—Nothing herein shall be construed to imply any guarantee or obligation as to such securities on the part of the state of North Carolina. (1933, c. 307. s. 23.)

§ 1112(24). Article not applicable to note issues; renewals likewise excepted.—The provisions of the foregoing sections shall not apply to notes issued by a utility for the proper purposes and not in violation of law, payable at a period of not more than two (2) years from the date thereof, and shall not apply to like notes issued by a utility payable at a period of not more than two (2) years from date thereof, to pay, retire, discharge, or refund in whole or in part any such note or notes and shall not apply to renewals thereof from time to time not exceeding in the aggregate six (6) years from the date of the issue of the original note or notes so renewed or refunded. No such notes payable at a period of not more than two (2) years from the date thereof, shall, however, in whole or in part, directly or indirectly, be paid, retired, discharged or refunded by any issue of securities of another kind of any term or character or from the proceeds thereof without the approval of the commission. (1933, c. 307, s. 24.)

§ 1112(25). Not applicable to debentures of court receivers; notice to commission.—Nothing contained in this article shall limit the power of any court having jurisdiction to authorize or cause receiver's certificate or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity. Within ten (10) days after the making of any such notes, so payable at periods of not more than two (2) years from the date thereof, the utility issuing the same shall file with the commission a certificate of notification, in such form as may from time to time be determined and prescribed by the commission. (1933, c. 307, s. 25.)

§ 1112(26). Periodical or special reports.—The commission shall require periodical or special reports from each utility hereafter issuing any security including such notes payable at periods of not more than two (2) years from the date thereof, which shall show, in such detail as the commission may require, the disposition made of such securities and the application of the proceeds thereof. (1933, c. 307, s. 26.)

§ 1112(27). Failure to obtain approval not to invalidate securities or obligations.—(a) Securities issued and obligations and liabilities assumed by a utility, for which under the provisions of this article the authorization of the commission is required, shall not be invalidated because issued or assumed without such authorization therefor having first been obtained or because issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption. (b) Securities issued or obligations or liabilities assumed in accordance with all the terms and conditions of the order of authorization therefor shall not be affected by a failure to comply with any provision of this article or rule or regulation of the commission relating to procedure and other matters preceding the entry of such order of authorization or order supplemental thereto. (c) A copy of any order made and entered by the commission as in this article provided (duly certified by the clerk of the commission) approving the issuance of any securities or the assumption of any obligation or liability by a utility shall, in and of itself, be sufficient evidence, for all purposes, of full and complete compliance by the applicant for such approval with all procedural and other matters required precedent to the entry of such order. (d) Any utility which willfully issues any such securities, or assumes any such obligation or liability, or makes any sale or other disposition of securities, or applies any securities or the proceeds thereof to purposes other than the purposes specified in an order of the commission with respect thereto, contrary to the provisions of this article, shall be liable to a penalty of not more than ten thousand dollars, but such utility is only required to specify

in general terms the purpose for which any securities are to be issued, or for which any obligation or liability is to be assumed, and the order of the commission with respect thereto shall likewise be in general terms. (1933, c. 307, s. 27.)

§ 1112(28). Commission may act jointly with agency of another state where utility operates. — If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, then the corporation commission of the state of North Carolina shall have the power to agree with such commission or other agency or agencies of such other state on the issue of stocks, bonds, notes or other evidences of indebtedness by a public utility owning or operating a public utility both in such state and in this state, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue joint certificate of such approval: Provided, however, that no such joint approval shall be required in order to express the consent to an approval of such issue by the state of North Carolina if said issue is separately approved by the corporation commission of the state of North Carolina. (1933, c. 307, s. 28.)

§ 1112(29). Willful acts of employees deemed those of utility. — The willful act of any officer, agent, or employee of a utility, acting within the scope of his official duties of employment, shall, for the purpose of this article be deemed to be the willful act of the utility. (1933, c. 307. s. 29.)

§ 1112(30). Actions to recover penalties.—Actions to recover penalties under this article shall be brought in the name of the state of North Carolina, in the county in which the offense was committed. Whenever any utility is subject to a penalty under this article, the commission shall certify the facts to the attorney-general, who shall institute and prosecute an action for the recovery of such penalty: Provided, the commission may compromise such action and dismiss the same on such terms as the court will approve. (1933, c. 307. s. 30.)

§ 1112(31). Penalties to school fund. — All penalties recovered by the state in such action shall be paid into the state treasury to the credit of the school fund. (1933, c. 307, s. 31.)

§ 1112(32). Abandonment and reduction of service. — Upon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of a utility realizing sufficient revenue from the service to meet its expenses, the commission shall have power, after petition, notice and hearing, to authorize by order any utility to abandon or reduce its service or facilities. (1933, c. 307, s. 32.)

§ 1112(33). Water gauging stations.—The commission may require the location, establishment, maintenance and operation of water gauging stations, and the commission and the North Carolina department of conservation and development may co-operate with each other as to such locations, construction and reports and upon the results of operation. (1933, c. 307, s. 33.)

§ 1112(34). Reports from municipalities operating own utilities. — Every municipality engaged in operating any works or systems for the manufacture and supplying of gas or electricity, or purchasing same for distribution and resale, or operating telephone exchanges, shall make an annual report to the commission, verified by the oath of the general manager or superintendent thereof, on the same blanks as now provided for reports of privately owned utilities, giving the same information as required of such utilities. (1933, c. 307, s. 34.)

§ 1112(35). Refusal to permit commission to inspect records made misdemeanor.—Any public utility, its officers or agents in charge thereof, that fails or refuses upon the written demand of the commission, or a majority of said commission, and under the seal of the commission, to permit the commission, its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a misdemeanor. Each day of such failure or refusal shall constitute a separate offense and each such offense shall be punishable by a fine of not less than five hundred and not more than five thousand dollars. (1933, c. 307, s. 35.)

§ 1112(36). Willful disobedience to orders of commission incurs forfeiture.—Every public utility and the officers, agents and employees thereof shall obey, observe and comply with every order made by the commission under authority of this article so long as the same shall be and remain in force. Any such person or corporation, or any officer, agent or employee thereof, who knowingly fails or neglects to obey or comply with such order, or any provision of this article, shall forfeit to the state of North Carolina not to exceed the sum of one thousand dollars for each offense. Every distinct violation of any such order or of this article shall be a separate and distinct offense, and in case of a continuing violation each day shall be deemed a separate and distinct offense.

No present provision of law shall be deemed to be repealed by this article except such as are directly in conflict therewith. (1933, c. 307, s. 36.)

CHAPTER 22

CORPORATIONS

Art. 2. Formation

§ 1125(a). North Carolina state thrift society incorporated.—In order the better to provide for the education of the school children of the state in the principles and practice of thirft and saving and in order to aid them in making better provision for their future advanced education, there is hereby created under the patronage and control of the state a non-stock corporation to be known as the North Carolina state thrift society. (1933, c. 385, s. 1.)

§ 1125(b). Charter perpetual.—The charter of the society shall be perpetual. (1933, c. 385, s. 2.)

§ 1125(c). Membership and directors. — The membership of the society shall be identical with

the membership of the governing board, which shall consist of sixteen directors. The state treasurer, the superintendent of public instruction, the president of the North Carolina bankers association and the president of the University of North Carolina shall throughout their terms of office be ex officio members of the board. The remaining twelve members of the board shall be appointed by the governor for successive terms of four years each, and shall be equally divided between the business and financial and the educational interests of the state, six members to each of the named groups: Provided that at least four of those representing business must be experienced bankers. (1933, c. 385, s. 3.)

§ 1125(d). Vacancies. — In the event of a vacancy occurring before the expiration of the terms of office of any director, the board by a majority vote of its full membership, including ex officio members, shall have power to elect persons to fill out the unexpired terms. (1933, c. 385, s. 4.)

§ 1125(e). Officers of society.—The state treasurer shall be the treasurer and depository of the funds of the society. The other officers of the society shall be elected by the board, and shall include a president, cashier, secretary and auditor. (1933, c. 385, s. 5.)

§ 1125(f). Powers of purchase and sale.—The society shall have power and authority to purchase, lease and otherwise acquire such real and personal property as may be deemed useful to the prosecution of the objects for which it is created. It may sell and dispose of the same and may hold or may sell and convey such property also as may be taken in whole or partial satisfaction of any debt due to it. It may also receive gifts of money and property to be applied to its corporate purposes. (1933, c. 385, s. 6.)

§ 1125(g). Deposits of school children. — The society may receive deposits of the funds of children and others attending any of the public schools or colleges of North Carolina, as provided in section 1125(m), and subject to repayment on terms established by the board: Provided that no individual account may exceed $1,000. (1933, c. 385, s. 7.)

§ 1125(h). Depositories. — The funds in the treasurer's hands may be deposited by him to his credit as state treasurer and treasurer of the society in banks upon like terms and secured in like manner as other state deposits. The interest accruing and paid on such deposits shall be added to the funds of the society. (1933, c. 385, s. 8.)

§ 1125(i). Exemption from taxation. — Neither deposits in the society nor its property investments and assets shall at any time be subject to taxation by the state of North Carolina or any of its sub-divisions, except that gift, inheritance or estate taxes may be levied on the transfer of private deposits in the society. (1933, c. 385, s. 9.)

§ 1125(j). Loan of funds to college students.— The society, for the purpose of aiding deserving students to obtain advanced education, shall have power to loan its funds, and those which it has received on deposit, for not more than one year at a time to students, residents of North Carolina, registered in any institution of higher learning in the state, on the note of the borrower to the society, with two co-makers as sureties who are certified by a clerk of the superior court and register of deeds, to be each worth the amount of the note above homestead exemption and encumbrances, and whose signatures are acknowledged before a notary public. The making of student loans shall be subject to such additional rules as the board may prescribe. (1933, c. 385, s. 10.)

§ 1125(k). Investments. — The funds of the society where not required for student loans may at the discretion of the board be invested in obligations of the United States Government or of the state of North Carolina. (1933. c. 385, s. 11.)

§ 1125(l). No expense to state.—Provided that no expense of any nature nor liability of any kind shall rest on the state of North Carolina by reason of this article. (1933, c. 385, s. 12.)

§ 1125(m). Thrift instruction provided by superintendent of public instruction in schools. — Within 150 days from the approval of this section the state superintendent of public instruction shall provide in the public schools of the state for instruction in thrift and the principles, practice and advantage of saving.

In connection with the instruction so provided arrangements shall be made at each school for the receiving of students' savings deposits into the North Carolina state thrift society, subject to its rules and on the terms provided therein.

The administration of the system in each school shall be in charge of one or more of the teachers in said school to be designated by the principal.

The savings deposits shall be transmitted to the state treasurer from time to time in accordance with rules to be established by the governing board of the North Carolina state thrift society and shall be held for the purposes declared in the charter of the said society. (1933, c. 481, ss. 1-4.)

Art. 3. Powers and Restrictions

§ 1137. Resident process agent.

A Federal Land Bank created by act of Congress and deriving its right to own property and to do business in this State solely through a Federal statute is not a foreign corporation exercising such functions under express or implied authority of this State, and this section is not applicable to such corporation, and our courts acquire no jurisdiction over it by such service. Leggett v. Federal Land Bank, 204 N. C. 151, 167 S. E. 557.

§ 1138. Corporate conveyances; when void as to torts.

I. IN GENERAL.

Judgment for Tort Committed before Transfer.—Under this section as construed with §§ 3309, 3311, an absolute sale by a corporation of its personal property, accompanied by delivery to the purchaser, is not void as to a judgment creditor of the corporation on a judgment obtained against the corporation for a tort committed before the transfer. Carolina Coach Co. v. Begnell, 203 N. C. 656, 166 S. E. 903.

§ 1140. Mortgaged property subject to execution for labor, clerical services, and torts.

I. IN GENERAL.

Judgments Not Superior Except as Provided in This Section.—Judgments against a corporation for its obligations arising on a contract are not superior to the lien of a prior registered deed of trust given to secure bondholders when the judgments were not in actions to recover for labor and

clerical services performed or to recover damages for a tort or for injuries to property within the meaning of this section. Amoskeag Mfg. Co. v. Yadkin Cotton Mills, 200 N. C. 10, 156 S. E. 101.

Art. 4. Directors and Officers

§ 1148(a). Forfeiture of corporate charter and organization of new corporation. — Wherever a corporation created under the laws of the state of North Carolina has, on account of failure to make reports of the different state authorities, for such a length of time as to lose its charter and where thereafter, under the laws of the state of North Carolina, a new charter is issued, in the same name as the original corporation, and on behalf of the same corporation, such new corporation shall succeed to the same properties, to the same rights as the original corporation before losing its charter on account of neglect hereinbefore mentioned.

Whenever such new corporation shall have been created, under the laws of this state, all the title, rights and emoluments to the property held by the original corporation shall inure to the benefit of the newer corporation and the new corporation shall issue its stock to the stockholders in the defunct corporation, in the same number and with the same par value as held by the stockholders of the defunct corporation.

Such new corporation shall have the rights and privileges of maintaining any action or cause of action which the defunct corporation might maintain, bring or defend and to all intents and purposes the new corporation shall take the place of the defunct corporation to the same intent and purposes as if the defunct corporation had never expired by reason of its failure to make the reports hereinbefore referred to. (1933, c. 124.)

Art. 5. Capital Stock

§ 1161. Decrease of capital stock.

Repurchase of Stock.—This section was held inapplicable to suit by receiver against directors for repurchase of stock by corporation in Thompson v. Shepherd, 203 N. C. 310, 165 S. E. 796.

Art. 6. Meetings, Elections and Dividends

§ 1179. Dividends from profits only; directors' liability for impairing capital. — No corporation may declare and pay dividends except from the surplus or net profits arising from its business, or when its debts, whether due or not, exceed two-thirds of its assets, nor may it reduce, divide, withdraw, or in any way pay to any stockholder any part of its capital stock except according to this chapter: Provided, a public service corporation may declare and pay such dividends from the surplus or net profits arising from its business except when its debts, whether due or not, exceed three-fourths of its assets: Provided, further, that any corporation, other than a public service corporation, which is a member of a partnership may declare and pay dividends from the surplus or net profits arising from its business when the sum of the corporation's separate debts, whether due or not, and that part of the partnership debts which is the same proportion of all the partnership debts, whether due or not, as the corporation's interest in the partnership assets is of all such assets, does not exceed two-thirds of the corporation's assets, and in such calculation the amount of its interest in the partnership assets shall be considered assets of the corporation. In case of a violation of any provision of this section, the directors under whose administration the same occurs are jointly and severally liable, at any time within six years after paying such dividend, to the corporation and its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend paid, or capital stock reduced, divided, withdrawn, or paid out, with interest on the same from the time such liability accrued. Any director who was absent when the violation occurred, or who dissented from the act or resolution by which it was effected, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors at the time the action was taken or immediately after he has had notice of it. (Rev., s. 1192; Code, s. 681; 1901, c. 2, ss. 33, 52; 1927, c. 121; 1933, c. 354, s. 1.)

Editor's Note.—

The second proviso, relating to dividends by corporation holding membership in partnership, was inserted by Public Laws 1933, c. 354.

Repurchase of Stock.—This section was held inapplicable to suit by receiver against directors for repurchase of stock by corporation in Thompson v. Shepherd, 203 N. C. 310, 165 S. E. 796.

§ 1179(a). No personal liability on corporate manager of partnership.—Any corporation created under this chapter which is a member of a partnership may have its interests in such partnership managed, and may be engaged in or have charge of the management and affairs of such partnership, by and through any of its officers, directors, stockholders, agents and servants, and no such person acting as manager of the interests of any corporation in such partnership, or engaged in or having charge of the management and affairs of such partnership, whether as executive, member of an executive committee or board, employee or otherwise, shall be personally subject to any liability for the debts of such partnership of such corporation. (1933, c. 354, s. 2.)

Art. 7. Foreign Corporations

§ 1181. Requisites for permission to do business.

In General.—Although this section excludes insurance companies from its operation, the statutes will be construed in relation to their subject-matter. The exception in this section is because insurance companies are exclusively dealt with elsewhere. Occidental Life Ins. Co. v. Lawrence, 204 N. C. 707, 169 S. E. 636.

Right to Sue and Be Sued.—Where a foreign corporation has submitted to domestication in this State by filing its certificate of incorporation with the Secretary of State and by otherwise complying with the provisions of this section, it thereby acquires the right to sue and be sued in the courts of this State as a domestic corporation, and where it brings action on a note in the county of its designated residence the defendants are not entitled to removal to the county of their residence as a matter of right. Smith-Douglass Co. v. Honeycutt, 204 N. C. 219, 167 S. E. 810.

Art. 8. Dissolution

§ 1193. Corporate existence continues three years.

Application.—

Under this section, a corporation continues for three years to be a body corporate for the purpose of disposing of its property and dividing its assets, and the section is applicable to any corporation. Burnet v. Lexington Ice, etc., Co., 62 F. (2d) 906, 909.

Art. 10. Receivers

§ 1208. Appointment and removal.

As to statute relating to receivers applicable to insolvent banks see § 218(e) and annotations thereunder.

§ 1209. Powers and bond.

Sufficiency to Pass Title.—Where, under a court order, the receiver of an insolvent has conveyed lands according to the terms of a deed of trust by which the bank held the land, applying this and the following section the deed was sufficient in law to pass title. Wachovia Bank, etc., Co. v. Hudson, 200 N. C. 688, 158 S. E. 244.

§ 1210. Title and inventory.

Cross Reference. — As to a conveyance by a receiver of an insolvent bank, according to a deed of trust, see § 1209 and the note thereto.

Applied in Teague v. Teague Furniture Co., 201 N. C. 803, 161 S. E. 530.

Art. 11. Taxes and Fees

§ 1220. Corporate property in receiver's hands liable for taxes.

Attachment and Continuance of Lien.—The lien for taxes attaches to the real property taxed from the date provided in the statute, and the lien continues thereon until the taxes are paid, regardless into whose hands the property has passed, unless barred by some statute of limitations. Reichland Shale Products Co. v. Southern Steel, etc., Co., 200 N. C. 226, 156 S. E. 777.

Art. 13. Merger

§ 1224(g). Merger of charitable and other corporations not under control of state.—Any two or more charitable, educational, social, ancestral, historical, penal or reformatory corporations not under the patronage and control of the state, and any two or more corporations without capital stock organized for the purpose of aiding in the work of any church, religious society or organization, or fraternal order, whether organized under special act or general laws, may consolidate into a single corporation, which shall be deemed the successor of each and all corporations joining in such consolidation, in the following manner:

(a) When authorized to do so by the conference, synod, convention or other body owning and/or controlling such corporation, the trustees or directors of such corporation by resolution adopted by majority vote at a meeting duly called and convened in accordance with the present charter, by-laws or other regulations for the conduct of such meetings of such corporation, and in the absence of such charter provision, by-laws or other regulations upon ten days' notice to each trustee or director of the time, place and object of the meeting, may authorize such corporation to make, enter into and execute a consolidation agreement with one or more other such corporations; that such consolidation agreement shall prescribe the terms and conditions of consolidation, the mode of carrying same into effect, and shall set forth in full the certificate of incorporation of the consolidated corporation; and the consolidation agreement so authorized shall be executed in the name and behalf of each such corporation entering into the consolidation by its president or vice-president, attested by its secretary or assistant secretary and its corporate seal thereto affixed, and the due execution thereof shall be acknowledged in the manner and before a notary public or other officer required by the general laws of North Carolina for the acknowledgment of corporate deeds; and there shall be attached to such agreement of consolidation the written consent of a majority of the trustees or directors of each corporation entering into the consolidation.

(b) The agreement of consolidation, when authorized and executed as provided above and having attached thereto the aforesaid written consent, shall be filed in the office of the secretary of state. When so filed, the separate legal existence of each of the corporations joining in the consolidation thereupon shall be merged into the consolidated corporation, and thereafter there shall be only one corporation having as its charter the certificate of incorporation fully set forth in the agreement of consolidation.

(c) A copy of said agreement of consolidation, duly certified by the secretary of state under the seal of his office, shall be recorded in the office of the clerk of the superior court of the county in which the principal office of the consolidated corporation as fixed by its certificate of incorporation is located, and a like certified copy of the agreement of consolidation shall be recorded in the office of the clerk of the superior court of each county where any one or more of the corporations joining in the consolidation theretofore has had its principal office or place of business; and such certified copy shall be evidence of the existence of the consolidated corporation created by such agreement of consolidation and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof. (1933, c. 408, s. 1.)

§ 1224(h). Rights and powers of consolidated corporation.—The consolidated corporation shall succeed to and be vested with all rights, privileges and powers, and all property, real, personal and mixed, tangible and intangible, and the title thereto, of each and all of the corporations joining in the consolidation as fully and effectually as the same were theretofore owned and held by each of the separate corporations, and the consolidated corporation shall be liable for the payment of all debts and liabilities of each and all of the separate corporations: Provided, such consolidation shall not affect liens or the priority of liens established against the separate property of any corporation prior to the consolidation. (1933, c. 408, s. 2.)

§ 1224(i). Property of all kinds vested in new corporation.—The consolidated corporation shall succeed to and be vested with all money, securities, property, real, personal and mixed, tangible and intangible, and the title thereto, theretofore owned, held and/or administered by each separate corporation upon the uses and trusts declared in any will, deed or other instrument, and the consolidated corporation shall handle, use and administer such trust funds upon the same uses and trusts and not otherwise; and the consolidated corporation shall be deemed to embrace each separate corporation and to constitute a continuation thereof, and no trust fund or other asset of a separate corporation shall be construed to revert and/or pass to other ownership on the ground that such separate corporation has ceased to exist for the purpose of administering such trust or otherwise. (1933, c. 408, s. 3.)

CHAPTER 23
COSTS

Art. 1. Generally

§ 1226. Summary judgment for official fees.

When Cause Is Still Pending.—This section is not applicable to the claim of a referee for payment of services rendered in a cause which is still pending in the courts upon exceptions to his report. Farmers Bank v. Merchants & Farmers Bank, 204 N. C. 378, 168 S. E. 221.

Art. 2. When State Liable for Costs

§ 1236. Civil actions by the state; joinder of private property.

Where the proceedings for disbarment of an attorney under § 214 has not been sustained the costs are taxable against the State under the provisions of this section, and an order erroneously taxing them against the county in which the matter was tried will be vacated. Committee on Grievances of Bar Ass'n v. Strickland, 201 N. C. 619, 161 S. E. 76.

Art. 5. Liability of Counties in Criminal Actions

§ 1259. County to pay costs in certain cases; if approved, audited and adjudged.—If there is no prosecutor in a criminal action, and the defendant is acquitted, or convicted and unable to pay the costs, or a nolle prosequi is entered, or judgment arrested, the county shall pay the clerks, sheriffs, constables, justices and witnesses one-half their lawful fees; except in capital cases and in prosecutions for forgery, perjury, or conspiracy, when they shall receive full fees. No county shall pay any such costs unless the same is approved, audited and adjudged against the county as provided in this chapter: Provided, that in Hertford County clerks, sheriffs or constables, justices and witnesses shall in all cases receive full fees. (Rev., s. 1283; Code, ss. 733, 739; R. C., c. 28, s. 8; R. S., c. 28, s. 12; 1933, c. 68, s. 1.)

Editor's Note.—The proviso at the end of the section, relating to Hertford County, was added by Public Laws 1933, c. 68.

§ 1260. Local modification as to counties paying costs.—In the following counties the county shall pay one-half the fees specified when "not a true bill" is found: Alexander, Alleghany, Ashe, Avery, Bertie, Brunswick, Burke, Caldwell, Caswell, Catawba, Chatham, Clay, Craven, Davie, Duplin, Gaston, Granville, Greene, Guilford, Haywood, Henderson, Iredell, Jackson, Johnston, Jones, Lenoir, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Northampton, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Richmond, Robeson, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Wake, Watauga, Wilkes, Yadkin, Yansey. (Rev., s. 1283; Code, ss. 733, 739; 1907, cc. 94, 162, 208, 606, 627, 695; 1909, cc. 50, 107; P. L. 1911, cc. 76, 167; P. L. 1915, c. 22; 1931, cc. 135, 187; 1933, c. 366.

In Bladen County, where in a criminal proceeding before the grand jury a "true bill" is not found, the county shall pay one-half fees to clerks, sheriffs, officers, or constables who served any process in such proceeding. (1909, c. 183.)

In Brunswick and Catawba counties the county shall not be liable for any part of the costs of justices of the peace, when "not a true bill" is found. (Rev., s. 1283; 1905, c. 598; 1909, c. 107.)

In Montgomery County, in criminal cases, where the defendant is convicted in superior court, justices of the peace are entitled to full fees, if any are legally taxed in the bill of costs. (1909, c. 223.)

In New Hanover County, in a criminal action, if there is no prosecutor, and the defendant is convicted and serves out his sentence on the public roads of the county, the county shall pay one-half fees as provided in the first sentence of this section. (Rev., s. 1283; 1905, c. 511.)

Editor's Note.—
Haywood County was added to the list of counties by Public Laws 1933, c. 366. The amendment provides that that county shall only be liable for one-half of fees to clerks, sheriffs and constables serving process.

§ 1266(a). Sums due credited on taxes due by payee.—Whenever a bill of costs in a criminal action is presented to any board of county commissioners in any county of the state for payment, as provided in chapter 23, article 5, of the consolidated statutes, and the said bill is ordered to be paid by the said county commissioners, it shall be the duty of the clerk of said board, before issuing any orders for payment of the sum set out in said bill, to ascertain whether any person to whom any amount is due on said bill of costs, is indebted to the county for taxes, and if said person to whom said order is payable is so indebted, the order shall state in its face, "Payable only on taxes due .....County," and upon presentation of such order to the sheriff or tax collector, said sheriff or tax collector shall give said taxpayer credit for the sum designated in said order, and the said sheriff or tax collector shall be entitled to receive credit for said sum so paid in his settlement for taxes.

It shall be unlawful for any board of county commissioners to pay to any person who is indebted to the county for taxes any money payable out of the revenues of the county on account of costs in a criminal case, which is payable by the county, except as provided in section one above.

Upon the ratification of this section the secretary of state is hereby authorized and directed to forward to the clerk of the board of county commissioners of each of the several counties of the state a copy of this section. (1933, c. 245.)

By Public Laws of 1933, c. 501, Wilson County is exempted from the operation of this section. By Public Laws of 1933, c. 426, the same exemption is made as to Granville and Craven Counties.

Art. 8. Fees of Witnesses

§ 1276. Local: trafficking in witness tickets regulated.—1. Amounts Paid for Tickets to be Endorsed thereon.—Whenever any person shall prove a ticket as a witness in any criminal action, wherein any county in this state shall be adjudged to pay the cost or any part thereof, and such person shall sell or assign the same to any other person, firm or corporation, he shall state on the back of the ticket the amount which he shall receive from the assignee named for such sale or assignment, and the assignee shall make an affidavit of the truthfulness of such amount as stated in the endorsement of sale.

2. Amount Receivable by Assignee.—It shall be unlawful for any assignee of any ticket proved in a criminal action, wherein any county is or shall be adjudged to pay the costs thereof, to re-

ceive from the county any greater sum than the amount paid by such person, firm or corporation, with ten per cent added to the amount received by the person proving the ticket.

3. If Improperly Endorsed Not Taxed against County.—It shall be the duty of the clerk of the superior court, in making out the bills of cost which shall be adjudged against the county for payment, to examine carefully all witness tickets, and whenever any ticket shall fail to show the amount paid for any transfer, sale or assignment properly endorsed on said ticket, and sworn to, as above provided in subsection one, he shall not tax the same against any county for payment.

4. Collection of Greater Amount Misdemeanor.—If any person shall collect from any county in this state a sum greater than the amount received by the person proving said ticket, with ten per cent added thereto, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined double the amount so collected by him, not exceeding the sum of fifty dollars, or imprisoned not more than thirty days.

5. False Statement Perjury.—Any person purchasing any ticket in any criminal action, wherein the county shall be adjudged to pay the cost or any part thereof, who shall make a false statement of the amount paid by him for such ticket or tickets, shall be guilty of perjury, and upon conviction shall be punished as for that offense.

6. To What Counties Applicable.—This section shall apply only to the counties of Anson, Buncombe, Columbus, Forsyth, Gaston, Haywood, Richmond, Robeson, Rutherford, and Surry. (1907, c. 120; P. L. 1913, cc. 791, 793; 1915, c. 305; 1933, c. 366, s. 2.)

Editor's Note.—The section was made applicable to Haywood County by Public Laws 1933, c. 366.

§ 1287. Witnesses not paid without certificate; court's discretion.

Appeal.—In an appeal from defendant's motion to retax the costs in a criminal action it should appear on the record that the provisions of this and § 1284 were complied with and when it does not so appear the case will be remanded. State v. Kirby, 201 N. C. 789, 161 S. E. 483.

Art. 9. Criminal Costs before Justices, Mayors, County or Recorder's Courts

§ 1288. Liability for criminal costs before justice, mayor, county or recorder's court.—The party convicted in a criminal action or proceeding, within the jurisdiction of a justice of the peace, before any justice, mayor, county or recorder's court, shall always be adjudged to pay the costs, and if the party charged be acquitted, the complainant shall be adjudged to pay the costs, and may be imprisoned for the nonpayment thereof, if the justice, mayor, county or recorder's court shall adjudge that the prosecution was frivolous or malicious. But in no action or proceeding in which a justice of the peace has final jurisdiction, commenced or tried in a court of a justice of the peace, mayor, county or recorder's court shall the county be liable to pay any costs: any defendants or prosecuting witness shall have the right of appeal to the superior court: Provided, that in cases where the defendant is sentenced to prison or to work upon the public roads by any justice of the peace in Jackson county, and in case such defendant is unable to pay the costs of such action, then the county of Jackson shall be liable for the payment of the costs of the trial justices and the sheriff of said county. (Rev., 1307; Code, s. 895; 1868-9, c. 178; 1879, c. 92, s. 3; 1881, c. 176; 1931, c. 252; 1933, c. 225, s. 1.)

Editor's Note.—
The proviso, relating to Jackson County, was added by Public Laws 1933, c. 225.

CHAPTER 24

COUNTIES AND COUNTY COMMISSIONERS

Art. 1. Corporate Existence and Powers of Counties

§ 1291. Corporate powers of counties.

Power to Enter Consent Judgment.—Under this section the commissioners have the authority to assent to the entry of a consent judgment in an action pending against the ecounty, when such judgment is entered in good faith and is free from fraud, etc., a consent judgment being a contract of the parties spread upon the records with the approval and sanction of a court of competent jurisdiction. Weaver v. Hampton, 204 N. C. 42, 167 S. E. 484.

Art. 2. County Commissioners

§ 1297. Powers of board

Subsection 8½.—
In General.—This section authorizes the boards of commissioners of the various counties to levy a tax for the purpose of maintaining county homes for the aged and infirm. This is a special purpose within the contemplation of the constitutional provision, and the words "county aid and poor relief" should be construed to be within the scope of the special purpose which is indicated in the statute. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 496, 157 S. E. 610.

Art. 5A. Contracts

§ 1316(a). Contracts involving expenditure of $1,000 or more let after advertisement for bids.—No contract for construction or repair work, or for the purchase of apparatus, supplies, materials or equipment, involving the expenditure of public money, the estimated cost of which amounts to or exceeds one thousand ($1,000) dollars, except in cases of special emergency involving the health or safety of the people or their property, shall be awarded by any board or governing body of any county, city, town or other sub-division of the state, unless proposals for the same shall have been invited by advertisement once in at least one newspaper having general circulation in the county, city, town or other sub-division, the publication to be at least one week before the time specified for the opening of said proposals: Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than two thousand ($2,000) dollars, such advertisement may be either published in some newspaper as required herein or posted at the court house door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other sub-division wherein there is no newspaper published and the estimated cost of the contract is less than two thousand ($2,000) dollars, such advertisement may be either published in some newspaper as required herein or posted at the court house door of the county in which such city, town or other sub-division is situated and at least one public place in such city, town or other sub-divi-

sion. Such advertisement shall state the time and place where plans and specifications of proposed work, or complete description of apparatus, supplies, materials or equipment may be had and the time and place for opening the proposals in answer to such advertisement, and shall reserve to said board or governing body the right to reject any or all such proposals. All such proposals shall be opened in public, shall be recorded on the minutes of the board or governing body and the award, if any be made, shall be made to the lowest responsible bidder, taking into consideration quality and the time specified in the proposal for performance of the contract. Each proposal shall be accompanied by a deposit with the board or governing body of cash or a certified check on some bank or trust company authorized to do business in this state, of an amount equal to not less than two per centum (2%) of the proposal; said deposit to be retained in the event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required herein. All contracts required herein shall be executed in writing, and where the amount involved is two thousand ($2,000) dollars or more, the board or governing body shall require the person, firm or corporation to whom the award of contract is made to furnish bond in some surety company authorized to do business in this state or require a deposit of money, certified check or government securities, for the full amount of said contract for the faithful performance of the terms of said contract, and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or other securities as required herein shall be deposited with the treasurer of the unit until the contract has been carried out in all respects. (1931, c. 338, s. 1; 1933, c. 50.)

Editor's Note.—In the third from the last sentence of this section, Public Laws 1933, c. 50, substituted the words "authorized to do business in" for the words "organized under the laws of."

Art. 6. Courthouse and Jail Buildings

§ 1317(a). Formation of district jail by contiguous counties.—Any two or more counties contiguous to one another or which lie in a continuous group may enter into an agreement for the construction and maintenance of a district jail. Such agreement shall specify the amount of the construction and maintenance cost to be borne by each county and shall fix the terms upon which such jail may thereafter be used by the counties becoming parties to the agreement.

Such counties may also by agreement establish a jail already built, as a district jail, and provide for the improvement, enlargement, maintenance cost and use thereof.

When and if such district jail has been established, all the counties in such district may then sell or dispose of their separate jails upon such terms as the board of county commissioners may decide. (1933, c. 201, s. 1.)

Art. 7. County Revenue

§ 1334. Annual statement of claims and revenues to be published.—The board shall cause to be posted at the courthouse within five days after each regular December meeting and for at least four successive weeks, or after each regular monthly meeting, if they deem it advisable, and for one week, the name of every individual whose accounts has been audited, the amount claimed and the amount allowed; and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county: Provided that the board of county commissioners of Hertford County shall not be required to publish the statement in some newspaper in the county if, in their discretion, the cost of the publication is excessive. (Rev., s. 1388; Code, s. 752; 1901, c. 196; 1905, c. 227; 1933, c. 525, s. 1.)

Editor's Note.—
The proviso at the end of the section declared prior to the amendment by c. 525 Public Laws 1933, that the cost of publication should not exceed one-half of a cent a word.

Art. 7A. County Finance Act

§ 1334(5). Revenue anticipation loans for debt service.—For the purpose of paying the principal or interest of bonds or notes due or to become due within four months, and not otherwise adequately provided for, any county may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the loan is made, or the revenues of the next succeeding fiscal year, and such loan shall be payable not later than the end of such next succeeding fiscal year. For the purpose of paying or renewing notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, and authorized by this article as amended to be funded, any county may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made payable at any time or times, not later than five years after July first, one thousand nine hundred thirty-three, notwithstanding anything to the contrary in this section. (1927, c. 81, s. 5; 1931, c. 60, s. 63, c. 294; 1933, c. 259, s. 2.)

Editor's Note.—
The dates in this section were changed, by Public Laws 1933, c. 259, from March 18th 1931 to July 1st 1933.

§ 1334(8). Purposes for which bonds may be issued and taxes levied.—The special approval of the general assembly is hereby given to the issuance by counties of bonds and notes for the special purposes named in this section, and to the levy of property taxes for the payment of such bonds and notes and interest thereon. Accordingly, authority is hereby given to all counties in the state, under the terms and conditions herein described, to issue bonds and notes, and to levy property taxes for the payment of the same, with interest thereon, for the following purposes, including therein purchase of the necessary land and, in the case of buildings, the necessary equipment:

(a) Erection and purchase of schoolhouses.

(b) Highway construction and reconstruction, including bridges and culverts.

(c) Bridge construction.

(d) Erection and purchase of court-house and jails, including a public auditorium within and as a part of a court-house.

(e) Erection and purchase of county homes for the indigent and infirm.

(f) Erection and purchase of hospitals.

(g) Erection and purchase of public auditoriums.

(h) Elimination of grade crossings over railroads and interurban railways, including approaches and damages, when not less than one-half of the cost shall be payable to the county at one time, or from time to time under contract made with a railroad or interurban railway company, the bonds herein authorized to be for the entire cost or any portion thereof.

(i) Acquisition and improvement of lands for public parks and playgrounds.

(j) Funding or refunding of valid indebtedness incurred before July first, one thousand nine hundred thirty-three, if such indebtedness be payable at the time of the passage of the order authorizing the bonds or be payable within one year thereafter, or, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the funding or refunding bonds, and all debt not evidenced by bonds which was created for necessary expenses of any county and which remains outstanding at the ratification of this act is hereby validated. The term 'indebtedness' as used in this clause (j) includes all valid or enforceable indebtedness of a county, whether incurred for current expenses or for any other purpose, except indebtedness incurred in the name of a county on behalf of a school district or township and not payable by means of taxes authorized to be levied on all taxable property in the county. It also includes indebtedness incurred in the name of a county board of education for the maintenance of schools for the six months' term required by the State Constitution. It includes indebtedness evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said indebtedness accrued to the date of the bonds issued. It also includes indebtedness assumed by a county as well as indebtedness created by a county. Bond anticipation notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, may, at the option of the governing body, be retired either by means of funding bonds issued under this subsection or by means of bonds in anticipation of the sale of which the notes were issued.

(k) A portion to be determined by the governing body of the cost of construction of bridges at county boundaries, when an adjoining county or municipality, within or without the state, shall have agreed to pay the remaining cost of construction.

(l) A portion to be determined by the governing body of the cost of public buildings constructed or acquired in order that a part of such buildings may be used for a purpose hereinabove expressed when a municipality within the county shall agree to pay the remaining cost.

(m) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2.)

Editor's Note.—

Public Laws 1933, c. 259 omitted a proviso, from subsection (j), which related to refunding serial bonds and added the second sentence to the definition of the term "indebtedness" contained in that subsection. By Public Laws of 1933, c. 566 the prior Amendment of 1933 was made not applicable to bonds passed by the County Commissioners of Guilford County prior to March 15th 1933.

§ 1334(9). Order of governing body required.— Bonds of a county shall be authorized by an order of the governing body, the term "order" being here used to indicate the order, resolution, or measure which declares that bonds shall be issued, in order to differentiate the same from such subsequent resolution as may be passed in respect of details which such order is not required to contain. Such order shall state:

(a) In brief and general terms, the purpose for which the bonds are to be issued, but not more than one purpose of issue shall be stated, the purposes set forth in any one subsection of section 1334(8) to be deemed as one purpose, but, in the case of funding or refunding bonds, a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;

(b) The maximum aggregate principal amount of the bonds;

(c) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected, provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

(d) That a statement of the county debt has been filed with the clerk, and is open to public inspection;

(e) A clause stating the conditions upon which the order will become effective, and the same shall become effective in accordance with such clause, which clause shall be as follows:

1. If the bonds are funding or refunding bonds, that the order shall take effect upon its passage, and shall not be submitted to the voters; or

2. If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not required to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the order shall take effect when approved by the voters of the county at an election as provided in this article; or

3. In any other case, that the order shall take effect thirty days after the first publication thereof after final passage, unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

4. No restriction, limitation, or provision contained in any other law, except a law of statewide application relating to the issuance of bonds, notes or other obligations of a county, shall apply to bonds or notes issued under this article for the purpose of refunding, funding or renewing indebtedness incurred before July first, nineteen hundred and thirty-three, and no vote of the people shall be required for the issuance of bonds

or notes for said purposes, unless required by the constitution of this state. (1927, c. 81, s. 9; 1931, c. 60, s. 55; 1933, c. 259, s. 2.)

Editor's Note.—The last part of subsection (a) relating to description of indebtedness to be funded or refunded and the proviso to subsection (c) were added by Public Laws 1933, c. 259.

§ 1334(11). Maturities of bonds.—All bonds shall mature as hereinafter provided, and no funding or refunding bonds shall mature after the expiration of the period herein fixed for such bonds, respectively; and no other bonds shall mature after the expiration of the period estimated by the governing body as the life of the improvement for which the bonds are issued, each such period to be computed from a day not later than one year after the passage of the order. Such periods shall not exceed the following for the respective classes of bonds:

(a), (b) Funding or refunding bonds, fifty years.

(c) Bridge bonds (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

(d) Elimination of grade crossings, thirty years.

(e) Lands for public parks and playgrounds, including improvements, buildings, and equipment, forty years.

(f) Highway construction or reconstruction, including bridges and culverts, if the surface—

1. Is constructed of sand and gravel, five years;

2. Is of waterbound macadam or penetration process, ten years;

3. Is of brick, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

(g) If, in the order or subsequent resolution, the governing body should be unwilling to provide that the surface of highways to be constructed or reconstructed with the proceeds of bonds shall have any surface described above, it shall be lawful to provide for a different surfacing if the state highway commission or the chairman thereof shall certify, and if an order or resolution of the governing body shall recite such certification (which recital shall be conclusive for the purpose of this article), that the surfacing so provided is believed to be of at least equal durability with the surfacing described in one or the other of the three classes of surfacing above described, and in that event the bonds shall not mature later than the period hereinabove provided for such similar surfacing.

(h) Public buildings, if they are—

1. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, flooring, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is wooden flooring supported by wooden sleepers on top of the fireproof floor, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years;

2. Of non-fireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years;

3. Of other construction, twenty years.

(i) Land for airports or landing fields, including grading and drainage, forty years.

(j) Buildings, equipment and other improvements for airports or landing fields, other than grading and drainage, ten years. (1927, c. 81, s. 11; 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s. 2.)

Editor's Note.—
Prior to Public Laws 1933, c. 259, subsection (a) of this section provided for thirty years in case the debt was less than ten per cent of the assessed valuation of property in the county and fifty years in other cases.

§ 1334(11a). Accelerating maturity of bonds and notes of counties and municipalities. — Any municipality or county may provide that its bonds or notes shall become due and payable before maturity at the election of the holders or a representative of the holders, or a majority in amount of the holders, upon the happening of such events and upon such conditions and subject to such limitations (which may include a provision for rescission of action taken in the exercise of said election) as may be set forth in a resolution or ordinance passed before the issuance of the bonds or notes: Provided, however, that such a provision, in order to become effective, must either be set forth in the bonds or notes or incorporated therein by reference to such resolution or ordinance. The negotiability of such bonds or notes shall not be affected by the adoption of such provision or by the recital thereof in the bonds or notes. (1931, c. 418; 1933, c. 258, s. 3.)

Editor's Note.—Public Laws 1933, c. 258 inserted the words "or a majority in amount of the holders" and added the last sentence relating to negotiability.

§ 1334(33). Bonded debt payable in installments.—Each bond issue made under this article shall mature in annual installments or series the first of which, if funding bonds, shall be made payable not more than two years, and if not funding bonds, not more than three years, after the date of the first issued bonds of such issue and the last within the period prescribed by section 1334(11) for bonds of the class issued. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. This section shall not apply to funding or refunding bonds. (1927, c. 81, s. 33; 1931, c. 60, s. 57; 1933, c. 259, s. 2.)

Editor's Note.—Prior to the Amendment of 1933, P. L. c. 259, the section applied to funding and refunding bonds except in cases where the debt exceeded ten per cent of the value of county property.

§ 1334(41). Taxes levied for payment of bonds.—The full faith and credit of the county shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this article, including bonds for which special funds are provided. The governing

body shall annually levy and collect a tax ad valorem upon all the taxable property in the county sufficient to pay the principal and interest of all bonds issued under this article as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose. The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a county may levy; the General Assembly does here give its special approval to the levy of taxes in the manner and to the extent provided by this article for the payment of obligations incurred pursuant to this article for the special purposes for which such obligations are in this article authorized. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the county. If any member of the governing body or any county officer shall vote to apply or shall apply or participate in applying any taxes in violation of this section, such member or officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the state prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby.

Nothing in this section shall be construed as authorizing an unlimited tax for the payment of bonds not issued for a special purpose within the meaning of section six of article five of the constitution of North Carolina. It is the intention of this article, however, to authorize the issuance of funding and refunding bonds and notes as herein provided in cases where taxes for their payment is limited by the constitution, as well as in other cases. The general assembly hereby declares that an emergency exists by reason of the present extraordinary financial condition of the counties of this state, and hereby gives it special approval to the levying of taxes to the fullest extent permitted by the constitution for the purpose of paying bonds and notes issued hereunder to fund or refund or renew indebtedness now outstanding or incurred before July first, nineteen hundred and thirty-three, and hereby declares that the payment of such bonds and notes constitutes a special purpose: Provided, in case of funding or refunding bonds which do not mature in installments as provided in section 1334(33), a tax for the payment of the principal of the said bonds need not be levied prior to the fiscal year or years said bonds mature, unless it is so provided for in an order or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such order or resolution. (1927, c. 81, s. 41; 1931, c. 60, s. 60; 1933, c. 259, s. 2.)

Editor's Note.—

Public Laws 1933, c. 259, added the last proviso of this section as it now reads.

Art. 7B. Collection of County Taxes

§ 1334(46). Tax lists and books delivered to sheriff.

Cited in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843.

§ 1334(47). Sheriff to present full settlement for previous year and give bond.

For amendment applicable to commissions of the tax collector of Yancey County, see Public Laws of 1933, c. 184.

Art. 7C. County Fiscal Control

§ 1334(53). Title; definitions.

Cited in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843.

§ 1334(54). County accountant.

Editor's Note.—

Public Laws 1933, c. 295 repeals this section insofar as it applies to Harnett County and makes other provision for that county.

§ 1334(61). Supplemental budget showing.—As soon as practicable after the first Monday in July, and before any levy of taxes is made, the county accountant shall submit to the board a supplemental budget showing: (a) the amount of any increase or decrease in each item of (1) deficits and (2) unencumbered balances and (3) surplus revenues as reported by him in the budget estimate, and (b) the amount of miscellaneous revenues collected in the preceding year from sources other than taxation, this amount to be separately classified as to funds and functions, and (c) an estimate of the amount of taxes for the current fiscal year which will not be collected in the same year. Upon the submission of the figures showing increase or decrease in deficits, the appropriation resolution shall be deemed automatically amended by adding such increase to or subtracting such decrease from the amount appropriated for the fund or function to which such deficit pertains, and it shall be the duty of the clerk to record the amount of increase or decrease on the margin of the recorded appropriation resolution. The figures of the supplemental budget showing increases or decreases in unencumbered balances and surplus revenues, and showing the amount of miscellaneous revenues collected in the preceding fiscal year, from sources other than taxes, and showing the estimate of taxes uncollectible in the current fiscal year, shall not affect the appropriation resolutions, but shall be taken into consideration in the levy of taxes as hereinafter provided. (1927, c. 146, s. 10; 1933, c. 191.)

Editor's Note.—Public Laws of 1933, c. 191, deleted from the end of the first sentence a clause which required a mathematical computation in determining the estimate mentioned in (c).

§ 1334(76)a. Local units authorized to accept their bonds in payment of such judgments and claims.—The governing bodies of the various counties, cities, towns, and other units in the state are hereby authorized in their discretion to accept their own bonds, at par, in settlement of any and all claims which it may have against any person, firm, or corporation, on account of any money of said unit held in any failed bank or on account of any judgment secured against any person, firm, or corporation on account of the funds in said bank.

Upon an order issued by the governing au-

thorities of the county, city, town, or other unit, the treasurer of the county, city, town, or other unit is hereby authorized and empowered to accept the bonds of said unit in settlement of said claim, as set out in section 1, and to mark said claim satisfied in full, whether the same has been reduced to judgment or not. (1933, c. 376.)

Art. 9. County Prisoners

§ 1349(a). Arrest of escaped persons from penal institutions.—Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the state, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the state, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1.)

Art. 11. Consolidation, Annexation and Joint Administration of Counties

§ 1382(1). Contiguous counties may consolidate into one.—Any two or more counties which are contiguous, or which lie in a continuous boundary may, in the manner herein prescribed, consolidate so as to form a single county. Where any group of counties so situated desires to effect such consolidation, a uniform resolution to this effect, setting forth the name of the proposed new county, shall be adopted by the governing bodies thereof, which resolution shall call a special election to be held on a specified date which shall be the same in all of said counties but not less than sixty nor more than ninety days from the last date of the adoption of such resolution in any of said counties. Said resolution shall also specify what group of counties it is proposed to consolidate, the name of the new county thus to be formed, and the county seat thereof. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein, once a week for a period of six weeks prior to the date of said election. (1933, c. 193, s. 1.)

§ 1382(2). Election laws applicable.—The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the general assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed in the manner now prescribed by law governing elections for members of the general assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed consolidation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Consolidation
☐ Against Consolidation

Place a cross (x) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the result of said election to the governing bodies of all of the counties in said group, and each governing body shall cause the complete results of said election to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed consolidation, then said consolidation shall be declared to be in effect, and thereupon, the several counties shall stand abolished except as hereinafter provided, and the new county thus created shall for all purposes be constituted one of the counties of this state with all the rights, powers, and functions incident thereto under the general laws. If it appear that a majority in any one of said counties voted against the proposed consolidation, then said consolidation shall be declared to have failed for all purposes. (1933, c. 193, s. 2.)

§ 1382(3). New county board of elections.—In case such consolidation be effected, the county boards of elections of the counties thus consolidated, acting together as one board, shall for the time being serve as a temporary county board of elections for the new county thus created, until the expiration of the terms for which they were appointed by the state board of elections. Thereafter the state board of elections shall appoint for such new county a county board of elections consisting of three members, in the manner and for the term now prescribed by law. (1933, c. 193, s. 3.)

§ 1382(4). Special election for new county officers.—In case such consolidation be effected, then said temporary county board of elections shall immediately call and shall hold a special election in such new county, on a date not less than forty-five nor more than sixty days after the date on which said consolidation was voted into effect, for the purpose of electing for said new county all constitutional and other county and township officers, except justices of the peace, as now provided by law for counties throughout the state, including a board of county commissioners consisting of five members. No elections shall be held to fill any office theretofore existing in one or more of the group of counties thus consolidated if such office did not exist in each of said counties, but all of such offices peculiar to only a part of the counties brought into said consolidation shall be deemed abolished in respect to the new county. All constitutional county and township offices, all offices created for counties and townships by general laws, and all other offices in the group of counties thus consolidated, provided they existed

in each of said counties, are hereby created for the new county effected by such consolidation, with the same rights, powers, duties and functions pertaining to such offices under the existing law. In order that elections by townships may be conducted, the various township lines and names as they existed before consolidation shall continue in effect, and townships of the several counties shall be deemed townships of the new county until thereafter altered in the manner prescribed by law. (1933, c. 193, s. 4.)

§ 1382(5). Term of new officers; salaries.—All officers elected for the new county at said special election shall hold office until the next general election at which time their successors shall be elected for the regular term prescribed by law. The salaries of all officers elected for the new county at said special election shall be the same as those now fixed by law for such offices. In case the salaries of any officers in the counties thus consolidated were not uniform, then any officer elected for the new county at such special election shall be entitled to a salary equal to the highest salary paid for that particular office in any of said counties before such consolidation was effected. (1933, c. 193, s. 5.)

§ 1382(6). Retention of old officers till qualification of new.—Notwithstanding such consolidation is voted upon favorably, all the existing officers in each of said counties shall continue to function as theretofore and shall have full authority to carry on the regular business of their respective counties, receiving their regular compensation therefor, until the officers for said new county shall have been elected and are qualified, as provided in section 4 hereof; and pending said election and the organization of the government of the new county, the several counties thus consolidated shall, for the purpose of carrying on their regular business, continue to exist and to function as separate county governments as fully as if said consolidation had never been voted upon. As soon as the officers for said new county are elected and qualified, then all public offices in the separate counties thus consolidated shall stand abolished and said separate counties shall stand dissolved and shall cease to exist for any and all purposes. (1933, c. 193, s. 6.)

§ 1382(7). Powers and duties of new officers.—All officers elected for the new county shall become vested with all the rights, powers, duties, and functions which pertained to their respective offices in any one of the counties thus consolidated. It shall be the duty of all public officers theretofore serving in each of said counties forthwith to surrender and turn over to the corresponding officers of the new county all books, records, funds, and other property held by them in their respective offices. Said new county shall become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to each of said counties and shall have full power to collect and disburse any and all taxes, penalties, and other charges which had been assessed by or had become due to said counties prior to such consolidation. (1933, c. 193, s. 7.)

§ 1382(8). Transfer of books, records, etc.—All records, papers, files, funds, and the like held by the clerks of courts in any of said counties shall forthwith be turned over to corresponding officials in the new county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. Wherever counties thus consolidated lie in different judicial districts, the new county thus established shall become a part of that judicial district in which the larger portion of its territory lies. (1933, c. 193, s. 8.)

§ 1382(9). Liability for bonded indebtedness.—Any such new county thus established shall be liable for all of the bonded and other indebtedness of the separate counties so consolidated, and any and all rights which might have been enforced against any of said counties may be enforced against said new county as fully as though the proceeding were against the county originally liable. (1933, c. 193, s. 9.)

§ 1382(10). Justices of the peace and constables.—All justices of the peace and constables holding office at the time of such consolidation shall continue to serve as such in and for the new county thus established until the expiration of the terms for which they were elected or appointed, at which time, justices of the peace and constables may be elected and appointed for said new county in the manner now provided by law. Such consolidation shall in no wise effect the validity of any proceeding pending in the court of any justice of the peace in said counties. (1933, c. 193, s. 10.)

§ 1382(11). Representation in general assembly.—In the event such consolidation be thus effected, the consolidated county thereafter shall be entitled to the same representation in the house of representatives theretofore had by the several counties so consolidated until the next re-apportionment of the membership of the house of representatives by the general assembly. Nor shall such consolidation affect the existing lines of state senatorial or congressional districts or the representation therein. (1933, c. 193, s. 10½.)

§ 1382(12). Merging of one contiguous county with another authorized.—Wherever two counties are contiguous, and it is their mutual desire that one of said counties shall be annexed to and merged in the other, such annexation may be effected in the manner herein prescribed. The governing body of each of said counties shall adopt a uniform resolution setting forth the willingness of one of said counties to become annexed to and merged in the other pursuant to the authority of this act. Said resolution shall also call for a special election to be held on a specified date which shall be the same in both counties but not less than sixty nor more than ninety days from the last date on which said resolution was adopted in either of said counties. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein once a week for a period of six weeks prior to the date of said election. (1933, c. 194, s. 1.)

§ 1382(13). Election laws applicable. — The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for mem-

bers of the general assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed, in the manner now prescribed by law governing elections for members of the general assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed annexation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Annexation
☐ Against Annexation

Place a cross (x) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the results of said election to the governing body of both counties, and thereupon, the governing body of each county shall cause the results of the said election in both counties to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed annexation, then said annexation shall be declared to be in effect. If it appear that a majority of those voting in either of said counties voted against the proposed annexation, then said annexation shall be declared to have failed for all purposes. (1933, c. 194, s. 2.)

§ 1382(14). Dissolution of county merged. — In the event such annexation shall be voted upon favorably in each of said counties, then the county which was voted to be annexed to the other shall thereupon stand dissolved and abolished, and its territory thereby shall be transferred to and for all purposes shall become a part of the annexing county, and townships of the annexed county shall be deemed townships of the annexing county until thereafter altered in the manner prescribed by law. (1933. c. 194, s. 3.)

§ 1382(15). Abolition of offices in merged county; transfer of books, records, etc. — In the event such annexation be thus effected, all public offices except those of justice of the peace and constable, in the county so annexed, shall stand abolished, and it shall be the duty of those who held such offices before annexation to turn over to the corresponding officers of the annexing county all books, records, funds, and other property theretofore held by them in their official capacity, and said corresponding officers of the annexing county shall be vested with all the rights of said offices thus abolished, and shall be entitled to the custody and control of all books, records, funds, and other property formerly held by the incumbents of such abolished offices. (1933, c. 194, s. 4.)

§ 1382(16). Court records transferred; justices of the peace and constables hold over.—In the event such annexation be thus effected, all records, papers, files, funds, and the like held by clerks of courts in the annexed county shall forthwith be turned over to corresponding clerks in the annexing county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. All justices of the peace and constables holding office in the annexed county at the time of such annexation shall continue to serve as justices of the peace and constables of the annexing county in and for the new township, until the expiration of the terms for which they were elected or appointed, in as full a measure as if such annexation had not occurred, and the validity of proceedings pending before such justices of the peace at the time of annexation shall in no wise be affected thereby. Upon the expiration of their terms, justices of the peace and constables shall be elected or appointed in such annexed territory in the manner prescribed by law. Any other officers provided by the general law for a township shall be elected in the new territory at the next general election following such annexation. (1933, c. 194, s. 5.)

§ 1382(17). Rights of annexing county.—In the event such annexation be thus effected, the annexing county shall forthwith:

(a) Become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to the annexed county, and shall have full power to collect and disburse any and all taxes, penalties and other charges which had been assessed by or had become due to the annexed county prior to such annexation. Said annexing county shall also be liable for all bonded and other indebtedness of the annexed county, and any and all rights which might have been enforced against said annexed county may be enforced against the annexing county as fully as though the proceeding had been against the county thus annexed;

(b) Said annexing county shall treat said annexed county as a township or division of said annexing county, and said annexing county shall forthwith be vested with title to all property of every kind and character, real, personal and mixed, belonging to said annexed county, and have full power to collect any and all taxes, penalties and other charges which have been assessed by or become due to the annexed county prior to the annexation, and shall disburse the same for the payment of obligations of said annexed county; and the bonded indebtedness of said annexed county shall be a charge only on the property of the township or division of said annexing county which was comprised in the annexed county, and taxes for the payment of same shall be levied only on property within said township or division. And the property in said township or division constituting the property in the annexed county shall not be liable for any of the bonded or other indebtedness of the county annexing it, existing prior to

said annexation, and no taxes shall be levied on the property of said township for the payment of same. (1933, c. 194, s. 6.)

§ 1382(18). Plan of government.—At the time of entering the resolutions as set out in section 1382(12), the counties in said resolution shall specifically provide whether plan A or plan B, as set out in section 1382(17) shall govern the two counties as to the bonded indebtedness. (1933, c. 194, s. 7.)

§ 1382(19). Membership in general assembly.—In the event such annexation be thus effected, the annexing county thereafter shall be entitled to the same representation in the house of representatives theretofore had by the annexed and annexing counties until the next reapportionment of the membership of the house of representatives by the general assembly. Nor shall such annexation affect the existing lines of state senatorial or congressional districts or the representation therein. (1933, c. 194, s. 7½.)

§ 1382(20). Joint administrative functions of contiguous counties.—Any two or more counties which are contiguous or which lie in a continuous boundary are authorized, whenever it is deemed for their best interests, to enter into written agreements for the joint performance of any and all similar administrative functions and activities of their local governments through consolidated agencies, or by means of institutions or buildings jointly constructed, owned and operated.

Such written agreement shall set forth what functions or activities of local government shall thus be jointly carried on, and shall specify definitely the manner in which the expenses thereof shall be apportioned and how any fees or revenue derived therefrom shall be apportioned. Upon such agreement being ratified by the governing bodies of the counties subscribing thereto, it shall be spread upon their respective minutes.

Whenever any such agreement has been entered into, then the consolidated agency or institution set up to function jointly for the counties which are parties thereto, shall be vested with all the powers, rights, duties and functions theretofore existing by law in the separate agencies so consolidated.

No such agreement shall be entered into for a period of more than two years from the date thereof, but such agreements may be renewed for a period not exceeding two years at any one time.

In the same manner and subject to the same provisions as herein set out, any municipality may enter into such an agreement with the county in which it is situated, or may join with other municipalities in the same county in making such an agreement with said county, to the end that the functions of local government may, as far as practicable, be consolidated, provided this section shall not apply to Guilford county or the municipalities in said county.

It is the purpose of this section to bring about efficiency and economy in local government through a consolidation of administrative agencies thereof, and to effectuate this purpose this section shall be liberally construed. (1933, c. 195, s. 1.)

CHAPTER 26
COUNTY TREASURER

§ 1389. Local: Commissioners may abolish office and appoint bank.—In the counties of Bladen, Carteret, Chatham, Cherokee, Chowan, Craven, Edgecombe, Granville, Hyde, Madison, Mitchell, Montgomery, Martin, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Tyrrell, Transylvania, and Union, the board of county commissioners is hereby authorized and empowered, in its discretion, to abolish the office of county treasurer in the county; but the board shall, before abolishing the office of treasurer, pass a resolution to that effect at least sixty days before any primary or convention is held for the purpose of nominating county treasurer. When the office is so abolished, the board is authorized, in lieu of a county treasurer, to appoint one or more solvent banks or trust companies located in its county as financial agent for the county, which bank or trust company shall perform the duties now performed by the treasurer or the sheriff as ex officio treasurer of the county. Such bank or trust company shall not charge nor receive any compensation for its services, other than such advantages and benefit as may accrue from the deposit of the county funds in the regular course of banking, or such sum as may be agreed upon as compensation between said board of county commissioners of Transylvania county and Chatham county and such bank or banks as may be designated by said board of county commissioners. This alternative shall apply only to Chatham and Transylvania counties: Provided, in said county of Chatham the county commissioners of said county shall fix the compensation to be allowed said bank designated as said financial agent of said county which compensation shall not exceed the sum of five hundred dollars per annum and said bank is to furnish, without cost to the county, a good and sufficient bond as such financial agent.

The bank or trust company, appointed and acting as the financial agent of its county, shall be appointed for a term of two years, and shall be required to execute the same bonds for the safe keeping and proper accounting of such funds as may come into its possession and belonging to such county and for the faithful discharge of its duties, as are now required by law of county treasurers. (1913, c. 142; Ex. Sess. 1913, c. 35; P. L. 1915, cc. 67, 268, 458, 481; 1919, c. 48; 1925, c. 46; 1933, c. 63.)

Editor's Note.—Public Laws 1933, c. 63, makes the alternative applicable in Chatham County and inserts the proviso relative to that county. Section 2 of c. 63 validates the acts of the Bank of Pittsboro as financial agent for the County of Chatham.

CHAPTER 27
COURTS

SUBCHAPTER I. SUPREME COURT

Art. 2. Jurisdiction

§ 1410. Procedure to enforce claims against the state.

In General.—

The Supreme Court, as a rule, will consider only such claims as present serious questions of law and will not take the burden of passing upon those claims which involve mainly

issues or questions of fact, although in proper cases the Court may order that issues of fact be tried in the Superior Court, as provided in this section. Cohoon v. State, 201 N. C. 312, 314, 160 S. E. 183.

The recommendatory or original jurisdiction of the Court is confined to claims in which it is supposed that an opinion on an important question of law would be of aid to the General Assembly in determining the merits of a claim against the State. This is true notwithstanding the broad provision of this section that any person having any claim against the State may commence the proceeding by filing his complaint. Id.

The Supreme Court is given original jurisdiction to hear claims against the State, but its decisions are merely recommendatory, and no process in the nature of execution shall issue thereon.

The procedure thus authorized is prescribed by this section, but this procedure must not be construed as exceeding the power conferred upon the Supreme Court by the organic law. Id.

§ 1412. Power to render judgment and issue execution.

III. EFFECT OF DECISION.

B. Power of Superior Court.

Motion for New Trial.—Where the Supreme Court has affirmed the judgment on an appeal in a criminal case and the judgment has been certified to the clerk of the Superior Court, under this section and § 1417, the case is in the latter court for the purpose of the execution of the sentence, and a motion for a new trial may be there entertained for disqualification of jurors and for newly discovered evidence. State v. Casey, 201 N. C. 620, 161 S. E. 81; State v. Cox, 202 N. C. 378, 162 S. E. 907.

§ 1414. Power of amendment and to require further testimony.

III. PARTIES.

Personal Representative.—Where a claim under the Workmen's Compensation Act has been litigated in the name of the deceased it is not permissible under this section for the personal representative of the deceased, hereafter to be appointed, to come in and make himself a party to the proceeding in the Supreme Court. Hunt v. State, 201 N. C. 37, 39, 158 S. E. 703.

§ 1416. Opinions and judgments to be in writing.

Discretion of Court.—

A judgment may be affirmed without extended opinion. Rogen v. Luff, 202 N. C. 819, 161 S. E. 924.

Applied, opinion deemed necessary, in Wootton v. McGinnis, 201 N. C. 841, 161 S. E. 926; Thrash v. Roberts, 201 N. C. 843, 161 S. E. 925.

§ 1417. Certificates to superior courts; execution for costs; penalty.

See notes to § 1412.

Applied in Commissioner of Banks v. Harvey, 202 N. C. 380, 162 S. E. 894.

SUBCHAPTER II. SUPERIOR COURTS

Art. 4. Organization

§ 1435(d). Governor to make appointment of four special judges.

Editor's Note.—For a similar act providing for appointment of special judges on or before July first 1933, see Public Laws 1933, c. 217.

Art. 5. Jurisdiction

§ 1437. Concurrent jurisdiction.

Applied in State v. Everhardt, 203 N. C. 610, 166 S. E. 738.

Art. 6. Judicial Districts and Terms of Court

§ 1443. Terms of court.—A superior court shall be held by a judge thereof at the courthouse in each county. The twenty judicial districts of the state shall be composed of the counties designated in this section, and the superior courts in the several counties shall be opened and held in each year at the times herein set forth. Each court shall continue in session one week, and be for the trial of criminal and civil cases, except as otherwise provided, unless the business thereof shall be sooner disposed of. Each county shall have the number of regular weeks of superior court as set out in this section. (1913, cc. 63, 196.)

Eastern Division

First District

Pasquotank—Eighth Monday before the first Monday in March for the trial of civil cases only; third Monday before the first Monday in March to continue for two weeks, the first week for the trial of civil cases only and the second week for the trial of criminal cases only; second Monday after the first Monday in March for the trial of civil cases only; ninth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; thirteenth Monday after the first Monday in March for the trial of criminal cases only; fourteenth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; second Monday after the first Monday in September for the trial of civil cases only; fifth Monday after the first Monday in September to continue for two weeks for the trial of civil cases only; ninth Monday after the first Monday in September to continue for two weeks, the first week for the trial of civil cases only and the second week for the trial of criminal cases only. (1913, c. 196; Ex. Sess., 1913, c. 51; 1921, c. 105; 1923, c. 232; 1929, c. 167; 1933, c. 129.)

Perquimans—Seventh Monday before the first Monday in March, for civil cases only, for which term a special judge to be assigned by the governor; sixth Monday after the first Monday in March; eighth Monday after the first Monday in September. 1913, c. 196; Ex. Sess., 1913, c. 51; 1931, c. 6; 1933, c. 286.)

Chowan—Fourth Monday after the first Monday in March; first Monday after the first Monday in September; fifteenth Monday after the first Monday in September. (1913, c. 196; 1931, c. 87; 1933, c. 456.)

Tyrrell—Seventh Monday after the first Monday in March; fourth Monday after the first Monday in September, and for this term a special Judge may be assigned; fourth Monday before the first Monday in March, for civil cases only. Upon recommendation of the local bar, the board of commissioners for the county of Tyrrell, at their option, may abolish and suspend the opening and holding, in any year, of the term above provided for the week commencing on the fourth Monday before the first Monday in March, by notifying the governor and the judge scheduled to hold said term, at least thirty days prior to the date for opening same, that such term of court is not desired. (1913, c. 196; Ex. Sess. 1913, c. 51; 1919, c. 128, s. 1; Ex. Sess. 1920, c. 23, s. 1; 1921, c. 83; Ex. Sess. 1921, c. 19; 1923, c. 124; 1927, c. 23; 1931, c. 92; 1933, c. 126.)

Beaufort—Seventh Monday before the first Monday in March for two weeks, the first week for criminal cases only, and the second week for criminal and civil cases; second Monday before the first Monday in March for two weeks for

civil cases only; second Monday after the first Monday in March for criminal cases only, no grand jury to be drawn for this term; fifth Monday after the first Monday in March for civil cases only; ninth Monday after the first Monday in March for two weeks for civil cases only; sixth Monday before the first Monday in September for capital felonies and jail cases and submissions and consent judgments and decrees in criminal causes and for trials of civil cases; fourth Monday after the first Monday in September to continue for two weeks for civil cases only; ninth Monday after the first Monday in September for criminal cases and consent trials and decrees in civil cases; thirteenth Monday after the first Monday in September for civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 51; 1919, c. 128, ss. 3, 4; 1927, c. 111; 1931, cc. 4, 8, 87; 1933, c. 3; c. 456, s. 2.)

Second District

Nash—Fifth Monday before the first Monday in March; second Monday before the first Monday in March, to continue for two weeks; first Monday after the first Monday in March; seventh Monday after the first Monday in March, to continue for two weeks; twelfth Monday after the first Monday in March; first Monday before the first Monday in September; fifth Monday after the first Monday in September; twelfth Monday after the first Monday in September, to continue for two weeks. (1913, c. 196; 1915, c. 63; 1919, c. 133; Ex. Sess. 1921, c. 108; 1923, c. 237; 1924, c. 46; 1933, c. 145.)

Third District

Northhampton—Fourth Monday after the first Monday in March; eighth Monday after the first Monday in September, each to continue two weeks; first Monday in August, the first Monday in September to continue for one week, for the trial of civil cases only and for this term of court the governor is hereby directed to appoint a judge to hold the same from among the regular or emergency judges; fourteenth Monday after the first Monday in September to continue for one week, for the trial of civil cases only. (1913, c. 196; 1929, cc. 123, 244; 1933, c. 409.)

Fourth District

Johnston—First Monday after the first Monday in March; third Monday before the first Monday in September, for criminal cases only; also the first Monday in March; the third Monday before the first Monday in March; sixth Monday after the first Monday in March; and sixth Monday after the first Monday in September, each for one week for criminal and civil cases; and the eighth Monday before the first Monday in March, two weeks for civil cases; and ninth Monday after the first Monday in September, two weeks for civil cases; fourteenth Monday after the first Monday in September, to continue for two weeks; second Monday before the first Monday in March; seventh Monday after the first Monday in March; and third Monday after the first Monday in September, each to continue for two weeks; and the last three terms for civil cases only; sixth Monday after the first Monday in March for the trial of criminal cases only. (1913, c. 196; 1927, c. 190; 1929, c. 208; 1933, c. 81.)

Sixth District

Lenoir—Sixth Monday before the first Monday in March, to continue for one week, for the trial of criminal cases; second Monday before first Monday in March to continue for two weeks, for the trial of civil cases only; fifth Monday after first Monday in March for the trial of criminal cases or civil cases, or both, to continue for one week; tenth Monday after first Monday in March, to continue for two weeks for the trial of civil cases only; fourteenth Monday after first Monday in March, to continue for two weeks for the trial of civil cases only; sixteenth Monday after first Monday in March for the trial of criminal cases only; second Monday before first Monday in September, to continue for one week for the trial of criminal or civil cases, or both; third Monday after first Monday in September, to continue for one week for trial of civil cases only; sixth Monday after first Monday in September, for the trial of civil or criminal cases, or both, to continue for one week; ninth Monday after first Monday in September, to continue for two weeks for the trial of civil cases only; fourteenth Monday after first Monday in September, to continue for one week for the trial of criminal or civil cases, or both, and for this term of court, the governor is hereby directed to appoint a judge to hold the same from among the regular or special judges. (1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 240; 1917, c. 13; 1931, c. 271; 1933, c. 234, s. 1.)

Duplin—Eighth Monday before first Monday in March, to continue for two weeks, for the trial of civil cases only; fifth Monday before first Monday in March, to continue for one week, for the trial of criminal cases; first Monday after first Monday in March, to continue for two weeks, for the trial of civil cases only; twelfth Monday after first Monday in March, to continue for two weeks, the first week of which shall be for the trial of criminal cases or civil cases, or both, and the second week for the trial of civil cases exclusively; sixth Monday before the first Monday in September, to continue for one week, for the trial of criminal cases only; first Monday before first Monday in September, to continue for two weeks, for the trial of civil cases only; fourth Monday after first Monday in September, to continue for one week, for the trial of criminal cases; thirteenth Monday after first Monday in September, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for trial of civil cases exclusively.

At criminal terms of the superior court in the county of Duplin, uncontested divorce cases may be tried and the court may make any order, judgment, or decree respecting the confirmation of judicial sales. (1913, c. 196; Ex. Sess. 1913, c. 53; 1915, c. 240; Ex. Sess. 1920, c. 81; Ex. Sess. 1921, cc. 78, 79; 1931, c. 271; 1933, c. 234, s. 1.)

Onslow—First Monday in March, to continue for one week, for the trial of criminal cases, or civil cases, or both; sixth Monday after first Monday in March, to continue for two weeks, for the trial of civil cases only; seventh Monday before first Monday in September, to continue for one week, for the trial of civil cases and jail cases, in accordance with chapter three hundred forty-one of the Public Laws of one thousand nine hundred

thirty-one; fifth Monday after the first Monday in September, to continue for one week, for the trial of criminal and civil cases; eleventh Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases. (Ex. Sess. 1913, c. 75; 1915, c. 240; Ex. Sess. 1921, c. 78, s. 1; 1927, c. 179, s. 1; 1933, c. 234, s. 1.)

The July term of the superior court for Onslow County, is hereby authorized, in the discretion of the board of county commissioners signified by resolution duly adopted in apt time, to try any or all state cases which involve defendants or witnesses confined in jail to await trial. In the event such trials are ordered, by such resolution, the board of county commissioners shall cause to be drawn and summoned in the usual manner sufficient jurors to provide for the empaneling of a grand jury and to also provide for a trial jury or juries. (1931, c. 341.)

Sampson—Fourth Monday before first Monday in March, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for the trial of civil cases exclusively; third Monday after first Monday in March, to continue for two weeks, for the trial of civil cases only; eighth Monday after the first Monday in March, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for the trial of civil cases exclusively; fourth Monday before the first Monday in September, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for the trial of civil cases exclusively; first Monday after first Monday in September, to continue for two weeks, for the trial of civil cases only; seventh Monday after first Monday in September, to continue for two weeks, the first week of which shall be for the trial of civil cases or criminal cases, or both, and the second week for the trial of civil cases exclusively. (1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 240; Ex. Sess. 1921, c. 79, s. 2; 1927, c. 179, s. 1(b); 1933, c. 234, s. 1.)

At criminal terms of superior court in the sixth judicial district, civil actions which do not require a jury may be heard by consent; and at criminal terms in the county of Lenoir uncontested divorce cases may be tried by the court and a jury in all respects as at civil terms, and any order, judgment or decree may be entered in a civil action not requiring a jury trial. (1915, c. 240, s. 3; 1917, c. 13; 1933, c. 234, s. 2.)

Eighth District

Pender—Eighth Monday after the first Monday in September to continue two weeks for the trial of civil and criminal cases; third Monday after the first Monday in March to continue two weeks for the trial of civil and criminal cases; the seventh Monday before the first Monday in September, to continue one week for the trial of civil and criminal cases. (1913, c. 196; 1921, c. 14; 1933, c. 153.)

Ninth District

Bladen—Eighth Monday before the first Monday in March for the trial of civil cases, and the trial of criminal cases where bills have been found, and cases on appeal from the recorder's court and courts of justices of the peace; the first Monday after the first Monday in March for the trial of criminal cases only; the eighth Monday after the first Monday in March for the trial of civil cases only; the fourth Monday before the first Monday in September for the trial of civil cases only; the second Monday after the first Monday in September for the trial of criminal cases only. Said courts to continue for one week unless the business is sooner disposed of, and grand juries to be summoned only for the March and September terms of court: Provided, that if the necessity should arise, and the county commissioners of Bladen County should so determine and order, a grand jury may be summoned by said commissioners for the January terms of court; and such grand jury so summoned shall have, perform and exercise all of the powers and duties of regular grand juries herein provided for the March and September terms of court. At any term for the trial of criminal cases, civil cases may be tried by consent. (1913, c. 196; 1915, c. 110; 1927, c. 166, s. 1; 1929, c. 27, s. 1; 1931, c. 96; 1933, c. 77.)

If it shall appear to the board of county commissioners of Bladen County at any time before the jury is summoned for a term of superior court of Bladen County that there is not sufficient business to justify a term of such court or that there are no cases of sufficient importance to warrant the expense of a term of such court, the said board of commissioners are authorized to order that the jury for such term be not summoned, and all cases which would come on for trial at such term shall be continued. In case of the continuance of a term of superior court of Bladen County as herein provided the board of commissioners of Bladen County shall notify, or cause to be notified, the solicitor of the district, the judge holding the courts of the district and the court stenographer of their action. (1933, c. 119.)

Hoke—Sixth Monday before the first Monday in March; seventh Monday after the first Monday in March; second Monday before the first Monday in September, to continue for one week; and tenth Monday after the first Monday in September. The commissioners of Hoke County, whenever in their discretion the best interests of the county demand it, shall have and are hereby granted the power and authority, by order, to abrogate, in any year, the holding of any one of the above set forth terms of court, and when said term is so abrogated, thirty days' notice of the same shall be given by said commissioners by the publication of same in a newspaper published in said county and at the court house door: Provided, that in the event the regular term at which the grand jury is selected shall be the term abrogated then the grand jury shall continue to serve until the following term of court at which time a new grand jury shall be selected. (1913, c. 196; 1917, c. 233; Ex. Sess. 1921, c. 81; 1927, c. 155; 1931, c. 96; 1933, c. 333.)

Western Division

Eleventh District

Surry—Seventh Monday after the first Monday in March, second Monday in July, each to continue for two weeks; fourth Monday before the first Monday in March; fourth Monday after the first Monday in September, to continue for

two weeks for the trial of criminal and civil causes. And there shall be a two weeks' term of court, beginning the first Monday in February, for the trial of criminal and civil causes. (1913, c. 196; Ex. Sess. 1913, c. 34; Ex. Sess. 1921, c. 9; 1931, c. 251; 1933, cc. 180, 413.)

Forsyth—The terms of superior court for Forsyth County shall each continue for two weeks, beginning on Monday as follows: Eighth Monday before the first Monday of March, for the trial of criminal and civil cases; sixth Monday before the first Monday of March, for the trial of civil cases only; fourth Monday before the first Monday of March, for the trial of criminal and civil cases; second Monday before the first Monday of March, for the trial of civil cases only; first Monday of March, for the trial of criminal and civil cases; second Monday after the first Monday of March, for the trial of civil cases only; fourth Monday after the first Monday of March, for the trial of criminal and civil cases; sixth Monday after the first Monday of March for the trial of civil cases only; ninth Monday after the first Monday in March, for the trial of criminal and civil cases; eleventh Monday after the first Monday in March, for the trial of civil cases only; thirteenth Monday after the first Monday of March, for the trial of criminal and civil cases; sixteenth Monday after the first Monday of March, for the trial of civil cases only; eighth Monday before the first Monday of September, for the trial of criminal and civil cases; first Monday before the first Monday of September, for the trial of criminal and civil cases; third Monday after the first Monday of September, for the trial of civil cases only; fifth Monday after the first Monday of September, for the trial of criminal and civil cases; sixth Monday after the first Monday of September, for the trial of civil cases only; ninth Monday after the first Monday of September, for the trial of criminal and civil cases; eleventh Monday after the first Monday of September, for the trial of civil cases only; thirteenth Monday after the first Monday of September, for the trial of criminal and civil cases. (1913, c. 196; 1917, c. 169; 1919, c. 87; 1923, c. 151; 1927, c. 197; 1929, c. 131; 1933, cc. 231, 306. P. L. 1917, c. 375, provides for a criminal calendar.)

The governor shall assign an emergency or any other judge to hold any of the terms of the superior court of Forsyth County when the judge holding courts in said district is unable to hold said terms. (1929, c. 131.)

Rockingham—Sixth Monday before the first Monday in March, to continue for two weeks, for criminal cases only; tenth Monday after the first Monday in March; fourth Monday before the first Monday in September, to continue for two weeks, for criminal cases only; first Monday before the first Monday in March, to continue for two weeks, for civil cases only; sixth Monday after the first Monday in March, for civil cases only; fourteenth Monday after the first Monday in March, to continue for two weeks, for civil cases only; first Monday after the first Monday in September, to continue for two weeks, for civil cases only; eleventh Monday after the first Monday in September, to continue for two weeks, for civil cases only.

The governor shall assign an emergency or any other judge to hold any of the terms of the superior court of Rockingham County when the judge holding courts in the eleventh district is unable to hold said terms. (1913, c. 196; Ex. Sess. 1913, c. 49; 1917, c. 107; 1933, cc. 45, 264. P. L. 1915, c. 60, provides for a calendar in Rockingham county.)

Caswell—Fourth Monday after the first Monday in March; thirteenth Monday after the first Monday in September; ninth Monday after the first Monday in March for the trial of civil cases; sixth Monday after the first Monday in September for the trial of civil cases.

The commissioners of Caswell County, whenever in their discretion the best interests of the county demand, may, by order, abrogate in any year the holding of that term of court which convenes on the second Monday before the first Monday in September; and when the term is so abrogated, thirty days' notice of the same shall be given by the commissioners by publication in same newspaper published in Caswell County and at the courthouse door and four other public places in the county. (1913, c. 196; 1919, c. 289; 1927, c. 202; 1933, c. 45, s. 1.)

Twelfth District

Davidson—Fifth Monday before the first Monday in March, one week; ninth Monday after the first Monday in March, one week; sixteenth Monday after the first Monday in March, one week; second Monday before the first Monday in September, one week, for the trial of criminal cases only.

Second Monday before the first Monday in March, two weeks; twelfth Monday after the first Monday in March, two weeks; first Monday after the first Monday in September, two weeks; eleventh Monday after the first Monday in September, two weeks mixed; for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 14; 1921, c. 42; 1923, c. 169; 1933, cc. 14, 404.)

In addition to the terms of court now provided by law to be held in Davidson County, the following terms of court shall be opened and held in each year in the manner and at the times herein set forth, to-wit: To convene on the first Monday in April of each year and to continue for two weeks for the trial of civil cases only. To convene on the first Monday in October of each year and to continue for two weeks for the trial of civil cases only. If the judge regularly assigned to the district in which said county is situate be unable because of another regular term of court in said district, or for other cause, to hold any term of court provided in section one hereof, the governor may appoint a judge to hold such term from among the regular or emergency judges. (1931, c. 114.)

Thirteenth District

Union—Fifth Monday before the first Monday in March, for criminal cases; third Monday after the first Monday in March, for civil cases; fifth Monday before the first Monday in September, for criminal cases. Sixth Monday after the first Monday in September, to continue for two weeks, the second week for civil cases only; second Monday before the first Monday in March, and second Monday before the first Monday in September, each to continue for two weeks; ninth Monday

after the first Monday in March; the last three terms for civil cases only.

In the first two terms of court for Union County for the trial of criminal cases, if it shall appear to the clerk of the superior court that the criminal docket will not be sufficient to take up the entire term, he may make or cause to be made a calendar of civil cases as is made at other terms, and such cases shall be tried at such term in the same manner as if it were a civil term.

If it shall appear to the county commissioners for the county of Union, prior to the drawing of a jury or grand jury for any criminal term of court, that there is no prisoner in jail in the county or that the criminal docket at such term is not sufficient to justify the holding of the term, then the clerk is not to make or cause to be made a calendar of civil cases to be tried at said term, and the county commissioners, within their discretion, may not draw a jury or grand jury for such term, and notice shall be given immediately to the judge not to hold said court.

If it shall appear to the board of commissioners of Union County, thirty days before the beginning of the term held the third Monday after the first Monday in March that the condition of the criminal docket, and the number of prisoners in jail, make it necessary that said March term should be used as a criminal term, then said board of commissioners are hereby authorized and empowered within their discretion to draw a grand jury for said term, and to give thirty days' notice in some local paper that criminal cases would be tried at said term, and all criminal process and undertakings returnable to a subsequent term shall be returnable to said March term. (1913, c. 196; Ex. Sess. 1913, c. 22; 1915, c. 72; 1917, cc. 28, 117; 1921, c. 55.)

If it shall appear to the county commissioners for the county of Union, prior to the drawing of a jury for the civil term of court to be held the third Monday after the first Monday in March, and/or the civil term to be held on the ninth Monday after the first Monday in March, that the condition of the civil docket does not justify holding said term, then the clerk shall not make, or cause to be made, a calendar of civil cases to be tried at the said term and the county commissioners may not draw a jury for such term and notice shall be given immediately to the judge not to hold said court. (1933, c. 112.)

Scotland—First Monday after the first Monday in March, for one week for the trial of both criminal and civil cases; eighth Monday after the first Monday in March for one week for the trial of civil cases only; thirteenth Monday after the first Monday in March for one week for the trial of criminal and civil cases; eighth Monday after the first Monday in September for one week for the trial of civil cases only; twelfth Monday after first Monday in September for two weeks for the trial of criminal and civil cases. (1913, c. 196; Ex. Sess. 1913, c. 22; 1917, c. 105; 1923, c. 178; 1933, c. 116.)

Stanly—Fourth Monday before the first Monday in March to continue for two weeks, for civil cases only; fourth Monday after the first Monday in March; tenth Monday after the first Monday in March, for civil cases only; eighth Monday before the first Monday in September; first Monday in September to continue for two weeks, for civil cases only; fifth Monday after the first Monday in September, for civil cases only; eleventh Monday after the first Monday in September.

Each of the terms set for the trial of criminal cases shall also be the return term for such civil process as may be returnable at term; and for the hearing of motions in civil actions; and for the trial of civil cases requiring a jury where issues are drawn by consent of the parties thereto; and for the trial of actions for divorce and other actions in which no answer has been filed when the time for filing the answer has expired.

The governor shall assign an emergency, or any other judge, to hold any of the terms of the superior court for Stanly County when the judge regularly holding the courts in said district for any cause is unable to hold any of said terms. (1913, c. 196; 1933, c. 240.)

Fifteenth District

Rowan—Third Monday before the first Monday in March, to continue for two weeks; first Monday in March, to continue for one week, for civil cases only; ninth Monday after the first Monday in March, to continue for two weeks; first Monday after the first Monday in September, to continue for two weeks; fifth Monday after the first Monday in September, for civil cases only; eleventh Monday after the first Monday in September, to continue for two weeks. (1913, c. 196; Ex. Sess. 1913, c. 5; 1921, c. 31.)

There shall be held in Rowan County two additional terms of the superior court as follows, to-wit: On the sixth Monday after the first Monday in September to continue for one week for the trial of civil cases only; on the first Monday after the first Monday in March to continue for one week for the trial of civil cases only. This act shall not be construed to repeal or abolish any terms of court now provided for the fifteenth judicial district, but in case of conflict of any of the regularly established terms of the courts of the fifteenth judicial district with the terms above set out, the said terms of the court herein established shall be considered special terms and the governor may assign a special or emergency judge to hold said terms of superior court of Rowan County when the judge holding the regular terms of court in the district is unable to hold said terms. (1933, c. 274.)

Cabarrus—Eighth Monday before the first Monday in March, to continue for two weeks, for the trial of criminal and civil cases; first Monday before the first Monday in March, to continue for one week, for civil cases only; seventh Monday after the first Monday in March, to continue for two weeks, for criminal and civil cases; fourteenth Monday after the first Monday in March, to continue for two weeks, for civil cases only; third Monday before the first Monday in September, to continue for three weeks, for criminal and civil cases; sixth Monday after the first Monday in September, to continue for two weeks, for criminal and civil cases. (1913, c. 196; 1921, c. 121, s. 2; 1933, c. 76.)

Sixteenth District

Catawba—Seventh Monday before the first Monday in March, to continue for two weeks and

for the trial of civil cases only, fourth Monday before the first Monday in March, to continue for two weeks; ninth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; ninth Monday before the first Monday in September, to continue for two weeks; first Monday in September, to continue for two weeks, for the trial of civil cases only; tenth Monday after the first Monday in September, to continue for one week, for the trial of criminal cases only; thirteenth Monday after the first Monday in September to continue for one week and for the trial of civil cases only. Fifth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; eleventh Monday after the first Monday in September, to continue for one week, for the trial of civil cases only: Provided, that the board of county commissioners may by resolution, adopted not less than 30 days prior to the convening of either of the last two courts, determine that the holding of such court is not necessary and cancel the same, in which case notice of such action shall immediately be given to the governor to the end that the judge assigned to said court may be relieved from such assignment. (1913, c. 196; Ex. Sess. 1913, c. 7; Ex. Sess. 1921, c. 47; c. 90, s. 1; 1923, c. 18; 1925, c. 13, ss. 1, 2; 1933, c. 311.)

Watauga—Seventh Monday after the first Monday in March, to continue for two weeks; second Monday after the first Monday in September, to continue for one week. (1913, c. 196; 1921, c. 166; 1931, c. 424; 1933, c. 250, s. 2.)

Seventeenth District

Alexander—Second Monday before the first Monday in March; first Monday in September, to continue for two weeks. (1913, c. 196; 1921, c. 166; 1933, c. 250, s. 4.)

Mitchell—Third Monday after the first Monday in March, two weeks; sixth Monday before the first Monday in September, two weeks for civil cases only; eighth Monday after the first Monday in September, each to continue for two weeks: Provided, that the board of commissioners of Mitchell County may in their discretion, at their regular meeting held on the first Monday in July in any year dispense with the second week of said term of court beginning the sixth Monday before the first Monday in September. (1913, c. 196; 1921, c. 166; Ex. Sess. 1921, c. 33; 1927, c. 168; 1929, c. 10; 1933, c. 250, s. 3.)

Avery—Fifth Monday after the first Monday in March, for two weeks, the first week for the trial of criminal cases only and the last two weeks for civil cases only; ninth Monday before the first Monday in September, three weeks for civil cases only; sixth Monday after the first Monday in September, for two weeks, the first week for the trial of criminal cases only and the second week for civil cases only. (1913, c. 196; 1915, c. 169; 1921, c. 166; Ex. Sess. 1921, c. 33; 1923, c. 90; 1931, c. 84; 1933, cc. 152, 250, s. 1.)

Eighteenth District

Henderson—Seventh Monday before the first Monday in March, to continue for two weeks for the trial of civil cases only; first Monday in March, fifth Monday after the first Monday in September, each to continue for two weeks; eighth Monday after the first Monday in March, twelfth Monday after the first Monday in March, eleventh Monday after the first Monday in September, each to continue for two weeks for the trial of civil cases only. (1913, c. 196; 1917, c. 115; 1919, c. 162; Ex. Sess. 1921, c. 24; 1923, c. 204; 1927, c. 207, s. 1; 1933, c. 117.)

Rutherford—Tenth Monday after the first Monday in March, ninth Monday after the first Monday in September, each to continue for two weeks; sixth Monday after the first Monday in March, third Monday after the first Monday in September each to continue for two weeks for the trial of civil cases only. (1913, c. 196; 1915, c. 116; Ex. Sess. 1921, c. 24; 1927, c. 207, s. 1; 1933, c. 232, s. 1.)

Yancey—Second Monday after the first Monday in March, seventh Monday after the first Monday in September to continue for two weeks; third Monday after the first Monday in September to continue for two weeks for the trial of civil cases only; fifth Monday after the first Monday in March to continue for one week for the trial of civil cases only, that the board of commissioners of Yancey County may in the exercise of its discretion dispense with this term of court. (1913, c. 196; Ex. Sess. 1913, c. 38; 1915, c. 71; Ex. Sess. 1920, c. 4; Ex. Sess. 1921, c. 24; 1923, c. 222; 1927, c. 207, s. 1; 1929, c. 173.)

The regular October term of the superior court of Yancey County shall be for trial of civil cases only, and the January term shall be a mixed term for civil and criminal cases. This act shall be in force and effect from first day of March, one thousand nine hundred thirty-four. (1933, c. 478.)

Polk—Fourth Monday before the first Monday in March, first Monday before the first Monday in September, each to continue for two weeks. (1913, c. 196; Ex. Sess. 1921, c. 24; 1927, c. 207, s. 1; 1933, c. 232, s. 2.)

Twentieth District

Swain—Seventh Monday before the first Monday in March, for the trial of civil cases only, to continue for two weeks; a special judge to be assigned for this court; first Monday in March; sixth Monday before the first Monday in September; seventh Monday after the first Monday in September, each to continue for two weeks: Provided, that the board of commissioners of Swain County may, when the public interest requires it, decline to draw a grand jury for the July term. (1913, c. 196; 1933, c. 125.)

Jackson—Second Monday before the first Monday in March; eleventh Monday after the first Monday in March; fifth Monday after the first Monday in September, each to continue for two weeks. (1913, c. 196; 1933, c. 107.)

Editor's Note.—

Only the parts of this section relating to the counties affected by the Public Laws of 1933 are here set out. If the county does not appear in the above presentation the terms are the same as those shown in the North Carolina Code of 1931.

Art. 8. Special Regulations

§ 1461. Court stenographers.—Upon the request of a judge holding a superior court in any county in the state, the board of county commissioners in such county shall employ a competent stenographer to take down the proceedings of the court, at a compensation not to exceed five dollars per day and actual expenses, to be paid

by the county in which the court is held: Provided, that the compensation of said stenographers in counties composing the sixteenth judicial district shall not exceed ten dollars per day.

The judge is authorized to tax a reasonable fee against the losing party in every action, civil and criminal, to be turned into the county treasury towards reimbursing the county, but no fee shall be taxed against a losing party suing in forma pauperis.

Every stenographer so employed shall make three copies of the proceedings in every case appealed to the supreme court, without extra charge, and shall furnish one copy to the attorneys on each side and file one copy with the clerk of the superior court of the county in which any such case is tried, and shall obey all orders of the judge relative to the time in which any such work shall be done: Provided, that the restrictions herein against an extra charge for making copies of the proceedings in cases appealed to the supreme court shall not apply to counties composing the sixteenth judicial district, except Burke, Lincoln and Catawba counties: Provided, that in the counties of Burke, Lincoln and Catawba the court stenographer shall make three copies of the proceedings in every case appealed to the supreme court at a charge of not more than fifteen cents per page for the original copy, which shall be paid by the appellant, and one copy shall be furnished to the clerk of the superior court and one copy to the appellee, without extra charge, and the original to the appellant. (1929, cc. 53, 260, s. 1.)

Every stenographer so employed shall, before entering upon the discharge of his duties, be duly sworn to well, truly and correctly take down and transcribe the proceedings of the court, except the argument of counsel, and the charge of the court thus taken down and transcribed shall be held to be a compliance with the law requiring the judge to put his instructions to the jury in writing.

This section shall not apply to any county which has a court stenographer authorized by law: Provided, that the board of county commissioners of Mecklenburg county may, by resolution approving this law, bring said county within the provisions of the same: Provided further, that this law shall not apply to the following counties: Alleghany, Brunswick, Caldwell, Camden, Carteret, Caswell, Chatham, Currituck, Dare, Davidson, Davie, Forsyth, Greene, Harnett, Haywood, Hoke, New Hanover, Orange, Pender, Perquimans, Person, Transylvania, Union, Watauga. (Ex. Sess. 1913, c. 69; Ex. Sess. 1921, c. 57. Alamance county: See Public Laws, Ex. Sess. 1921, c. 2; 1927, c. 268; 1933, c. 75, s. 2.)

The compensation of each stenographer so employed shall be not exceeding ten dollars per day and two and one-half dollars per day expenses, and there shall be taxed in each case as provided in section one thousand, four hundred and sixty-one a reasonable fee, against the losing party in every action, civil and criminal, to be turned in to the county treasury toward reimbursing the county which fee shall be fixed by the judge presiding and taxed in each case at such amount as said judge may determine taking into consideration the time required in the trial of a cause: Provided, no tax or fee shall be charged against the State, in any criminal action nor against the losing party in a suit brought in forma pauperis. (1927, c. 268, s. 2.)

Editor's Note.—

Public Laws 1933, c. 75 inserted Harnett County in the list of counties appearing in the next to the last paragraph. For an amendment of this section applicable in McDowell County only, see Acts of 1933, c. 85.

§ 1461(5)a. Court reporter for second judicial district.—The resident judge of the second judicial district be, and he is hereby authorized and empowered, to appoint an official court reporter for one or more or all of the counties in said district who shall serve at the will of the resident judge, and whose appointment may be terminated by thirty days' written notice thereof. (1933, c. 335, s. 1.)

§ 1461(5)b. Recording of appointment in clerk's office.—The appointment of such reporter or reporters shall be filed in the office of the clerk of the superior court of each county in said district in which said reporter is to officiate, and the same, or a certified copy thereof, shall be recorded by said clerk on the minute docket of his court. (1933, c. 335, s. 2.)

§ 1461(5)c. Oath of reporter.—Before entering upon the discharge of the duties of said office, said reporter shall take and subscribe an oath in words substantially as follows: "I, ..., do solemnly swear that I will, to the best of my ability, discharge the duties of the office of court reporter in and for the county of ..... in the second judicial district, and will faithfully transcribe the testimony offered in said courts as the presiding judge may direct, or as I may be required to do under the law, so help me, God." Said oath shall be filed in the office of each of the clerks of the superior courts of the counties in which said reporter is to officiate, and recorded and indexed on the minute dockets of said courts. (1933, c. 335, s. 3.)

§ 1461(5)d. Reporter pro tem.—If on account of sickness, or for other cause, said reporter is unable to attend upon any of the regular courts of said district, and for conflict and special terms, the resident judge may appoint a reporter pro tem for said court or courts, and said appointment shall appear upon the minutes of said term, and said reporter shall take and subscribe the oath referred to in section 3 hereof, which oath shall be filed with the clerk. In lieu of appointing a reporter pro tem for each of said courts, the resident judge may, in his discretion, appoint a reporter pro tem for a stated period whose duty it shall be to report any and all courts in the county or counties designated in the appointment, which the regular court reporter is for any cause unable to report. (1933, c. 335, s. 4.)

§ 1461(5)e. Compensation.—The resident judge shall likewise fix the compensation to be received by such reporter and such reporter pro tem: Provided, however, such compensation shall not exceed ten dollars per day and actual expenses upon a weekly basis. (1933, c. 335, s. 5.)

§ 1461(5)f. Transcripts competent as evidence.—The testimony taken and transcribed by said court reporter or said court reporter pro tem, as

the case may be, and duly certified, either by said reporter or the presiding judge at the trial of the cause, may be offered in evidence in any of the courts of this state as the deposition of the witness whose testimony is so taken and transcribed, in the same manner, and under the same rule governing the introduction of depositions in civil actions. (1933, c. 335, s. 6.)

SUBCHAPTER III. JUSTICES OF THE PEACE

Art. 10. Jurisdiction

§ 1481. Jurisdiction in criminal actions.

Simple Assault.—
Under this section a magistrate has original jurisdiction of simple assault and on appeal from an acquittal a plea of former jeopardy is good. State v. Myrick, 202 N. C. 688, 163 S. E. 803.

Art. 13. Pleading and Practice

§ 1498. Removal of case.

Editor's Note.—For a proviso applicable in Mecklenburg County only, see Public Laws 1933, c. 278.

Art. 15. Judgment and Execution

§ 1526. Nature of undertaking.—The undertaking shall be in writing, executed by one or more sufficient sureties, to be approved by the justice or clerk making the order, to the effect that if judgment be rendered against the appellant, the sureties will pay the amount together with all costs awarded against the appellant, and when judgment shall be rendered against the appellant, the appellate court shall give judgment against the said sureties. And in the event that said defendant shall prior to entry of the final judgment be adjudicated a bankrupt, then and in that event, the surety or sureties on said bond shall remain bound as if they were co-debtors with the defendant and the plaintiff may continue the prosecution of the action against said sureties, as if they were co-defendants in the cause. (Rev., s. 1487; Code, s. 884; 1879, c. 68; 1933, c. 251, s. 1.)

Editor's Note.—By Public Laws 1933, c. 251, was added the sentence, appearing at the end of this section, which provides for liability of sureties in case defendant is adjudicated a bankrupt.

Art. 16. Appeal

§ 1530. Manner of taking appeal.

Time.—
From the decision of a Justice of the Peace in a bastardy proceeding either the woman or the defendant may appeal to the Superior Court, but the appeal must be taken to the next term. The Superior Court has no right to dispense with this requirement. Helsabeck v. Grubbs, 171 N. C. 377, 88 S. E. 473. The "next term" means any term, civil or criminal, which begins after the expiration of the ten days allowed for serving the notice of appeal. State v. Fleming, 204 N. C. 40, 42, 167 S. E. 483.

SUBCHAPTER IV. RECORDERS' COURTS

Art. 18. Municipal Recorders' Courts

§ 1555. Jury trial, as in justice's court.

Editor's Note.—
Public Laws 1933, c. 142, repeals Public Laws 1931, c. 335.

Art. 19. County Recorders' Courts

§ 1569. Removal of cases from justices' courts.

Editor's Note.—
Public Laws 1933, c. 277, makes the removal mandatory but applies only in Mecklenburg County.

§ 1572. Jury trial as in municipal court.—In all trials in county recorders' courts, upon demand for a jury by the defendant or the prosecuting attorney representing the state, a jury shall be had in the same manner and under the same provisions as are set forth in this subchapter in reference to municipal courts, so far as the same may be practically applicable to a county court: Provided, that this section shall not apply to Henderson County. (1919, c. 277, s. 40; 1933, c. 316.)

Editor's Note.—
Public Laws of 1933, c. 316, added the proviso exempting Henderson county from the operation of the section and providing for jury trials in said county. See § 1572(b).

§ 1572(b). Jury trials in Henderson County recorder's court.—Jury trials may be had in the county court of Henderson County upon demand of any defendant and upon depositing the sum of six ($6.00) dollars to cover jury fees; and the jury shall consist of six men who shall receive one ($1.00) dollar each for their services in each case. Upon demand of any defendant for a jury trial, and depositing the sum required, the jury shall be summoned in the same manner as provided by juries in the courts of justices of the peace. (1933, c. 316, s. 2.)

Art. 22. Civil Jurisdiction of Recorders' Courts

§ 1589. Civil jurisdiction may be conferred.—The board of county commissioners of any county in which there is a city or town with a population of not less than ten thousand inhabitants, in which there has been established a recorder's court, under the provisions of this subchapter, or in which there is a recorder's court established by law, may confer upon such recorder's court jurisdiction to try and determine civil actions, as hereinafter provided, wherein the party plaintiff or defendant is a resident of such county, or is doing business in the county. Such jurisdiction may be conferred by resolution by the board of county commissioners of any county, entered upon their minutes, and the board of county commissioners of any county may likewise confer civil jurisdiction on the county recorder's court to try and determine civil actions as hereinafter provided wherein one or more of the parties, plaintiff or defendant, is a resident of said county or is doing business therein. (1919, c. 277, s. 47; 1921, c. 110, s. 7; 1933, c. 166.)

Editor's Note.—Prior to the Amendment of 1933, Public Laws 1933, c. 166, this section applied in cities or towns of not less than 10,000 "nor more than 25,000" inhabitants. The quoted clause was omitted by the amendment. For act applicable in Carteret County only, see P. L. 1933, c. 379.

§ 1590. Extent of jurisdiction.

Editor's Note.—Public Laws 1933, c. 174 increased the jurisdictional amounts here specified from one to three thousand and from five hundred to two thousand dollars respectively, but the act applies only in Mecklenburg county.

For act applicable in Carteret County only, see P. L. 1933, c. 379.

§ 1591. Procedure in civil actions.

Editor's Note.—
For act applicable in Carteret County only, see P. L. 1933, c. 379.

§ 1592. Trial by jury in civil actions.

Editor's Note.—Public Laws 1933, c. 142, repeals Public Laws 1931, c. 335.

Art. 23. Elections to Establish Recorders' Courts

§ 1608. Certain districts and counties not included.—This subchapter shall not apply to the tenth, except as Granville and Orange counties, [fifteenth], except as to Iredell and Montgomery counties, [sixteenth], except as to Lincoln and Catawba counties, seventeenth, except as to Alexander county, eighteenth, nineteenth, and twentieth judicial districts, except as to Buncombe, Cherokee, Jackson, Haywood, and Swain counties, nor to the eleventh district, except to the county of Caswell; nor shall it apply to the counties of Chatham, Columbus, Hyde, Johnston, New Hanover, Polk, Madison, and Robeson. (1919, c. 277, s. 64; 1921, c. 110, s. 16; Ex. Sess. 1921, cc. 59, 80; 1923, cc. 19, 40; 1925, c. 162, s. 1; Pub. Loc. 1927, c. 85, s. 24; 1929, cc. 17, 111, 114, 130, 340; 1931, c. 3, c. 19, s. 2; 1933, c. 142, s. 1.)

Editor's Note.—
By Public Laws 1933, c. 142, Burke county was omitted from the exceptions as to the sixteenth district. Public Laws 1933, c. 142, s. 1, repealed Public Laws 1929, c. 17 which added Burke to this section.

SUBCHAPTER V. GENERAL COUNTY COURTS

Art. 24. Establishment, Organization and Jurisdiction

§ 1608(f). Establishment authorized; official entitlement; jurisdiction.—In each county of this state there may be established a court of civil and criminal jurisdiction, which shall be a court of record and which shall be maintained pursuant to this subchapter and which court shall be called the general county court and shall have jurisdiction over the entire county in which said court may be established. In any county in the state in which there is situated a city which has or may have in the future a population, according to any enumeration by the United States census bureau, of more than twenty thousand inhabitants, the commissioners of such county or counties are authorized hereby to establish general county courts as hereinafter provided without first submitting the question of establishing such court to a vote of the people: Provided, that the said enumeration need not be made at a regular decennial census: Provided further, that in the event that the second sentence of this section is acted upon by the commissioners of any county in establishing a general county court, as is herein provided, the said commissioners may make such provisions for holding such courts in such city. (1923, c. 216, s. 1; 1925, c. 242; 1927, c. 74; 1931, c. 17; 1933, c. 405.)

Editor's Note.—Prior to the 1933 amendment (Public Laws 1933, c. 405) Caswell county was excepted from the operation of the section. The amendment struck out the words "except Caswell County" following the words "in each county of this state" at the beginning of the section. Public Laws 1933, c. 142, repealed Public Laws 1931, c. 422.

In General.—Under this section the Legislature may create courts inferior to Superior Court if provision is made for appeal to the Superior Court. Jones v. Standard Oil Co., 202 N. C. 328, 162 S. E. 741.

§ 1608(f) 3(c): Repealed by Public Laws 1933, c. 405.

§ 1608(f) 4. Transfer of civil cases.—Transfers may be made in term of any civil action in the superior court to the general county court, and from the general county court to the superior court by the presiding judge of said respective courts, by consent, or upon motion of which due notice has been given, when, in the opinion of the presiding judge of the court from which the transfer is to be made, the ends of justice will be best served and promoted by such transfer. (1924, c. 85, s. 24-d; 1933, c. 127.)

Editor's Note.—This section was rewritten by Public Laws 1933, c. 127. Many changes were effected for a determination of which a comparison with the old section is necessary.

Art. 25. Practice and Procedure

§ 1608(t). Procedure in civil actions; return of process.—The rules of procedure, issuing process and filing pleadings shall conform as nearly as may be to the practice in the superior courts. The process shall be returnable directly to the court, and may issue out of the court to any county in the state: Provided, that civil process in cases within the jurisdiction now exercised by justices of the peace shall not run outside of or beyond the county in which such court sits.

Motions for the change of venue or removal of cases from the general county courts to the superior courts of counties other than the one in which said court sits may be made and acted upon, and the causes for removal shall be the same as prescribed by law for similar motions in the superior courts.

The provisions of the chapters of the consolidated statutes on civil procedure and criminal procedure, and all amendments thereof, shall apply as nearly as may be to the general county courts, and the judges and the clerks of said courts, in all causes pending in said courts, shall have rights, privileges, powers and immunities similar in all respects to those conferred by law on the judges and clerks of the superior courts of the state, and shall be subject to similar duties and liabilities: Provided, that this section shall not extend the jurisdiction of said judges and clerks, nor infringe in any manner upon the jurisdiction of the superior courts, except as provided in articles twenty-four and twenty-five of this chapter: Provided, that in any civil action instituted in said general county court, where one or more bona fide defendants reside in said county and one or more bona fide defendants reside out of said county, then in such case summons may be issued out of said general county court against the defendants residing outside of said county as well as those residing in said county, and the said general county court shall have jurisdiction to try the action as against all of said defendants.

All motions and petitions for removal of actions from the general county court to the district court of the United States shall be presented to, be heard and determined by the judge of the general county court, with the right of appeal from any order or ruling of said judge to the

superior court. (1923, c. 216, s. 7; 1925, c. 242, s. 2; 1925, c. 250, s. 2; 1933, c. 128, s. 1.)

Editor's Note.—
The last sentence of this section as it now reads, relating to removal from a General Court to the United States District Court, was added by Public Laws 1933, c. 128.

§ 1608(cc). Appeals to superior court in civil actions; time; record; judgment; appeal to supreme court.—Appeals in civil actions may be taken from the general county court to the superior court of the county in term time for errors assigned in matters of law in the same manner as is now provided for appeals from the superior court to the supreme court except that appellant shall file in duplicate statement of case on appeal, as settled, containing the exceptions and assignments of error, which, together with the original record, shall be transmitted by the clerk of the general county court to the superior court, as the complete record on appeal in said court; that briefs shall not be required to be filed on said appeal, by either party, unless requested by the judge of the superior court. The time for taking and perfecting appeals shall be counted from the end of the term of the general county court at which such trial is had. Upon such appeal the superior court may either affirm or modify the judgment of the general county court, or remand the cause for a new trial. From the judgment of the superior court an appeal may be taken to the supreme court as is now provided by law. (1923, c. 216, s. 18; 1933, c. 109.)

Editor's Note.—Prior to Public Laws 1933, c. 109, the exception at the end of the first sentence of this section merely provided that the record might be typewritten and that only two copies should be required. This was omitted and the present exception inserted in lieu thereof.

Assignment of Error.—In the absence of assignments of error appearing in the transcript on an appeal to this Court, the appeal will ordinarily be dismissed on the motion of the appellee. Smith v. The Texas Co., 200 N. C. 39, 41, 156 S. E. 160.

In the exercise of its appellate jurisdiction under this section, the Supreme Court may consider and pass only on the contention of the appellant that there was error in matters of law at the hearing in the Superior Court. This contention must, however, be presented to this Court by assignments of error based on exceptions to specific rulings of the judge of the Superior Court, on the assignments of error appearing in the case on appeal filed in the Superior Court. Id.

Sending Record Up.—Where an appeal is taken from a county court under this section it is not desirable that the entire record in the Superior Court be sent up, but only such parts as relate to the questions to be reviewed with only material exceptions, properly stated, grouped and sufficiently compiled to enable the court to understand them without searching through the record. Baker v. Clayton, 202 N. C. 741, 164 S. E. 233.

SUBCHAPTER VI. CIVIL COUNTY COURTS

Art. 26. Under Chapter 135, Acts of 1925

§ 1608(jj). Appeals.

An appeal to the Superior Court from the granting or refusal of a restraining order by the county court may be taken to the next term of the Superior Court without the necessity of serving statement of case on appeal, countercase or exceptions, etc., the case having been heard on the pleadings and the record in the Superior Court consisting of the summons, complaint, answer, orders, judgment and assignment of errors. Thomason v. Swenson, 204 N. C. 759, 169 S. E. 620.

§ 1608(nn). Removal of cause before justice.

For an amendment applicable in Mecklenburg County only, see Public Laws 1933, c. 279.

CHAPTER 28
DEBTOR AND CREDITOR

Art. 1. Assignments for Benefit of Creditors

§ 1609. Debts mature on execution of assignment; no preferences.

What Constitutes an Assignment.—

Same—Deed to Secure Advancements. — Where the purpose of a deed is to secure payment not only of pre-existing debts but also of debts to be contracted for advancements to aid grantors in carrying on their business then said deed is not a voluntary deed of assignment for the benefit of creditors, within the meaning of this and the following section. Commissioner of Banks v. Turnage, 202 N. C. 485, 486, 163 S. E. 451.

Same—Chattel Mortgages.—

A chattel mortgage of an insolvent corporation, executed and registered before the appointment of a receiver for it, will not be construed under the provisions of this section as in effect an assignment for the benefit of creditors in the absence of the fact that the property covered by the mortgage constitutes practically all of the property of the insolvent. Vanderwal v. Vanco Dairy Co., 200 N. C. 314, 315, 156 S. E. 512.

Art. 4. Discharge of Insolvent Debtors

§ 1632. Persons imprisoned for nonpayment of costs in criminal cases.—The following persons may be discharged from imprisonment upon complying with this article:

Every person committed for the fine and costs of any criminal prosecution. (Rev., s. 1915; Code, s. 2967; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, cc. 797, 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 26; 1933, c. 228, s. 9.)

Editor's Note.—Prior to Public Laws 1933, c. 228, sec. 9, this section contained a provision which read as follows: "Every putative father of a bastard committed for failure to give bond, or to pay any sum of money ordered to be paid for its maintenance." This provision was omitted by the amendment.

CHAPTER 29
DESCENTS

§ 1654. Rules of descent.

By virtue of this section an heir takes only the undevised inheritance of which the ancestor was seized at the time of his death. Gosney v. McCullers, 202 N. C. 326, 327, 162 S. E. 746.

Rule 2.—

Owner's Wishes Respected. — Where the deceased leaves a will disposing of his estate the doctrine of advancements to his child or children has no application. Prevette v. Prevette, 203 N. C. 89, 164 S. E. 623.

Rule 5.—

Whether of Whole or Half Blood.—Where a son acquires land by deed from his father and pays a valuable consideration therefor, and dies without lineal descendants prior to his father's death intestate, the land descends to the collateral relations of the son whether of the whole or half-blood, and the inheritance is not limited to the collateral relations of the son who are also of the blood of the father, the grantor. Ex parte Barefoot, 201 N. C. 393, 394, 160 S. E. 365.

Rule 9 Applies Only in Case of Illegitimates.—

See Paul v. Willoughby, 204 N. C. 595, 598, 169 S. E. 226, following the statement under this catchline in the Code of 1931.

CHAPTER 30
DIVORCE AND ALIMONY

§ 1658. What marriages may be declared void on application of either party.

See § 2495 and notes thereto.

§ 1659. Grounds for absolute divorce.—Mar-

riages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

1. If the husband or wife commits adultery.

2. If either party at the time of the marriage was and still is naturally impotent.

3. If the wife at the time of the marriage is pregnant, and the husband is ignorant of the fact of such pregnancy and is not the father of the child with which the wife was pregnant at the time of the marriage.

4. If there has been a separation of husband and wife, whether voluntary or involuntary, provided such involuntary separation is in consequence of a criminal act committed by the defendant prior to such divorce proceedings, and they have lived separate and apart for two successive years, and the plaintiff in the suit for divorce has resided in this state for one year. (Rev., s. 1561; Code, s. 1285; 1871-2, c. 193, s. 35; 1879, c. 132; 1887, c. 100; 1889, c. 442; 1899, c. 29; 1903, c. 490; 1905, c. 499; 1907, c. 89; 1911, c. 117; 1913, c. 165; 1917, cc. 25, 57; 1921, c. 63; 1929, c. 6; 1931, c. 397; 1933, c. 71, s. 1.)

5. If any person shall commit the abominable and detestable crime against nature, with mankind, or beast.

It shall not be necessary to set forth in the affidavit filed with the complaint in suits brought under subsection four of this section that the grounds for divorce have existed at least six months prior to the filing of the complaint, nor to allege or prove such fact. (1933, c. 71, s. 2.)

Paragraph 4.—

Editor's Note.—

In subsection 4 of this section, the period of required living apart for five successive years was changed to two successive years and the requirement that the plaintiff has resided in the state for five successive years was changed to one year. The changes were effected by Public Laws of 1933, c. 71. That chapter also added the last paragraph of the section eliminating the necessity of alleging the existence of grounds for six months.

An action can be maintained under this section only by the party injured. Reeves v. Reeves, 203 N. C. 792, 794, 167 S. E. 129.

§ 1659(a). Divorce after separation of two years on application of either party.—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of either party, if and when there has been a separation of husband and wife, either under deed of separation or otherwise, and they have lived separate and apart for two years, and the plaintiff in the suit for divorce has resided in the state for a period of one year. This section shall be in addition to other acts and not construed as repealing other laws on the subject of divorces. (1931, c. 72; 1933, c. 163.)

Editor's Note.—

By Public Laws of 1933, c. 163, the time of living apart was changed from five to "two" years, and the required residence of the defendant in the State was changed from five years to "one" year.

Allegation and Proof That There Are no Children.—Requisite to an action under this section are both allegation and proof that "no children have been born to the marriage." Reeves v. Reeves, 203 N. C. 792, 794, 167 S. E. 129.

§ 1660. Grounds for divorce from bed and board.

Only the party injured is entitled to a divorce from bed and board under this section. Carnes v. Carnes, 204 N. C. 636, 637, 169 S. E. 222.

§ 1661. Affidavit to be filed with complaint; affidavit of intention to file complaint.—The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint. The plaintiff shall also set forth in such affidavit, either that the facts set forth in complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint, and that complainant has been a resident of the state for one year next preceding the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove, his property and effects from the state, whereby she may be disappointed in her alimony: Provided, however, that if the cause for divorce is five [two] years separation then it shall not be necessary to set forth in the affidavit that the grounds for divorce have existed at least six months prior to the filing of the complaint, it being the purpose of the section to permit a divorce after a separation of five [two] years without waiting an additional six months for filing the complaint. If any wife files in the office of the superior court clerk of the county where she resides an affidavit, setting forth the fact that she intends to file a petition or bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which the petition or action will be based for six months, she may reside separate and apart from her husband, and may secure for her own use the wages of her own labor during the time she remains separate and apart from him. If she fails to file her petition or bring her action for divorce within ninety days after the six months have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section. (Rev., s. 1563; Code, s. 1287; 1868-9, c. 93, s. 46; 1869-70, c. 184; 1907, c. 1008, s. 1; 1925, c. 93; 1933, c. 71, ss. 2, 3.)

Editor's Note.—The requirement that the complainant has been a resident of the state for "two years" was changed to "one year" by Public Laws 1933, c. 71. It would seem that the word "two" appearing in the brackets in the section is correct in view of the changes made in sections 1659 and 1659(a).

§ 1664. Custody of children in divorce.

Judgment out of Term.—Where an absolute divorce has been decreed in an action and a motion is made respecting the custody of a minor child, and the parties agree that the judge should render judgment on the motion out of term and outside the county of trial, the judgment rendered under the terms of the agreement is valid, the judge having authority under this section to render such judgment. Pate v. Pate, 201 N. C. 402, 160 S. E. 450.

Modification of Decree.—Where, in a decree of divorce the father is ordered to pay a certain sum monthly for the support of his infant daughter, and by its first order the court has retained the cause subject to the right of either party at any time to apply for a modification of the order, and pursuant to this provision the court later, upon the father's insolvency, made the sums assessed a charge on the plain-

tiff's homestead and personal property exemptions when allotted, the modification is authorized by this section as well as by the order of the courts. Walker v. Walker, 204 N. C. 210, 212, 167 S. E. 818.

§ 1667. Alimony without divorce.

Section 1665, may be considered in an action under this section, in determining the allowance of reasonable subsistence to the wife and children and the allowance of counsel fees based on the defendant's means and condition in life. Kiser v. Kiser, 203 N. C. 428, 166 S. E. 304.

Modification or Variation of Order.—

The amounts allowed for reasonable subsistence and counsel fees upon application for alimony pendente lite are determined by the trial court in his discretion and are not reviewable, although either party may apply for a modification before trial. Tiedmann v. Tiedmann, 204 N. C. 682, 169 S. E. 422.

Contempt.—In Little v. Little, 203 N. C. 694, 166 S. E. 809, the defendant was held in contempt for disobedience of the court's order for him to pay certain weekly sums to his wife under this section.

CHAPTER 31

DOGS

Art. 2. License Taxes on Dogs

§ 1673. Amount of tax.

Editor's Note.—

Public Laws 1933, c. 90 provided that this section should not apply to Cherokee. Chapter 90 was amended by Public Laws, 1933, c. 301 so as to exempt Macon and Clay counties. Public Laws, 1933, c. 149, repealed §§ 1673-1684, insofar as they apply to Swain County.

§ 1681. Proceeds of tax to school fund; proviso, payment of damages; reimbursement by owner.—The money arising under the provisions of this article shall be applied to the school funds of the county in which said tax is collected: Provided, it shall be the duty of the county commissioners, upon complaint made to them of injury to person or injury to or destruction of property by any dog, upon satisfactory proof of such injury or destruction, to appoint three freeholders to ascertain the amount of damages done, including necessary treatment if any, and all reasonable expenses incurred, and upon the coming in of the report of such jury of the damage as aforesaid, the said county commissioners shall order the same paid out of any moneys arising from the tax on dogs as provided for in this article; Provided, that before appointing a jury or making any payment, the commissioners shall satisfy themselves that the claimant listed said property for taxation at the last listing time, if said property was then owned by him. This proviso shall apply only to Chowan county. And in cases where the owner of such dog or dogs is known or can be ascertained, he shall reimburse the county to the amount paid out for such injury or destruction. To enforce collection of this amount the county commissioners are hereby authorized and empowered to sue for the same.

Provided, however, no amount shall be paid out under the terms of this article, except upon the findings of three freeholders appointed to ascertain the amount of damages done, expense of treatment, and necessary expenses incurred, and in no event shall the amount allowed be more than the doctor's bill, including medicine and treatment, and the actual loss of time based upon the earning capacity of the person injured, including reasonable expense of travel to the place of treatment, and if injury to property, the actual damage suffered; but this proviso will apply only to Rockingham county: Provided further that this section shall not apply to Davidson county. And provided also that all that portion of this section after the word "collected" in line three thereof, shall not apply to Lincoln county. (1919, c. 116, s. 7; 1925, cc. 15, 25, 79; 1933, c. 28.)

Editor's Note.—

The proviso at the end of this section, relating to Lincoln county, was added by Public Laws of 1933, c. 28. For an act repealing all of the provisos of this section insofar as they relate to Duplin county, see Public Laws 1933, c. 477; for repealing act as to Mitchell and Avery counties, see Public Laws 1933, c. 273. For act applicable to Guilford and Forsyth counties only, see Public Laws 1933, c. 547. For act applicable to Moore county only, see Public Laws 1933, c. 526. For Columbus county, see Public Laws 1933, c. 387, and for act applicable in Pitt only, see Public Laws 1933, c. 561. Public Laws 1933, c. 200 made the local amendment of 1931, applicable also in Onslow county.

§ 1634(b). Dog tax applicable to all counties; exceptions.

As to damages done by dogs in Surrey county, see Public Laws 1933, c. 310.

CHAPTER 32

ELECTRIC, TELEGRAPH, AND POWER COMPANIES

Art. 1. Acquisition and Condemnation of Property

§ 1696. Electric and hydro-electric power companies may appropriate highways; conditions.

Where under the provisions of this section, a hydro-electric power company has appropriated a section of a public highway and built another section in lieu thereof, the provisions of the statute that the company pay all damages assessed as provided by law does not entitle the plaintiff to recover damages for the slight change in the road causing inconvenience to him in hauling wood, etc., to and from his market town. Crowell v. Tallassee Power Co., 200 N. C. 208, 156 S. E. 493.

CHAPTER 33

EMINENT DOMAIN

Art. 1. Right of Eminent Domain

§ 1706. By whom right may be exercised.

II. STRICT CONSTRUCTION.

In General.—

A corporation furnishing electricity for public use may condemn lands of a private owner necessary for its transmission lines under the provisions of this section, but it is unlawful for a power company to enter upon and take the lands of the owner for such purpose without complying with the statutory procedure. Crisp v. Nanthala Power, etc., Co., 201 N. C. 46, 158 S. E. 845.

CHAPTER 34

ESTATES

§ 1734. Fee tail converted into fee simple.

II. RULES IN SHELLEY'S CASE.

Fee Simple.—

Where a husband conveys his lands to his wife for life and to her bodily heirs begotten by him, the estate conveyed is an estate tail special under the rule in Shelley's case, converted into a fee simple absolute by this section. Morehead v. Montague, 200 N. C. 497, 157 S. E. 793.

§ 1743. Titles quieted.

II. NATURE AND SCOPE.

C. What Constitutes Cloud.

Tax Deed as Cloud upon Title.—Where a judgment en-

tered in favor of the county in an action against the owner for taxes has been set aside upon motion after notice to the parties the owner, in an action to remove cloud upon title, is entitled to judgment canceling the tax deed. Galer v. Auburn-Asheville Co., 204 N. C. 683, 169 S. E. 642.

III. ACTIONS.

C. Jurisdiction of Courts.

Equity Jurisdiction of Federal Courts.—

This section does not enlarge the jurisdiction of federal courts of equity, as it merely regulates procedure and does not create any substantive right. And, even if it could be considered as creating an equitable right, it would not authorize the trial by a federal court of equity of what is in essence an action of ejectment, for the reason that in such action the defendant is entitled under the federal constitution to a trial by jury. Wood v. Phillips, 50 F. (2d) 714, 716.

§ 1744. Remainders to uncertain persons; procedure for sale; proceeds secured.—In all cases where there is a vested interest in real estate, and a contingent remainder over to persons who are not in being, or when the contingency has not yet happened which will determine who the remaindermen are, there may be a sale or mortgage of the property by a proceeding in the superior court, which proceeding shall be conducted in the manner pointed out in this section. Said proceeding may be commenced by summons by any person having a vested interest in the land, and all persons in esse who are interested in said land shall be made parties defendant and served with summons in the way and manner now provided by law for the service of summons in other civil actions, as provided by section 479, and service of summons upon nonresidents, or persons whose names and residences are unknown, by publication as now required by law or such service in lieu of publication as now provided by law. In cases where the remainder will or may go to minors, or persons under other disabilities, or to persons not in being whose names and residence are not known, or who may in any contingency become interested in said land, but because of such contingency cannot be ascertained, the clerk of the superior court shall, after due inquiry of persons who are in no way interested in or connected with such proceeding, designate and appoint some discreet person as guardian ad litem, to represent such remainderman, upon whom summons shall be served as provided by law for other guardians ad litem, and it shall be the duty of such guardian ad litem to defend such actions, and when counsel is needed to represent him, to make this known to the clerk, who shall by an order give instructions as to the employment of counsel and the payment of fees.

The court shall, if the interest of all parties require or would be materially enhanced by it, order a sale of such property or any part thereof for reinvestment, either in purchasing or in improving real estate, less expense allowed by the court for the proceeding and sale, and such newly acquired or improved real estate shall be held upon the same contingencies and in like manner as was the property ordered to be sold. The court may authorize the loaning of such money subject to its approval until such time when it can be reinvested in real estate. And after the sale of such property in all proceedings hereunder, where there is a life estate, in lieu of said interest or investment of proceeds to which the life tenant would be entitled to, or to the use of, the court may in its discretion order the value of said life tenants' share during the probable life of such life tenant, to be ascertained as now provided by law, and paid out of the proceeds of such sale absolutely, and the remainder of such proceeds be reinvested as herein provided. Any person or persons owning a life estate in lands which are unproductive and from which the income is insufficient to pay the taxes on and reasonable upkeep of said lands shall be entitled to maintain an action, without the joinder of any of the remaindermen or reversioners as parties plaintiff, for the sale of said property for the purpose of obtaining funds for improving other non-productive and unimproved real estate so as to make the same profit bearing, all to be done under order of the court, or reinvestment of the funds under the provisions of this section, but in every such action when the rights of minors or other persons not sui juris are involved, a competent and disinterested attorney shall be appointed by the court to file answer and represent their interests. This provision (as to sale of unproductive lands) being remedial shall apply to cases where any title in such lands shall have been acquired before, as well as after, its passage—1927: Provided that the provision shall not affect pending litigation.

The clerk of the superior court is authorized to make all orders for the sale or mortgage of property under this section, and for the reinvestment or securing and handling of the proceeds of such sales, but no sale under this section shall be held or mortgage given until the same has been approved by the resident judge of the district, or the judge holding the courts of the district at the time said order of sale is made.

The court may authorize the temporary reinvestment, pending final investment in real estate, of funds derived from such sale in coupon or registered bonds of the United States of America (commonly called liberty bonds) issued incident to the late war between the United States and the imperial German government or bonds of the state of North Carolina issued since the year one thousand eight hundred and seventy-two; but in the event of such reinvestment, the commissioners, trustees or other officers appointed by the court to hold such funds shall hold the bonds in their possession and shall pay to the life tenant and owner of the vested interest in the lands sold only the interest accruing on the bonds, and the principal of the bonds shall be held subject to final reinvestments, and to such expense only as is provided in this section. Temporary reinvestments, as aforesaid, in liberty bonds or state bonds heretofore made with the approval of the court of all or a part of the funds derived from such sales are ratified and declared valid.

The court shall, if the interest of the parties require it and would be materially enhanced by it, order such property mortgaged for such terms and on such conditions as to the court seems proper and to the best interest of the interested parties. The proceeds derived from the mortgage to be used for the sole purpose of adding improvements to the property. In all cases of mortgages under this section the court shall authorize and direct the guardian representing the interests of minors and the guardian ad litem representing the interest of those persons unknown

or not in being to join in the mortgage for the purpose of conveying the interest of such person or persons. In all cases of mortgages under this section the owner of the vested interest or his or her legal representative shall within six months from the date of the mortgage file with the court an itemized statement showing how the money derived from the said mortgage has been expended, and shall exhibit to the court receipts for said money. Said reports to be audited in the same manner as provided for the auditing of guardian's accounts. The owner of vested interest or his or her legal representative shall collect the rents and income from the property mortgaged and apply the proceeds first to taxes and discharge of interest on the mortgage and the annual curtailment as provided thereby, or if said persons uses or occupies said premises he or she shall pay the said taxes, interest and curtailments and said party shall enter into a bond to be approved by the court for the faithful performance of the duties hereby imposed, and such person shall annually file with the court a report and receipts showing that taxes, interest and the curtailment as provided by the mortgage have been paid.

The mortgagee shall not be held responsible for the application of the funds secured or derived from the mortgage. The word mortgage whenever used herein shall be construed to include deeds in trust. (Rev., s. 1590; 1903, c. 99; 1905, c. 548; 1907, cc. 956, 980; 1919, c. 17; Ex. Sess. 1921, c. 88; 1923, c. 69; 1925, c. 281; 1927, cc. 124, 186; 1933, c. 123.)

I. GENERAL CONSIDERATIONS.

Editor's Note.—

The only change effected by the 1933 amendment occurs in the second paragraph of the section. In the next to the last sentence of that paragraph, Public Laws of 1933, c. 123 inserted, following the word "property" and preceding the word "reinvestment", the words "for the purpose of obtaining funds for improving other non-productive," etc.

III. SALE AND REINVESTMENT.

C. Application.

General Illustrations.—

Where the complaint of a life tenant alleges that the land is unproductive and income therefrom is insufficient to pay the taxes and reasonable upkeep, and prays that the land be sold in accordance with this section, the demurrer of the vested remaindermen is improperly sustained, the complaint alleging at least one good cause of action. Stepp v. Stepp, 200 N. C. 237, 156 S. E. 804.

In a suit regarding the management of the trust estate where the trustee and the testator's wife and children are parties and the one living grandchild is made a party defendant and is represented by a guardian ad litem, who also represents as a class the other grandchildren not in esse, all parties having an interest in the estate are properly represented, and the judgment of the court is binding as to all interests. Spencer v. McCleneghan, 202 N. C. 662, 163 S. E. 753.

CHAPTER 35

EVIDENCE

Art. 1. Statutes

§ 1749. Laws of other states or foreign countries.

Witnesses.—

The law of another State may be proven in transitory actions brought in the courts of this State by witnesses learned in the law of such other State, and by its authorized statutes and reports of decisions of its courts of last resort, and when properly offered in evidence they must be interpreted by our courts as matters of law. Howard v. Howard, 200 N. C. 574, 158 S. E. 101.

Art. 6. Competency of Witnesses

§ 1795. A party to a transaction excluded, when the other party is dead.

II. THE SECTION DISQUALIFIES WHOM.

A. Parties to the Action.

In an action to recover for services rendered deceased testimony by the plaintiff, that plaintiff boarded deceased is incompetent under the provisions of this section. Price v. Pyatt, 203 N. C. 799, 167 S. E. 69.

B. Parties Interested in the Event of the Action.

1. General Consideration.

Witness Must Be Party in Interest.—

In an action against the administrator of a deceased person to recover for breach of the deceased's contract to devise, testimony of witnesses not interested in the event as to declarations made by the deceased against his interest was properly admitted. Hager v. Whitener, 204 N. C. 747, 169 S. E. 645.

2. Applications.

In caveat proceedings propounders and caveators are "parties interested in the event" within the meaning of this section. In re Brown, 203 N. C. 347, 166 S. E. 72.

The interest of one who temporarily held the title to the lands in dispute prior to the defendant is a sufficient interest in the event to disqualify his testimony as to a conversation or transaction with the plaintiff's deceased predecessor in title. Dill-Cramer-Truitt Corp. v. Downs, 201 N. C. 478, 160 S. E. 492.

In this case, testimony of an endorser of a note, as to conversations with the payee's agent, now dead, showing the consideration which induced the endorsement, is not excluded under this section the agent not being a party interested in the event within the meaning of the statute for, although the agent guaranteed all notes to the payee, if there was a failure of consideration the payee could hold neither of the guarantors and had the endorser been liable he could not have recovered from the agent. American Agr. Chemical Co. v. Griffin, 204 N. C. 559, 169 S. E. 152.

III. WHEN THE DISQUALIFICATION EXISTS.

Party Testifying against Interest.—

In an action to declare a deed void on the ground that it was never delivered to the grantee since deceased, testimony offered by the grantor tending to show that the deed had not been delivered is not incompetent under this section. Gulley v. Smith, 203 N. C. 274, 165 S. E. 710.

§ 1798. Communications between physician and patient.

In General.—

If the statements were privileged under this section, then in the absence of a finding by the presiding judge, duly entered upon the record, that the testimony was necessary to a proper administration of justice, it was incompetent, and upon defendant's objection should have been excluded. Sawyer v. Weskett, 201 N. C. 500, 501, 160 S. E. 575.

§ 1799. Defendant in criminal action competent but not compellable to testify.

Treated as Other Witness.—

Where a defendant in a criminal prosecution testifies in his own behalf he waives his constitutional privilege not to answer questions tending to incriminate him and is subject to cross-examination for the purpose of impeaching his credibility as other witnesses. State v. Griffin, 201 N. C. 541, 160 S. E. 826.

§ 1801. Husband and wife as witnesses in civil actions.

Contradiction by Wife—Criminal Conversation.—

In an action for criminal conversation wherein the husband has testified to immoral relations between his wife and the defendant, the wife is a competent witness for the defendant for the purpose of refuting the charges made against her character. Chestnut v. Sutton, 204 N. C. 476, 168 S. E. 680.

Where a witness has written a letter to his wife the asserted right of the defendant to cross examine the witness on the letter to produce evidence tending to show bias or prejudice of the witness is excluded by the inhibitions of this section when the letter is procured by the defendant with the

consent and privity of the wife alone. State v. Banks, 204 N. C. 233, 167 S. E. 851.

Applied, in action by husband for criminal conversation, in Rouse v. Creech, 203 N. C. 378, 166 S. E. 174.

§ 1802. Husband and wife as witnesses in criminal actions.—The husband or wife of the defendant, in all criminal actions or proceedings, shall be a competent witness for the defendant, but the failure of such witness to be examined shall not be used to the prejudice of the defense. Every such person examined as a witness shall be subject to be cross-examined as are other witnesses. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage. Nothing herein shall render any husband or wife competent or compellable to give evidence against each other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, and except that in all criminal prosecutions of a husband for an assault and battery upon his wife, or for abandoning his wife and/or his children, or for neglecting to provide for her support and/or the support of his children, it shall be lawful to examine the wife in behalf of the state against the husband. (Rev., ss. 1634, 1635, 1636; Code, ss. 588, 1353, 1354; 1856-7, c. 23; 1866, c. 43; 1868-9, c. 209; 1881, c. 110; 1933, c. 13, s. 1; c. 361.)

Editor's Note.—Public Laws of 1933, cc. 13 and 361, added, near the end of this section, the words "and/or his children" following the word "wife" and the words "and/or the support of his children" following the word "support."

Confidential Communication.—

The confidential communications between husband and wife cannot, on the grounds of public policy, be admitted in evidence. State v. Brittain, 117 N. C. 783, 23 S. E. 433.

Husband May Testify against Wife in Assault.—

The rule that neither the husband nor wife is competent to testify against the other in criminal cases does not apply to proof of assault by the one upon the other. State v. French, 203 N. C. 632, 166 S. E. 747.

Abandonment of Children.—The wife is not competent to testify against her husband in a criminal action, unless the action comes within the exceptions enumerated in this section, and upon the trial of the husband for wilfully abandoning and failing to support his minor children, the admission of the wife's testimony against him is reversible error. State v. Brigman, 201 N. C. 793, 161 S. E. 727.

Abandonment of Wife.—Under this section the wife is a competent witness against her husband as to the fact of abandonment, or neglect to provide adequate support. State v. Brown, 67 N. C. 470.

Proof of Marriage. — The wife is competent to prove the fact of marriage under an indictment against her husband for abandonment. State v. Chester, 172 N. C. 946, 90 S. E. 697. The holding was otherwise under a former wording of the statute. State v. Brown, 67 N. C. 470.

Same—Bigamy.—In an indictment for bigamy the first wife of the defendant is a competent witness to prove the marriage, public cohabitation as man and wife being public acknowledgments of the relation and not coming within the nature of the confidential relations which the policy of the law forbids either to give in evidence. State v. Melton, 120 N. C. 591, 26 S. E. 933. See also State v. McDuffie, 107 N. C. 885, 890, 12 S. E. 83.

Adultery Prior to Marriage.—Where a man and woman are indicted for fornication and adultery, and a nol. pros. is entered as to the feme defendant, the husband of the woman is a competent witness to show adultery between the defendants committed before the marriage of the woman and the witness. State v. Wiseman, 130 N. C. 726, 41 S. E. 884.

Competency of Divorced Parties. — A divorced husband is incompetent to testify against the divorced wife in the trial of an indictment against her for fornication and adultery which occurred prior to the divorce. State v. Raby, 121 N. C. 682, 28 S. E. 490.

§ 1802(a). Wife may testify in applications for peace warrants.—The wife shall be competent to make affidavit and testify in application for peace warrants against the husband. (1933, c. 13, s. 2.)

Art. 9. Inspection and Production of Writings

§ 1823. Inspection of writings.

Discretion of Court.—Whether the trial court shall grant an order for the inspection of writings upon a sufficient affidavit rests in his sound discretion. Dunlap v. London Guaranty, etc., Co., 202 N. C. 651, 163 S. E. 750.

The affidavit supporting an order for inspection of writings must sufficiently designate the writings sought to be inspected and show that they are material to the inquiry, and where the affidavit is insufficient the order based thereon is invalid. Dunlap v. London Guaranty, etc., Co., 202 N. C. 651, 163 S. E. 750.

CHAPTER 36

FENCES AND STOCK LAW

Art. 3. Stock Law

§ 1864. Local: Depredations of domestic fowls in certain counties.—In the counties and parts of counties hereafter enumerated, where the stock law prevails, it shall be unlawful for any person to permit any turkeys, geese, chickens, ducks or other domestic fowls to run at large, after being notified as provided in this section, on the lands of any other person while such lands are under cultivation in any kind of grain or feedstuff, or while being used for gardens or ornamental purposes.

Any person so permitting his fowls to run at large, after having been notified to keep them up, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five dollars or imprisoned not exceeding five days, or if it shall appear to any justice of the peace that after two days notice any person persists in allowing his fowls to run at large and fails or refuses to keep them upon his own premises, then the said justice of the peace may, in his discretion, order any sheriff, constable or other officer to kill said fowls when so depredating.

Alamance, 1901, c. 645.
Bladen, 1901, c. 645.
Buncombe, 1907, c. 508.
Burke, 1907, c. 508.
Cabarrus, 1901, c. 645.
Caldwell, P. L. 1911, c. 244.
Cleveland, 1901, c. 645.
Columbus, 1933, c. 308.
Currituck, 1901, c. 645.
Davidson, P. L. 1911, c. 244.
Duplin, 1908, c. 73.
Edgecombe, 1901, c. 645.
Gaston, P. L. 1919, c. 31.
Graham, 1901, c. 645.
Granville, P. L. 1911, c. 244.
Guilford, 1901, c. 645.
Harnett, P. L. 1931, c. 443.
Henderson, P. L. 1911, c. 636.
Iredell, in Turnersburg Township, 1901, c. 645; in town of Statesville, 1903, c. 470.
Jackson, P. L. 1919, c. 31.
Lee, P. L. 1913, c. 725.
Lenoir, P. L. 1911, c. 244.
Macon, P. L. 1919, c. 31.
Mecklenburg, 1901, c. 645.
Onslow, P. L. 1911, c. 244.
Orange, 1903, c. 115.

Pasquotank, 1901, c. 645.
Rockingham, P. L. 1931, c. 434.
Rowan, 1909, c. 847.
Stokes, P. L. 1931, c. 22.
Surry, 1901, c. 645.
Swain, P. L. 1911, c. 244.
Transylvania, P. L. 1911, c. 244.
Tyrrell, P. L. Ex. Sess. 1921, c. 41.
Vance, 1909, c. 619.
Wayne, P. L. 1911, c. 244.

Note.—Statutes more or less similar to the above exist in the following counties:
Catawba, 1903, c. 482.
Chatham, 1903, c. 482.
Davie, P. L. 1915, c. 167.
Forsyth, P. L. 1915, c. 39.
Green, 1907, c. 917; 1908, c. 78.
Lincoln, P. L. 1915, c. 312.
McDowell, P. L. 1917, c. 328.
Pitt, P. L. 1915, c. 462.
Randolph, P. L. 1913, c. 645.
Robeson, P. L. 1917, c. 662.
Scotland, P. L. 1915, c. 714.
Wake, P. L. 1915, c. 378.
Yadkin, P. L. 1915, c. 39; P. L. 1917, c. 321 (Deep Creek Township excepted).
Yancy, P. L. 1913, c. 739.

Editor's Note.—"Columbus" was added to the list of counties by Public Laws 1933, c. 308. For act, applicable only to Duplin County, making this section over land used for cultivation of strawberries or other truck crop, see Public Laws 1933, c. 186.

§ 1864(a). Eastern North Carolina, territory placed under stock law.

As to stock law territory in Onslow County, see Public Laws 1933, c. 151.

CHAPTER 37

FISH AND FISHERIES

SUBCHAPTER I. FISHERIES COMMISSION BOARD ACT

Art. 4. Taxes and Regulations

§ 1889. Licenses for oyster boats; schedule.—The fisheries commissioner, assistant commissioner, or inspector, may grant license for a boat to be used in catching oysters upon application made, according to law, and the payment of a license tax as follows: On any boat or vessel without cabin or deck, and under custom-house tonnage, using scrapes or dredges, measuring over all twenty-five feet and under thirty, a tax of two dollars and fifty cents; fifteen feet and under twenty-five feet, a tax of one dollar and fifty cents; on any boat or vessel with cabin or deck and under custom-house tonnage, using scrapes or dredges, measuring over all thirty feet or under, a tax of four dollars; over thirty feet, a tax of five dollars; on any boat or vessel using scoops, scrapes, or dredges required to be registered or enrolled in the custom house, a tax of seventy-five cents a ton on gross tonnage. No vessel propelled by steam, gas or electricity, and no boat or vessel not the property absolutely of a citizen or citizens of this state, shall receive license or be permitted in any manner to engage in the catching of oysters anywhere in the waters of this state. (1915, c. 84, s. 11; 1933, c. 106.)

Editor's Note.—
Prior to Public Laws of 1933, c. 106, the fees required by this section were: $3, $2, $5, $6, and $1.50. The substantial reductions were effected by the amendment.

§ 1890. Boats using purse seines or shirred nets; tax.—All boats or vessels of any kind used in operating purse seines or shirred nets shall pay a license fee of seventy-five cents per ton on gross tonnage, custom-house measurement, which shall be independent of and separate from the seine or net tax on the seines or nets used on said boats. This license fee shall be for one year from January 1st, and shall not be issued for any period less than one year. It shall be issued by the fisheries commission. (1915, c. 84, s. 12; 1917, c. 290, s. 3; 1919, c. 333, s. 3; 1933, c. 106, s. 2.)

Editor's Note.—Prior to Public Laws 1933, c. 106, the fee required was $2 per ton instead of $.75 per ton.

§ 1891. Licenses for various appliances and their users; schedule.—The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina:

Anchor gill nets, fifty cents for each hundred yards or fraction thereof.

Stake gill nets, fifty cents for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, twenty-five cents for each hundred yards or fraction thereof.

Pound nets, one dollar and fifty cents on each pound; the pound is construed to apply to that part of net which holds and from which the fish are taken.

Submarine pounds, or submerged trap nets, one dollar and fifty cents for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, fifty cents each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, fifty cents per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, seventy-five cents per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, one dollar per one hundred yards or fraction thereof.

Fyke nets, twenty-five cents each.

For each trot line used in taking hard crabs, one dollar and fifty cents.

[Nonresident motor boats chartered by residents of the state and used in taking shrimp, ten dollars ($10.00) for each boat, and on each nonresident person acting as principal or employed in taking shrimp, a license tax of ten dollars ($10.00) for each year.]

Resident motor boats used in taking shrimp, three dollars ($3.00) for each boat.

Motor boats used in hauling nets, two dollars and fifty cents ($2.50) for each boat.

Motor boats used in dredging crabs or escallops, three dollars ($3.00) for each boat.

For each trawl used in taking fish or shrimp, one dollar ($1.00).

Nonresident angler's license to fish with rod and reel anywhere in the fresh waters of the State during the open season, five dollars ($5.00) each; that nothing herein contained shall be construed so as to require an angler's license of any one to fish on his own land or on any privately owned lake or pond.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

In addition to the officers now empowered by law, the clerks of the superior courts in the state are authorized to issue nonresident angler's license under chapter thirty-seven, consolidated statutes of North Carolina, in accordance with rules and regulations to be prescribed by the state fisheries commission board. (1915, c. 84, s. 14; 1917, c. 290, s. 5; 1919, c. 333, s. 3; 1925, c. 168, s. 1; 1927, c. 59, ss. 5, 7; 1931, c. 117; 1933, c. 106, s. 3; c. 433.)

Editor's Note.—
Public Laws of 1933, cc. 106 and 443, made substantial changes in the fees required by this section.

§ 1892. License tax on dealers and packers.—An annual license tax, for the year beginning January 1st in each year, to be collected by the fisheries commission board, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On—

oysters, two dollars and fifty cents;
escallops, two dollars and fifty cents;
clams, two dollars and fifty cents;
crabs, for shipment out of the state, two dollars and fifty cents;
fish, two dollars and fifty cents;
shrimp, two dollars and fifty cents: Provided, no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets. (1917, c. 290, s. 5; 1919, c. 333, ss. 1, 2; 1933, c. 106, s. 4.)

Editor's Note.—Public Laws of 1933, c. 106, reduced the fees on oysters, scallops and clams, from $5 to $2.50. The amendment also omitted the former provision requiring a license of fifty cents a year for shucking or selling oysters and clams on local market by retail.

§ 1893. Purchase tax on dealers; schedule; collection.—All dealers in and all persons who purchase, catch, or take for canning, packing, shucking, or shipping the sea products enumerated below shall be liable to a tax to be collected by the fisheries commission board as follows: On—

Oysters, two cents a bushel, except coon oysters, one cent a bushel; escallops, five cents a gallon; clams, four cents a bushel; soft crafts, one and one-quarter cents a dozen; shrimp, cooked or green, fifteen cents per one hundred pounds: Provided, however, no license tax shall be imposed or required for trot lines used for taking hard crabs from public grounds: Provided, further, that no license tax shall be imposed or required for power boats used for dredging escallops or crabs: Provided, further, that no license shall be required of any person who takes oysters for shucking and sells such oysters at retail on local markets.

But none of these products shall be twice taxed, and no tax shall be imposed on oysters, escallops, or clams taken from private beds or gardens. Upon failure to pay said tax, the license provided in the preceding section shall at once be null and void and no further license shall be granted during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the state of North Carolina on relation of the commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the general fisheries commission fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor. (1915, c. 84, s. 13; 1917, c. 290, s. 4; 1919, c. 333, s. 1; 1921, c. 194, s. 2; Ex. Sess. 1921, c. 42, ss. 2-4; 1923, c. 170; 1925, c. 168, s. 3; 1927, c. 59; 1929, c. 113; 1933, c. 106, s. 5.)

Editor's Note.—
Public Laws 1933, c. 106, changed the fees and added the three provisos appearing at the end of the first paragraph.

§ 1893(a). License tax on trawl boats.—There shall be levied annually upon each trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of twenty-five cents per gross ton, and on each trawl boat, or boat used for trawling purposes, not documented in the customs house a license tax of two dollars, and a tax of one dollar for each net. (1933, c. 106, s. 6.)

SUBCHAPTER II. SHELLFISH

Art. 5. Shellfish; General Laws

Part 2. Leases of Bottoms

§ 1908. Term and rental.—All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of fifty cents per acre for the first ten years and one dollar per acre per year for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years, of the lease. This rental shall be in lieu of all other taxes and imposts whatever, and shall be considered as all and the only taxation which can be imposed by the state, counties, municipalities or other subordinate political bodies. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding. (1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6; 1933, c. 346.)

Editor's Note.—The rental fees were reduced, by Public Laws 1933, c. 346, from $1 and $2, to $.50 and $1, respectively.

Art. 7A. Propagation of Oysters

§ 1959(h). Planting of certain kinds of oysters prohibited.—It shall be unlawful for any person, persons, firm or corporation to plant, store, dis-

tribute or in any way deposit the Japanese, Portugese or Mongolian oysters in any of the waters of North Carolina. Any person, persons, firm or corporation violating or attempting to violate this section shall be guilty of a felony, and, upon conviction, shall be fined not less than one thousand ($1,000.00) dollars or imprisoned not less than one (1) year, or both, in the discretion of the court. (1933, c. 235.)

SUBCHAPTER III. FISH OTHER THAN SHELLFISH

Art. 9. Commercial Fishing; General Regulations

§ 1970. Sunday fishing.—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months. (Rev., s. 3841; Code, s. 1116; 1883, c. 338; 1933, c. 438.)

Editor's Note.—

Public Laws 1933, c. 438, omitted the exception as to nets fastened to sticks.

For act exempting stationary fisheries in Onslow County from operation of section, see Public Laws 1933, c. 51.

Art. 10. Commercial Fishing; Local Regulations

Part 2. Streams

§ 2015. Roanoke river: Drift nets in, regulated.—It is unlawful to fish any drift nets in the Roanoke river over twenty yards in length, and no net shall drift within three hundred yards of another net and no two nets shall drift abreast of each other. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court: Provided, it shall be lawful on the Roanoke River from Halifax to the Power Dam at Roanoke Rapids to fish from January 1st to June 1st of each year with skim nets, dip nets, and fish traps with or without wings or hedgings. (1911, c. 163, s. 3; 1933, c. 336.)

Editor's Note.—Public Laws 1933, c. 336, added the proviso at the end of this section.

Part 3. Counties

§ 2066(a). Onslow County: Ban on use of haul nets and seines in New River.—It shall be unlawful to haul or drag seines or nets of any size, length or description by any means whatsoever within the waters of New River and its tributaries in Onslow County: Provided, that this section shall not be construed to prevent the transportation of seines or nets by boat: Provided further, that this section shall not apply to shrimp seines not over one hundred and fifty yards in length operated exclusively by hand and for the purpose of catching shrimp only as now provided by law or regulation.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 253.)

SUBCHAPTER IV. NONCOMMERCIAL FISHING

Art. 14. Licenses under Public Laws 1929

§ 2078(r). Non-resident state license.—Any person, without regard to age or sex, upon application to the director of the department of conservation and development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a non-resident of the state, shall, upon the payment of five ($5.00) dollars for the use of the department of conservation and development and ten ($.10) cents for the use of the official authorized in writing to issue licenses, be entitled to a "non-resident state fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under section one: Provided that any non-resident of the state desiring to fish for one day or more in the waters of the state of North Carolina may do so upon payment to the clerk of the court or game warden of the county in which the non-resident desires to fish the sum of sixty cents (60c) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of sixty cents (60c) the clerk of the court or game warden shall issue a permit allowing said non-resident to fish. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236.)

Editor's Note.—

Public Laws of 1933, c. 236, added the proviso, at the end of the section, relating to short time licenses for nonresidents.

SUBCHAPTER V. LICENSES FOR THE ARTIFICIAL PROPAGATION OF FISH

Art. 15. Licenses in General

§ 2078(ee). By whom issued.—The department of conservation and development is authorized to issue an artificial propagation license for the propagation of all species of trout and all species of bass, upon written application therefor signed by the applicant and upon the payment to said department the sum of five dollars; for all other species of fish, the sum of fifty cents: Provided, that any commercial fisherman who has paid the required license or licenses upon his fishing nets, devices or gear shall not be required to pay an additional license to deal in live fish for propagation purposes. (1929, c. 198, s. 1; 1933, c. 430, s. 1.)

Editor's Note.—Public Laws 1933, c. 430, added the proviso at the end of this section relating to payment of license by commercial fisherman.

CHAPTER 38

GAME LAWS

Art. 6. Local Hunting Laws

§ 2135(a) Local by counties; no closed season on foxes in certain counties.—It shall be lawful to hunt, take or kill foxes at any time in Ashe,

Avery, Iredell, Lenoir, Henderson and Watauga counties. (1931, c. 143, s. 5; 1933, c. 428.)

Editor's Note.—Public Laws 1933, c. 428, added Henderson to the list of the counties.

Art. 7. North Carolina Game Law of 1927 as Amended

§ 2141(j)1. Offices of state game warden and fisheries commissioner abolished; new office created.—The office of state game warden and the office of the commissioner of inland fisheries are hereby abolished. The board of conservation and development may appoint a person of scientific training and experience in the propagation and preservation of fish and game, who shall carry out the duties now prescribed for the state game warden and commissioner of inland fisheries, and whose salary shall not exceed three thousand dollars ($3,000.00) per year. (1933, c. 357.)

§ 2141(u). Powers of county game commission.—This article shall not be construed to dissolve any game commissions now existing in the several counties, nor to prohibit the creation of game commissions in the several counties, and such commissions now existing and such as may be created shall exist, but supervision of the provisions of this article and the direction of the policies and administration of this article and other acts which may exist for the same purposes as this shall be vested in and abide with the state game commission, and the powers of such county commissions as may exist or may be created shall be of a nature advisory and recommendatory to the state game commission and the exercise of any powers by them shall require the approval of the state game commission. In counties where game commissions are not created by legislative act the game commission of said county shall be composed of the chairman of the board of county commissioners, the clerk of the superior court, and the duly appointed and bonded county game warden as authorized in section 2141(w). (1927, c. 51, s. 18; 1933, c. 422, s. 1.)

Editor's Note.—Public Laws 1933, c. 422, added, as the last sentence of the section, the provision applicable in counties where commissions are not created by legislative act.

§ 2141(w). Powers of warden: To employ deputies.

Although a man may have been duly appointed under this section he is not an employee of the State before he has received word of his appointment and accepted it. Birchfield v. Department of Conservation, etc., 204 N. C. 217, 167 S. E. 855.

§ 2141(bb). Payment to state treasurer of license fees.—The warden shall promptly pay to the state treasurer all moneys received by him from the sale of hunting licenses or from any other source arising through the administration of this article, and the state treasurer shall deposit all such moneys in a special fund to be known as the state game fund and which is hereby reserved, set aside, appropriated and made available until expended as may be directed by the commission in the enforcement of this article, for the purposes of this article, and shall be used for no other purpose: Provided, that under the fiscal laws, rulings of the budget bureau and in the manner used in paying any other bill or item of expense there shall be paid each hunting season by the department of conservation and development to each county game commission as created in section eighteen, as amended, one one-hundredth part of the following per cent of receipts from the total sales of hunting licenses in North Carolina; five per cent of the first twenty-five thousand dollars; ten per cent of the second twenty-five thousand dollars; and fifteen per cent of all sales in excess of fifty thousand dollars, said remittances to be made as promptly as practicable and to be used by the county game commission specifically and only for paying bounties for the heads of outlawed predatory birds and animals in said county. (1927, c. 51, s. 25; 1933, c. 422, s. 2.)

Public Laws 1933, c. 422, added the proviso at the end of this section, relating to the percentage allowed counties.

§ 2141(dd). License required.

Editor's Note.—

For an act fixing licenses for the seasons of '33-'34 and '34-'35, see Public Laws 1933, c. 422, § 3. For an act relating to fox hunting with dogs applicable only to Northampton County, see Public Laws 1933, c. 157.

§ 2141(ii). Open seasons.—That for the purpose of fixing the open seasons the state shall be divided into three zones: the western, the central, and the eastern. The western zone shall be composed of the counties of Alleghany, Ashe, Watauga, Avery, Mitchell, Yancy, Buncombe, and Henderson and all other counties lying west of said counties; the central zone shall begin at the eastern boundary of the western zone, extend to and include the counties of Warren, Franklin, Wake, Chatham, Lee, Moore and Richmond; the eastern zone shall begin on the eastern boundary of the central zone and include all counties to the Atlantic Ocean. The open season for taking game animals and game birds, excepting opossum, raccoon, bear, buffalo, elk, squirrel and deer, shall be as follows:

Western Zone—November 15 to January 1.
Central Zone—November 20 to February 20.
Eastern Zone—November 20 to February 1.

The open season on deer as follows:
Western and Central Zones—October 15 to December 15.
Eastern Zone—September 1 to December 15.

The open season on squirrel as follows:
Western Zone—October 1 to November 30.
Central and Eastern Zones—October 1 to December 31.

The open season on opossum and raccoons as follows:
All Zones—November 1 to January 31.

The open season on bear as follows:
Western and Central Zones—October 1 to January 15.
Eastern Zone—Outlawed for 1933.

Provided, that the open seasons in the counties of Halifax, Northampton, Hertford, Person, Martin, Bertie, and Washington shall be as follows:

squirrel—September 15 to February 1.
deer—September 1 to January 1.
quail—November 20 to February 20.
turkey—November 20 to February 20.
raccoon—October 1 to February 1.

No open seasons on the following game animals

and birds: beaver, buffalo, elk, doe deer, pheasants and ruffed grouse.

The open and closed season on all migratory wildfowl shall conform with the United States biological survey legislation, irrespective of season as set for them by the North Carolina game laws. (1933, c. 422, s. 4.)

Editor's Note.—
Public Laws of 1933, c. 422, struck out the section as it formerly appeared and substituted the present section. A comparison of the old with the new is necessary to ascertain the changes. For act closing season on turkey in Guilford County for period of five years, see Public Laws of 1933, c. 169. This act was later repealed by Public Laws 1933, c. 378.

§ 2141(jj)1. Protection of public hunting grounds by department of conservation and development.—In order to improve hunting, to open to the hunting public lands well stocked with game, and to give landowners some income through game protection and propagation, the state of North Carolina through the department of conservation and development is authorized to recognize, list, and assist the owners in protecting their lands which are a part of public hunting grounds organized under this section of the North Carolina game law subject to the following conditions, stipulations, and such rules as the conservation board may adopt for the regulation of said hunting grounds:

(1) The minimum area recognized under this act is one thousand (1,000) acres;

(2) Owners of lands included in a hunting ground formed under this act must organize, adopt rules and regulations for the operation of said hunting ground, and be recognized by the department of conservation and development before such hunting grounds are put into operation under this section.

(3) The department of conservation and development will list and assist in advertising such public hunting grounds as are formed under this section, subject to such rules and regulations as may be adopted by the board from time to time and in accordance with the North Carolina game law and this section. The department of conservation and development will furnish at cost to the owners of public hunting grounds posters to be used in posting such lands, such poster to state that the lands are posted under this section of the North Carolina game law and in case of withdrawal of recognition by the department such posters shall be removed from the lands effected within ten days after notice to owner or owners;

(4) Owners of public hunting grounds shall require of each and every hunter the prescribed hunting licenses as set forth elsewhere in the North Carolina game law;

(5) The owners of public hunting grounds may require of each and every hunter a per day rate for hunting, rates to be approved by the department of conservation and development, said rates not to exceed four dollars ($4.00). In addition to charges for the privilege of shooting game, landowners may charge a dog hire when landowners furnish dogs, dogs to be furnished only by request of the hunter;

(6) When any group of owners of a public hunting ground organized under this section decide to promote the hunting of certain kinds of game, said kinds of game used for stocking to be propagated in game breeding plants organized and operated under the game and other laws of North Carolina, the owners shall be permitted to charge hunters such fees and rates as are approved by the board of conservation and development;

(7) No hunter is allowed to quit the hunting grounds at the end of the day's or part of a day's hunting without seeing the authority who gave him permission to hunt on said hunting grounds and paying all accounts due said authority;

(8) No construction or interpretation shall be put on this section or any part thereof as to permit the sale of dead game killed in accordance with this section, abrogate the bag limits, time of hunting, open and closed seasons as prescribed elsewhere in the North Carolina game law;

(9) No person shall hunt or discharge firearms upon any public hunting grounds organized under this section without being accompanied by one of the landowners or a personal representative of one landowner or after securing, on the day of the hunt or day preceding the hunt, written permission to hunt under the authority of this act, said written permission to bear the name in full, age, and address of the hunter, under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars for each and every offense;

(10) When hunting grounds, or any part thereof, organized and operated under this section, are used for purposes not consistent with the federal, state, and local laws, the department of conservation and development shall withdraw recognition from the area or such parts thereof as are deemed advisable, and report the case to the proper civil officials. (1931, c. 159; 1933, c. 422, s. 5.)

Editor's Note.—The only change effected by the 1933 amendment appears in clause (1). Public Laws 1933, c. 422, changed the minimum area recognized from 3,000 acres to 1,000 acres.

§ 2141(jj)2. Consent in writing to hunt upon another's lands.—It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only. (1933, c. 422, s. 6.)

This section does not repeal c. 210, Public Laws 1931 relating to Bladen County Game Laws.

§ 2141(qq). Punishment for violation of article.

Editor's Note.—
Public Laws of 1933, c. 422, § 7, provides: "Any person or persons violating any of the provisions of this act [amending §§ 2141(u), 2141(bb), 2141(ii), 2141(jj) 1, and adding § 2141(jj) 2,] shall be guilty of a misdemeanor and fined not to exceed fifty dollars or imprisoned for not more than thirty days for each offense."

§ 2141(aaa). Amount of license; license to be good only in county of residence.—Such licenses must be taken out before any person, firm or corporation in any manner engages in the business of buying and selling furs, and the amount of said licenses shall be as follows: For a resident state-wide license the sum of twenty-five dollars, which will entitle the holder to buy and sell furs in any or all of the counties of North Carolina; for a resident county license the sum of ten dol-

lars, which will entitle the holder to buy or deal in furs only in the county designated in the license, and for each additional county the sum of ten dollars; for a non-resident of the state of North Carolina before he shall be permitted to engage in the business of buying or selling furs or dealing in same, any such person, firm or corporation shall annually take out a fur dealer's license and shall pay therefor the sum of one hundred dollars for a state-wide license. These licenses shall be issued through the wardens or agents of the department of conservation and development as a part of their official duties. An annual license shall be issued for the sum of five dollars per annum: Provided, such license shall be issued only to a dealer buying only in the county of his residence, at a fixed place of business. (1929, c. 333, s. 2; 1933, c. 337, s. 1.)

Editor's Note.—Prior to Public Laws 1933, c. 337, the state-wide license for a resident was $75, instead of $25. The license for a non-resident was $400, instead of $100, and counties were permitted to collect an additional $50 from such resident. The next to the last sentence formerly provided for an annual local license of $5, instead of $1, with the limitation that the buying should not exceed $500 worth of furs per annum.

§ 2141(ccc). What counties may levy tax.—No county, city or town shall have the right to levy any license on resident fur dealers except that the county in which such dealers or buyers maintain a place of business or residence may charge and collect from such dealers a license tax of not more than five dollars per annum. (1929, c. 333, s. 4; 1933, c. 337, s. 2.)

Editor's Note.—Ten dollars, instead of five dollars, was the amount permitted to be collected prior to Public Laws 1933, c. 337.

§ 2141(ddd). Permits may be issued to non-resident dealers.—It shall be lawful for the department of conservation and development to issue permits to non-resident dealers for the purchase of raw furs from only licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3.)

Editor's Note.—Prior to Public Laws 1933, c. 337, this section contained the proviso limiting permits to the purchase of furs from dealers who had taken out the $75 license.

§ 2141(eee). Duplicate license for each employee of dealer, $25 each; applicants must be residents.—All bona fide members of a resident firm or corporation and their bona fide regular employees, all such members and employees being residents of North Carolina, shall be required to take out a license showing their employment and shall pay therefor the sum of twenty-five dollars each. Applicants for resident fur dealers license must have actually resided in the state for six months next before making application for such license. (1929, c. 333, s. 6; 1933, c. 337, s. 4.)

Editor's Note.—In the first sentence of this section, Public Laws of 1933, c. 337, struck out the word "duplicate" before the word license. It also increased the sum from $10 to $25.

CHAPTER 40

GUARDIAN AND WARD

Art. 1. Jurisdiction in Matter of Guardianship

§ 2150. Jurisdiction in clerk of superior court.

Removal of Guardian.—A ward may not bring an action in the Superior Court by her next friend to remove her guardian appointed by the clerk under this section. Moses v. Moses, 204 N. C. 657, 169 S. E. 273.

Art. 2. Creation and Termination of Guardianship

§ 2158. Removal by clerk.

A ward may not bring an action in the Superior Court by her next friend to remove her guardian and appoint another, the Superior Court in such instance being without jurisdiction. Moses v. Moses, 204 N. C. 657, 169 S. E. 273.

Art. 3. Guardian's Bond

§ 2161. Bond to be given before receiving property.

Cross References.—
As to the liability of a bank and its surety for mingling funds while acting as guardian, see § 2162 and the note thereto. As to corporation acting as guardian without giving bond, see §§ 6376 and 6377.

Necessary Parties to Action on Bond.—Where an assistant clerk of the Superior Court has been appointed guardian of the estate of a minor by the clerk and has given bond and has defaulted, causing loss to the estate of the minor, upon the minor's coming of age he and the new guardian appointed may sue upon the guardianship bond and where he does so neither the clerk of the Superior Court nor his sureties on his bond is a necessary party, so far as his action is concerned. Phipps v. Royal Indemnity Co., 201 N. C. 561, 161 S. E. 69.

§ 2162. Terms and conditions of bond; increased on sale of realty.

Bank Intermingling Trust Funds.—If a bank, as guardian, in not investing the funds of its ward, but intermingling it with other funds of its bank, it is faithless to the trust reposed in it; under the terms of this section, then its bondsman, must suffer the loss for such faithlessness. Roebuck v. National Surety Co., 200 N. C. 196, 202, 156 S. E. 531.

§ 2165. Renewal of bond every three years; enforcing renewal.

Where a guardian gives several successive bonds for the faithful discharge of his trust, the sureties on each bond stand in the relation of cosureties to the sureties on every other bond; the only qualification to the rule being, that the sureties are bound to contribution only according to the amount of the penalty of the bond, in which each class is bound. Thornton v. Barbour, 204 N. C. 583, 585, 169 S. E. 153.

§ 2166. Relief of endangered sureties.

The clerk is not empowered by any express statute to release sureties, upon bonds approved by him, certainly at a time when the principal is in default, this section provides a remedy for dissatisfied sureties upon guardian bonds, but release is not one of the remedies therein contemplated. Thornton v. Barbour, 204 N. C. 583, 587, 169 S. E. 153.

Art. 4. Powers and Duties of Guardian

§ 2169. To take charge of estate.

Payment of funds to a guardian by Veterans' Bureau under War Risk Insurance Act vests title in the ward and operates to discharge the obligation of the United States. Hence the deposit of the funds in a bank which was duly appointed guardian and which later became insolvent does not belong to the United States and, as indebtedness to the United States is essential to priority under 31 U. S. C. A., § 191, the claim of the surety on the guardian's bond is without merit. In re Home Savings Bank, 204 N. C. 454, 168 S. E. 688.

Art. 5. Sales of Ward's Estate

§ 2180. Special proceedings to sell; judge's approval required.

Where an order confirming a sale of lands for partition does not provide for the disbursement of the funds, and the sum received in cash is properly paid into court and properly disbursed to the parties, the share of the minors therein being less than one hundred dollars and being paid to their mother for their benefit, under § 962, the sale was not void. Ex parte Huffstetler, 203 N. C. 796, 167 S. E. 65.

Art. 6. Returns and Accounting

§ 2183. Return within three months.

In the administration of the estate in behalf of the lunatic, the guardian is subject to the orders of the clerk by whom he was appointed and to whom he is required by this and following sections to account. Read v. Turner, 200 N. C. 773, 777, 158 S. E. 475.

§ 2187. Procedure to compel accounting.—If any guardian omit to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the clerk of the superior court shall forthwith order such guardian to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such guardian fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against him for contempt and commit him till he exhibits such account, and may likewise remove him from office. And in all proceedings hereunder the defaulting guardian will be liable personally for the costs of the said proceeding, including the costs of service of all notices or writs incidental to, or thereby accruing, or the amount of the costs of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate. Where a corporation is guardian, the president, cashier, trust officer or the person or persons having charge of the particular estate for said corporation, or the person to whom the duty of making reports of said estate has been assigned by the officers or directors of said corporation, may be proceeded against and committed to jail as herein provided as if he or they were the guardian or guardians personally: Provided, it is found as a fact that the failure or omission to file such account or to obey the order of the court in reference thereto is willful on the part of the officer charged therewith: Provided further, the corporation itself may also be fined and/or removed as such guardian for such failure or omission. (Rev., s. 1806; Code, s. 1618; C. C. P., s. 479; 1929, c. 9, s. 2; 1933, c. 317, § 1.)

Editor's Note.—
Public Laws 1933, c. 317, inserted the last sentence of this section relating to compelling corporate guardians to account.

Art. 10. Guardian of Estates of Missing Persons

§ 2202(a). Appointment.—When it shall be made to appear to the satisfaction of the clerk of the superior court, or a judge of the superior court having jurisdiction of the appointment of guardians, that any person has disappeared from the community of his residence, and his whereabouts remains unknown in such community for a period of three (3) months, and cannot, after diligent inquiry, be ascertained; and that such person has property in the state and property rights within its jurisdiction which may be affected by his absence, or may need protection and administration; and that such person has made no provision for the management of his affairs; such clerk of the superior court or judge of the superior court may appoint a guardian of the estate and property of such person as may, by law be done in the case of minors and persons non compos mentis, and with the like powers and duties with respect to such estate. (1933, c. 49, s. 1.)

§ 2202(b). Jurisdiction.—The clerk of the superior court of the county of the last residence of such absent person shall have prior right to jurisdiction of such appointment, but the appointment may be made by the clerk of the superior court of any county in the state where such person has property, after the expiration of six months from the time of such disappearance, if no prior appointment has been made. (1933, c. 49, s. 2.)

§ 2202(c). Powers and duties; bond. — The guardian, so appointed, shall have all the powers and duties with respect to the property and estate of such absent person as are now, or may be hereafter, conferred by law upon guardians generally; and before entering into the discharge of the duties of his guardianship, he shall be required to enter into such bond as is now required by law in such cases, for the faithful performance of his trust and for the accounting of the property, moneys and assets of the estate coming into his hands as guardian. (1933, c. 49, s. 3.)

§ 2202(d). General laws applicable.—The public laws relating to guardianships, and particularly chapter forty (40), consolidated statutes of North Carolina, entitled "guardian and ward," as far as by their terms may be applicable, and as far as they are not modified by this article shall apply to guardians so appointed. (1933, c. 49, s. 3.)

§ 2202(e). Other managerial powers conferred.—In addition to the powers given to guardians under the general laws of the state, such guardians may, by approval of the court, apply funds in his hands to the satisfaction of obligations of such absent person, renew notes and other obligations, pledge property for loans necessary in carrying on or liquidation of the affairs of such absent person; cause lands to be cultivated, where such business was previously carried on, and make such contracts with reference thereto as he may deem to the best interest of the estate, and, under the direction of the court and with its approval, continue to operate any business or business enterprise of such person, and make such contracts, agreements and settlements in reference thereto as may be necessary, or to the best interests of the estate. (1933, c. 49, s. 4.)

§ 2202(f). Discharge of guardian upon return of missing person.—Upon the return of such absent person, and within six months from the filing of the petition by such person to be restored to his property and to the management of his estate, the clerk of the superior court having jurisdiction of the said guardianship shall require a settlement of the estate by the guardian so appointed, and shall cause to be turned over to him all of the said estate then in the hands of the said guardian, after the payment of such reasonable costs and commissions as may be authorized by law, and, upon the filing of a financial account by the said guardian, he shall be discharged. (1933, c. 49, s. 5.)

§ 2202(g). Guardian not liable except for misconduct.—No action shall be maintained against such guardian, or the sureties on his bond, by reason of his appointment, taking over and managing the property of such absent person, or any

of his acts with respect to the said estate, where it appears that they were done under authority of this article, but only for recovery because of the misconduct in office or bad faith of such guardian, or the waste of the assets of the estate through mismanagement, amounting to gross carelessness or in violation of the law. (1933, c. 49, s. 6.)

CHAPTER 40A

VETERANS' GUARDIANSHIP ACT

§ 2202(10). Guardian's accounts to be filed; hearing on accounts.—Every guardian who shall receive on account of his ward any moneys from the bureau, shall file with the court annually on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the bureau having jurisdiction over the area in which such court is located.

At the time such account is filed the clerk of superior court shall require the guardian to exhibit to the court all investments and bank statements showing cash balance and the clerk of superior court shall certify on the original account and the certified copy which the guardian sends the bureau that an examination was made of all investments and cash balance and that same are correctly stated in the account. If objections are raised to such an accounting, the court shall fix a time and place for the hearing thereon not less than fifteen days nor more than thirty days from the date of filing such objections, and notice shall be given by the court to the aforesaid bureau office and state service officer by mail not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall also be given to the guardian. (1929, c. 33, s. 10; 1933, c. 262, s. 1.)

Editor's Note.—Public Laws of 1933, c. 262, omitted the last two sentences of this section as it formerly read and inserted the last three sentences of the present section in lieu thereof. The next to the last and the last sentence as they now read are practically the same as the omitted provision. The third from the last sentence is new with the amendment.

§ 2202(13). Investment of funds.—Every guardian shall invest the funds of the estate in any of the following securities:

(a) United States government bonds.

(b) State of North Carolina bonds issued since the year one thousand eight hundred seventy-two.

(c) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty per cent (50%) of the actual appraised or assessed value, whichever may be lower, and said loans when made to be evidenced by a note, or notes, or bond, or bonds, under seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages shall secure a certificate of title from some reputable attorney certifying that the same is the first lien on real estate and also setting forth the tax valuation thereof for the current year: Provided, said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of superior court, said order to be approved by the resident or presiding judge of the superior court, and provided further that copy of said petition shall be forwarded to said bureau before consideration thereof by said court.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the superior court, either residing in or presiding over the courts of the district, the clerk of the superior court may authorize the guardian to extend from time to time, the time for sale or collection of any such investments; that no extension shall be made to cover a period of more than one year from the time the extension is made.

The clerk of the superior court of any county in the state or any guardian who shall violate any of the provisions of this section shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court. (1929, c. 33, s. 14; 1933, c. 262, s. 2.)

Editor's Note.—Prior to the amendment by Public Laws 1933, c. 262, this section merely provided that the guardian should invest the funds as allowed by the law or approved by the court.

CHAPTER 41

HABEAS CORPUS

Art. 6. Proceedings and Judgment

§ 2234. Proceedings on return; facts examined; summary hearing of issues.

Hearing Not Perfunctory.—The words "if issue be taken upon the material facts . . . the judge shall proceed in a summary way to hear the allegations and proofs of both sides," preclude the idea that such hearing shall be perfunctory and merely formal. In re Bailey, 203 N. C. 362, 365, 166 S. E. 165.

Discretion of Judge.—See In re Bailey, 203 N. C. 362, 367, 166 S. E. 165, following statement under this catchline in Code of 1931.

Art. 7. Habeas Corpus for Custody of Children in Certain Cases

§ 2241. Custody as between parents in certain cases; modification of order.

Action by Father against Grandmother.—Where the father of a child brings a writ of habeas corpus against the grandmother for the custody of the child but the contest is to all intents and purposes between the husband and wife for the custody of the child the writ comes within the spirit and letter of this section. In re Ten Hoopen, 202 N. C. 223, 162 S. E. 619.

CHAPTER 43

INSANE PERSONS AND INCOMPETENTS

Art. 2. Guardianship and Management of Estates of Incompetents

§ 2285. Inquisition of lunacy; appointment of guardian.—Any person, in behalf of one who is deemed an idiot, inebriate, or lunatic, or incompetent from want of understanding to manage his own affairs by reason of the excessive use of intoxicating drinks, or other cause, may file a

petition before the clerk of the superior court of the county where such supposed idiot, inebriate or lunatic resides, setting forth the facts, duly verified by the oath of the petitioner; whereupon such clerk shall issue an order, upon notice to the supposed idiot, inebriate or lunatic, to the sheriff of the county, commanding him to summon a jury of twelve men to inquire into the state of such supposed idiot, inebriate or lunatic. Upon the return of the sheriff summoning said jury, the clerk of the superior court shall swear and organize said jury and shall preside over said hearing, and the jury shall make return of their proceedings under their hand to the clerk, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate, lunatic, or incompetent person by inquisition of a jury, as in cases of orphans.

Either the applicant or the supposed idiot, inebriate, lunatic, or incompetent person may appeal from the finding of said jury to the next term of the superior court, when the matters at issue shall be regularly tried de novo before a jury, and pending such appeal, the clerk of the superior court shall not appoint a guardian for the said supposed idiot, inebriate, lunatic, or incompetent person, but the resident judge of the district, or the judge presiding in the district, may in his discretion appoint a temporary receiver for the alleged incompetent pending the appeal. The trial of said appeal in the superior court shall have precedence over all other causes.

The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate, lunatic or incompetent person by inquisition of a jury, as in cases of orphans. If the person so adjudged incompetent shall be an inebriate within the definition of section two thousand two hundred and eighty-four, the clerk shall proceed to commit said inebriate to the department for inebriates at the state hospital in Raleigh for treatment and cure. He shall forward to the superintendent of said state hospital a copy of the record required herein to be made, together with the commitment, and these shall constitute the authority to said superintendent to receive and care for and cure said inebriate. The expenses of the care and cure of said inebriate shall constitute a charge against the estate in the care of his guardian. If, however, such estate is not large enough to pay such expenses, the same shall be a valid charge against the county from which said inebriate is sent. Provided, where the person is found to be incompetent from want of understanding to manage his affairs, by reason of physical and mental weakness on account of old age and/or disease and/or other like infirmities, the clerk may appoint a trustee instead of guardian for said person. The trustee appointed shall be subject to the laws now or which hereinafter may be enacted for the control and handling of estates by guardians. The clerks of the superior courts who have heretofore appointed guardians for persons described in this proviso are hereby authorized and empowered to change said appointment from guardian to trustee. The sheriffs of the several counties to whom a process is directed under the provisions of this section shall serve the same without demanding their fees in advance. And the juries of the several counties upon whom a process is served under the provisions of this section shall serve and make their returns without demanding their fees in advance. (Rev., s. 1890; Code, s. 1670; C. C. P., s. 473; 1919, c. 54; 1921, c. 156, s. 1; 1929, c. 203, s. 1; 1933, c. 192.)

Editor's Note.—Public Laws 1933, c. 192, added the last two sentences abolishing advanced fees of sheriffs and juries.

Art. 5. Detention, Treatment, and Cure of Inebriates

§ 2304(f). Department for inebriates.—It shall be the duty of trustees and superintendent of the state hospital at Raleigh to prepare and set apart a department for such inebriates on or before the first day of May, one thousand nine hundred and twenty-two: Provided that, if in the course of care and treatment of said inebriates it developes that they have criminal, mental, or other symptoms indicating they can not be properly taken care of in this department, the superintendent of the hospital is hereby authorized to transfer such patients to any other department under his care, that, in his opinion, the circumstances may justify. (1921, c. 156, s. 7; 1933, c. 341.)

Editor's Note.—Public Laws of 1933, c. 341, added the proviso relating to inebriates in the state hospital at Raleigh.

Art. 6. Sterilization of Persons Mentally Defective

§ 2304(h)-2304(l): Repealed by Public Laws 1933, c. 224.

§ 2304(m). State institutions authorized to sterilize mental defectives.—The governing body or responsible head of any penal or charitable institution supported wholly or in part by the state of North Carolina, or any subdivision thereof, is hereby authorized and directed to have the necessary operation for asexualization, or sterilization, performed upon any mentally diseased, feebleminded or epileptic inmate or patient thereof, as may be considered best in the interest of the mental, moral, or physical improvement of the patient or inmate, or for the public good: Provided, however, that no operation described in this section shall be lawful unless and until the provisions of this article shall first be complied with. (1933, c. 224, s. 1.)

Constitutionality.—The Act of 1929, c. 34, appearing in the Code of 1931 as §§ 2304(h) to 2304(l), was held unconstitutional, being in violation of the provisions of the Fourteenth Amendment, § 1, of the Constitution of the United States, and of the State Constitution, Art. I, § 17, there being no provision in the statute giving a person ordered to be sterilized notice and a hearing or affording him the right to appeal to the courts. Brewer v. Valk, 204 N. C. 186, 167 S. E. 638. The defect does not exist in the present statute. See § 2304(y).

§ 2304(n). Operations on mental defectives not in institutions.—It shall be the duty of the board of commissioners of any county of North Carolina, at the public cost and expense, to have one of the operations described in section 2304(m), performed upon any mentally diseased, feebleminded or epileptic resident of the county, not an inmate of any public institution, upon the request and petition of the superintendent of public welfare or other similar public official per-

forming in whole or in part the functions of such superintendent, or of the next of kin, or the legal guardian of such mentally defective person: Provided, however, that no operation described in this section shall be lawful unless and until the provisions of this article shall be first complied with. (1933, c. 224, s. 2.)

§ 2304(o). Restrictions on such operations.— No operation under this article shall be performed by other than a duly qualified and registered North Carolina physician or surgeon, and by him only upon a written order signed after complete compliance with the procedure outlined in this act by the responsible executive head of the institution or board, or the superintendent of public welfare, or other similar official performing in whole or in part the functions of such superintendent, or the next of kin or legal guardian having custody or charge of the feebleminded, mentally defective or epileptic inmate, patient or non-institutional individual. (1933, c. 224, s. 3.)

§ 2304(p). Prosecutors designated; duties. — If the person upon whom the operation is to be performed is an inmate or patient of one of the institutions mentioned in section 2304(m), the executive head of such institution or his duly authorized agent shall act as prosecutor of the case. If the person to be operated upon is not an inmate of any such public institution, then the superintendent of welfare or such other official performing in whole or in part the functions of such superintendent of the county of which said inmate, patient, or non-institutional individual to be sterilized is a resident, shall be the prosecutor. It shall be the duty of such prosecutor promptly to institute proceedings as provided by this article in any or all of the following circumstances:

1. When in his opinion it is for the best interest of the mental, moral or physical improvement of the patient, inmate, or non-institutional individual, that he or she be operated upon.

2. When in his opinion it is for the public good that such patient, inmate or non-institutional individual be operated upon.

3. When in his opinion such patient, inmate, or non-institutional individual would be likely, unless operated upon, to procreate a child or children who would have a tendency to serious physical, mental, or nervous disease or deficiency.

4. When requested to do so in writing by the next of kin or legal guardian of such patient, inmate or non-institutional individual.

5. In all cases as provided for in section 2304(ff). (1933, c. 224, s. 4.)

§ 2304(q). Eugenics board of N. C. created.— There is hereby created the eugenics board of North Carolina. All proceedings under this article shall be begun before the said eugenics board. This board shall consist of five members and shall be composed of: (1) the commissioner of public welfare of North Carolina, (2) the secretary of the state board of health of North Carolina, (3) the chief medical officer of an institution for the feebleminded or insane of the state of North Carolina, not located in Raleigh, (4) the chief medical officer of the state hospital at Raleigh, (5) the attorney general of the state of North Carolina. Any one of these officials may for the purpose of a single hearing delegate his power to act as a member of said board to an assistant: Provided, said delegation is made in writing, to be included as a part of the permanent record in said case. The said board shall from time to time elect a chairman from its own membership and adopt and from time to time modify rules governing the conduct of proceedings before it, and from time to time select the member of the said board designated above as the chief medical officer of an institution for the feebleminded or insane of the state of North Carolina not located in Raleigh. (1933, c. 224, s. 5.)

§ 2304(r). Quarterly meetings.—The board of eugenics shall meet at least quarterly in each year in Raleigh for the purpose of hearing all cases that may be brought before it and shall continue in session with appropriate adjournments until all current applications and other pending business have been disposed of. The members shall receive no additional compensation for their services. (1933, c. 224, s. 6.)

§ 2304(s). Secretary of board and duties.—The board shall appoint a secretary not a member of the board who shall conduct the business of the board between the times of the regular meetings. Such secretary shall receive all petitions, keep the records, call meetings, and in general act as the executive of said board in such matters as may be delegated to him by said board. (1933, c. 224, s. 7.)

§ 2304(t). Proceedings before board.—Proceedings under this article shall be instituted by petition of the said prosecutor to the said eugenics board. Such petition shall be in writing, signed by the petitioner and duly verified by his affidavit to the best of his knowledge, information and belief. It shall contain the history of the inmate or patient as shown in the records of the institution, or if he is not in an institution, then the complete medical history of the case of the individual resident so far as it bears upon the recommendations for asexualization or sterilization, and setting forth the particular reasons why asexualization or sterilization is recommended. This history shall be verified by the affidavit of at least one competent physician who has had actual knowledge of the case and who in the cases of inmates or patients of the institutions described in section 2304(m) may be a member of the medical staff of said institution. The petition shall further contain an adequate social case history of the circumstances surrounding the inmate's, patient's, or individual resident's life in so far as such circumstances may bear upon the question as to whether said inmate, patient, or individual resident is likely to procreate a child or children. The prayer of said petition shall be that an order be entered by said board requiring the petitioner to perform, or to have performed by some competent physician or surgeon to be designated by him in said petition, or by said board in its order, upon said inmate or patient or individual resident named in said petition in its discretion that one of the operations specified in section 2304(m) which shall be best suited to the interests of the said inmate, patient or individual resident or to the public good. (1933, c. 224, s. 8.)

§ 2304(u). Copy of petition served on patient.—A copy of said petition, duly certified by the secretary of the said board to be correct, must be served upon the inmate, patient or individual resident, together with a notice in writing signed by the secretary of the said board designating the time and place not less than fifteen days before the presentation of such petition to said board when and where said board will hear and act upon such petition.

A copy of said petition, duly certified to be correct, and the said notice must also be served upon the legal or natural guardian and next of kin of the inmate, patient or individual resident. If no near relative is known, the copy and notice shall be sent to the solicitor of the county in which the inmate, patient or individual resident resides, and it shall be his duty to protect the rights and best interests of the said inmate, patient or individual resident.

If there is no next of kin and no solicitor in said county, or if there is no known guardian of said inmate, patient, or individual resident and the said inmate, patient or individual resident is of such mental condition as not to be competent reasonably to conduct his own affairs, then the said prosecutor shall apply to the superior court of the county in which the inmate, patient or individual resident resides or to the judge thereof in vacation, who shall appoint some suitable person to act as guardian of the said inmate during and for the purposes of proceedings under this act, to defend the rights and interests of the said inmate, patient or individual resident. And such guardian shall be served likewise with a copy of the aforesaid petition and notice, and shall under all circumstances be given at least fifteen days' notice of said hearing. Such guardian may be removed or discharged at any time by the said court or the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the said inmate or patient be under twenty-one years of age and have a living parent or parents whose names and addresses are known or can by reasonable investigation be learned by said prosecutor, they or either of them, as the case may be, shall be served likewise with a copy of said petition and notice and shall be entitled to at least fifteen days' notice of the said hearing. (1933, c. 224, s. 9.)

§ 2304(v). Consideration of matter by board.—The said board at the time and place named in said notice, with such reasonable continuances from time to time and from place to place as the said board may determine, shall proceed to hear and consider the said petition and evidence offered in support of and against the same: Provided, that the said board shall give opportunity to said inmate, patient or individual resident to attend the said hearings in person if desired by him or if requested by his guardian or next of kin, or the solicitor.

The said board may receive and consider as evidence at the said hearings the commitment papers and other records of the said inmate or patient with or in any of the aforesaid institutions as certified by the superintendent or executive official, together with such other evidence as may be offered by any party to the proceedings.

Any member of the said board shall have power for the purposes of this article to administer oaths to any witnesses at such hearing.

Depositions may be taken, as in other civil cases, by any party after due notice and read in evidence, if otherwise pertinent.

Any party to the said proceedings shall have the right to be represented by counsel at such hearings.

A stenographic transcript of the proceedings at such hearings duly certified by the petitioner and the inmate, patient or individual resident, or his guardian or next of kin, or the solicitor, shall be made and preserved as part of the records of the case. (1933, c. 224, s. 10.)

§ 2304(w). Board may deny or approve petition.—The said board may deny the prayer of the said petition or if, in the judgment of the board, the case falls within the intent and meaning of one or more of the circumstances mentioned in section 2304(p), and an operation of asexualization or sterilization seems to said board to be for the best interest of the mental, moral or physical improvement of the said patient, inmate or individual resident or for the public good, it shall be the duty of the board to approve said recommendation in whole or in part or to make such order as under all the circumstances of the case may seem appropriate, within fifteen days after the conclusion of said hearings, and to send to the prosecutor a written order, signed by at least three members of the board, directing him to proceed with the operation as provided in this article. Said order shall contain the name of the specific operation which is to be performed and the date when said operation is to be performed.

If the board disapproves the petition, the case may not be brought up again except on the request of the inmate, patient, or individual resident, or his guardian, or one or more of his next of kin, husband, wife, father, mother, brother, or sister, until one year has elapsed.

Nothing in this act shall be construed to empower or authorize the board to interfere in any manner with the right of the patient, inmate, or individual resident, or his guardian or next of kin to select a competent physician of his own choice for consultation or operation at his own expense. (1933, c. 224, s. 11.)

§ 2304(x). Orders may be sent parties by registered mail; consenting to operation.—Any order granting the prayer of the petition, in whole or in part, may be delivered to the petitioner by registered mail, return receipt demanded, to all parties in the case, including the legal guardian, the solicitor and the next of kin of the inmate, patient, or individual resident. It shall be the duty of the said guardian, the solicitor and the next of kin to protect by such measures as may seem to them in their sole discretion sufficient and appropriate the rights and best interests of the said inmate, patient, or individual resident.

If the inmate, patient or individual resident, or the next of kin, legal guardian, solicitor of the county, and guardian appointed as herein provided, after the said hearing but not before, shall consent in writing to the operation as ordered by the board, such operation shall take place at

such time as the said prosecutor petitioning shall designate. (1933, c. 224, s. 12.)

§ 2304(y). Right of appeal to superior court. —If it appears to the inmate, patient or individual resident, or to his or her representative, guardian, parent or next of kin, or to the solicitor, that the proceedings taken are not in accordance with the law, or that the reasons given for asexualization or sterilization are not adequate or well founded, or for any other reason the order is not legal, or is not legal as applied to this inmate, patient or individual resident, he or she may within fifteen days from the date of such order have an appeal of right to the superior court of the county in which said inmate or patient resided prior to admission to the institution, or the county in which the non-institutional individual resides. This appeal may be taken by giving notice in writing to any member of the board and to the other parties to the proceeding, including the doctor who is designated to perform the said operation. Upon the giving of this notice the petitioner within fifteen days thereafter shall cause a copy of the petition, notice, evidence and orders of the said board certified by any member thereof to be sent to the clerk of the said court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The said superior court in determining such an appeal may consider the record of the proceedings before the said board, including the evidence therein appearing, together with such other legal evidence as may be offered to the said court by any party to the appeal.

Upon such appeal the said superior court may affirm, revise, or reverse the orders of the said board appealed from and may enter such order as it deems just and right and which it shall certify to the said board.

The pendency of such appeal shall automatically, and without more, stay proceedings under the order of the said board until the appeal be completely determined. Should the decision of the superior court uphold the plaintiff's objection, such decision will annul the order of the board to proceed with the operation, and the matter may not be brought up again until one year has elapsed except by the consent of the plaintiff or his next of kin, or his legal representatives. Should the court affirm the order of the board, then, if no notice of appeal to the supreme court is filed within ten days after such decision, said board's recommendation as affirmed shall be put into effect at a time fixed by the original prosecutor or his successor in office and the inmate, patient or individual shall be asexualized or sterilized as provided in this article.

In this appeal the person for whom an order of asexualization or sterilization has been issued shall be designated as the plaintiff, and the prosecutor presenting the original petition shall be designated as defendant. (1933, c. 224, s. 13.)

See note to § 2304(m).

§ 2304(z). Record before board conclusive as to facts; appeal costs.—In the proceedings before the superior court the record of the proceedings before said board shall be conclusive and binding as to all questions of fact. The superior court shall pass upon and review only questions of law.

The cost of appeal, if any, to the superior or higher courts, shall be taxed as in civil cases. If the case is finally determined in favor of the plaintiff, the costs shall be paid by the county. (1933, c. 224, s. 14.)

§ 2304(aa). Appeal to supreme court. — Any party to such appeal to the superior court may, within ten days after the date of the final order therein, apply for an appeal to the supreme court, which shall have jurisdiction to hear and determine the same upon the record of the proceedings in the superior court and to enter such order as it may find the superior court should have entered.

The pendency of an appeal in the supreme court shall operate as a stay of proceedings under any orders of the said board and the superior court until the appeal be determined by the said supreme court. (1933, c. 224, s. 15.)

§ 2304(bb). Civil or criminal liability of parties limited. — Neither the said petitioner nor any other person legally participating in the execution of the provisions of this article shall be liable, either civilly or criminally, on account of such participation, except in case of negligence in the performance of said operation. (1933, c. 224, s. 16.)

§ 2304(cc). Necessary medical treatment unaffected by article.—Nothing contained in this article shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this state, by a physician or surgeon licensed in this state, which treatment may incidentally involve the nullification or destruction of the reproductive functions. (1933, c. 224, s. 17.)

§ 2304(dd). Permanent records of proceedings before board.—Records in all cases arising under this article shall be filed permanently with the secretary of the said eugenics board. Such records shall not be open to public inspection except for such purposes as the court may from time to time approve. (1933, c. 224, s. 18.)

§ 2304(ee). Valid parts of act upheld; definitions.—This article is severable in its provisions; and the validity of any part, section, or provision of the same shall not be construed to affect the validity of any other part which may be given practical operation and effect without the invalid part, section or provision.

Where the inmates, patients or non-institutional individuals are referred to in this article as of the masculine or feminine gender, the same shall be construed to include the feminine or masculine gender as well. Wherever the term individual resident appears in this article, it shall be construed to mean non-institutional individual. (1933, c. 224, s. 19.)

§ 2304(ff). Discharge of patient from institution.—Before any inmate or patient designated in sections 2304(m) and 2304(p), shall be released, paroled or discharged, it shall be the duty of the governing body or responsible head of any institution above mentioned to comply with the procedure set out in this article, whenever a written

request for the asexualization or sterilization of said inmate or patient is filed with the governing body or responsible head of the institution in which such inmate or patient has been legally confined. This written request may be made by any public official or by the legal guardian or next of kin of any inmate or patient not later than thirty days prior to the date of said parole or discharge. Upon the receipt of the signed approval of the eugenics board as described in this article, it shall be the duty of said governing board or responsible head to issue an order for the performance of the operation upon said inmate or patient, and the operation must be performed before the release, parole or discharge of any such inmate or patient. (1933, c. 224, s. 20.)

Art. 7. Temporary Care and Restraint of Inebriates, Drug Addicts and Persons Insane

§ 2304(gg). Hospitals and sanatoriums may restrain and treat alcohol and drug addicts.—The superintendent, manager, or owner of any public or private hospital, sanatorium, or institution, upon the written request of two duly licensed physicians, not connected with any hospital, public or private, and the husband, wife, guardian, or in the case of an unmarried person having no guardian, by some one of the next of kin, may receive, care for and restrain in such hospital, sanatorium, or institution, as a patient, for a period not exceeding twenty days, any insane person needing immediate care and treatment; or any person needing immediate care, restraint and treatment because such person has become addicted to the intemperate use of narcotics, hypnotic drugs or alcoholic drinks, to such an extent that he has lost the power of self control. Such request for the admission of such patient shall be in writing and filed at such hospital, sanatorium, or institution, at the time of the reception of such patient, or within twenty-four hours thereafter, and such written request shall be held and considered as a commitment of such patient or person to said hospital, sanatorium, or institution, for a period of not exceeding twenty days. The superintendent, manager, or owner of such hospital, sanatorium, or institution shall not detain or restrain any person received as above provided for more than twenty days and shall not be liable in damages to such person or his personal representative or guardian on account of such restraint: Provided, the same is exercised and administered in a humane manner, without violence or personal injury. (1933, c. 213, s. 1.)

§ 2304(hh). Use of restraining devices limited. — No restraint in the form of muffs or mitts with lock buckles, or waist straps, wristlets, anklets, or camisoles, head-straps, protection sheets or simple sheets when used for restraint or other device interfering with freedom shall be imposed upon any patient in such hospital, sanatorium, or institution, unless applied in the presence of the superintendent, or of the physician, or of an assistant physician of such hospital, sanatorium, or institution. Such device shall be applied only in cases of extreme violence, active homicidal or suicidal intent, physical exhaustion, infectious disease, or following an operation, or accident which has caused serious bodily injury, or to prevent injury to such patient or others, except that in cases if emergency restraint may be imposed without the presence of the superintendent, physician or assistant physician; that every such emergency case, after the imposition of such restraint, shall immediately be reported to the superintendent, or manager, physician, or assistant physician of such hospital, sanatorium or institution, who shall immediately investigate the case and approve or disapprove the restraint imposed. (1933, c. 213, s. 2.)

§ 2304(ii). Civil liability for corrupt admissions. —Nothing contained in this article shall be held or construed to relieve from liability in any suit or action, instituted in the courts of this state, any husband, wife, guardian, physician, or assistant physician, to such person or patient on account of collusion of such husband, wife, guardian, physician or assistant physician to unlawfully, wrongfully and corruptly commit any such person or patient to such hospital, sanatorium, or institution, under the provisions of this article: Provided, that the provisions of this article shall not apply to pending litigation. (1933, c. 213, s. 3.)

CHAPTER 44

INTEREST

§ 2305. Legal rate is six per cent.

Applied in Hackney v. Hood, 203 N. C. 486, 166 S. E. 323.

§ 2306. Penalty for usury; corporate bonds may be sold below par.

I. GENERAL CONSIDERATION.

The usury statute will be strictly construed, and usury must be pleaded. Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

II. SUBSTANCE CONTROLS NATURE OF TRANSACTION.

B. Specific Instances.

Where an association charges a stockholder certain fines under § 5178, such fines cannot be alleged as interest paid on the loan from the corporation. Moore v. Mutual Building, etc., Ass'n, 203 N. C. 592, 166 S. E. 597.

VI. PLEADING AND PRACTICE.

As a Defense.—Where the payee of a promissory note or bond brings action thereon and the defendant sets up a deduction on account of usury, within the plain intent and meaning of this section the plaintiff will not be entitled to recover the usurious charge. Pugh v. Scarboro, 200 N. C. 59, 156 S. E. 149.

Restraining Foreclosure.—The holder of a second mortgage, able and willing to pay the amount of the debt secured by the first mortgage, but alleging usury, under this section, is entitled to have a restraining order against foreclosure continued until determination of the issue of usury. Wilson v. Union Trust Co., 200 N. C. 788, 158 S. E. 479.

Effect of Consent Judgment.—Where a controversy between the parties as to the amount of the debt has been settled by a consent judgment such judgment is conclusive and final as to any matter determined and cannot be impeached collaterally in another proceeding under this section. Rector v. Suncrest Lbr. Co., 52 F. (2d) 946.

Failure to Instruct as to Double Recovery Is Prejudicial.—The plaintiff in his action to recover for usurious rate of interest paid and received by the lender is entitled under this section to recover double the amount of the interest so paid and received, and an instruction to the jury that fails to give him this right is prejudicial to him and is reversible error. Bundy v. Commercial Credit Co., 200 N. C. 511, 512, 157 S. E. 860.

§ 2308. Obligations due guardians to bear compound interest.

Security in Addition to That of Borrower.—

A guardian will be held liable for any loss resulting from a loan made without taking any security, however solvent the debtor may have been when the loan was made. Bane v. Nicholson, 203 N. C. 104, 106, 164 S. E. 750.

§ 2309. Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.

After demand by a depositor or creditor of a bank for the payment of the amount due and refusal of the bank to make payment, the bank is liable for the amount of the claim plus interest at the rate of six per centum per annum. Hackney v. Hood, 203 N. C. 486, 166 S. E. 323.

CHAPTER 45

JURORS

Art. 1. Jury List and Drawing of Original Panel

§ 2312. Jury list from taxpayers of good character.

For act providing that nonpayment of taxes does not disqualify a juror in Macon County, see Public Laws, 1933, c. 62.

§ 2314. Manner of drawing panel for term from box.—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined: Provided, that regular jurors drawn, summoned, and the attendance upon any term of a superior court, regular or special, in any county, or upon any terms of a general county court or civil county court when not serving upon the trial of any case in the court to which he was summoned, may be ordered by the judge presiding in such court to attend and serve as a juror in the trial of any case pending in any other of said courts in such county, and shall be competent to serve as a regular juror in such other court under the law applicable to trials by jury.

This proviso shall only apply to the counties of Guilford, Wake, Forsyth, Buncombe, Catawba, Cabarrus, Iredell and Haywood. (Rev., s. 1959; Code, ss. 1727, 1731; 1889, c. 559; 1897, c. 117; 1868-9, c. 175; 1868-9, c. 9, s. 6; 1806, c. 694; 1901, c. 636; 1901, c. 28, s. 3; 1903, c. 11; 1905, cc. 38, 76, s. 4; 1905, c. 285; 1933, c. 89.)

Editor's Note.—Public Laws 1933, c. 89, added the proviso, applicable in the eight counties enumerated, relating to service in the courts of another county.

Art. 2. Petit Jurors; Attendance, Regulation and Privileges

§ 2326. Causes of challenge to juror drawn from box.—It shall not be a valid cause of challenge that a juror called from those whose names are drawn from the box is not a freeholder or has served upon the jury within two years prior to the court at which the case is tried, or has not paid the taxes assessed against him during the preceding two years. In other respects the cause of challenge shall be the same as now provided by law, and nothing herein shall modify any law authorizing jurors to be summoned from counties other than the county trial. (1913, c. 31, ss. 5, 7; 1933, c. 130.)

Editor's Note.—

Public Laws 1933, c. 130, inserted, at the end of the first sentence of this section, the clause "or has not paid the taxes assessed against him during the preceding two years."

Art. 4. Grand Jurors

§ 2334. Grand juries in certain counties.—At the first fall and spring terms of the criminal courts held for the counties of Gaston, Guilford, Mecklenburg, Moore, Pitt, Richmond, New Hanover, McDowell, Durham, Cumberland, Columbus, Nash, Johnston, Vance, Wayne, Iredell, and Wake, grand juries shall be drawn, the presiding judge shall charge them as provided by law, and they shall serve during the remaining fall and spring terms, respectively. In the event of vacancies occurring in the grand jury of Pitt county, the judge holding the court of said county, may, in his discretion, order a new juror drawn to take the oaths prescribed and to fill any vacancy occurring therein.

At any time the judge of the superior court presiding over either the criminal or civil court of New Hanover, McDowell, Durham, and Cumberland counties may call said grand jury to assemble and may deliver unto said grand jury an additional charge. The said judge presiding over either the criminal or civil court of New Hanover, McDowell, Durham, or Cumberland counties may at any time discharge said grand jury from further service, in which event he shall cause a new grand jury to be drawn which shall serve during the remainder of the said fall or spring term. The first nine members of the grand jury chosen at the first term of the superior court of Cumberland county for the trial of criminal cases in the year of one thousand nine hundred twenty-two shall serve during the spring and fall terms, and at the first of such courts of the fall and spring terms thereafter, nine additional jurors shall be chosen to serve for one year.

At any time the judge of the superior court presiding over the criminal court of Columbus county may call said grand jury to assemble and may deliver unto said jury an additional charge. The said judge presiding over the criminal court of Columbus county may at any time discharge said grand jury from further service, and may cause a new grand jury to be drawn, which shall serve during the remainder of the said fall and spring term.

Every grand juror drawn and summoned in Robeson county shall serve for a period of twelve months.

At the spring term of the criminal court held for the county of Gates, and for the county of

Henderson, grand jury shall be drawn, the presiding judge shall charge them as provided by law, and they shall serve for twelve (12) months: Provided, that at any time the judge of the superior court presiding over the criminal courts of Gates county or Henderson county may call said jury to assemble and may deliver unto said grand jury an additional charge: Provided further, that the judge of the superior court presiding over the criminal courts of Gates county and of Henderson county may at any time discharge said grand jury from further service, and may cause a new grand jury to be drawn, which shall serve during the remainder of the said twelve (12) months.

At the April term of superior court held for the county of Hoke a grand jury shall be drawn, the presiding judge shall charge it as provided by law, and it shall serve until the following April term, Hoke superior court: Provided, that at any time the judge of the superior court presiding over either criminal or civil court in said county may call said grand jury to assemble and may deliver unto said grand jury an additional charge: Provided further, that the judge of the superior court presiding over either criminal or civil court in said county may at any time discharge said grand jury from further service, in which event he shall cause a new grand jury to be drawn, which shall serve out the unfinished year.

If it should appear to the board of commissioners of Union county, thirty days before the beginning of the term of superior court that begins on the third Monday after the first Monday in March, that the condition of the criminal docket, and the number of prisoners in jail, make it necessary that said March term should be used as a criminal term, the said board of commissioners are authorized and empowered within their discretion to draw a grand jury for said term, and to give thirty days' notice in some local paper that criminal cases would be tried at said term, and all criminal process and undertakings returnable to a subsequent term shall be returnable to said March term. A grand jury for Union county shall be selected at each January term of the superior court in the usual manner by the presiding judge, which said grand jury shall serve for a period of one year from the time of their selection. (1913, c. 196; 1917, cc. 116, 118; 1919, cc. 113, 187; Ex. Sess. 1920, c. 39; 1921, cc. 18, 55, 69, 72; Ex. Sess. 1921, c. 15; 1923, cc. 11, 15, 104, 115; 1925, c. 24; 1929, c. 52, ss. 1, 2; 1931, cc. 43, 97, 130, 131, 237; 1933, cc. 29, 92.)

Editor's Note.—
Public Laws of 1933, cc. 29, 92, made the fourth paragraph of this section, formerly applicable in Gates county only, applicable to Henderson county. The provision, at the end of this section, relating to the grand jury and Union county, was also inserted. For act relating to fees of grand jurors applicable in Scotland county only, see Public Laws 1924, Ex. Sess., c. 28 as amended by Public Laws 1933, c. 138.

§ 2335. Exceptions for disqualifications.

Indictment Not Quashed for Failure to Pay Taxes.—The passage of this section, immediately following the decision of this court in Breese v. United States, 143 F. 250, was evidently for the purpose of removing the disqualification of grand jurors, based upon failure to pay taxes for the preceding year, in cases where they actually serve upon the grand jury and pass upon bills of indictment; and there is no reason why it should not be given this interpretation. Davis v. United States, 49 F. (2d) 269, 270.

§ 2336. Foreman may administer oaths to witnesses.

Section Directory Merely.—See State v. Avant, 202 N. C. 680, 163 S. E. 806, following statement under this catchline in Code of 1931.

Art. 5. Special Venire

§ 2338. Special venire to sheriff in capital cases.

Challenge for Cause.—Under this section where a special venire has been ordered by the court for the trial of a capital felony, such venire, is selected by the sheriff in his discretion, not from the jury box, and by § 4635 are subject to the same challenges for cause as tales jurors. State v. Avant, 202 N. C. 680, 163 S. E. 806.

CHAPTER 46
LANDLORD AND TENANT

Art. 1. General Provisions

§ 2352. Lessee may surrender, where building destroyed or damaged.

Where the terms of a lease fully provide for the rights of the parties upon destruction of the property by fire such rights will be determined in accordance with the written agreement, without reference to this section, or the common law. Grant v. Borden, 204 N. C. 415, 168 S. E. 492.

Art. 2. Agricultural Tenancies

§ 2355. Landlord's lien on crops for rents, advances, etc., enforcement. — When lands are rented or leased by agreement, written or oral, for agricultural purposes, or are cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or his assigns at all times, until the rents for said lands are paid and until all the stipulations contained in the lease or agreement are performed, or damages in lieu thereof paid to the lessor or his assigns, and until said party or his assigns is paid for all advancements made and expenses incurred in making and saving said crops. A landlord to entitle himself to the benefit of the lien herein provided for, must conform as to the prices charged for the advance to the provisions of the article Agricultural Liens, in the chapter Liens.

This lien shall be preferred to all other liens, and the lessor or his assigns is entitled, against the lessee or cropper, or the assigns of either, who removes the crop or any part thereof from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop or any part thereof, to the remedies given in an action upon a claim for the delivery of personal property.

Provided, that when advances have been made by the federal government or any of its agencies, to any tenant or tenants on lands under the control of any guardian, executor and/or administrator for the purpose of enabling said tenant or tenants to plant, cultivate and harvest crops grown on said land, the said guardian, executor, and/or administrator may waive the above lien in favor of the federal government, or any of its agencies, making said advances. (Rev., s. 1993; Code, s. 1754; 1896-7, 283; 1917, c. 134; 1933, c. 219.)

Editor's Note.—Public Laws 1933, c. 219, added the proviso now appearing at the end of this section.

Art. 3. Summary Ejectment

§ 2365. Tenant holding over may be dispossessed in certain cases.

I. APPLICATION AND SCOPE.

For an act, applicable in Johnson county only, providing that the landlord shall pay all just set-offs and counterclaims before execution, see Public Laws 1933, c. 390.

Relation of Landlord and Tenant Necessary.—This section applies only where the conventional relationship of landlord and tenant exists, and when title to the property is in issue, the jurisdiction of the justice of the peace is ousted, and the proceeding is properly dismissed as in case of nonsuit upon appeal to the Superior Court. Prudential Ins. Co. v. Totten, 203 N. C. 431, 166 S. E. 316.

Consideration of Equitable Defenses. — A justice of the peace has jurisdiction of a summary action in ejectment, and may determine the questions of tenancy and holding over, and while he has no equitable jurisdiction, he may consider equitable defenses set up in summary ejectment in so far as they relate to the issue of tenancy. Farmville Oil, etc., Co. v. Bowen, 204 N. C. 375, 168 S. E. 211.

§ 2366. Local: Refusal to perform contract ground for dispossession.—When any tenant or cropper who enters into a contract for the rental of land for the current or ensuing year willfully neglects or refuses to perform the terms of his contract without just cause, he shall forfeit his right of possession to the premises. This section applies only to the following counties: Alleghany, Anson, Beaufort, Bertie, Bladen, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Duplin, Edgecombe, Franklin, Gaston, Gates, Greene, Halifax, Harnett, Hertford, Hyde, Jackson, Johnston, Jones, Lenoir, Martin, Mecklenburg, Montgomery, Nash, Northampton, Onslow, Pender, Perquimans, Pitt, Polk, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Swain, Tyrrell, Union, Wake, Wayne, Washington, Wilson, Yadkin, Moore, Surry, Stokes and Pasquotank. (Rev., s. 2001, subsec. 4; Code, ss. 1766, 1777; 4 Geo. II, c. 28; 1868-9, c. 156, s. 19; 1905, cc. 297, 299, 820; 1907, cc. 43, 153; 1909, cc. 40, 550; 1931, cc. 50, 194, 446; 1933, cc. 86, 485.)

Editor's Note.—
Public Laws 1933, cc. 86, 485, added Polk and Pasquotank counties to this section.

§ 2373. Undertaking on appeal; when to be increased.—Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; except in the counties of Iredell, Mecklenburg, Craven, Granville, Watauga, Davie, and Swain, upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except the cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided, further, that the presiding judge, in his discretion, may take up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed. (Rev., s. 2008; Code, s. 1772; 1868-9, c. 156, s. 25; 1883, c. 316; 1921, c. 90; Ex. Sess. 1921, c. 17; 1933, c. 154.)

Editor's Note.—
Public Laws 1933, c. 154, struck out Cabarrus county from the list of counties excepted.

CHAPTER 49

LIENS

Art. 1. Mechanics', Laborers' and Materialmen's Liens

§ 2435. On personal property repaired.

Where the purchaser of an automobile gives the seller a title-retaining contract to secure the balance of the purchase price, and thereafter gives a second lien on the car to another, and later the second lienor takes possession from the purchaser without legal process and has the car repaired, the second lienor is not the owner or legal possessor of the car within the intent and meaning of this section, and the one making the repairs obtains no lien therefor under the statute and is not entitled to possession as against the first lienor. Willis v. Taylor, 201 N. C. 467, 160 S. E. 487.

§ 2436. Laborer's lien on lumber and its products.

Editor's Note.—
Under the provision of this section, prior to the amendment of 1929, persons who cut and log timber to a mill under a contract to do so at a fixed price are not entitled to a lien for such services, this interpretation of this section being strengthened by the fact that the amendment of 1929 included within the meaning of the statute those who were engaged in logging to the mill. Graves v. Dockery, 200 N. C. 317, 156 S. E. 506.

Art. 2. Subcontractors', etc., Liens and Rights against Owners

§ 2438. Notice to owner; liability.

Applied in Brown v. Burlington Hotel Corp., 202 N. C. 82, 161 S. E. 735.

§ 2440. Laborer, etc., may furnish statement of claim to owner; effect.

Construction with Other Sections.—A letter to the owner setting forth the amount of the account for materials furnished the contractor and stating that other items were being purchased on the account, and offering to furnish an itemized statement upon request is not a sufficient notice upon which to base a materialman's lien, under this section, requiring that an itemized statement be furnished the owner manifestly, §§ 2438, 2439, 2440, 2441, and 2442 must be construed together. Huske Hardware House v. Percival, 203 N. C. 6, 164 S. E. 334.

Assignment of Lien.—The statutory lien of a laborer or materialman under the provisions of this section, is assignable as in case of ordinary business contracts. Horne-Wilson v. Wiggins Bros., 203 N. C. 85, 164 S. E. 365.

§ 2445. Contractor on municipal building to give bond; action on bond.

Not Applicable to East Carolina Teachers' College. — While the board of trustees of the East Carolina Teachers' College is made a body corporate, it is not a municipal cor-

poration within the meaning of this section. Hunt Mfg. Co. v. Hudson, 200 N. C. 541, 542, 157 S. E. 799.

Provision That Action Must Be within Reasonable Time.—Under this section the provision in a bond for public construction that action thereon should be brought within reasonable time is valid. Horne-Wilson v. National Surety Co., 202 N. C. 73, 161 S. E. 726.

Local Law Requiring Provision of Section Be Read in Bonds.—A local statute providing that the provisions of this section should be read into private construction bonds is invalid. Plott Co. v. Ferguson Co., 202 N. C. 446, 163 S. E. 688.

Not Applicable When Surety Takes over Contract.—A surety company on a contractor's bond for the erection of municipal buildings in taking over for its own protection the completion thereof, and dealing directly with the materialmen upon its own credit changes its liability as a surety on the bond, and this section is not applicable. Hunt Mfg. Co. v. Hudson, 200 N. C. 541, 157 S. E. 799.

Art. 4. Warehouse Storage Liens

§ 2459. Liens on goods stored for charges.

Application of Section.—This section applies to such persons, firms or corporations as operate warehouses as a business for compensation, and not to an isolated instance in which goods or chattels are left in a store or building of the claimant. Champion Shoe Machinery Co. v. Sellers, 197 N. C. 30, 147 S. E. 674.

Art. 8. Perfecting, Enforcing and Discharging Liens

§ 2469. Claim of lien to be filed; place of filing.

Particularity of Claim Filed.—Same—Instances of Sufficiency.—
In this case claim, or notice of lien, was not made out in sufficient detail, "specifying the . . . labor performed, and the time thereof," the wages he was to receive, how and when payable, etc. And further, it was not made to appear that said purported notice of claim was filed "in the office of the nearest justice of peace" as required by this section. Gainey v. Gainey, 203 N. C. 190, 191, 165 S. E. 547.

§ 2470. Time of filing notice.

Question for Jury.—
Whether the notice of claim of a lien was filed within the time prescribed by this section is a question for the jury where it appears from the evidence that later work was done under the original contract. Beaman v. Elizabeth City Hotel Corp., 202 N. C. 418, 163 S. E. 117.

§ 2471. Date of filing fixes priority.

In General.—Liens of materialmen and laborers are statutory, and by the clear provisions of this section and § 2473 the liens of parties furnishing labor and material under direct contract with the owner have priority in accordance with the time of filing notice of lien with the justice of the peace or clerk. The right of pro rata payment on liens of subcontractors is distinguished on the basis of the statutory provisions, § 2442, no notice of lien being required to be filed with the justice of the peace or clerk in the case of subcontractors, notice to the owner being sufficient under the statute. Boykin v. Logan, 203 N. C. 196, 165 S. E. 680.

Art. 9. Agricultural Liens for Advances

§ 2480. Lien on crops for advances.

II. PRIORITY OF LIENS.

Precedence over a Prior Mortgage Lien.—
A statutory agricultural lien for supplies and advancements during the current crop year, conforming to the requirements of this section both as to context and registration, is superior to a prior registered chattel mortgage given to secure an antecedent debt, the chattel mortgage not being in the required form to constitute a crop lien for supplies as contemplated by the section. Eastern Cotton Oil Co. v. Powell, 201 N. C. 351, 160 S. E. 292.

§ 2485. Commission in lieu of interest, where advance in money.

Applied in Ransom v. Eastern Cotton Oil Co., 203 N. C. 193, 165 S. E. 350.

§ 2490. Local: Short form of liens.—For the purpose of creating a valid agricultural lien under the preceding sections for supplies to be advanced, and also to constitute a valid chattel mortgage as additional security thereto, and to secure a pre-existing debt, the following or a substantially similar form shall be deemed sufficient, and for those purposes legally effective, in the counties of Alamance, Alleghany, Anson, Ashe, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Davie, Davidson, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pender, Pamlico, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Transylvania, Tyrell, Union, Vance, Wake, Watauga, Washington, Wayne and Wilson: North Carolina, ... County.

Whereas, ... ha .... agreed to make advances to ..... for the purpose of enabling said ..... to cultivate the lands hereinafter described during the year 19.., the amount of said advances not to exceed ..... dollars; and,

Whereas, said ..... is indebted to said ..... in the further sum of ..... dollars now due; now, therefore, in order to secure the payment of the same the said ..... does hereby convey to said ..... all the crops of every description which may be raised during the year 19.. on the following lands in ..... County, North Carolina, ... Township, adjoining the lands of ..... and also the following other property, viz.: ....

And if by the ..... day of ....., 19.., said ..... fail ..... to pay said indebtedness, then said ..... may foreclose this lien as provided in section two thousand four hundred and eighty-eight of the consolidated statutes or otherwise, and may sell said crops and other property after ten days' notice posted at the courthouse door and three other public places in said county, and apply the proceeds to the payment of said indebtedness and all costs and expenses of executing this conveyance, and pay the surplus to said ....., and the said ..... hereby represents that said crops and other property are the absolute property of ..... and free from encumbrance .....

Witness ..... hand ..... and seal, ... this the ..... day of ....., 19...

Witness: .....

....., owner of the lands described in the foregoing instrument, in consideration of the advances to be made, as therein provided, do ..... hereby agree to waive and release my lien as landlord upon said crops to the extent of said advances made to said .....

This the ..... day of .....

Witness: .....

..... (Seal.)

North Carolina, ... County.

The due execution of the foregoing instrument was this day proven before me by the oath and examination of ....., the subscribing witness thereto.

This the ..... day of ....., 19...

..... (Seal.)

North Carolina, ... County.

The foregoing certificate of ....., a ..... of

..... County, is adjudged to be correct. Let the instrument with the certificate be registered.

This the ..... day of ....., 19...

....., Clerk Superior Court.

(Rev., s. 2055; 1899, cc. 17, 247; 1901, cc. 329, 704; 1903, c. 489; 1905, cc. 226, 319; 1907, c. 843; 1909, c. 532; P. L. 1913, c. 49; 1925, c. 285, s. 1; 1931, c. 196; 1933, c. 101, s. 6.)

Editor's Note.—

Public Laws 1933, c. 101, struck out Beaufort from the list of counties, and provided a standard form of agricultural lien and title note in that county, fixing fees for recording same.

CHAPTER 49B

LOCAL GOVERNMENT ACT—INDEBTEDNESS AND BONDS OF UNITS

Art. 1. Local Government Commission and Director of Local Government

§ 2492(5). Creation of local government commission.—There is hereby created a commission to be known as the local government commission, consisting of nine members of whom the state auditor and the state treasurer and the secretary of state and the commissioner of revenue shall be members ex-officio and of whom six members shall be appointed by the governor to hold office during his pleasure. One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the commission, both ex-officio members and appointed members, shall be required to give such bond, if any, as the governor may require. The state treasurer shall be ex-officio director of local government and shall also be the treasurer and chairman of the commission. The board shall elect a vice-chairman from its members who shall hold office at the will of the commission. The appointed members of the commission shall be entitled to ten dollars for each day actually spent in the service of the commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The director shall appoint some competent person as secretary of the commission and assistant to the director and may appoint such assistants as may be necessary, who shall be responsible to the director, and may fix their compensation subject to the approval of the governor. The commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this act. The commission shall hold quarterly regular meetings in the city of Raleigh at such place and times as may be designated by the commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the attorney general or any assistant thereof or upon the executive counsel for legal advice in relation to its powers and duties. The functions of the local government commission and of the director of local government shall be maintained and operated as a separate and distinct division of the department of the state treasurer. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1.)

Editor's Note.—Public Laws 1933, c. 31, made the secretary of state an ex officio member of the commission, made the treasurer ex officio director, and provided for the appointment by the director of the secretary of the commission and assistant to the director; deleted a provision which excepted the director from the $10 remuneration, and added the last sentence as to maintenance and operation as separate and distinct division. Section 3 of c. 31 of the Amendatory Act of 1933 provides for the transfer of the records to the state treasurer.

§ 2492(6). Executive committee; powers; quorum.—The state auditor and state treasurer, the commissioner of revenue and secretary of state shall constitute the executive committee of the commission and shall be vested with all the powers of the commission except when the commission is in session and except as otherwise provided in this act. Action of the commission as a whole and of the executive committee shall be taken by resolution which shall be in effect upon passage by a majority of the members of the commission or the committee present at the meeting at which such resolution is passed. A majority of the commission shall be a quorum. (1931, c. 60, s. 8; 1933, c. 31, s. 2.)

Editor's Note.—Public Laws 1933, c. 31, substituted secretary of state for the director as a member of the committee.

§ 2492(15). Sale of bonds and notes. — All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the commission at its office in the city of Raleigh, but the commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the commission shall cause a notice of the proposed sale to be published at least once at least ten days before the date fixed for the receipt of bids (a) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the court house, and (b) such notice, in the discretion of the commission, may be published also in some other newspaper of greater general circulation published in the state. The commission may in its discretion cause such notice to be published in a journal approved by the commission and published in New York City, devoted primarily to the subject of state, county and municipal bonds; provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days notice has been given in the manner specified in clause (a) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the commission through the state treasurer may exchange any such bonds or notes for

a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids a certified check upon an incorporated bank or trust company payable unconditionally to the order of the state treasurer for two per cent of the face value of the bonds and one-half of one per cent on notes bid for, drawn on some bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation thereto to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17, c. 296, s. 1; 1933, c. 258, s. 1.)

Editor's Note. — This section formerly provided that the bonds or notes might be exchanged for a like or greater face amount and interest on the exchanged notes collected. The section now provides for exchange of a like or greater "amount of such indebtedness and make such adjustment of accrued interest as may be requested by the said board or body." The change was effected by Public Laws 1933, c. 258.

§ 2492(27). Investment of unit sinking funds. —It shall be the duty of all officers having charge of the investment of sinking funds of each unit either to deposit such funds under security therefor as provided by this act, or to invest the same (or deposit in part and invest in part) in bonds or notes of the United States or of the state of North Carolina, or in bonds or notes of such unit, or in such bonds or notes of North Carolina municipalities, counties and school districts as are eligible for investment of the sinking funds of the state under any law in force at the time of investment of such local sinking funds, provided, however, that no investment shall be made in any bonds or notes of any city, county or school district except with the approval of the commission, which is hereby directed to scrutinize with great care any applications for any such investment and to refrain from approving the same unless such investment is prudent and is safe in the opinion of the commission and unless the legality thereof has been approved by an attorney believed by the commission to be competent as an authority upon the law of public securities. No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. (1931, c. 60, s. 29; 1933, cc. 143, 436.)

Editor's Note.—Public Laws 1933, cc. 143, 436, deleted two clauses from this section, one qualifying the deposit in bonds of a unit by the words "if such sinking funds are applicable to the payment of such bonds or notes" and the other limiting the approval to cases where the unit is not in duplicate of any payment of principal or interest.

§ 2492(33). Appointment of unit administrator of finance in event of default.—If funds sufficient for the payment of the principal and interest due at any time upon any valid indebtedness of any unit shall not be remitted for the payment thereof in sufficient time to pay the same when due the director may appoint a qualified person of good repute and ability as administrator of finance of such unit, at such compensation as may be determined by the director, but not in excess of three hundred dollars monthly nor for a period of more than one year except with the approval of the governor. It shall be the duty of such administrator of finance to take full charge of the collection of taxes in such unit and the charge and custody of all funds of the unit and the safeguarding thereof, and of the disbursement of moneys for all purposes, or to take charge of such part of any or all such duties as the director may determine. The administrator may retain under his supervision and control any city or county officers or employees for the performance of any part of such duties falling within the lines of their customary office or employment or may remove any tax collector or accountant or other officer having connection with the collection and disbursement of funds of the unit in his discretion. The administrator shall comply, on behalf of such units, with all the requirements of law applicable to such unit, officers and employees. Any questions or disputes arising out of the appointment of such administrator or his assumption of duties hereunder or as to his powers, may be presented to the commission on the application of any officer, taxpayer or citizen of the unit or on the application of the director, and the commission shall be empowered to determine the same. The compensation and expenses of the administrator, and the expenses of the director and the commission, arising out of the provisions of this section, shall be a charge against the unit and shall be paid by it and shall be deemed a special purpose for the payment of which this special provision of law is made, and the amount thereof shall be included in the budget of the unit for the following fiscal year.

One year after any unit shall have failed to remit the principal and/or interest due upon any valid indebtedness then outstanding, upon petition of the holders of fifty-one per centum of the indebtedness of the unit, the director shall appoint an administrator of finance, by and with the consent of the resident judge of the district in which the unit is located, who, upon his appointment, shall have the authority hereinbefore in this section conferred upon the administrator of finance.

The petition shall disclose all facts and circumstances available in connection with the issue in default, including the names and addresses of all known holders of such issue, and, insofar as the petitioning holders, shall contain a consent to the filing of the petition.

The order shall be in such form as the director and judge may determine, to include, however, such facts as may appear from the petition to be the facts with respect to the issue in default. It shall show the consent of the resident judge to the appointment of the administrator of finance named in the order.

Immediately upon the filing of the petition and

the entry of the order, which shall be done within ten days after the date the petition is filed with the director, the director shall certify, over his hand and the seal of the treasurer, the petition and order to the superior court of the county where the unit is located, if it be a unit other than the county, and to the superior court of the county, if the unit be a county. Upon receipt of the certified petition and order, it shall be the duty of the clerk of the superior court to which certified to issue such notice as may be prescribed by the director, and cause the same to be published in a newspaper of general circulation published in the state and in a journal approved by the commission for "notice of sale" of evidences of indebtedness, once a week for four weeks, and issue a copy of such notice to all holders of the issue in default named in the petition. Such notice shall contain a provision requiring all holders of such issue to appear in person or through attorney, and disclose their name, address and amount of the issue held.

Upon the expiration of the period of publication hereinbefore prescribed, the cause shall be transferred by the clerk of the superior court to the civil issue docket of the court, and the same shall thereafter stand upon such docket to be proceeded with as in other civil actions, but shall be placed upon the trial calendar at each term of the court thereafter for the trial of civil actions until final action is entered by the court at term.

Any action taken in the cause shall be after notice issued and published as hereinbefore provided, but from any order entered, unless the holders of all of the issue in default shall have responded, shall remain open for a period of thirty days after the publication of the order as hereinbefore prescribed for publication of notice. If the holder of any amount of such issue in default shall, during said thirty-day period, file a petition for a modification or revocation of the order, said order shall not become effective until the petitioning holder or holders shall have been heard by the court. If the order shall be, on such petition, modified or revoked, the order modifying or revoking the order shall become the order of the court in the cause.

Upon the notice hereinbefore prescribed and in the manner herein provided, the court shall have authority to enter any order which shall be for the interest of the unit and the holders of the issue in default, but no order entered shall become finally operative until the expiration of the time hereinbefore provided for the filing of petitions for modification or revocation. Any order which is agreed to by the unit and the holders of the issue in default may be entered at any time, but such order shall be likewise published, and unless agreed to by the holders of the entire issue in default, shall become operative only after the expiration of the period hereinbefore provided for the filing of petitions for modification or revocation, and the court shall have authority, upon the filing of such a petition, to modify or revoke the order entered by agreement, which order then entered, shall thereupon become effective and operative.

The costs of all publications and of the issuance of all notices shall be paid by the administrator of finance: Provided, however, that the holders of the issue in default filing the original petition shall advance the necessary cost, but shall be reimbursed by the administrator of finance upon the docketing of the cause upon the civil issue docket of the superior court to which certified.

The court, with the consent of the director, for good cause shown, shall have the right to remove the administrator of finance appointed, and, with the consent of the director, appoint another administrator of finance in his place. The administrator of finance appointed upon the institution of the cause or thereafter by the court shall give such bond as shall be prescribed by the director and the resident judge of the district. The compensation shall be fixed for the administrator of finance by the director and the resident judge of the district and all costs shall be paid as provided in the first paragraph of this section. Until the final determination of the cause and the entry of an order finally discharging an administrator of finance, the administrator of finance shall have such powers and perform such duties as prescribed in the first paragraph of this section. (1931, c. 60, s. 36; 1933, c. 374.)

Editor's Note.—Public Laws of 1933, c. 374, added all the paragraphs of this section except the first paragraph. The first paragraph formerly comprised the whole section.

§ 2492(36). Unit must levy sufficient taxes to provide for maturing obligations.—Any board whose duty it shall be to provide for the payment by taxation or otherwise of the principal or interest of any valid obligations of the unit shall make provision for such payment by the levy of such taxes as are authorized to be levied therefor at or before the time provided for such tax levy, or to make other legal provision for such payment, and every member thereof who shall be present at the time for such levy or provision shall vote in favor thereof and shall cause his request that such tax levy or provision be made to be recorded in the minutes of the meeting: Provided, in making such levy any such board may determine and make allowance for moneys due to it and receipt of which may be reasonably anticipated by such unit. (1931, c. 60, s. 36; 1933, c. 332.)

Editor's Note.—Public Laws of 1933, c. 332, added the proviso appearing at the end of this section.

§ 2492(49). Notes and bonds of units redeemable before maturity.—Any notes or bonds of a unit may (but need not) be made subject to call for redemption before maturity at the option of the unit issuing them, but no such bond or note shall be redeemed before maturity without the consent of the holder thereof, unless such bond or note states on its face that the unit reserves the right to redeem the same before maturity. (1931, c. 296, s. 3; 1933, c. 258, s. 2.)

Editor's Note.—Public Laws 1933, c. 258, made this section applicable to all units instead of the bonds issued "pursuant to the county or municipal finance act." The quoted words were omitted by the amendment.

§ 2492(50)a. Adjustment of indebtedness of units when refunding.—The board or body authorized to issue funding and refunding bonds of a unit is hereby invested with all powers necessary for the execution and fulfillment of any plan or agreement for the settlement, adjustment, funding, or refunding of the indebtedness of the unit, not inconsistent with general laws relating

to the issuance of funding and refunding bonds. (1933, c. 258, s. 4.)

§ 2492(50)b. Provisions in bond resolutions set out.—In any ordinance, order or resolution authorizing or providing for the issuance of bonds or notes of a unit for the purpose of refunding, funding or renewing indebtedness incurred before July 1, 1933, it shall be lawful to incorporate any or all of the following provisions, which shall have the force of contract between the unit and the holders of said bonds or notes, and every board or body authorized to issue such bonds or notes or to levy taxes for their payment shall have power to do all things necessary or convenient for the purpose of carrying out such provisions, viz.:

(a) Provisions for the creation of a special fund or funds to be used for the purchase of said bonds or notes at market prices less than par and accrued interest, or for the payment of the bonds or notes at par and accrued interest at or before maturity. All bonds or notes so purchased or paid shall be cancelled and shall not be reissued.

(b) Provisions for levying a tax annually or otherwise for the payment of the principal of the bonds or notes or for the said retirement fund.

(c) Provisions pledging any taxes, special assessments, or other revenues or moneys of the unit to the payment of said bonds or notes or to said retirement fund.

(d) Provisions whereby, so long as any of said bonds or notes are outstanding, the unit will not pledge any particular revenues or moneys, except special property taxes, without securing such bonds or notes equally and ratably with the other obligations to be secured by such pledge.

(e) Provisions whereby any special fund aforesaid may be a revolving fund, and used temporarily for other purposes, and thereafter replenished, upon such terms and conditions as may be set forth in said ordinance, resolution or order.

(f) Provisions for the custody of any such special fund by a bank or trust company in this or any other state or by the state treasurer.

(g) Provisions for the allocation and payment daily or periodically of moneys payable to any of said special funds.

(h) Provisions for the determination by arbitration of any question arising under any of the foregoing provisions.

No such provisions shall become effective without the approval of the local government commission, or under the provision of an act passed at this session of the general assembly to provide a method for the readjustment of the indebtedness of counties and municipalities with creditors and holders of securities. (1933, c. 258, s. 4.)

Art. 2. Validation of Bonds, Notes and Indebtedness of Unit

§ 2492(62). Validation of certain funding and refunding bonds. — Funding or refunding bonds authorized by a bond ordinance adopted under the municipal finance act, or by a bond order adopted under the county finance act, when such ordinance or order was adopted before the eleventh day of April, nineteen hundred and thirty-three, may be delivered notwithstanding such ordinance or order may not contain a description of the indebtedness to be funded or refunded: Provided, all funding, refunding or readjustment bonds authorized to be issued after the eleventh day of April, nineteen hundred and thirty-three, must conform to the requirements of all laws enacted for the purpose of funding, refunding and readjusting such indebtedness. (1933, c. 500, s. 1.)

Public Laws of 1933, c. 288, exempts Forsyth county from the operation of this and the following sections of the prior Act of 1933.

Art. 3. Readjustment of Indebtedness of Counties and Municipalities

§ 2492(63). County readjustment commission created. — There is hereby created a commission to be known as the county readjustment commission, which shall consist of three (3) freeholders and taxpayers resident in the state of North Carolina, to be appointed by the governor immediately following the ratification of this article, no two of which shall be of the same business or profession, in the appointment of which the governor shall name the chairman and fix the compensation of such commissioners, which shall be paid as hereinafter provided, and said commission shall proceed to organization by electing a secretary and providing such other expert legal and clerical assistance as may be necessary for the purposes hereinafter enumerated. (1933, c. 205, s. 1.)

§ 2492(64). Assistance to local units in readjustment plan; notice of hearing; findings as to ability to pay; negotiations with bondholders. — Upon call, and at the request of any county or municipality of the state which may desire to have the services of the aforesaid readjustment commission in ascertaining and assisting such county, governmental unit, or municipality in working out a plan of readjustment, the aforesaid commission, with such aid and assistance as it may require, and after said county, governmental unit, or municipality has advertised in a local newspaper in said county once a week for four successive weeks of the time, place and hearing of said readjustment commission in order that the bondholders may have notice thereof, shall forthwith proceed to investigate the resources and available revenue of such county or municipality, its tax burdens and its valid obligations and securities outstanding and permit and allow any bondholder, county, governmental unit, or municipality to offer evidence or information in order that it may make such study of an analysis of the debts and obligations of such county, governmental unit, or municipality and its resources to meet the same and to fix the valuation of said county, governmental unit, or municipality and find the ability of said county, governmental unit or municipality to pay, and recommend and report to the authorities their suggestions and methods of such readjustment and the ability of such county, governmental unit, or municipality to meet the same. Findings by said readjustment commission as to the value of the securities and the ability of the county, governmental unit, or municipality to pay, if supported by competent evidence shall be prima facie and presumptive evidence of the valuation of the securities and of the ability of the county, govern-

mental unit, or municipality to meet the same. And the said authorities of all such counties, municipalities, and governmental units shall be further authorized and empowered in their discretion to request the services of the aforesaid county readjustment commission to enter into negotiations with the holder or holders of all such securities for the purpose of readjusting the same upon such basis as the said commission and the holders of such obligations may agree upon, and shall report their recommendations as to the readjustment of such indebtedness to the authorities of such counties, municipalities, or other governmental units for their final decision. (1933, c. 205, s. 2.)

§ 2492(65). Conference with creditors to agree upon readjustment; consent of two-thirds of creditors. — Upon the coming in of the aforesaid report, the authorities of such county, municipality, or governmental unit shall be authorized to call the holders of its securities or obligations in conference for discussion of a basis of such readjustment and may make such adjustment of its obligations with the holders of its securities as may be mutually acceptable and agreeable, and whenever the holders of at least two-thirds of the total obligations of such county, governmental unit, or municipality shall agree upon a basis of readjustment, then such county, governmental unit, or municipality shall be authorized to proceed therewith and to issue new securities or refunding securities to the amount of the readjustment basis of its obligations for such extended period of time and at such rate of interest as may be mutually acceptable unless an election shall be called as hereinafter provided. (1933, c. 205, s. 3.)

§ 2492(66). Tender of agreed adjustment to minority third of creditors; minority may seek redress in courts; investigation by courts into affairs of local unit. — Whenever two-thirds in amount of the holders of the securities of such county or municipality have agreed with such county, municipality, or governmental unit upon the readjustment of its obligations, the same adjustment shall be tendered to all holders of the securities on the same basis proposed and agreed to, and upon the failure of such minority holders to accept such settlement and readjustment upon the basis assented to by two-thirds in amount of the holders of the total obligations of such county, governmental unit, or municipality, then thereafter the holders of such securities declining to accept the adjustment aforesaid may proceed to seek redress for relief by an action in the superior court in said county, but no mandamus shall lie until eighteen months after final judgment establishing the claims of such minority holder or holders and upon application for said mandamus. The court shall have power and authority to investigate and determine the ability of the county, governmental unit, or municipality to pay out of its present and probable income its accrued and accruing indebtedness and when the money which may reasonably be expected to be raised by the levy of and collection of taxes in the said county, governmental unit, or municipality within its current fiscal year, together with such other sources of income of the county, governmental unit, or municipal corporation as may exist, shall be insufficient to pay the reasonable, necessary and economical operating expenses of such municipal corporation, its probable requirements for welfare relief and the service of its debts, the court may upon the facts so found by it issue said mandamus upon such terms and conditions as in the judgment of the court may seem just and equitable. (1933, c. 205, s. 4.)

§ 2492(67). Expense of investigation borne by units affected.—All of the costs of investigation, salaries of the commission, and its expenses in making the report herein provided for shall be borne by and paid by the county, municipality, or governmental unit calling upon such commission for its assistance and report, and the salaries of the aforesaid commissioners and the general expense thereof shall be apportioned by the commission in a just and equitable manner and paid by the county, municipality, or governmental unit calling for this service. (1933, c. 205, s. 5.)

§ 2492(68). Findings of commission and readjustments filed with secretary of state; debt service levies reducible in proportion to terms of readjustment.—The commission herein appointed, after making the investigation and report as herein provided for, shall make a copy of its findings and recommendations in condensed form and file the same in the office of the secretary of state at Raleigh, which shall be by him recorded in a book to be provided for that purpose, and the county, governmental unit, or municipality shall make and file with the secretary of state, to be likewise recorded in his office, a copy of any adjustment or settlement which may be or may have been reached with the holders of such securities and obligations as herein provided, and thereafter the aforesaid county, municipality, or governmental unit shall not make or levy any tax or assessment concerning the aforesaid bonds and obligations or provide any debt service or sinking fund beyond the amount of such settlement and adjustment agreed upon and adopted by such readjustment as herein provided. (1933, c. 205, s. 6.)

§ 2492(69). Local units may borrow money to purchase their own bonds at discounts; R. F. C. loans authorized.—Said county readjustment commission is hereby authorized and empowered, subject to the approval of the governing body of any political sub-division of the state, and at its request, to negotiate for a loan to be made to any county, city, town or other political sub-division, if such loan, or the money derived therefrom, can be used to purchase the outstanding bonds or notes, or other evidences of indebtedness of such political subdivision at a discount of 40 per cent or more. If congress shall provide that the reconstruction finance corporation may make such loans to counties, cities, towns or other political sub-divisions of North Carolina, then the governing bodies of such counties, cities, towns or other political subdivisions of North Carolina, are hereby authorized and empowered to borrow money from such reconstruction finance corporation for such purpose, and such governing bodies are hereby authorized and empowered to issue bonds or other evidence of indebtedness to the reconstruction finance corporation, or any other lender, under like circumstances, in such amounts and in such denominations, at such rate of interest and for such term of years, and otherwise, as may be

agreed upon between the governing body of any such county, city, town or other political sub-division of North Carolina, and the reconstruction finance corporation. Said obligations to the reconstruction finance corporation or other lender are hereby declared to be obligations issued for a necessary purpose and to be binding upon the county, city, town or other political sub-division, and a sufficient special tax shall be levied and collected each year by the governing body of such county, city, town or other political sub-division as may be necessary to pay the interest and retire the principal of such bonds, according to the terms and provisions contained in the issue. It is further provided that any portion of the total of the outstanding indebtedness of any county, town, city or other political subdivision may be discounted as herein provided. (1933, c. 205, s. 7.)

§ 2492(70). Agreement as to readjustment tentative; publication of proposed plan; if no election petition filed, then agreement may be put into effect.—In any case where any county, city, town or other political sub-division shall have reached an agreement with its creditors upon a debt settlement plan, as provided in this article, such agreement shall be tentative to the following extent: That is, the proposed debt settlement plan shall first be published in some newspaper in the county affected by the debt settlement plan, or within which the county, city or town is situated, once a week for four successive weeks, or for thirty days. If, at the end of said thirty days, no petition as hereinafter provided shall have been presented to the governing body of any such political sub-division requesting an election upon the proposed debt settlement plan, then the governing body thereof is hereby authorized and empowered to enter into a contract with its creditors for a readjustment of its indebtedness, and to issue bonds of any nature, and in any denominations, maturing within such period of time and at such rates of interest, as may be proposed in the debt settlement plan; and it is further authorized and empowered to do everything necessary in order to fully carry out the terms and conditions embodied in the proposed or tentative debt settlement plan. Such bonds, issued for a total refunding of the indebtedness of such political sub-division, or issued as partial refunding of indebtedness of such political sub-division, are hereby declared to be issued for necessary purposes within the contemplation of the constitution; and such political sub-division, through its proper governing body, is hereby directed to levy sufficient taxes annually to pay such obligations in accordance with the tenor and terms as same may be provided in such debt settlement plan. However, if within such period of thirty days publication, a petition shall be filed with the governing body of any such political sub-division signed by a number of qualified voters equal to 10 per cent of the votes cast for governor of North Carolina at the last preceding election in such political unit, then it shall be the duty of such governing body to call an election to be held within sixty days after the expiration of the said thirty day period at which time the election shall be conducted in accordance with the general law of North Carolina as now provided for voting for propositions. A ballot shall be provided having thereon the phrase "for debt settlement plan," and also the phrase "against debt settlement plan." Those desiring to vote for the debt settlement plan shall make a cross mark in the square at the left of the following: "for debt settlement plan," and those desiring to vote against proposed debt settlement plan shall make a cross mark in the square at the left of the following: "against debt settlement plan." If the majority of the votes cast at such an election shall be in favor of the proposed debt settlement plan, then the governing body of such county, city, town or other political sub-division shall proceed to sign the debt settlement contract with the creditors, and to issue such bonds as may be provided in said debt settlement plan, at such rate of interest and in such denominations and for such length of time as may be provided for in the debt settlement contract; and the said governing body is hereby fully authorized and empowered to do everything necessary to carry out the provisions of any such proposed debt settlement. If, at such election, a majority of the votes cast are against the proposed debt settlement plan, then the tentative agreement shall become null and void; however, such failure of a majority of the people to ratify any tentative debt settlement plan shall not be deemed to prohibit the governing body of any county, city or town from proceeding to negotiate any other plan of debt settlement with its creditors, and, after the expiration of one year from the date of such an election, a second election may be held upon any other or different debt settlement plan. (1933, c. 205, s. 8, c. 348.)

§ 2492(71). Supplemental to existing laws.—This section shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as a limitation on or as affecting any powers for the issuance of bonds or notes under the provisions of other laws, or as affecting the proceedings or as requiring any additional proceedings for the issuance of bonds or notes under such other laws. Before any of the provisions of this act shall be applicable to any county, city, town or political subdivision the governing body thereof shall pass a resolution requesting the services of said readjustment commission and shall file with its secretary a certified copy of such resolution. (1933, c. 312, s. 1.)

Art. 4. Funding and Refunding of Debts of Local Units Other Than Counties, Cities and Towns

§ 2492(72). Local units, other than counties, cities and towns, authorized to fund outstanding debts.—Any unit other than a county, city or town may issue bonds as provided in this article for the purpose of funding or refunding any or all of its matured or unmatured notes or bonds, or the interest accrued thereon, provided the indebtedness evidenced by said notes or bonds was incurred before July 1, 1933. The word unit as here used means a township, school district, school taxing district, road district, drainage district, sanitary district, water district, or other district, political sub-division or local

governmental agency. The notes and bonds hereby authorized to be funded or refunded include notes and bonds issued in the name of a county, but payable from taxes levied in a township, school district or other unit embracing only a part of the territory of the county. (1933, c. 257, s. 1.)

§ 2492(73). General law applicable. — Bonds issued pursuant to this article shall be issued in accordance with the provisions of the county finance act, as amended, relating to the issuance of funding and refunding bonds under that act, except in the following respects, viz.:

(a) They shall be issued in the name of the obligor named in the obligations to be funded or refunded;

(b) They shall be issued by or on behalf of the unit by the same board or body which issued the obligations to be funded or refunded, or its successor, or, if said board or body is no longer in existence, by the board of county commissioners or other governing body of the county in which the unit, or the major portion of the unit, is situated;

(c) It shall not be necessary to include in the order or resolution authorizing the bonds, or in the notice required to be published prior to final passage of the order or resolution, any statement concerning the filing of a debt statement, or the contents thereof; and, as applied to said bonds, sections 9, 13, 14, 15, 16, and 17, of the county finance act, as amended [§§ 1334(9), 1334(13)-1334(17) of this code], shall be read and understood as if they contained no requirements in respect to such matters;

(d) The bonds shall mature at such time or times, not later than forty years after their date, as may be fixed or provided for in the resolutions under which they are issued;

(e) The bonds shall be issued in exchange for the obligations to be funded or refunded thereby, and the aggregate principal amount of the bonds shall not exceed the aggregate amount of unpaid principal and accrued interest of the obligations for which they are exchanged. (1933, c. 257, s. 2.)

§ 2492(74). Taxes to pay new obligations authorized.—Taxes for the payment of the principal and interest of bonds issued pursuant to this act shall be levied by the board or body authorized by existing law to levy taxes for the payment of the obligations funded or refunded by said bonds, and shall be levied only in the territory subject to taxation for the payment of the obligations so funded or refunded. (1933, c. 257, s. 3.)

§ 2492(75). County finance act applicable.— Except where they are inconsistent with the provisions of this article; all of the provisions of the county finance act, as amended, applicable to bonds issued under that article for the funding or refunding of indebtedness incurred before July 1, 1933, shall be applicable to bonds issued under this article. For the purpose of applying the provisions of said act to bonds issued under this article, the following words and phrases in said act shall be deemed to have the following meanings when applied to said bonds, viz.: "Governing body" means the board or body authorized by this article to issue bonds, except the words "governing body" in section 41 of the county finance act, where said words mean the board or body authorized by this act to levy taxes; "county" means the unit by or on behalf of which the bonds are to be issued under this article; "published" means published in a newspaper published in a county in which such unit is situated, if there be such a newspaper, but otherwise means posted at the courthouse door of said county and at least three other public places; "clerk of board of commissioners" means the clerk or secretary of the board or body authorized by this act to issue bonds; "this act" means this article. (1933, c. 257, s. 4.)

CHAPTER 50

MARRIAGE

Art. 1. General Provisions

§ 2494. Capacity to marry.—All unmarried male persons of sixteen years, or upwards, of age, and all unmarried females of sixteen years, or upwards, of age, may lawfully marry, except as hereinafter forbidden: Provided, that females over fourteen years of age and under sixteen years of age may marry under a special license to be issued by the register of deeds, which said special license shall only be issued after there have been filed with the register of deeds a written consent to such marriage, signed by one of the parents of the female or signed by that person standing in loco parentis to such female, and the fact of the filing of such written consent shall be set out in said special license: Provided, that all couples resident of the state of North Carolina who marry in another state must file a copy of their marriage certificate in the office of the register of deeds of the home county of the groom within thirty days from the date of their return to the state, as residents, which certificate shall be indexed on the marriage license record of the office of the register of deeds and filed with marriage license in his office; that the fee for the filing and indexing said certificate shall be fifty cents: Provided, the failure to file said certificate shall not invalidate the marriage. (Rev., s. 2082; Code, s. 1809; R. C., c. 68, s. 14; 1871-2, c. 193; 1923, c. 75; 1933, c. 269, s. 1.)

Editor's Note.—

Public Laws of 1933, c. 269, added the proviso, at the end of this section, relating to filing certificates by those marrying in another state.

§ 2495. Want of capacity; void and voidable marriages.

Bigamous Marriage Always Void.—

Where a wife attempts to marry again when no valid divorce a vinculo has been obtained from her living husband, such second attempted marriage is absolutely void and may be annulled by the husband of the second attempted marriage in an action instituted for that purpose. Pridgen v. Pridgen, 203 N. C. 533, 166 S. E. 591.

Art. 2. Marriage License

§ 2500(a). Certificates of health for applicants for license.

Chapter 256, Public Laws 1933, purports in the caption to repeal §§ 2500(a) to 2500(e) but no mention is made of the sections in the context of the act, which is codified here as § 2500(g).

§ 2500(f): Repealed by Public Laws 1933, c. 12.

§ 2500(g). Affidavit of groom as to physical condition when applying for marriage license.—The register of deeds of the several counties of the state shall require, before issuing a marriage license, that the groom shall file with him an affidavit setting forth that he does not have active tuberculosis or any venereal disease, and has not had either of said diseases for a period of two years prior thereto. The affidavit must be signed by the maker and sworn to before the register of deeds or any other person authorized to administer oaths: Provided, however, that when the affidavit is made before the register of deeds, he shall not make any charge therefor.

The applicant, in lieu of making affidavit as herein set out, may file a certificate of health as provided by law before a passage of this section.

Upon the applicant complying with either of the provisions of the foregoing section the register of deeds may issue a license to marry: Provided the contracting parties are otherwise qualified to marry according to law: Provided further, that the bride shall not be required to stand a physical examination. (1933, c. 256, s. 1.)

CHAPTER 51

MARRIED WOMEN

Art. 1. Powers and Liabilities of Married Women

§ 2515. Contracts of wife with husband affecting corpus or income of estate.

IV. EFFECT OF NONCOMPLIANCE.

Noncompliance Renders Deed Void.—The failure of the certificate of a deed to lands from a wife to her husband to state that the conveyance was "not unreasonable or injurious to her" renders the instrument void. Farmers Bank v. McCullers, 201 N. C. 440, 160 S. E. 494.

§ 2517. Wife's antenuptial contracts and torts.

Where prior to their marriage the wife incurs liability for a negligent injury to the husband the subsequent marriage does not affect her liability. Shirley v. Ayers, 201 N. C. 51, 158 S. E. 840.

Art. 2. Acts Barring Reciprocal Property Rights of Husband and Wife

§ 2522. Divorce a vinculo and felonious slaying a bar.

When Homicide Is Admitted.—The provisions of this section do not require a conviction of the offense where it is admitted that the homicide had been committed. Parker v. Potter, 200 N. C. 348, 349, 157 S. E. 68.

Application to Estates by Entireties.—In Bryant v. Bryant, 193 N. C. 372, 137 S. E. 188, it was held that where husband and wife hold estate by entireties, and the husband has murdered the wife, and her expectancy of life has been legally determined to have been longer than his own, equity will decree that he hold the legal title to lands held by them in entireties in trust for her heirs at law until his death, subject to his right of management and the use of the rents and profits for his own life. As this decision was based upon equitable principles, it was not necessary to determine whether the provision of this section, in reference to the felonious slaying of the husband or wife, which was enacted after the decision in Owens v. Owens, 100 N. C. 240, 6 S. E. 794, embraces estates held by entireties.

CHAPTER 52

MILLS

Art. 1. Public Mills

§ 2532. Miller to grind according to turn; tolls regulated.—All millers of public mills shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one-eighth part of the indian corn and wheat and one-fourteenth part for chopping grain of any kind; and every miller and keeper of a mill making default therein shall, for each offense, forfeit and pay five dollars to the party injured: Provided, that the owner may grind his own grain at any time: Provided further that this shall not apply to Lenoir and Cleveland counties: Provided, further, that in Northampton and Franklin counties it shall be lawful for water mills to take for toll for grinding one-sixth of the indian corn and wheat, and one-twelfth part for chopping grain of any kind: Provided, further that this section shall not apply to Hertford, Bertie and Hyde counties. (Rev., s. 2120; Code, s. 1847; R. C., c. 71, s. 6; 1777, c. 122, s. 10; 1793, c. 402; 1905, c. 694; 1907, c. 367; 1929, cc. 129, 139; 1933, cc. 150, 158.)

Editor's Note.—

Public Laws 1933, cc. 150, 158, exempted Cleveland, Hertford, Bertie and Hyde counties from the operation of this section. For act increasing the toll from one-eighth to one-sixth in Pender county, see P. L. 1933, c. 298.

CHAPTER 53

MONOPOLIES AND TRUSTS

§ 2563. Particular acts defined.

The refusal by wholesalers of ice to sell a retailer on the same terms as those offered to other retailers in the city is not a violation of this section, it not appearing that the parties were business competitors. Rice v. Ashville Ice, etc., Co., 204 N. C. 768.

CHAPTER 54

MORTGAGES AND DEEDS OF TRUST

Art. 2. Right to Foreclose or Sell Under Power

§ 2578. Representative succeeds on death of mortgagee or trustee in deeds of trust; parties to action.—When the mortgagee in a mortgage, or the trustee in a deed in trust, executed for the purpose of securing a debt, containing a power of sale, dies before the payment of the debt secured in such mortgage or deed in trust, all the title, rights, powers and duties of such mortgagee or trustee pass to and devolve upon the executor or administrator or collector of such mortgagee or trustee, including the right to bring an action of foreclosure in any of the courts of this state as prescribed for trustees or mortgagees, and in such action it is unnecessary to make the heirs at law of such deceased mortgagee or trustee parties thereto. (Rev., s. 1031; 1901, c. 186; 1887, c. 147; 1895, c. 431; 1905, c. 425; 1933, c. 199.)

Editor's Note.—Public Laws of 1933, c. 199, inserted the words "or collector" following the words "executor or administrator."

§ 2583. Clerk appoints successor to incompetent trustee.—When the sole or last surviving trustee named in a will or deed of trust dies, removes from the county where the will was probated or deed executed and/or recorded and from the state, or in any way becomes incompetent to execute the said trust, or is a nonresident of this state, or has disappeared from the community of his residence and his whereabouts remains un-

known in such community for a period of three months and cannot, after diligent inquiry be ascertained, the clerk of the superior court of the county wherein the will was probated or deed of trust was executed and/or recorded is authorized and empowered, in proceedings to which all persons interested shall be made parties, to appoint some discreet and competent person to act as trustee and execute the trust according to its true intent and meaning, and as fully as if originally appointed: Provided, that in all actions or proceedings had under this section prior to January first, one thousand nine hundred, before the clerks of the superior court in which any trustee was appointed to execute a deed of trust where any trustee of a deed of trust has died, removed from the county where the deed was executed and from the state, or in any way become incompetent to execute the said trust, whether such appointment of such trustee by order or decree, or otherwise, was made upon the application or petition of any person or persons ex parte, or whether made in proceedings where all the proper parties were made, are in all things confirmed and made valid so far as regards the parties to said actions and proceedings to the same extent as if all proper parties had originally been made in such actions or proceedings. (Rev., s. 1037; Code, s. 1276; 1869-70, c. 183; 1873-4, c. 126; 1901, c. 576; 1933, c. 493.)

Editor's Note. — Public Laws 1933, c. 493, inserted the words "and/or recorded" following the word "executed." It also inserted the clause relating to instances where the trustee has disappeared.

Section Becomes Part of Contract.—Where a deed of trust is executed after the effective date of this section the provisions of the section enter into and become a part of the contract, and a later statute providing a more economical and expeditious procedure for such substitution, so long as the rights of the parties, especially those of the cestui que trust, are not injuriously affected, does not violate the constitutional provisions. Bateman v. Sterrett, 201 N. C. 59, 159 S. E. 14.

Art. 3. Mortgage Sales

§ 2591. Reopening judicial sales, etc., on advanced bid.—In the foreclosure of mortgages or deeds of trust on real estate, or by order of court in foreclosure proceedings either in the superior court or in actions at law, or in the case of the public sale of real estate by an executor, administrator, or administrator with the will annexed, or by any person by virtue of the power contained in a will, or sale under execution duly issued the sale shall not be deemed to be closed under ten days. If in ten days from the date of the sale, the sale price is increased ten per cent where the price does not exceed five hundred dollars, and five per cent where the price exceeds five hundred dollars, and the same is paid to the clerk of the superior court, the mortgagee, trustee, executor, or person offering the real estate for sale shall reopen the sale of said property and advertise the same in the same manner as in the first instance. The clerk may, in his discretion, require the person making such advance bid to execute a good and sufficient bond in a sufficient amount to guarantee compliance with the terms of sale should the person offering the advance bid be declared the purchaser at the resale. Where the bid or offer is raised as prescribed herein, and the amount paid to the clerk, he shall issue an order to the mortgagee or other person and require him to advertise and resell said real estate. It shall only be required to give fifteen days' notice of a resale. Resales may be had as often as the bid may be raised in compliance with this section. Upon the final sale of the real estate, the clerk shall issue his order to the mortgagee or other person, and require him to make title to the purchaser. The clerk shall make all such orders as may be just and necessary to safeguard the interest of all parties, and he shall keep a record which will show in detail the amount of each bid, the purchase price, and the final settlement between parties. This section shall not apply to the foreclosure of mortgages or deeds of trust executed prior to April first, nineteen hundred and fifteen. (1915, c. 146; 1917, c. 127, ss. 3, 4; 1919, c. 124; 1929, c. 16; 1931, c. 69; 1933, c. 482.)

Editor's Note.—

Public Laws of 1933, c. 482, inserted, near the end of the first sentence, the words "or sale under execution duly issued."

There is nothing in the statute which deprives the court of its power to prescribe the terms upon which land or other property shall be sold under its orders, judgments or decrees. Koonce v. Fort, 204 N. C. 426, 430, 168 S. E. 672.

Deposit When No Upset Bid Is Made.—Under the provisions of this section the last and highest bidder at a foreclosure sale obtains no interest in the land until the elapse of the ten-day period for the filing of an increased bid, and although the mortgagee or trustee may, in fixing the terms of the sale, require a reasonable cash deposit to cover the cost of the sale and insure completion of the sale by the purchaser if no upset bid is made, the reasonableness of such deposit may be determined by analogy to the deposit required for an upset bid, and a demand for a cash deposit at the sale amounting to twenty-five per cent of the bid is unreasonable. Alexander v. Boyd, 204 N. C. 103, 167 S. E. 462.

Power and Authority of Clerk.—

Notwithstanding ten days have elapsed from the date of the sale, at the time the increased bid was made, the clerk has the power, in his discretion, to order a resale, without waiting for the expiration of twenty days within which parties to the proceeding might file exceptions to the sale. Vance v. Vance, 203 N. C. 667, 668, 166 S. E. 901.

The order of the clerk to deliver title required by this section is, however, merely ministerial in its nature, and its omission, when in fact the trustee has, after complying with all the terms of the power of sale contained in the deed of trust, made title to the purchaser, does not invalidate the foreclosure, or render the title acquired by the purchaser as grantee in the deed of the trustee void, solely for that reason. Cheek v. Squires, 200 N. C. 661, 668, 158 S. E. 198.

By this section, the clerk has the power to make an allowance to the mortgagee or trustee for his services in making the sale, to be retained by him from the proceeds of the sale. From an order making such allowance, a party interested in the land or in the proceeds of the sale, may appeal to the judge, who upon such appeal may affirm, reverse or modify the order of the clerk; in the absence of such appeal, the order of the clerk is final and conclusive. Tidewater Brokerage Co. v. Southern Trust Co., 203 N. C. 182, 183, 165 S. E. 353.

Recovery of Deposit.—Where the last and highest bidder at a sale of lands under decree of foreclosure has been required under order of court to deposit a certain per cent of his bid in cash to show his good faith, he is entitled to receive his deposit back upon the entering of an order of resale by the clerk under the provisions of this section, upon the placing of an advanced bid and cash deposit by another. Koonce v. Fort, 204 N. C. 426, 168 S. E. 672.

Striking Out Order for Resale.—Where, on account of an upset bid, an order for a resale has been entered, it is error, eleven days thereafter to strike out such order and declare the sale final in prejudice of further rights of mortgagers. Virginia Trust Co. v. Powell, 189 N. C. 372, 127 S. E. 242.

§ 2593(b). Injunction of mortgage sales on equitable grounds.—Any owner of real estate, or other person, firm or corporation having a legal or equitable interest therein, may apply to a judge of the superior court, prior to the confirmation of any sale of such real estate by a mortgagee,

trustee, commissioner or other person authorized to sell the same, to enjoin such sale or the confirmation thereof, upon the ground that the amount bid or price offered therefor is inadequate and inequitable and will result in irreparable damage to the owner or other interested person, or upon any other legal or equitable ground which the court may deem sufficient: Provided, that the court or judge enjoining such sale or the confirmation thereof, whether by a temporary restraining order or injunction to the hearing, shall, as a condition precedent, require of the plaintiff or applicant such bond or deposit as may be necessary to indemnify and save harmless the mortgagee, trustee, cestui que trust, or other person enjoined and affected thereby against costs, depreciation, interest and other damages, if any, which may result from the granting of such order or injunction: Provided further, that in other respects the procedure shall be as is now prescribed by law in cases of injunction and receivership, with the right of appeal to the supreme court from any such order or injunction. (1933, c. 275, s. 1.)

§ 2593(c). Ordering resales before confirmation; receivers for property; tax payments.—The court or judge granting such order or injunction, or before whom the same is returnable, shall have the right before, but not after, any sale is confirmed to order a resale by the mortgagee, trustee, commissioner, or other person authorized to make the same in such manner and upon such terms as may be just and equitable: Provided, the rights of all parties in interest, or who may be affected thereby, shall be preserved and protected by bond or indemnity in such form and amount as the court may require, and the court or judge may also appoint a receiver of the property or the rents and proceeds thereof, pending any sale or resale, and may make such order for the payment of taxes or other prior lien as may be necessary, subject to the right of appeal to the supreme court in all cases. (1933, c. 275, s. 2.)

§ 2593(d). Right of mortgagee to prove in deficiency suits reasonable value of property by way of defense.—When any sale of real estate or personal property has been made by a mortgagee, trustee, or other person authorized to make the same, at which the mortgagee, payee or other holder of the obligation thereby secured becomes the purchaser and takes title either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation whose property has been so purchased, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and off-set, but not by way of counter-claim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and, upon such showing, to defeat or off-set any deficiency judgment against him, either in whole or in part: Provided, this section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other obligation secured by such mortgage, deed of trust or other instrument: Provided, further, this section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any sale heretofore made and confirmed. (1933, c. 275, s. 3.)

§ 2593(e). Conflicting laws repealed; not applicable to tax suits. — All laws and clauses of laws in conflict herewith, to the extent of such conflict only, are hereby repealed, but this act [§§ 2593(b)-2593(e)] shall not apply to tax foreclosure suits or tax sales. (1933, c. 275, s. 4.)

§ 2593(f). Deficiency judgments abolished where mortgage represents part of purchase price.—In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust hereafter executed, or where judgment or decree is given for the foreclosure of any mortgage executed after the ratification of this section to secure payment of the balance of the purchase price of real property, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by the same: Provided, said evidence of indebtedness shows upon the face that it is for balance of purchase money for real estate: Provided, further, that when said note or notes are prepared under the direction and supervision of the seller or sellers, he, it, or they shall cause a provision to be inserted in said note disclosing that it is for purchase money of real estate; in default of which the seller or sellers shall be liable to purchaser for any loss which he might sustain by reason of the failure to insert said provision as herein set out. (1933, c. 36.)

Art. 4. Discharge and Release

§ 2594. Discharge of record of mortgages and deeds of trust.

Not Retroactive.—This section has no application to a mortgage given prior to the passage of the section nor does it wipe out a valid debt existing at the time the statute took effect. Dixie Grocery Co. v. Hoyle, 204 N. C. 109, 113, 167 S. E. 469. And it is not a ground for setting aside a foreclosure of a mortgage given before the passage of the act in an action by a subsequent mortgagee. Roberson v. Matthews, 200 N. C. 241, 156 S. E. 496.

§ 2594(a). Entry of foreclosure.

The purchaser of lands at a foreclosure sale made in conformity with a deed of trust upon lands is not affected with constructive notice of fraud by the omission of the trustee to comply with the provisions of this or the following section. Cheek v. Squires, 200 N. C. 661, 662, 158 S. E. 198.

CHAPTER 55
MOTOR VEHICLES

Art. 3A. Gasoline Tax

§ 2613(i5). Gallon tax.

Our state gasoline tax is an excise and not a property tax. Stedman v. Winston-Salem, 204 N. C. 203, 167 S. E. 813.

And it May Be Levied on Municipality.—Under the provisions of our Constitution, Art. V, sec. 5, the General Assembly is prohibited from levying a property tax on property owned by municipal corporations, but the prohibition does not extend to excise taxes, and under the provisions of this section, a municipality is liable for the gasoline tax on gasoline bought by it in bulk and distributed by it to its various departments for use in its governmental functions. Stedman v. Winston-Salem, 204 N. C. 203, 167 S. E. 813.

§ 2613(i12). Actions for tax; double liability.—If any person, firm or corporation shall fail to pay the amount of tax levied in section 2613(i5) within the time specified in section 2613(i6) of this act, it shall be the duty of the commissioner of revenue to proceed at once to enforce the payment of said tax, and to this end the commissioner of revenue shall have and may exercise all the remedies provided in the revenue laws of the state for enforcing payment of other taxes, including the right of execution through the sheriffs of the several counties of the state upon any property of the delinquent taxpayer, and shall with the assistance of the attorney general whenever necessary bring appropriate action in the courts of the state for the recovery of such tax. If it shall be found as a fact that such failure to pay was willful on the part of such person, firm or corporation, judgment shall be rendered against such person, firm or corporation for double the amount of tax found to be due, together with interest, and the amount of taxes and penalties shall be paid into the state treasury to the credit of the state highway fund. All remedies which now or may hereafter be given by the laws of the state of North Carolina for the collection of taxes are expressly given herein for the collection of taxes levied in this article or of judgment recovered under authority of this article. It shall also be the duty of the commissioner of revenue to revoke the license of any licensed distributor who shall refuse, fail or neglect to pay the taxes levied in section 2613(i5) within the time specified in section 2613(i6), and whose account shall remain delinquent for any part of said tax for ten days thereafter: Provided, that in consideration of the reduction by thirty days of time previously allowed before enforcing payment of this tax the commissioner of revenue may find the correct amount of accrued tax liability for the last thirty days next preceding the effective date of this act, and may permit the said sum of delinquency to be divided into twelve equal monthly payments to be paid on the twentieth day of each succeeding twelve months, plus interest at the rate of six per cent per annum on deferred payments and upon failure of any distributor to meet any such deferred payment at the time specified or within ten days thereafter, together with the current monthly liability, it shall be the duty of the commissioner of revenue to revoke the license of any such distributor and to proceed to enforce payment of the whole amount that may be due by said distributor. (1933, c. 137, s. 1.)

Editor's Note.—Public Laws of 1933, c. 137, repealed this section as it formerly read and substituted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

§ 2613(i12)a. Auditing books of licensed distributors.—It shall be the duty of the commissioner of revenue, by competent auditors, to have the books and records of every licensed distributor in the state examined at least twice each year to determine if such distributor is keeping complete records as provided in section 2613(i8), and to determine if correct reports have been made to the state department of revenue by every such distributor covering the total amount of tax liability of such licensed distributor. It shall also be the duty of such auditors to check the records of each distributor with the records of shipment by railroad companies, or by boats or trucks, or other available sources of information, and also to check the records covering the receipt and distribution of any other liquid petroleum products handled by each distributor. (1933, c. 137, s. 1.)

§ 2613(i12)b. License constitutes distributor trust officer of state for collection of tax.—The licensing of any person, firm or corporation as a wholesale distributor of gasoline shall constitute such distributor an agent or trust officer of the state for the purpose of collecting the tax on the sale of gasoline imposed in this article, and the failure of any such person, firm or corporation who adds the amount of the tax levied in this article to the customary market price for gasoline and collects the same and who shall fail to remit the gasoline tax to the commissioner of revenue upon the terms and as provided herein, such failure shall constitute embezzlement of state funds, and upon conviction under this section any individual, partner or officer or agent of any association, partnership or corporation shall be guilty of a felony, and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 137, s. 1.)

§ 2613(i12)c. Boats and vehicles transporting motor fuels must register.—The owner or operator of any motor vehicle using the highways of this state, or the owner or operator of any boat using the waters of this state, transporting into, out of, or between points in this state, any gasoline or liquid motor fuel taxable in this state, or any liquid petroleum product that is, or may be hereafter made, subject to the inspection laws of this state, shall, as a prerequisite to the transportation of such products over the highways or waters of this state, register such intention with the commissioner of revenue in advance of such transportation, with notice of the kind and character of such products to be transported, and if by motor vehicle the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of this article, the commissioner of revenue shall, without any charge therefor, issue a numbered certificate to such owner or operator for each motor vehicle intended to be used for such transportation, which numbered certificate shall be prominently displayed on the motor vehicle or boat used in transporting the products named in this section. Every person hauling, transporting, or conveying gasoline over any of the public highways of this state shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or other record evidence showing the true name and address of the person from whom he has received the gasoline, and the number of gallons so originally received by him from said person, and the true name and address of every person to whom he has made deliveries of said gasoline, or any part thereof, and the number of gallons so delivered to each of said persons. The person hauling, transporting or conveying such gasoline shall, at the request of any representative of the commissioner of revenue, produce and offer for inspection said invoice or bill of sale, or record evi-

dence. If said person fails to produce the invoice or bill of sale, or record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey gasoline over any of the public highways of the state except in vehicles plainly and visibly marked on the rear thereof with the word "gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name or trade mark of the owner of the vehicle in which such gasoline is contained displayed in a conspicuous place on the vehicle. Any person guilty of violating any of the provisions of this sub-section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 137, s. 1.)

§ 2613(i15). Fuels purchased for farm tractors, motor boats and manufacturing processes entitled to rebates.—Any person, association, firm, or corporation, who shall buy in quantities of ten gallons or more at any one time any motor fuels as defined in this article for the purpose of use, and the same is actually used, for a purpose other than the operation of a motor vehicle designed for use upon the highways, on which motor fuels the tax imposed by this article shall have been paid, shall be reimbursed at the rate of five cents per gallon of the amount of such tax or taxes paid under this article, upon the following conditions and in the following manner:

(a) Before using such motor fuels the person, association, firm, or corporation proposing to use the same shall apply to the commissioner of revenue, upon blanks to be furnished by him, for a refund permit. Such application shall state the use for which the motor fuels for which taxes are to be refunded are to be used. If such motor fuels are to be used in a gasoline motor or engine, the application shall state the make and kind of such motor, the serial number thereof, and the purpose for which it is proposed to use the same. If such motor fuels are to be used for some purpose other than the operation of an engine, the application shall state the nature and kind of process in which such motor fuels are to be used, and the method and manner in which such motor fuels are to be used, stored and kept. In all cases such application shall state the approximate number of gallons of such motor fuels to be used per month, and shall give such other information as the commissioner of revenue shall require. In making application for refund permit, the person making application may combine one or more of the uses above specified in the same application. Dealers in motor fuel engaged in selling such fuel to motor boats owned by non-residents, and which boats are not documented in this state, may apply to the commissioner of revenue for a permit on forms to be prescribed by the commissioner of revenue, which permit shall entitle the said dealer to be furnished with blanks by the commissioner of revenue in such form as may be prescribed by him, for the use of such non-resident boat owners to file applications for refunds as provided in this article, and said non-resident boat owners shall not be required to secure permits. Such application for refund shall be filed in the name of the non-resident boat owner on blanks furnished by dealers holding permits. Said applications must be accompanied by an invoice of the dealer holding permit, showing the number of gallons of motor fuel delivered into the tanks of said boats and shall furnish such other information as the commissioner of revenue shall require. Applications must be sworn to before a notary public of this state and filed with the commissioner of revenue. Upon approval of said applications by the commissioner of revenue, said applications shall be paid as other applications for refund are paid: Provided, however, that such non-residents must file applications with the commissioner of revenue within thirty days from the date of purchase of said gasoline and that said applications may be paid immediately upon approval. The application shall be accompanied by a fee of one dollar, to be returned if the refund permit is not issued. Such fees, if retained, shall be paid by the commissioner of revenue to the state treasurer, to be credited by him to the state highway fund.

(b) If, upon the filing of such application, the commissioner of revenue shall be satisfied that the same is made in good faith and that the motor fuels upon which the said tax refund is requested are to be used exclusively for one of the purposes set forth above and specified in said application, he shall issue to said applicant a refund permit specifying the terms and conditions under which refunds on such motor fuels will be made, which refund permits will expire with the fiscal year in which it is issued. Refund permits issued under this article shall state the name of the person, association, firm, or corporation to whom and for whose benefit it is issued, the purposes for which the motor fuels upon which tax refunds are to be made under the provisions thereof are to be used and the approximate number of gallons expected to be used per month for such purposes, and the commissioner of revenue shall determine such amount. Such refund permits shall bear serial numbers and shall not be transferable, nor shall any right or claim for refund under the same be transferable: Provided, however, that the commissioner of revenue shall not be required to issue any refund permit for use of motor fuels unless and until the applicant therefor shall have satisfied the commissioner of revenue that provisions have been made for the storage of such motor fuels in a manner prescribed by the commissioner of revenue, so as to segregate the same from motor fuels for use in vehicles upon the highways.

(c) All claims for refunds for tax or taxes for motor fuels under the provisions of this article shall be filed with the commissioner of revenue on forms to be prescribed by him, between the first and the fifteenth day of January, April, July, and/or October of each year, and at such periods only, and shall cover only the motor fuels so used during the three months immediately preceding the filing of such application. Such application shall be accompanied by ticket, invoice, or other document from the retail dealer or distributor for motor fuels, issued at the time of purchase of such motor fuel and showing the purchase of the number of gallons of motor fuels

on which said refund is requested, and upon which shall be written or stamped at the time of purchase appropriate words showing the purpose for which the said motor fuel is purchased and that refund will be requested. The application shall be sworn to before the clerk of the superior court or a notary public of the county in which the applicant resides or has his place of business, and such attesting officer is authorized to charge therefor a fee of not exceeding twenty-five cents.

(d) If the commissioner of revenue shall be satisfied that the motor fuels specified in such application for refund have been legitimately used for the purpose specified in the refund permit issued to such applicant, he shall issue to such applicant a warrant upon the state treasurer for the said taxes paid on such motor fuels under this article.

(e) No refund of tax or taxes shall be paid on motor fuels except under a refund permit and to the person, association, firm, or corporation named in said refund permit in the manner herein provided for.

(f) If the commissioner of revenue shall be satisfied that the holder of any refund permit issued under the provisions of this act has violated the conditions thereof, or has collected or sought to collect any refund of tax or taxes thereunder upon any motor fuels not used in strict accordance with said refund permit, he shall issue notice to the holder of such refund permit to show cause why the refund permit should not be cancelled, which notice shall state a time and place of hearing upon said notice. If upon such hearing the commissioner shall find as a fact that the permit holder has violated the terms of his permit, he shall cancel such refund permit and the holder thereof shall be required to repay all tax or taxes which have been refunded to him under such permit.

(g) Any applicant for a refund permit or any holder of a refund permit may appeal from the decision of the commissioner of revenue upon any matters arising under this section to the state board of assessment, who shall hear the matters presented on such appeal at a time and place to be fixed by said state board of assessment. Such state board of assessment shall have authority to cause the attendance of witnesses in behalf of such applicant or of the commissioner of revenue, and shall have authority to administer oaths and take testimony.

(h) The commissioner of revenue is hereby authorized and directed, if at any time in his opinion there is reason to doubt the accuracy of the facts set forth in any application for tax refund, to refer the matter to any agent of the department of revenue or to any member of the state highway patrol, and such person so designated shall make a careful investigation of all the facts and circumstances relating to said application in the use of the motor fuel therein referred to, and shall have a right to have access to the books and records of any retailer or distributor of motor fuel products for the purpose of obtaining the necessary information concerning such matters, and shall make due report thereof to the commissioner of revenue.

(i) That if any court of last resort shall hold that the provisions for refund herein set out shall render the levying and collecting of the tax hereinbefore provided invalid, it is the intention of the general assembly that such provisions for refund shall be annulled and the tax shall be levied without any provisions for such refund and that this article shall be so construed.

Any person making a false return or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00), or imprisoned not exceeding two years, in the discretion of the court. (1933, c. 211, s. 1.)

Editor's Note.—Public Laws of 1933, c. 211, repealed this section as it formerly read and substituted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

§ 2613(i16). Reports of carriers.—Every person, firm or corporation engaged in the business of, or transporting motor fuel, whether common carrier or otherwise, and whether by rail, water, pipe line or over public highways, either in interstate or in intrastate commerce, to points within the state of North Carolina, and every person, firm or corporation transporting motor fuel by whatever manner to a point in the state of North Carolina from any point outside of said state shall be required to keep for a period of two years from the date of each delivery records on forms prescribed by, or satisfactory to, the commissioner of revenue of all receipts and deliveries of motor fuel so received or delivered to points within the state of North Carolina, including duplicate original copies of delivery tickets or invoices covering such receipts and deliveries, showing the date of the receipt or delivery, the name and address of the party to whom each delivery is made, and the amount of each delivery; and shall report, under oath, to the commissioner of revenue, on forms prescribed by said commissioner of revenue, all deliveries of motor fuel so made to points within the state of North Carolina. Such reports shall cover monthly periods, shall be submitted within the first ten days of each month covering all shipments transported and delivered for the previous month, shall show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, the name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car, and the number of gallons contained therein if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein, and the consignor and consignee if shipped by water; the license number of each tank truck and the number of gallons contained therein, and the consignor and consignee if transported by motor truck; if delivered by other means the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel as the commissioner of revenue may require: Provided, that the commissioner of revenue may modify or suspend the provisions of this section with regard to reports of interstate or intrastate shipments or deliveries upon application of any licensed distributor: Pro-

vided, also, that the commissioner of revenue shall have full power to require any distributor to make additional reports and to produce for examination duplicate originals of delivery tickets or invoices covering both receipts and deliveries of products as herein provided. The reports herein provided for shall cover specifically gasoline, kerosene, benzine, naphtha, crude oil, or any distillates from crude petroleum. Any person, firm or corporation refusing, failing or neglecting to make such report shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 137, s. 1.)

Editor's Note.—
Public Laws of 1933, c. 137, repealed this section as it formerly read and substituted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

§ 2613(i17). Forwarding of information to other states.—The commissioner of revenue of the state of North Carolina shall, upon request duly received from the officials to whom are intrusted the enforcement of the motor fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation or shipment by any person of motor fuel. (1929, c. 230, s. 1; 1933, c. 137, s. 1.)

Art. 3B. Motor Busses

§ 2613(l). Application for franchise certificate.—Every corporation or person, their lessees, trustees, or receivers, before operating any motor vehicle upon the public highways of the state for the transportation of persons or property for compensation, within the purview of this act, shall apply to the commission and obtain a franchise certificate authorizing such operation, and such franchise certificate shall be secured in the manner following:

(f) The commission may refuse to grant any application for a franchise certificate where the granting of such application would duplicate, in whole or in part, a previously authorized similar class of service, unless it is shown to the satisfaction of the commission that the existing operations are not providing sufficient service to reasonably meet the public convenience and necessity and the existing operators, after thirty days' notice, fail to provide the service required by the commission: Provided, that where two or more highways intersect within less than twenty-five miles of any incorporated city and the business of such lines transacted at such intersection is insufficient to warrant the maintenance of a bus station, then the commission may in its discretion route all operators to the next city in which a bus station is established and maintained. (1925, c. 50, s. 3, c. 137; 1927, c. 136, s. 3; 1931, c. 182; 1933, c. 440, s. 1.)

Editor's Note.—Subsection (f) of this section formerly provided that the commission could not refuse to grant the certificate because of the multiplicity of operators over the proposed route. As subsection (f) is the only one affected by Public Laws 1933, c. 440, it is the only one shown above.

§ 2613(z): Repealed by Public Laws 1933, c. 440.

Art. 4. Operation of Vehicles

§ 2616. Driving regulations; frightened animals; crossings.

Cross Reference.—As to submitting evidence of violation of this and other sections to show reckless driving, in a prosecution for manslaughter, see § 2621 and the note thereto.

§ 2617. Rule of the road in passing.

Act Must Have Been Likely to Cause Harm.—One who violated the provisions of this section or § 2618, not intentionally or recklessly, but merely through a failure to exercise due care and thereby proximately caused the death he would not be culpably negligent unless in the light of the attendant circumstances his negligent act was likely to result in death or bodily harm. State v. Stansell, 203 N. C. 69, 74, 164 S. E. 580.

§ 2618. Speed regulations; mufflers.

As to the culpable negligence of one violating the provisions of this section, see annotations under § 2617.

Art. 7. The Motor Vehicle Act; Department of Motor Vehicles; Registration

§ 2621(3). Duties of department and vehicle commissioner.—(a) It shall be the duty of the department and all officers thereof to enforce the provisions of this act.

(b) The vehicle commissioner is hereby authorized to adopt and enforce such administrative rules and regulations and to designate and appoint such agents and deputies not to exceed six in number: Provided, that the number of patrolmen employed under this section shall not exceed sixty-seven (67), to carry out the provisions of this act and such agents and deputies are hereby given police power and authority throughout the state, to arrest without writ, rule, order or process any person in the act of violating or attempting to violate in his presence any of the provisions of this act, and are hereby made peace officers of this state for that purpose. He shall also provide suitable forms for applications, certificates of title and registration cards, license number plates, certificate holders, and all other forms requisite for the purpose of this act, and shall prepay all transportation charges thereon. (1927, c. 122, s. 3; 1933, c. 214, s. 10.)

Editor's Note.—Public Laws of 1933, c. 214, added the proviso limiting the number of patrolmen to sixty-seven.

§ 2621(16). Transfer of title or interest.—(a) The owner of a vehicle registered under the foregoing provisions of this act, transferring or assigning his title or interest thereto, shall endorse an assignment and warranty of title in form approved by the department upon the reverse side of the certificate of title or execute an assignment and warranty of title of such vehicle with a statement of all liens or encumbrances thereon, which statement shall be verified under oath by the owner, who shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle, except that where a deed of trust, mortgage, conditional sale or title retaining contract is obtained from purchaser or transferee in payment of purchase price, or otherwise, the lien holder shall forward such certificate of title papers with said deed of trust, mortgage, conditional sale or title retaining contract, to the department within ten days: Provided, that the said commissioner of revenue shall, upon and after inspection of said chattel mortgages, notes, deeds of trust, etc., return same to the owner or owners thereof, within ten days after such inspection.

(b) The transferee shall thereupon write his name and address with pen and ink upon the certificate of title or assignment, and except as pro-

vided in the next subdivision of this section shall forward such certificate and assignment to the department with an application for the registration of such vehicle and for a certificate of title within ten days after the date of purchase.

(c) When the transferee of a vehicle is a dealer who holds the same for resale and operates the same only for purposes of demonstration under a dealer's number plates, such transferee shall not be required to register such vehicle nor forward the certificate of title to the department as provided in the preceding paragraph, but such transferee upon transferring his title or interest to another person shall give notice of such transfer to the department and shall execute and acknowledge an assignment and warranty of title in form approved by the department and deliver the same to the person to whom such transfer is made.

(d) The department, upon receipt of a certificate of title properly assigned and acknowledged, accompanied by an application for registration and necessary fees, shall register the vehicle, therein described and shall issue to the person entitled thereto by reason of such transfer, a new registration card and certificate of title in the manner and form hereinbefore provided for original registration, except that where there is a lien upon such vehicle, the certificate of title when issued shall be mailed to the lien holder.

(e) Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the department is hereby authorized to receive such application and to examine into the circumstances of the case and may require the filing of affidavits or other information, and when the department is satisfied that the applicant is entitled thereto, is hereby authorized to register such vehicle and issue a new registration card number plate or plates and certificate of title to the person entitled thereto.

(f) In the event of the transfer by operation of law of the title or interest of an owner in and to a vehicle registered under the provisions of this act, order in bankruptcy or insolvency, execution sale, repossession upon default in performing the terms of a lease or executory sales contract or otherwise than by the voluntary act of the person whose title or interest is so transferred, the transferee or his legal representative shall make application to the department for a certificate of title therefor, giving the name and address of the person entitled thereto, and accompanying such application with the registration card and certificate of title previously issued for the vehicle, if available, together with such instruments or documents of authority, or certified copies thereof, as may be required by law to evidence or effect a transfer of title or interest in or to chattels in such case, together with the number plate originally issued. The department, when satisfied of the genuineness and regularity of such transfer, shall cancel the registration and license of such vehicle and issue a new certificate of title and license therefor to the person entitled thereto, upon payment of necessary fees. The transferee may also apply for and obtain the registration of such vehicle. In the event of transfer, as upon inheritance, devise or bequest, the department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as a part of her year's support, transfer both title and license as provided in sub-section (d). (1927, c. 122, s. 15; 1929, c. 72, s. 4, c. 272, s. 5; 1933, c. 344.)

Editor's Note.—
Public Laws 1933, c. 344, inserted the last sentence of this section relating to transfer to heirs, legatees, or devisees.

§ 2621(17). Registration by manufacturers and dealers.—(a) A manufacturer of or dealer in motor vehicles, trailers or semi-trailers, owning or operating any such vehicle or any vehicle known as a wrecker and owned by a dealer upon any highway in lieu of registering each such vehicle may obtain from the department upon application therefore upon the proper official form and payment of the fees required by law and attach to each such vehicle one number plate, which plate shall each bear thereon a distinctive number, also the name of this state, which may be abbreviated, and the year for which issued, together with the word "dealer" or a distinguishing symbol indicating that such plate or plates are issued to a manufacturer or dealer, and any such plates so issued may, during the calendar year for which issued, be transferred from one such vehicle to another owned and operated by such manufacturer or dealer.

(b) Every manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall obtain and have in possession a certificate of title issued by the department to such manufacturer or dealer, or to the immediate vendor of such manufacturer or dealer for each motor vehicle, trailer and semi-trailer owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required for any new vehicle to be sold as such by a manufacturer or dealer, prior to the sale of such vehicle by the manufacturer or dealer.

(c) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person to be operated or moved upon a public highway without there being displayed upon such vehicle a number plate or plates issued to such person, either under section thirteen or under this section.

(d) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person or by any person in his employ which is in the personal use of such person or employee to be operated or moved upon a public highway with a "dealer" plate attached to such vehicle. (1927, c. 122, s. 16; 1933, c. 360.)

Editor's Note.—
Public Laws 1933, c. 360, inserted, near the beginning of this section, the word "or any vehicle known as a wrecker and owned by a dealer."

§ 2621(29). Registration fees.—It shall be unlawful to operate upon the public highways of this state any motor vehicles, except the same shall

be duly licensed according to the following schedules and classifications:

(a) Passenger Vehicles

There shall be paid to the department of revenue annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) Franchise Bus Carriers. — Passenger motor vehicles operating under a franchise certificate issued by the corporation commission under chapter fifty of the public laws of one thousand nine hundred and twenty-five, and amendments thereto, for operation on the public highways of this state between fixed termini or over a regular route for the transportation of persons or property for compensation shall be classified as "franchise bus carriers."

(2) "U-Drive-It" Passenger Vehicles. — Passenger motor vehicles used for the purpose of rent or lease to be operated by the lessee shall be classified as "'u-drive-it' passenger vehicles."

(3) "For Hire" Passenger Vehicles.—Passenger motor vehicles engaged in the business of transporting passengers for compensation shall be classified as "'for hire' passenger vehicles"; but this classification shall not include motor vehicles of seven-passenger capacity or less operated by the owner where the cost of operation is shared by a neighbor fellow-workman between their homes and the place of regular daily employment.

(4) Excursion Passenger Vehicles. — Passenger vehicles kept and used for the purpose of transporting persons on sightseeing or travel tours shall be classified as "excursion passenger vehicles."

(5) Private Passenger Vehicles. — All other passenger vehicles not included in the above definitions shall be classified as "private passenger vehicles."

Schedule of Rates

(6) Franchise Bus Carriers. — Franchise bus carriers shall pay an annual license tax of ninety cents per hundred pounds weight of each vehicle unit, and in addition thereto six per cent of the gross revenue derived from such operation: Provided, said additional six per cent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax of ninety cents per hundred pounds; and provided further, that franchise bus carriers operated between point or points within this state and point or points without this state shall be required to account as compensation for the use of the highways of this state and the special privileges extended such carriers by this state, in computing the six per cent tax, only on that proportion of the gross earnings which correspond to the proportion of mileage in this state as compared with the total mileage, but in no event shall the tax paid by such franchise bus carriers be less than ninety cents per hundred pounds weight for each vehicle. In computing said gross earnings, revenue derived from transportation of United States mail, or other United States Government services, shall not be included, and amounts expended for tolls in using toll bridges shall be deducted from gross revenues. All revenue, except as hereinbefore provided, collected by such franchise bus carriers, whether on fixed schedule routes or by special trips, shall be included in the gross income upon which said tax is based.

(7) "U-Drive-It" Passenger Vehicles. — "U-Drive-It" passenger vehicles shall pay the following tax:

Motorcycles:

1 passenger capacity	$12.00
2 passenger capacity	15.00
3 passenger capacity	18.00

Automobiles:

One dollar and ninety cents per hundred pounds weight of each such vehicle.

(8) "For Hire" Passenger Vehicles.—"For hire" passenger vehicles shall be taxed at a rate of one dollar and ninety cents per hundred pounds of weight.

(9) Excursion Passenger Vehicles. — Excursion passenger vehicles shall be taxed at the rate of eight dollars per passenger capacity, with a minimum charge of twenty-five dollars.

(10) Private Passenger Vehicles.—Private passenger vehicles shall be taxed at fifty-five cents per hundred pounds of weight or major fraction thereof, according to the manufacturer's shipping weight: Provided, that no fee for any private passenger vehicle shall be less than twelve dollars and fifty cents. Private passenger motorcycles shall pay for each motorcycle five dollars, and for each side-car five dollars.

(11) Motor Vehicle Dealers.—Dealers in motor vehicles for demonstration tags shall pay as a registration fee and for one set of plates, twenty-five dollars, and for each additional set of plates one dollar.

(12) Licensees Protected.—No person, partnership, association or corporation shall maintain an office or place of business in which or through which persons desiring transportation for themselves or their baggage are brought into contact by advertisement or otherwise with persons owning or operating motor vehicles and willing to transport other persons, or baggage, for compensation, or on a division of expense basis, unless the owner or operator of such motor vehicle furnishing the transportation has qualified under the tax provisions of this act for the class of service he holds himself out to perform.

(b) Property Hauling Vehicles

There shall be paid to the department of revenue annually, as of the first day of January, for the registration and licensing of trucks, truck-tractors, trailers, and semi-trailers, fees according to the following classifications and schedules:

The term "for hire" as used in these classifications shall include every arrangement by which the owner of a motor vehicle for compensation permits such vehicle to be used for the transportation of the property of another: Provided, it shall not be construed to include an arrangement by which two or more farmers share in the cost of transporting their farm produce or livestock from the farm to the first or primary market, whether the truck be jointly or severally owned.

(1) Contract Hauler Vehicles. — Motor vehicles used for the transportation of property for hire, but not licensed as common carriers under the provisions of chapter one hundred thirty-six

of the public laws of one thousand nine hundred and twenty-seven, and amendments thereof, shall be classified as "contract hauler vehicles": Provided, this classification shall not include persons distributing goods of another on consignment, on conditional sale, or on commission basis.

(2) Franchise Hauler Vehicles. — Motor vehicles used for the transportation of property on specified routes between fixed termini, with the right to make occasional trips off said route, as provided in chapter one hundred and thirty-six of the public laws of one thousand nine hundred and twenty-seven, and amendments thereof, shall be classified as "franchise hauler vehicles"; Provided, only such vehicles shall be so classified as the corporation commission shall determine to be reasonably necessary for the proper handling of the business on the said route, and the determination so arrived at duly certified by the corporation commission to the motor vehicle department.

(3) Private Hauler Vehicles. — All motor vehicles used for the transportation of property not falling within the above defined classification shall be classified as "private hauler vehicles."

(4) Determination of Weight. — For the purpose of licensing, the weight of the several classes of motor vehicles used for transportation of property shall be gross weight and load, to be determined by the manufacturer's gross weight capacity as shown in an authorized national publication, such as commercial car journal or the statistical issue of automotive industries, all such weights subject to verification by the commissioner of revenue or his authorized deputy, and if no such gross weight on any vehicle is available in such publication, then the gross weight shall be determined by the commissioner of revenue or his authorized agent, but such calculation shall be made only in units of one thousand pounds or major fractions thereof, weights of less than five hundred pounds being disregarded and weights of five hundred pounds or over being counted as one thousand. Semi-trailers, licensed for use in connection with a truck-tractor, shall in no case be licensed for less gross weight capacity than the truck-tractor with which it is to be operated.

Schedule of Rates

(5) Rate Per Hundred Pounds Gross Weight:

	Private Hauler	Contract Hauler	Franchise Hauler (Deposit)
Gross weight under 8,000 pounds	$ .40	$ .85	$ .60
8,000 pounds to 12,500, inclusive	.50	1.00	.60
Over 12,500 pounds to 16,000, inclusive	.60	1.15	.60
Over 16,000 pounds	.70	1.30	.60

The minimum rate for any vehicle licensed under this section shall be fifteen dollars.

The rate on trucks wholly or partially equipped with solid tires shall be double the above schedule.

(6) Franchise Haulers. — Franchise haulers shall pay an annual license tax as per the above schedule of weight of each vehicle unit (except on trucks licensed for inter-state routes and used exclusively for inter-state business, where more than fifty per cent of the designated route lies outside of the state of North Carolina, the required deposit may be reduced by the commissioner of revenue to fifty per cent of the schedule rate), and in addition thereto six per cent of the gross revenue derived from such operation: Provided, said additional six per cent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax per the above schedule; and provided further, that franchise haulers operated between point or points within this state and point or points without this state shall be required to account as compensation for the use of the highways of this state and the special privileges extended such carriers by this state in computing the six percent tax only on that proportion of the gross earnings which correspond to the proportion of the mileage in this state as compared with the total mileage, but in no event shall the tax paid by such franchise haulers be less than the license tax shown on the above schedule. In computing said gross earnings, revenue derived from transportation of United States mail, or other United States government services, shall not be included. All revenue, except as hereinbefore provided, collected by such franchise haulers, whether on fixed schedule routes or by special trips, shall be included in the gross income upon which said tax is based. All motor vehicles licensed as contract hauler vehicles, and franchise hauler vehicles, shall have printed on the side thereof in letters not less than three inches in height the name and home address of the owner. Before issuing any license plates to a franchise hauler, it shall be the duty of the commissioner of revenue to either satisfy himself of the financial responsibility of such licensee or to require a bond or deposit in such amount as he may deem necessary to insure the collection of the tax imposed by this section.

(7) Identification of Trailers. — The application for license for any trailer or semi-trailer shall show the manufacturer's serial number; and if such vehicle has no identifying serial number, the commissioner of revenue shall assign to such vehicle a distinguishing serial number, which number shall be permanently affixed to such vehicle in a manner to be prescribed by rules and regulations issued by the commissioner of revenue, and it shall be unlawful to use the license issued for such vehicle upon any other vehicle.

(8) Partial Payments. — In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars, half of such payment may be deferred until April first in any calendar year upon the execution to the commissioner of revenue of a draft upon any bank or trust company upon forms to be provided by the commissioner of revenue in an amount equivalent to one-half of such tax, plus a carrying charge of two per cent; Provided, that any person using any tag so purchased after the first day of April in any such year, without having first provided for the payment of such draft, shall be guilty of a misdemeanor. Any such drafts being dishonored and not paid shall be immediately turned over by the commissioner of revenue to his duly authorized agents and/or the state highway patrol, to the end that this provision may be enforced.

(9) Overloading. — The commissioner of rev-

enue, or his authorized agent, may allow any owner of a motor vehicle for transportation of property to overload said vehicle by paying the fee at the rate per hundred pounds which would be assessed against such vehicle if its rated capacity provided for such load; but such calculation shall be made only in units of one thousand pounds or major fractions thereof, excessive weights of less than five hundred pounds being disregarded and weights of five hundred pounds or over being counted as one thousand.

(10) Foreign Vehicles. — Motor vehicles engaged in the transportation of persons or property and duly licensed in any other state or territory, desiring to make occasional trips into or through the state of North Carolina, may be permitted the same use and privileges of the highways of this state as provided for similar vehicles regularly licensed in this state by procuring from the commissioner of revenue trip licenses upon forms and under rules and regulations to be adopted by the commissioner of revenue, good for use for a period of thirty days, upon the payment of a fee in compensation for said privileges equivalent to one-tenth of the annual fee which would be chargeable against said vehicle if regularly licensed in this state: Provided, however, that nothing in this provision shall prevent the extension of the privileges of the use of the roads of this state to vehicles of other states under the reciprocity provisions now provided by law; and provided further, that nothing herein contained shall prevent the owners of vehicles from other states from licensing such vehicles in the state of North Carolina under the same terms and the same fees as like vehicles are licensed by owners resident in this state. (1927, c. 122, s. 28; 1929, c. 272, s. 7; 1931, cc. 336, 362; 1933, c. 375, s. 1, c. 533.)

Editor's Note.—
Public Laws of 1933, c. 375, repealed this section as it formerly read and substituted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

§ 2621(29)a. License fee for semi-trailers towed by passenger cars.—No fee for any truck, or truck-tractor shall be less than fifteen dollars ($15.00): Provided, the license fee for a semi-trailer weighing not more than five hundred pounds (500 lbs.) and carrying not more than one thousand pounds (1000 lbs.) load, and towed by a passenger car, shall be two dollars ($2.00) for any part of the license year for which license is issued. (1933, c. 73, s. 1.)

§ 2621(30). Exempt from registration fees.—The department, upon proper proof being filed with it that any motor vehicle for which license is herein required is owned by the state or any department thereof, or by any county, township, city or town, or by any board of education, or orphanages, shall collect one dollar for the registration and numbering of such motor vehicles: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the state or some department thereof, or of the county, township, city or town, or of the board of education, or orphanages, and no motor vehicle which is the property of any officer or employee of any department or orphanages named herein shall be construed as being "owned" by such department or orphanages. Provided, that the above exemption from registration fees shall also apply to a church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.

The word "orphanages" shall be construed to mean only those institutions that are recognized by the state board of charities and public welfare as charitable child-caring institutions. (1927, c. 122, s. 29; 1929, c. 209, s. 1; 1933, c. 221, s. 1, c. 375, s. 1.)

Editor's Note.—
Public Laws 1933, c. 375, repealed this section as it formerly read and substituted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes. Public Laws 1933, c. 221, amended the former section by inserting the words "or orphanages."

§ 2621(31). Collection of delinquent taxes by duress.—Whenever any tax imposed by this act shall be in default for a period of ten days, it shall be the duty of the commissioner of revenue to certify the same to the sheriff of any county of this state in which such delinquent motor vehicle operator is operating, which said certificate to said sheriff shall have all the force and effect of a judgment and execution, and the said sheriff is hereby authorized and directed to levy upon any property in said county owned by the said delinquent motor vehicle operator, and to sell the same for the payment of said tax as other property is sold in the state for the non-payment of taxes; and for such services the sheriff shall be allowed the fees now prescribed by law for sales under execution, and the cost in such cases shall be paid by the delinquent taxpayer or out of the proceeds of the said property; and upon the filing of said certificate with the sheriff, in the event the delinquent taxpayer shall be the operator of any franchise bus carrier or franchise hauler vehicle, the franchise certificate issued to such operator shall become null and void and shall be canceled by the corporation commission, and it shall be unlawful for any such franchise bus carrier or the operator of any franchise hauler vehicle to continue the operation under said franchise. (1933, c. 375, s. 1.)

Editor's Note.—
Public Laws 1933, c. 375, repealed this section as it formerly read and substituted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

§ 2621(31)a. Transfer of license.—Upon the legal transfer of the title of any vehicle licensed under the provisions of this act by foreclosure sale under chattel mortgage or retained title contract, the purchaser of said vehicle at such sale shall acquire the right to operate such vehicle for the remainder of the license period under the license plates issued for said vehicle, upon complying with the provisions of law with reference to the transfer of title; but this provision, insofar as it may relate to franchise bus carriers or franchise hauler vehicles, is subject to the regulations now in effect or hereafter established by the corporation commission with respect to the regulation of such vehicles. Upon satisfactory proof to the commissioner of revenue that any motor vehicle, duly licensed, has been completely destroyed by fire or collision, the owner of such vehicle may be allowed on the purchase of a new license for

another vehicle a credit equivalent to the unexpired proportion of the cost of the original license, dating from the first day of the next month after the date of such destruction. (1933, c. 375, s. 1.)

§ 2621(31)b. Quarterly payments.—Licenses issued on or after April first of each year and before July first shall be three-fourths of the annual fee, licenses issued on or after July first and before October first shall be one-half of the annual fee; and licenses issued on or after October first shall be one-fourth of the annual fee. (1933, c. 375, s. 1.)

§ 2621(31)c. Taxes compensatory.—All taxes levied under the provisions of this act are intended as compensatory taxes for the use and privileges of the public highways of this state, and shall be paid by the commissioner of revenue to the state treasurer, to be credited by him to the state highway fund; and no county or municipality shall levy any license or privilege tax upon the use of any motor vehicle licensed by the state of North Carolina, except that cities and towns may levy not more than one dollar per year upon any such vehicle resident therein. (1933, c. 375, s. 1.)

§ 2621(31)d. No other state license taxes imposed.—No additional franchise tax, license tax, or other fee shall be imposed by the state against any franchised motor vehicle carrier taxed under this act, nor shall any county, city or town impose a franchise tax, or other fee upon them. (1933, c. 375, s. 1.)

§ 2621(31)e. Effect on existing law; current license unaffected.—This act [§§ 2621(29), 2621(30), 2621(31) of this Code Supplement] is intended to take the place of and be a substitute for sections one hundred and sixty-five and two hundred and nine of the revenue act one thousand nine hundred and thirty-one [§§ 7880(96) and 7880(117) of the Code of 1931]. Nothing in this act shall be construed to repeal or amend the act of 1933, c. 73, herein codified as section 2621(29)a. This act shall be in full force and effect from and after July first, one thousand nine hundred and thirty-three, but it shall not have the effect of cancelling or annulling any motor vehicle license for the year one thousand nine hundred and thirty-three which shall have been issued and paid for prior to that date. (1933, c. 375, ss. 2, 3, 5.)

§ 2621 (32). Driving vehicle without owner's consent.

An indictment charging larceny and receiving does not include a charge of driving a motor vehicle without the knowledge or consent of the owner, and a defendant charged in the indictment only with larceny and receiving may not be convicted under this section. State v. Stinnett, 203 N. C. 829, 167 S. E. 63.

Art. 8. Uniform Act Regulating Operation of Vehicles on Highways

§ 2621(44). Persons under the influence of intoxicating liquor or narcotic drugs.

Death caused by a violation of this section may be manslaughter but a condition precedent to conviction is that the violation of the law in this respect must have caused the wreck and the death of deceased. State v. Dills, 204 N. C. 33, 167 S. E. 459.

One who drives his automobile, in violation of § 2621(43) or this section, and runs into another car and thereby proximately causes the death of one of the occupants, is guilty of manslaughter at least. State v. Stansell, 203 N. C. 69, 74, 164 S. E. 580.

§ 2621(45). Reckless driving.

As to the culpable negligence of one violating the provisions of this section, see annotations under § 2621(45).

Violation of Traffic Ordinance.—Under this definition, the simple violation of a traffic regulation, which does not involve actual danger to life, limb or property, while importing civil liability if damage or injury ensue, would not perforce constitute the criminal offense of reckless driving. State v. Cope, 204 N. C. 28, 31, 167 S. E. 456.

Proximate Cause is Question for Jury.—The violation of this and succeeding sections enacted for the safety of those driving upon the highway is negligence per se, and when such violation is admitted or established the question of proximate cause is ordinarily for the jury. King v. Pope, 202 N. C. 554, 163 S. E. 447; Godfrey v. Queen City Coach Co., 201 N. C. 264, 267, 159 S. E. 412.

Sufficiency of Evidence for Jury. — Evidence that the individual defendant drove his car in a negligent manner in violation of this section and §§ 2621(51), (54), (55), and (71a) and that such negligence proximately caused injury to the plaintiff is held sufficient to have been submitted to the jury. Puckett v. Dyer, 203 N. C. 684, 167 S. E. 43.

§ 2621(46). Restrictions as to speed.

This section applies to criminal actions only and not to civil actions for damages. Piner v. Richter, 202 N. C. 573, 163 S. E. 561.

Contributory Negligence at Crossing. — Failure of a driver to keep his car under such control as will enable him to observe the restrictions imposed by this section as to grade crossings is contributory negligence sufficient to bar recovery against the railroad. Hinnant v. Atlantic Coast Line R. Co., 202 N. C. 489, 163 S. E. 555.

Proximate Cause Is for Jury.—Where there is evidence that defendant was driving his automobile on the highway at a speed of sixty-five miles per hour and that the injury in suit was proximately caused by such excessive speed, it is sufficient to be submitted to the jury on the issue of actionable negligence, since such speed, being in violation of this section, is negligence per se, regardless of the condition of the road, the weather or traffic. Norfleet v. Hall, 204 N. C. 573, 169 S. E. 143.

§ 2621(51). Drive on right side of highway.

Proximate Cause.—A violation of this section is negligence per se, but such negligence is not actionable unless there is a causal relation between the breach and the injury. Grimes v. Carolina Coach Co., 203 N. C. 605, 608, 166 S. E. 599.

Question for Jury.—Evidence tending to show violations of this section and §§ 2616, 2621(46) is sufficient evidence that the defendant was driving unlawfully in several respects in violation of our statutes and in disregard of the safety of others who might then be upon the highway, and is properly submitted to the jury in a prosecution for manslaughter. State v. Durham, 201 N. C. 724, 725, 161 S. E. 398.

§ 2621(53). Meeting of vehicles.

Assumption that Vehicle Will Turn to Right. — When the driver of one of the automobiles is not observing the rule, of this section, as the automobiles approach each other, the other may assume that before the automobiles meet, the driver of the approaching automobile will turn to his right, so that the two automobiles may pass each other in safety. Shirley v. Ayers, 201 N. C. 51, 53, 158 S. E. 840.

§ 2621(59). Signals on starting, stopping or turning.

In General.—

One driving an automobile upon a public highway is required by provision of this section to give specific signals before stopping or turning thereon, and the failure of one so driving to give the signal required by statute is negligence, and when the proximate cause of injury, damages may be recovered therefor by the one injured. Murphy v. Asheville-Knoxville Coach Co., 200 N. C. 92, 93, 156 S. E. 550.

§ 2621(60). Right of way.

Instruction.—Under this section where damages are sought for defendant's negligent driving at a street intersection and there is evidence tending to show that the defendant was approaching the intersection at an unlawful rate of speed and did not slow up before the happening of the collision with another car; an instruction correctly charging the rule of the right of way if both cars approached the intersection simultaneously and the rule that if one of the cars was al-

ready in the intersection it was the duty of the driver of the other car to slow down and permit it to pass will not be held for error. Piner v. Richter, 202 N. C. 573, 163 S. E. 561.

§ 2621(66). Stopping on highway.

Exception in Subsection (c) Is Question for Jury. — Where there is evidence tending to show that the defendant had parked his truck upon the hard surface of a highway in violation of this section, resulting in injury to the plaintiff, and the defendant claims that under the facts it came within the exception, subsection (c); under the statute and the facts disclosed by the record the matter should have been submitted to the jury under proper instructions, and the granting of defendant's motion as of non-suit was error. Smithwick v. Colonial Pine Co., 200 N. C. 519, 157 S. E. 612.

§ 2621(83). Trailers and towed vehicles.

(a) No motor vehicle shall be driven upon any highway drawing and having attached thereto more than one trailer or semi-trailer.

(b) No trailer or semi-trailer shall be operated over the highways of the state unless such trailer or semi-trailer be firmly attached to the rear of the motor vehicle drawing same, and unless so equipped that it will not snake, but will travel in the path of the wheels of the vehicle drawing such trailer or semi-trailer, which equipped shall at all times be kept in good condition. (1927, c. 148, s. 41; 1931, cc. 235, 322; 1933, c. 484.)

Editor's Note.—Public Laws 1933, c. 484, changed the word "or" to "and" in the second line of the section, and changed the word "and" to "or", in the third line of the section.

Art. 11. Consolidation of Activities under the Motor Vehicle Bureau

§ 2621(127). Motor vehicle bureau set up in department of revenue; deputy commissioner.—The commissioner of revenue shall set up in the department of revenue a motor vehicle bureau and appoint as administrative head of said bureau a deputy motor vehicle commissioner, which deputy motor vehicle commissioner shall at all times be under the authority and control of the commissioner of revenue. There shall be transferred and organized under the motor vehicle bureau all such activities as are now provided by law in the department of revenue for the registration and licensing of motor vehicles, for the collection of gasoline taxes, and likewise all duties and authority now conferred by law upon the department of agriculture with respect to the inspection and analysis of kerosene, gasoline, and lubricating oils; and likewise all duties and authority now conferred by law upon the state highway commission with respect to the enforcement of the motor vehicle laws and control and direction of the state highway patrol; and such other additional duties as are hereinafter provided for. (1933, c. 544, s. 1.)

§ 2621(128). Motor vehicle and inspection board created.—In order to more fully carry out the purposes of this act, there is hereby created a motor vehicle and inspection board, to be composed of the governor, or such person as he may designate to serve in his stead, the commissioner of revenue, and the chairman of the state highway commission, who shall serve without additional compensation. (1933, c. 544, s. 2.)

§ 2621(129). Minimum standards for articles inspected.—It shall be the duty of the motor vehicle and inspection board, after public notice and provision for the hearing of all interested parties within sixty days after the ratification of this act, to adopt minimum standards for each of the articles for which inspection is provided in consolidated statutes, section four thousand eight hundred and fifty-two, and to cause such standards to be published throughout the state and made available for all dealers in such products. After the adoption and publication of said standards, it shall be unlawful to sell or offer or expose for sale or exchange or to use in this state any of such products which fail to comply with the standards so adopted. The said motor vehicle and inspection board shall from time to time, after a public hearing, have a right to amend, alter, or change said standards. (1933, c. 544, s. 3.)

§ 2621(130). Adulteration of articles prohibited.—It shall be unlawful for any person, firm, corporation or association who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid, or which has been designated gasoline of legal standard, to in any wise adulterate or lower the standard of same by the addition thereto of kerosene, or any other liquid or substance, and sell or offer for sale the same. (1933, c. 544, s. 4.)

§ 2621(131). Board to sample articles to be inspected.—For the purpose of protecting the state's revenues, and for the purpose of preventing frauds, substitutions, adulterations, and other reprehensible practices, sections four thousand eight hundred fifty and four thousand eight hundred and fifty-one of the consolidated statutes be, and the same are hereby so amended as to authorize and empower said department, or its agents, to examine, investigate, inspect and take samples of all kerosene, gasoline, benzine, naphtha, petroleum solvents, distillates, gas oil, furnace or fuel oil, and all other volatile and inflammable liquids by whatever name known or sold and produced, manufactured, refined, prepared, distilled, compounded or blended for the purpose of generating power in motor vehicles for the propulsion thereof by means of internal combustion, or which are sold or used for such purposes, and any and all substances or liquids or commodities which, in themselves, or by reasonable combinations with others, might be used for, or as substitutes for, motor fuels. But, it is not the purpose of this statute to impose any inspection tax upon commodities except kerosene oil, gasoline, and other products of petroleum used as motor fuels, as provided in section four thousand eight hundred fifty-six of the consolidated statutes. The inspection tax shall be due and payable upon the total quantity of kerosene, gasoline, or other motor fuels sold or used as required by the laws imposing tax under the gasoline road tax; and payment of same shall be made concurrent therewith, unless the commissioner of revenue shall by rule and regulation prescribe other methods for the collection of such tax; and the said commissioner is hereby expressly given authority to make and provide for the enforcement of such rules and regulations as the said commissioner may find necessary to secure the inspection of all gasoline and kerosene, and to collect the inspection fee therefor. To this end the laws requiring transportation agencies to report to the department of revenue the delivery in this state of gas-

oline and/or kerosene are hereby amended so as to authorize the said commissioner of revenue to require said transportation agencies to likewise report any of the other articles mentioned in this section which, in the opinion of the commissioner, may be necessary or useful in preventing the adulteration of gasoline or kerosene. (1933, c. 544, § 5.)

§ 2621(132). Laboratory analysis.—The commissioner of revenue be authorized to provide for laboratory analysis of samples of the inspected articles by continuing said work in the department of agriculture as heretofore, upon such arrangements as may be mutually agreed upon between the commissioner of revenue and the commissioner of agriculture, or by transferring said laboratory analysis to the division of laboratory and tests in the department of the state highway commission, as he may find most advantageous and economical. (1933, c. 544, s. 6.)

§ 2621(133). Analysis certificate admissible in evidence.—A certified copy of the official test of the analysis of any petroleum product made under the provisions of this article, under the seal of the commissioner of revenue, shall be admissible as evidence of the fact therein stated in any of the courts of this state on the trial of any issue involving the qualities of said product. (1933, c. 544, s. 7.)

§ 2621(134). Inspection duties of highway patrol.—In addition to the duties now imposed by law upon the state highway patrol, the deputy motor vehicle commissioner shall direct the members of the state highway patrol to perform the duties now imposed by law upon the inspectors as authorized by consolidated statutes, section four thousand eight hundred fifty-four, and they shall be invested with all the authority of such inspectors. The deputy motor vehicle commissioner may likewise direct any employee of the motor vehicle bureau to collect samples of the articles to be inspected, and they shall, upon such designation, have all the authority now conferred by law upon inspectors for this purpose. (1933, c. 544, s. 8.)

§ 2621(135). Samples taken of bulk shipments and from retail distributors.—The deputy motor vehicle commissioner shall cause samples to be taken not only of bulk shipments and in original packages, but likewise at the various retail distributing points throughout the state, to the end that the public may be protected in the quality of petroleum products purchased, and that the mixing and blending of other products with gasoline to avoid the tax thereon may be prevented. (1933, c. 544, s. 9.)

§ 2621(136). Violation of act by distributors cause of revocation of license; power of commissioner of revenue to cancel license and surrender bond.—If any licensee shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the commissioner of revenue may forthwith cancel the license of such licensee and notify such licensee in writing of such cancellation by registered mail to the last known address of such licensee appearing in the files of the commissioner of revenue. In the event that the license of any licensee shall be cancelled by the commissioner of revenue as hereinbefore provided in this section, and in the event such licensee shall have paid to the state of North Carolina all the taxes due and payable by it under this article, together with any and all penalties accruing under any of the provisions of this article, then the commissioner of revenue shall cancel and surrender the bond theretofore filed by said licensee. (1933, c. 544, s. 10.)

§ 2621(137). Penalty for failure to report or to pay taxes promptly.—When any licensee shall fail to file reports with the commissioner of revenue, as required by this article, or shall fail to pay to the commissioner of revenue the amount of inspection tax due to the state of North Carolina when the same shall be payable, a penalty of one hundred per cent (100%) shall be added to the amount of the tax due, and said penalty of one hundred per cent (100%) shall immediately accrue, and thereafter said tax and penalty shall bear interest at the rate of one per cent (1%) per month until the same is paid. (1933, c. 544, s. 11.)

§ 2621(138). The commissioner of revenue may estimate motor fuel received.—Whenever any licensee shall neglect or refuse to make and file any report as required by this article, or shall file an incorrect or fraudulent report, the commissioner of revenue shall determine after an investigation the number of gallons of kerosene oil and motor fuel with respect to which the licensee has incurred liability under the tax laws of the state of North Carolina, and shall fix the amount of the taxes and penalties payable by the licensee under this article accordingly. In any action or proceeding for the collection of the inspection tax for kerosene oil or motor fuel and/or any penalties or interest imposed in connection therewith, an assessment by the commissioner of revenue of the amount of tax due, and/or interest and/or penalties due to the state, shall constitute prima facie evidence of the claim of the state; and the burden of proof shall be upon the licensee to show that the assessment was incorrect and contrary to law; and the commissioner of revenue may institute action therefor in the superior court of Wake county, regardless of the residence of such licensee or the place where the default occurred. (1933, c. 544, s. 12.)

§ 2621(139). "Licensee" defined.—The word "licensee" as used in this article is hereby defined and declared to include and embrace not only the person, firm or corporation to which the license is issued, but all its agents, servants, and employees. (1933, c. 544, s. 13.)

§ 2621(140). Measuring equipment to be inspected.—The agents of the deputy motor vehicle commissioner shall be required to investigate and inspect the equipment for measuring gasoline, lubricating oil, and illuminating oil, and other petroleum products, and make report of such inspection to the deputy motor vehicle commissioner. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, and if the owner, within five days after the notice of such inaccuracy, fails to cor-

rect the same and continues to use it, he shall be guilty of a misdemeanor, and the deputy motor vehicle commissioner is authorized to condemn and confiscate such equipment: Provided, that the owner of any such equipment, before the same is confiscated, shall have a right to a hearing before the motor vehicle and inspection board hereinbefore provided. (1933, c. 544, s. 14.)

§ 2621(141). Field force limited.—In addition to the members of the state highway patrol, the deputy motor vehicle commissioner shall not be allowed a field force of more than six men, other than the auditors provided in house bill number three hundred and eighty (380), providing for the auditing of the accounts of gasoline distributors. (1933, c. 544, s. 15.)

§ 2621(142). Vehicles for hire regulated.—The commissioner of revenue shall have authority and it shall be his duty to pass reasonable rules and regulations to require all operators of motor vehicles for hire to have such vehicles properly equipped with brakes and lights, in accordance with the requirements of law, and to require satisfactory evidence of liability insurance where same is required by law, prior to the issuance of annual license therefor, and to have the same inspected periodically during the period of said license; and the commissioner of revenue is authorized and directed to take all necessary steps to enforce such rules and regulations. (1933, c. 544, s. 16.)

§ 2621(143). Compensation of members of new department.—The salary of the deputy motor vehicle commissioner and the number and salaries of the various clerks and assistants assigned to him by the commissioner of revenue shall be fixed by the budget bureau, and all appropriations made under the several departments for the various activities here consolidated, or so much thereof as may be necessary, shall, with the approval of the budget bureau, be made available for carrying out the purposes of this article. (1933, c. 544, s. 17.)

§ 2621(144). Abolishing inspection appropriation.—Item no. 20 in house bill no. 125, enacted at the present session of the general assembly, appropriating to the department of agriculture for gasoline and oil inspection the sum of fifteen thousand six hundred and sixty dollars ($15,660.00) for each of the fiscal years of the next ensuing bi-ennium, is hereby repealed. It shall be the duty of the department of revenue to utilize as far as practical its general organization, and including the services of the highway patrol, to carry out the provisions of this article and of senate bill no. 238, enacted at the present session of the general assembly, in so far as can reasonably be done without additional or specific appropriation for such service. For the necessary laboratory work in connection with an efficient administration of the inspection laws by either the laboratories of the department of agriculture or of the state highway commission, as either of these agencies may be utilized under the provisions of this act, and for any other services necessary to be performed in carrying out the provisions of this article, there shall from time to time be allotted by the budget bureau from the inspection fees collected under authority of the inspection laws of this state such sums as the budget bureau may find to be necessary for the efficient administration of the inspection laws. (1933, c. 544, s. 18.)

§ 2621(145). Laws amended.—All laws relating to the subject matter of this article are hereby amended to such extent as may be necessary to make them conform to this article, and as thus amended continued in full force and effect; and all laws or clauses of laws inconsistent with the provisions of this article, to the extent of such inconsistency and conflict, but no further, are hereby repealed. (1933, c. 544, s. 19.)

Art. 12. Regulation of Automobile Liability Insurance Rates

§ 2621(146). Approval by insurance commissioner of automobile liability insurance rates.—Every person, association or corporation authorized to transact automobile liability and/or property damage and/or collision insurance business within this state shall file with the insurance commissioner on or before their effective date, the classification of risks, rules, rates, and rating plans, for writing such insurance, approved or made by such insurer or by any rating organization of which it is a member, none of which shall become effective until approved by the insurance commissioner. The insurance commissioner shall within fifteen days after the filing of each classification of risks, rules, rates and rating plans indicate in writing his approval or disapproval thereof with his reasons therefor. Such filing may be made on behalf of an insurer by the rating organization of which it is a member. Any bureau organized in this state for making and/or administering automobile rates and rating plans shall provide for equal representation of stock and non-stock insurers upon its governing and all other committees and shall admit to membership any insurer applying therefor. (1933, c. 283, s. 1.)

§ 2621(147). Compliance with fixed rates mandatory.—Every person, association, or corporation authorized to transact the aforesaid insurance business within this state shall comply with the rates and rules affecting such rates of the rating organization in which it has membership or whose rates it adopts as its standard, or with the rates and rules which such insurer has filed with the insurance commissioner. (1933, c. 283, s. 2.)

§ 2621(148). Adjustment of unreasonable rates.—It shall be the duty of the insurance commissioner, after due notice and a hearing before him, to order an adjustment of rates on any such risks or classes of risks whenever it shall be found by him that such rates are excessive or unreasonable or that any insurer is discriminating unfairly between its policyholders whose risks are of essentially the same hazard. The findings, determinations and orders of the insurance commissioner shall be subject to review on their merits by appeal to the superior court of Wake county. (1933, c. 283, s. 3.)

§ 2621(149). Refunds by mutuals and exchanges unaffected.—Nothing in this article shall be construed to limit the method of determining rates, or plan of operation of any mutual insurance com-

pany or inter-insurance exchange in this state, or prevent refund to all policyholders of the same class any portion of the annual premium not required to defray the expense of such insurance. (1933, c. 283, s. 4.)

CHAPTER 56

MUNICIPAL CORPORATIONS

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917

Art. 1. General Powers

§ 2623. Corporate powers.—A city or town is authorized:

1. To sue and be sued in its corporate name.

2. Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.

3. To purchase and hold land, within or without its limits, not exceeding fifty acres (in cities or towns having a population of more than twenty thousand the number of acres shall be in the discretion of said city), for the purpose of a cemetery, and to prohibit burial of persons at any other place in town, and to regulate the manner of burial in such cemetery. All municipal corporations purchasing real property at any trustee's, mortgagee's, or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as conveyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers herein mentioned.

4. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

5. To make such orders for the disposition or use of its property as the interest of the town requires.

6. To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease, upon such conditions and with such terms of payment as the city or town may prescribe, any waterworks, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period not exceeding thirty years, for the supply of light, water or other public commodity.

7. To provide for the municipal government of its inhabitants in the manner required by law.

8. To levy and collect such taxes as are authorized by law.

9. To do and perform all other duties and powers authorized by law. (Rev., s. 2916; Code, ss. 704, 3817; 1901, c. 283; 1905, c. 526; 1907, c. 978; P. L. 1917, c. 223; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69.)

Editor's Note.—
Public Laws 1933, c. 69, omitted a provision that the section should not apply to Cumberland county.

Art. 3. Elections Regulated

§ 2649. Application of law, and exceptions.—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Chowan, Davidson, Edgecombe, Gaston, Lenoir, Mitchell, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson. (Rev., s. 2944; 1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; 1907, c. 165; Ex. Sess. 1908, c. 63; 1909, c. 365; 1931, c. 369; 1933, c. 102.)

Editor's Note.—
Public Laws 1933, c. 102, omitted the town of Shelby, from the list of excepted places.

Art. 8. Public Libraries

§ 2694. Libraries established upon petition and popular vote.—The governing body of any incorporated city or county, upon the petition of ten per cent of the registered voters thereof, shall submit the question of the establishment and/or support of a free public library to the voters at the next municipal election, the next general election, or at a special election. If a majority of the qualified votes cast on said question be in the affirmative, the board of aldermen or town commissioners or board of county commissioners shall establish the library or reading room and levy and cause to be collected as other general taxes are collected a special tax of not more than ten cents or not less than three cents on the hundred dollars of the assessed value of the taxable property of such city, town or county. The fund so derived shall constitute the library fund, and shall be kept separate from the other funds of the city, town or county to be expended exclusively upon such library. In lieu of establishing a library by vote of the people as above provided, the governing body of any city, town or county may establish such a library upon petition as above provided and maintain the same by a special tax not less than that provided in this section. When such library has been established by either method as above provided, it may be abolished only by a vote of the people. (1911, c. 83, s. 1; 1927, c. 31, s. 91; 1933, c. 365, s. 1.)

Editor's Note.—
Public Laws 1933, c. 365, repealed the former section and enacted the above in lieu thereof.

§ 2696. Powers and duties of trustees.—Immediately after appointment, such board of trustees shall organize by election one of its members as president and one as secretary-treasurer, and such other officers as it may deem necessary. The secretary-treasurer before entering upon his duties shall give bond to the municipality in an amount fixed by the board of trustees, conditioned for the faithful discharge of his official duties. The board shall adopt such by-laws, rules and regulations for its own guidance and for the government of the library as may be expedient and conformable to law. It shall have exclusive control of the expenditure of all moneys collected for or placed to the credit of the library fund, and of the supervision, care, and custody of the rooms or buildings constructed, leased, or set apart for library purposes. But all money received for such library shall be paid into the

city treasury or county treasury, be credited to the library fund, be kept separate from other moneys, and be paid out to the secretary-treasurer upon the authenticated requisition of the board of trustees through its proper officers. With the consent of the governing body of the city or town or county, it may lease and occupy, or purchase, or erect upon ground secured through gift or purchase, an appropriate building: Provided, that of the income for any one year not more than one-half may be employed for the purpose of making such lease or purchase or for erecting such building. It may appoint a librarian, assistants, and other employees, and prescribe rules for their conduct, and fix their compensation, and shall also have power to remove such appointees: Provided, that after the ratification of this section no vacancies existing or occurring in the position of head librarian in such libraries shall be filled by appointment or designation of any person who is not in possession of a library certificate issued under the authority of this article. It may also extend the privileges and use of such library to nonresidents upon such terms and conditions as it may prescribe. (1911, c. 83, s. 3; 1927, c. 31, s. 3; 1933, c. 365, s. 2.)

Editor's Note.—Public Laws 1933, c. 365, inserted the proviso in the next to the last sentence of this section.

§ 2696(a). Library certification board.—That the secretary of the North Carolina library commission, the librarian of the University of North Carolina, the president of the North Carolina library association and one librarian appointed by the executive board of the North Carolina library association shall constitute a library certification board who shall serve without pay and who shall issue librarian's certificates under reasonable rules and regulations to be promulgated by the board and a complete record of the transactions of said board shall be kept at all times. (1933, c. 365, s. 3.)

§ 2696(b). Librarians now acting—temporary certificates.—That the provisions of this article shall not be construed to affect any librarian at this time in his or her position. Such librarians as are now acting shall be entitled to receive a certificate in accordance with positions now held. Upon the submission of satisfactory evidence that no qualified librarian is available for appointment, a temporary certificate, valid for one year, may be issued upon written application of the library board. Such certificate shall not be renewed or extended and shall not be valid beyond the date for which it is issued. (1933, c. 365, s. 3.)

§ 2697. Annual report of trustees.—The board of trustees shall make an annual report to the governing body of the city, town or county, stating the condition of their trust, the various sums of money received from the library fund and all other sources, and how much money has been expended; the number of books and periodicals on hand, the number added during the year, the number lost or missing, the number of books loaned out, and the general character of such books, the number of registered users of such library, with such other statistics, information and suggestions as it may deem of general interest, (1911, c. 83, s. 7; 1927, c. 31, s. 4; 1933, c. 365, s. 4.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

§ 2699. Title to property vested in the city, town or county.—All property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any city, town or county for a library shall vest in and be held in the name of such city, town or county and any conveyance, grant, donation, devise, bequest or gift to or in the name of any public library board shall be deemed to have been made directly to such city, town or county. (1911, c. 83, s. 4; 1917, c. 31, s. 6; 1933, c. 365, s. 5.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

§ 2702. Contract with existing libraries.—The governing body of any city, town or county, when deemed best for the interest of the city, town or county, may in lieu of supporting and maintaining a public library, enter into a contract with and make annual appropriations of money to such library, associations or corporations as shall maintain a library or libraries, whose books shall be available without charge to the residents of such city, town or county, under such rules and regulations of said library, associations or corporations, as shall be approved by the governing body of such city, town or county. All money paid to such society or corporation under such contract shall be expended solely for the maintenance of such library, and for no other purpose. For the governing body of such library when contract has been made between city and county, the trustees shall be appointed proportionately to the funds provided for its support.

Nothing in this section shall be construed to abolish or abridge any power or duty conferred upon any public library established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries. (1911, c. 83, ss. 9, 10; 1917, c. 215; 1927, c. 31, s. 8; 1933, c. 365, s. 6.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

§ 2702(b). Combined counties.—Where found to be more practicable, two or more adjacent counties may join for the purpose of establishing and maintaining a free public library under the terms and provisions herein above set forth for the establishment and maintenance of a free county library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county under the provisions of this article. The board of county commissioners of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as herein provided for the commissioners of a single county. Should any county at any time desire to withdraw from such combination, the said county shall be entitled to such proportion of the property as may have been agreed upon in the terms of combination at the time such joint action was taken. (1933, c. 365, s. 7.)

Art. 9. Local Improvements

§ 2707. What petition shall contain.

Petition Necessary.—Under this section an assessment for

widening a street under contract with the Highway Commission without petition of a majority of the owners is invalid. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212.

§ 2710. Assessments levied.

In General.—The clear interpretation of this section means what its language says—that one-half of the total cost of the street improvements shall be assessed upon the parcel of land abutting directly on the improvement, according to the extent of the respective frontage thereon. Carpenter v. Maiden, 204 N. C. 114, 116, 167 S. E. 490.

§ 2713. Hearing and confirmation; assessment lien.

Statute of Limitations.—The assessment against abutting lands for street improvements is made a lien on the land superior to all other liens and encumbrances under this section, and the ten-year statute of limitation is applicable thereto and not the three-year statute. High Point v. Clinard, 204 N. C. 149, 167 S. E. 690.

§ 2717(b). Extension of time for payment of assessments.—At any time or times prior to July first, one thousand nine hundred and thirty-five, the governing body of any city or town may adopt a resolution granting an extension of time for the payment of any installment and accrued interest thereon of any special assessment for local improvements due prior to July first, one thousand nine hundred thirty-two, so that the first of such installments so extended may be payable not later than one year from the date when the final installment of the original special assessment becomes due, and the last of such installments so extended shall become due not later than ten years from the first of such installments, and so that each other installment so extended may be payable annually thereafter in serial order: Provided, however, no such extension shall in any way discriminate in favor of or against any property assessed by virtue of the same assessment roll: Provided, further, that such extensions shall not prevent the payment of any assessment or interest at any time: Provided, further, that special assessments extended in accordance with the provisions of this article shall bear interest at the rate of six per centum per annum from the due date of the last installment of the original assessment or any extension thereof heretofore legally made. (1931, c. 249; 1933, c. 410, s. 1.)

Editor's Note.—The above section was substituted for the former reading by Public Laws 1933, c. 365. A comparison of the two sections is necessary to determine the changes.

Art. 11. Regulation of Buildings

§ 2751. Thickness of walls.

Public Laws 1933, c. 254, provides for the construction of parapet walls but applies in Durham county only.

§ 2768. Fees of inspector.

For an act providing that no fees shall be charged in Lenoir county if the amount involved is less than one hundred dollars, see Public Laws 1933, c. 294.

Art. 11C. Zoning Regulations

§ 2776(s). Districts. — For any or all said purposes it may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. Provided, however, that when at any intersection of streets in the corporate limits of any city or town the said legislative body of the said city or town promulgates any certain regulations and/or restrictions for the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land on two or more of said corners at said intersection, it shall be the duty of such legislative body upon written application from the owner of the other corners of said intersection to redistrict, restrict and regulate the remaining said corners of said intersecting streets in the same manner as is prescribed for the erection, construction, reconstruction, alteration, repair or use of buildings, structure or land of the other said corners for a distance not to exceed one hundred and fifty feet from the property line of said intersecting additional corners: Provided, further, that the provisions of this act shall not apply to the cities, towns or municipalities in the following counties: Rowan, Durham, Rockingham, Perquimans, Guilford, Cleveland, Wayne and Forsyth. (1923, c. 250, s. 2; 1931, c. 176, s. 1; 1933, c. 7.)

Editor's Note.—
Public Laws 1933, c. 7, added "Forsyth" to the list of counties in which the section does not apply. For an act relating to zoning for filling stations and garages in Elizabeth city and Pasquotank county, see Public Laws 1933, c. 263.

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917

Art. 13. Organization under Act

§ 2780. Number of persons and area included.

An act of the legislature expressly validating and confirming a municipality as established cures all objections under this section. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649.

Art. 15. Powers of Municipal Corporations

Part 5. Protection of Public Health.

§ 2796. Establish hospitals, pesthouses, quarantine, etc.

As to the validity of bonds issued by municipality to erect and maintain a hospital, see § 2937 and the note thereto.

Part 7. Sewerage

§ 2806(i). Authority to fix sewerage charges; lien thereof.—The governing body of any municipality, maintaining and operating a system of sewerage, including sewerage treatment works, if any, is hereby authorized to charge for sewerage service, to determine and fix a schedule of charges to be made for such service, to fix the time and manner in which such sewerage service charges shall be due and payable and to fix a penalty for the non-payment of the same when due. In no cases shall the charges, rents or penalties be a lien upon the property served and in cases where the service is rendered to a tenant and the tenant removes from the premises, the municipality shall not charge against the owner thereof the service charges or penalties for said service: Provided, that this act shall not apply to the counties of Transylvania, Mecklenburg, and Davie: Provided, however, that for sewerage service supplied outside of the corporate limits of the city, the governing body, board or body having such sewerage system in charge may fix a different schedule of rates from that fixed for such service

rendered within the corporate limits, with the same exemption from liability by city or town as is contained in section two thousand eight hundred and seven. (1933, c. 322, s. 1.)

Part. 8. Water and Lights

§ 2808. Fix and enforce rates.—The governing body, or such board or body which has the management and control of the waterworks system in charge, may fix such uniform rents or rates for water or water service as will provide for the payment of the annual interest on existing bonded debt for such waterworks system, for the payment of the annual installment necessary to be raised for the amortization of the debt, and the necessary allowance for repairs, maintenance, and operation, and when the city shall own and maintain both waterworks and sewerage systems, including sewerage disposal plants, if any, the governing body shall have the right to operate such system as a combined and consolidated system, and when so operated to include in the rates adopted for the waterworks a sufficient amount to provide for the payment of the annual interest on the existing bonded debt for such sewerage system or systems, for the payment of the annual installment necessary to be raised for the amortization of such debt, and the necessary allowance for repairs, maintenance and operation. Such body shall fix the times when the water rents shall become due and payable, and in case such rent is not paid within ten days after it becomes due and payable, the same may at any time thereafter be collected either by suit in the name of the city or by the collector of taxes for the city. Upon the failure of the owner of property for which water is furnished under the rules and regulations of such body to pay the water rents when due, then the body, or its agents or employees, may cut off the water from such property; and when so cut off it shall be unlawful for any person, firm, or corporation, other than the body or its agents or employees, to turn on the water to such property, or to use the same in connection with the property, without first having paid the water rent and obtained permission to turn on the water: Provided, however, that for service supplied outside the corporate limits of the city, the governing body, board or body having such waterworks or lighting system in charge, may fix a different rate from that charged within the corporate limits, with the same exemption from liability by city or town as is contained in section two thousand eight hundred seven: Provided further, that where the water may be cut off under the provision of this section for the failure of the occupant of the premises to pay his water bill, and such occupant is not the owner of the premises but occupies said premises as a tenant, it shall not be lawful for the board in charge or management of the waterworks to require the payment of such delinquent bill before turning on the water at the instance of a new and different tenant or occupant of said premises. This proviso shall not apply in cases where the premises are occupied by two or more tenants serviced by the same water meter. Nor shall this proviso apply in Caldwell county. (1917, c. 136, sub-ch. 11, s. 3; 1929, c. 285, s. 2; 1933, cc. 140, 353, 368.)

Editor's Note.—
Prior to the amendment by Public Laws 1933, c. 353, the first sentence of this section merely provided that the governing board should fix "such uniform rates for water as is deemed best." Public Laws of 1933, c. 140 added the last proviso of the section. By the terms of the act the amendment of 1933, c. 353, does not apply in Haywood, Ashe, Transylvania and Mecklenburg counties.

Part 10. Municipal Taxes

§ 2815. Lien of taxes.

When Lien Attaches.—
There is no lien upon the personal property for taxes except from the date of levy thereon. Reichland Shale Products Co. v. Southern Steel, etc., Co., 200 N. C. 226, 156 S. E. 777.

Art. 18. Adoption of City Charters

Part. 2. Manner of Adoption

§ 2847. Petition filed.—A petition addressed to the board of elections of the county in which the city is situated, in the form and signed and certified as provided in the next section, may be filed with the county board of elections. The petition shall be signed by qualified voters of the city to a number equal to at least twenty-five per cent of the qualified voters at the last election next preceding the filing of the petition. In cities having a population of eighty thousand (80,000), as shown by the last census, in which it is proposed to adopt plan "B," the petition shall be signed by ten per cent of the qualified voters of said city. (1917, c. 136, sub-ch. 16, s. 6; 1933, c. 80, s. 5.)

Editor's Note.—Public Laws of 1933, c. 80, added the last sentence relating to cities having a population of 80,000.

Art. 19. Different Forms of Municipal Government

Part 2. Plan "B". Mayor and Council Elected by Districts and at Large

§ 2868. City council, election and term of office.—The legislative powers of the city shall be vested in a city council. One of its members shall be elected biennially as its mayor pro tem. In cities over eighty thousand (80,000) population, as shown by the last census, the city council or aldermen shall consist of twelve members, one shall be elected from each ward by and from the qualified voters of that ward. That on or before March 1, 1933, the governing body of each city of over eighty thousand (80,000) inhabitants shall, and it is made mandatory on them to divide the said city into twelve wards as nearly equal as possible as to population. In cities having more than seven wards the city council shall be composed of twelve members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. At the first election held in a city after its adoption of Plan B, the councilors elected from each ward shall be elected to serve for two years from Wednesday after first Monday in May following their election and until their successors are elected and qualified; and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected

to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 4; 1933, c. 80, s. 1.)

Editor's Note.—Public Laws 1933, c. 80, added the third and fourth sentences relating to cities of over 80,000.

§ 2871. Salaries of mayor and council. — The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred dollars nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than five thousand dollars, and it shall be mandatory that the mayor shall give his entire time and attention to the affairs of the city. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder, and shall six months prior to the time of the expiration of its term fix by ordinance the salary, within the above limits, of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of the succeeding mayors; but such ordinance shall not be binding as to succeeding mayors in case another plan shall be adopted during the term of office of such council. The council may by two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding one hundred dollars each per year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 7; 1933, c. 80, s. 2.)

Editor's Note.—Public Laws 1933, c. 80, increased the salaries in cities of over 25,000 inhabitants from $3,500 to $5,000, and made it mandatory that the mayor should devote his entire time to city affairs.

§ 2871(a). Supervisory power of mayor. — All heads of departments after their election by the city council or aldermen, as provided for by section 2869 of the consolidated statutes, shall be under the direction, control and supervision of the mayor during their tenure of office and until discharged by law. (1933, c. 80, s. 3.)

§ 2871(b). Approval of contracts.—No contract or obligation of whatever nature shall be binding upon the city until first approved by the majority of the city council or aldermen, and approved and counter-signed by the mayor. (1933, c. 80, s. 4.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT

Art. 23. General Provisions

§ 2919. Meaning of terms.—In this law, unless the context otherwise requires the expressions:

"Bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality;

"Clerk" means the person occupying the position of clerk or secretary of a municipality;

"Financial officer" means the chief financial officer of a municipality;

"Funding bonds" means bonds issued to pay or extend the time of payment of debts not evidenced by bonds.

"Governing body" means the board or body in which the general legislative powers of a municipality are vested;

"Local improvement" means any improvements or property the cost of which has been or is to be specially assessed in whole or in part;

"Municipality" means and includes any city, town, or incorporated village in this state, now or hereafter incorporated;

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the constitution of North Carolina;

"Publication" includes posting in cases where posting is authorized by this act as a substitute for publication in a newspaper;

"Refunding bonds" means bonds issued to pay or extend the time of payment of debts evidenced by bonds.

"Special assessments" means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and "specially assessed" has a corresponding meaning. (1917, c. 138, s. 2; 1919, c. 178, s. 3(2); 1919, c. 285, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 46; 1933, c. 259, s. 1.)

Editor's Note.—
Prior to Public Laws 1933, c. 259, this section, in the definition of "funding bonds" and "refunding bonds" limited such bonds to those issued for the payment of debts "incurred before July first, one thousand nine hundred and thirty-one." The quoted clause was deleted by the amendment.

Art. 25. Temporary Loans

§ 2933. Money borrowed to pay judgments or interest.—For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next succeeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made. For the purpose of paying or renewing notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, and authorized by this act, as amended, to be funded, any municipality may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made

payable at any time or times not later than five years after the first day of July, one thousand nine hundred thirty-three, notwithstanding anything to the contrary in this section. (1919, c. 178, s. 3 (12); Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 64; 1933, c. 259.)

Editor's Note.—
Public Laws 1933, c. 259, changed the time mentioned in this section from January 1, 1931, to July 1, 1933.

Art. 26. Permanent Financing.

§ 2937. For what purpose bonds may be issued. —A municipality may issue its negotiable bonds for any one or more of the following purposes:

1. For any purpose or purposes for which it may raise or appropriate money, except for current expenses.

2. To fund or refund a debt of the municipality if such debt be payable at the time of the passage of the ordinance authorizing bonds to fund or refund such debt or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "debt" as used in this subsection two includes all valid or enforceable debts of a municipality, whether issued for current expense or for any purpose. It includes debts evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said debts accrued to the date of the bonds issued. Bond anticipation notes evidencing debts incurred before July first, one thousand nine hundred thirty-three, may, at the option of the governing body, be retired either by means of funding bonds issued under this section or by means of bonds in anticipation of the sale of which the notes were issued. It also includes debts assumed by a municipality as well as debts created by a municipality. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 48; 1933, c. 259, s. 1.)

Editor's Note.—
Public Laws 1933, c. 259, omitted the limitation that the debt must have been incurred before July 1, 1931, and inserted the last two sentences of the section.

Refunding Bond.—Under the provisions of this and the following section an ordinance authorizing the issuance of refunding bonds need not be submitted to the voters. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361.

Issuance of Bonds Pursuant to Section Not Enjoined. — The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters is conferred on a municipality by this section and § 2796, and where the other statutes relevant have been duly followed, the bonds so issued are a valid obligation of the town issuing them, and their issuance will not be enjoined by the courts. Burleson v. Spruce Pine Board of Aldermen, 200 N. C. 30, 156 S. E. 241.

§ 2938. Ordinance for bond issue:

1. Ordinance Required.—All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

2. What Ordinance Must Show.—The ordinance shall state:

a. In brief and general terms the purpose for which the bonds are to be issued, including, in case of funding or refunding bonds a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness.

b. The maximum aggregate principal amount of the bonds;

c. That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

d. That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection.

e. One of the following provisions:

(1) If the bonds are funding or refunding bonds or for local improvements of which at least one-fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or

(2) If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not required to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this law; or

(3) In any other case, that the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this law, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this law.

3. When the Ordinance Takes Effect.— A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

4. Need not Specify Location of Improvement. —In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement substantially is the language employed in sections two thousand nine hundred and forty-two of this subchapter to describe such a property or improvement, shall be a sufficiently definite statement of the purpose for which the bonds authorized by the ordinance are to be issued.

5. Application of Other Laws.—No restriction, limitation or provision contained in any special, private or public-local law relating to the issuance of bonds, notes or other obligations of a municipality shall apply to bonds or notes issued under this act for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purpose, unless required by the constitution of this state. (1917, c. 138, s. 17; 1919, c. 178, s. 3 (17); 1919, c. 285, s. 2; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 49; 1933, c. 259, s. 1.)

Editor's Note.—
Public Laws of 1933, c. 259, added to subdivision 2, a, the requirement for a brief description of indebtedness for funding or refunding bonds. It also added the proviso to 2, c,

relating to funding and refunding bonds. And it omitted the limitation formerly occurring in subdivision 5, that the indebtedness must have been incurred before July 1, 1931.

§ 2939. Ordinance not to include unrelated purposes.—Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection four of section two thousand nine hundred and forty-two of this subchapter may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue. Separate issues of funding and/or refunding bonds may be made under authority of the same bond ordinance for the retirement of two or more different debts or classes of debts. (1919, c. 178, s. 3 (17); 1919, c. 285, s. 3; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Editor's Note.—
Public Laws 1933, c. 259, added the last sentence to this section.

§ 2942. Determining periods for bonds to run: 1. How Periods Estimated.—Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection four of this section, determine and declare:

a. The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or

b. If the bonds are to be funding or refunding bonds, either the shortest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred.

2. Average of Periods Determined.—In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

3. Maturity of Bonds.—The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

4. Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

a. Sewer systems (either sanitary or surface drainage), forty years.

b. Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.

c. Gas systems, thirty years.

d. Electric light and power systems, separate or combined, thirty years.

e. Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.

f. Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.

g. Playgrounds, fifty years.

h. Buildings for purposes not stated in this section, if they are:

(1) Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the petitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.

(2) Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

(3) Of other construction, twenty years.

i. Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

j. Lands for purposes not stated in this section, fifty years.

k. Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:

(1) Is constructed of sand and gravel, five years;

(2) Is of waterbound macadam or penetration process, ten years;

(3) Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

l. Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.

m. Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

n. Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

o. Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

p. Land for cemeteries, or the improvement thereof, thirty years.

q. Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

r. The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

s. Equipment, apparatus, or furnishings not included in the foregoing clauses of this subsection, ten years.

t. Any improvement or property not included in other clauses of this subsection, forty years.

u. Land for airports or landing fields, including grading and drainage, forty years.

v. Buildings and equipment and other improvements of airports or landing fields, other than grading and drainage, ten years.

5. Improvements and Properties Defined.—The maximum periods fixed herein for the improvements and properties mentioned in clauses numbered from a to i, both inclusive, of subsection 4 of this section shall be applied thereto whether such improvements or properties are to be acquired, constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or are not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one clause of subsection 4 above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

6. Kind of Construction Determined. — If the bonds are for a building referred to in clause h of subsection 4 above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in clause k of subsection 4 above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material, as the case may be, shall be determined by resolution before any of the bonds are issued.

7. Period of Payment.—In determining for the purpose of this section the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the tax-payers of the municipality, the governing body shall not deem said period to be greater than fifty years. (1917, c. 138, s. 18; 1919, c. 178, s. 3 (18); Ex. Sess. 1921, c. 106, s. 1; 1929, c. 170; 1931, c. 60, s. 50, cc. 188, 301; 1933, c. 259, s. 1.)

Editor's Note.—

The only change effected in this section by Public Laws 1933, c. 259, occurs in subsection 7. The limitation was formerly thirty years if the gross debt of the county was less than twelve per cent of the assessed valuation, and fifty years in other cases. The amendment makes the limitation fifty years in all cases.

Maturity of Refunding Bonds. — Under this section the period for maturity of refunding bonds is in the discretion of the governing body of the city issuing them. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361.

§ 2943. Sworn statement of indebtedness. — 1. What Shall Be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk showing the following:

(a) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:

(1) Outstanding debt not evidenced by bonds.

(2) Outstanding bonded debts.

(3) Bonded debt to be incurred under ordinances passed or introduced.

(b) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:

(1) Amount of unissued funding or refunding bonds included in gross debt.

(2) Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.

(3) The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.

(4) The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.

(5) The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.

(5a) The amount of existing bonded debt included in the gross debt, and incurred or to be incurred for the construction of sewerage systems or sewerage disposal plants where said sewerage system is entirely supported by sewerage service charges or when said systems or plants are operated together with the waterworks as a combined and consolidated system and as an integral part thereof, and when the amount necessary to meet the annual interest payable on the debt, and the annual installment necessary for the amortization of the debt, and the amount necessary for repairs, maintenance and operation of said system or systems is included in the rate for waterworks service and so collected by the municipality: Pro-

vided, the provisions of this subsection shall not apply to Transylvania county nor to municipalities situate therein, nor shall it apply to cities and towns in Mecklenburg county.

(6) The amount which the municipality shall be entitled to receive from any railroad or street-railway company under contract theretofore made for payment by such company of all or a portion of the cost of eliminating a grade crossing or crossings within the municipality which amount will be applied when received to the payment of any part of the gross debt;

(7) Indebtedness for school purposes.

(c) The net debt, being the difference between the gross debt and the deductions.

(d) The assessed valuation of property as last fixed for municipal taxation.

(e) The percentage that the net debt bears to said assessed valuation.

2. Limitation upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) per cent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes, or are bonds for sanitary sewers, sewage disposal or sewage purification plants, the construction of which shall have been ordered by the state board of health or by a court of competent jurisdiction.

3. Statement Filed for Inspection.—Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this act, unless it appears (in an action or proceeding commenced within the time limited by § 2945 for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed. (1917, c. 138, s. 19; 1919, c. 178, s. 3 (19); 1919, c. 285, s. 4; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; c. 321.)

Editor's Note.—

Public Laws 1933, c. 259, eliminated the provision that the outstanding debt must have been incurred before July first, one thousand nine hundred and thirty-one. Public Laws 1933, c. 321, inserted subsection (5a).

For an amendment applicable only in the city of Burlington, see Public Laws 1933, c. 334.

§ 2951. Amount and nature of bonds determined.—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. The bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Editor's Note.—

Public Laws 1933, c. 259, inserted the words "or otherwise" following the word "semi-annually."

§ 2952. Bonded debt payable in installments.—Each bond issue made under this act shall mature in annual installments or series, the first of which shall be made payable not more than three years after the date of the first issued bonds of such issue, and the last within the period determined and declared pursuant to section two thousand nine hundred and forty-two of this subchapter. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. This section shall not apply to funding or refunding bonds. (1917, c. 138, s. 26; 1919, c. 178, s. 3 (26); Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1.)

Editor's Note.—

Public Laws 1933, c. 259, inserted the last sentence of the section stating that the section shall not apply to funding or refunding bonds. Prior to the amendment the section was applicable to such bonds in municipalities having a debt of less than twelve per cent of the assessed valuation.

§ 2959. Taxes levied for payment of bonds.—The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this law, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this act as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this law, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this law.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the

amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality: Provided, in the case of funding or refunding bonds which do not mature in installments, as provided in section two thousand nine hundred fifty-two of this act, a tax for the payment of the principal of said bonds need not be levied prior to the fiscal year or years said bonds mature unless it is so provided for in an ordinance or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such ordinance or resolution. (1917, c. 138, s. 33; 1919, c. 178, s. 3 (33); Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Editor's Note.—
Public Laws 1933, c. 259, inserted the proviso at the end of this section.

CHAPTER 58

NEGOTIABLE INSTRUMENTS

Art. 2. Form and Interpretation

§ 2982. Form of negotiable instrument.

Form of Instrument.—
The provisions therein that a bond should be payable to bearer, or if registered to the registered holder only, and provisions for an extension of time, upon application of the maker, in the discretion of trustee in the deed of trust securing it, does not change its negotiable character. Thomas v. De Moss, 202 N. C. 646, 163 S. E. 759.

A municipal bond payable to bearer, and otherwise complying as to form with the provisions of this section, is a negotiable instrument, and as such when in the hands of a holder in due course as defined by C. S., 3033, is not subject to defenses which would otherwise ordinarily be available to the municipal corporation by which the bond was issued. Bankers' Trust Co. v. Statesville, 203 N. C. 399, 407, 166 S. E. 169.

A bond indemnifying a bank from any loss which it might sustain by reason of its taking over the assets and discharging the liabilities of another bank, the bond being payable to the liquidating bank and not to its order, is not a negotiable instrument within the meaning of this section. North Carolina Bank, etc., Co. v. Williams, 201 N. C. 464, 160 S. E. 484.

Cited in Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

Holders of negotiable mortgage notes are necessary parties plaintiff in an equitable action to reform the deed of trust and the notes. First Nat. Bank v. Thomas, 204 N. C. 599, 169 S. E. 189.

§ 2997. Delivery necessary; when effectual; when presumed.

Presumption of Delivery to Holder in Due Course. — Where a negotiable municipal bond is in the hands of a holder in due course, it is conclusively presumed that a valid delivery of the bonds had been made so far as the rights of the holder are concerned. Bankers' Trust Co. v. Statesville, 203 N. C. 399, 166 S. E. 169.

Art. 3. Consideration

§ 3008. Effect of want of consideration.

Failure of consideration is a valid defense to a note under seal by reason of the fact the presumption arising from a seal upon a negotiable instrument is rebuttable. Patterson v. Fuller, 203 N. C. 788, 791, 167 S. E. 74.

Art. 4. Negotiation

§ 3010. What constitutes negotiation.

Cited in Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

§ 3019. Qualified indorsement.

Qualifying Words May Precede or Follow Signature.— The words qualifying an endorsement of a negotiable instrument, such as "without recourse" and words of like effect, may either precede or follow the signature of the transferer of title. Medlin v. Miles, 201 N. C. 683, 161 S. E. 207.

Qualified Indorser May Be Liable on Warranties.—A negotiable instrument transferred by an endorsement reading "for value received I hereby sell, transfer and assign all my right, title and interest to within note to M." assigns title to the instrument by qualified endorsement, exempting the transferer from all liability as a general endorser, except that he is still chargeable with implied warranties as a seller. Medlin v. Miles, 201 N. C. 683, 161 S. E. 207.

§ 3028. Continuation of negotiable character.

Applied in Dunlap v. London Guaranty, etc., Co., 202 N. C. 651, 163 S. E. 750.

§ 3031. When prior party may negotiate instrument.

One who obtains possession of a note or bill after endorsing it is restored to his original position and cannot hold intermediate parties; and one who acquires possession of the instrument from such person, with notice of the fact, cannot hold the intermediate endorser. Ray v. Livingston, 204 N. C. 1, 4, 167 S. E. 496.

Art. 5. Rights of Holder

§ 3033. What constitutes holder in due course.

Cross Reference.—As to defenses which may or may not be set up against a holder in due course see § 3038 and the note thereto.

Indorsement Necessary.—See Keith v. Henderson County, 204 N. C. 21, 24, 167 S. E. 481, following statement under this catchline in Code of 1931.

The transfer by endorsement to another of a bond indemnifying a bank from any loss which it might sustain by reason of its taking over the assets and discharging the liabilities of another bank, is an assignment of a chose in action, and the assignee is not a holder in due course. North Carolina Bank, etc., Co. v. Williams, 201 N. C. 464, 160 S. E. 484.

Applied in Wellons v. Warren, 203 N. C. 178, 165 S. E. 545; Bankers' Trust Co. v. Statesville, 203 N. C. 399, 166 S. E. 169.

Cited in Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

§ 3038. Rights of holder in due course.

In General.—
The maker of a note may not set up defenses he may have against the payee of the note in an action by a holder in due course, but where the holder is not a holder in due course without notice, the maker may set up all defenses which he may have as against the payee. Federal Reserve Bank v. Atmore, 200 N. C. 437, 157 S. E. 129.

Where the answer sufficiently alleges that the holder was not a holder in due course for value without notice, all defenses which the defendant may have are presentable under the pleadings. Id.

Cited in Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

§ 3039. When subject to original defenses.

In General.—
A holder in due course may transfer a complete title to a third person although the latter when he takes the paper has knowledge of facts which would defeat recovery by the payee. Wellons v. Warren, 203 N. C. 178, 181, 165 S. E. 545.

"But this rule is subject to the single exception that if the note were invalid as between the maker and the payee, the payee could not himself, by purchase from a bona fide holder, become successor to his rights, it not being essential to such bona fide holder's protection to extend the principle so far." Ray v. Livingston, 204 N. C. 1, 4, 167 S. E. 496.

§ 3040. Who deemed holder in due course.

Cited in Dixon v. Smith, 204 N. C. 480, 168 S. E. 683.

Art. 6. Liabilities of Parties

§ 3044. When person deemed indorser.

Applied in Corporation Commission v. Wilkinson, 201 N. C. 344, 160 S. E. 292; Hyde v. Tatham, 204 N. C. 160, 167 S. E. 626.

§ 3047. Liability of general indorser.

Cross References.—As to words which exempt transferer

from liability as general endorser see § 3019 and the note thereto.

Considered with Other Sections.—This section, which restricts the warranty to subsequent holders in due course, must be considered in connection with other sections of the Negotiable Instruments Law. Ray v. Livingston, 204 N. C. 1, 4, 167 S. E. 496.

Parol Evidence. — Where an unqualified endorsement is supported by a valuable consideration and the maker seeks to enforce the endorser's liability the endorser may introduce parol evidence of an agreement entered into by the parties contemporaneously with the execution of the note that payment was to be made out of a particular fund, but he may not introduce parol evidence in contradiction of the written terms of the note that he was not to be held liable in any event. Kindler v. Wachovia Bank, etc., Co., 204 N. C. 198, 167 S. E. 811.

Applied in Hyde v. Tatham, 204 N. C. 160, 167 S. E. 626.

Art. 7. Presentment for Payment

§ 3061. When presentment not required to charge the indorser.

This section is not applicable where holder testifies endorser was not accommodation endorser. Hyde v. Tatham, 204 N. C. 160, 167 S. E. 626.

Art. 8. Notice of Dishonor

§ 3071. To whom notice of dishonor must be given.

Effect of Endorser's Consent to Extension of Time.—It cannot be determined as a matter of law that an endorser is not entitled to notice of dishonor as provided in this section, by reason of his consent to an extension of time of payment granted the principal. Davis v. Royall, 204 N. C. 147, 167 S. E. 559.

Art. 9. Discharge

§ 3102. Discharge of person secondarily liable.

Applied in Corporation Commission v. Wilkinson, 201 N. C. 344, 349, 160 S. E. 292.

§ 3104. Renunciation by holder.

A parol agreement between an official of a bank that the bank would release the endorsers or sureties on a note upon the maker confessing judgment thereon is not enforceable, a verbal renunciation being ineffectual under the provisions of this section. Page Trust Co. v. Lewis, 200 N. C. 286, 287, 156 S. E. 504.

Art. 17. Promissory Notes and Checks

§ 3168. Within what time a check must be presented.

In General.—

A check is only conditional payment, but the payee must exercise due diligence in presenting it for payment, and where his failure to exercise such diligence causes loss he must suffer it, due diligence being determined in accordance with the facts and circumstances of each particular case. Henderson Chevrolet Co. v. Ingle, 202 N. C. 158, 162 S. E. 219.

CHAPTER 62

OFFICES AND PUBLIC OFFICERS

Art. 1. General Provisions

§ 3206. Citizen to recover funds of county or town retained by delinquent official.

Under the provisions of this section, citizens and taxpayers of a county may maintain an action against the commissioners of the county and its defaulting sheriff to enforce collection of the amount of the default upon allegations that the county commissioners have corruptly refused to perform their duties in this respect. Weaver v. Hampton, 201 N. C. 798, 161 S. E. 480.

CHAPTER 63

PARTITION

Art. 1. Partition of Real Property

§ 3225(a). Judgments in partition of remainders validated.

—In all cases where land has been conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, where a judgment of partition has been rendered by the superior court authorizing a division of said lands upon the petition of the life tenant or tenants and all other persons then in being who would have taken such land if the contingency had then happened, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing a division of said lands among the respective life tenants and remaindermen, or executory devisees, shall be valid and binding upon the parties thereto and upon all other persons not then in being: Provided, that nothing herein contained shall be construed to impair or destroy any vested right or estate. (1933, c. 215, s. 1.)

Art. 2. Partition Sales of Real Property

§ 3240. Notice of partition sale.

—The notice of sale, under this proceeding, shall be the same as required by law on sales of real estate by sheriff under execution: Provided, however, that in case a re-sale of such real property shall become necessary under such proceeding, that such real property shall then be re-sold only after notice of re-sale has been duly posted at the courthouse door in the county for fifteen days immediately preceding the re-sale and also published at any time during such fifteen day period once a week for two successive weeks of not less than eight days in some newspaper published in the county, if a newspaper is published in the county, but if there be no newspaper published in said county the notice of re-sale must be posted at the courthouse door and three other public places in the county for fifteen days immediately preceding the re-sale. (Rev., s. 2514; Code, s. 1905; 1868-9, c. 122, s. 14; 1933, c. 187.)

Editor's Note.—Public Laws 1933, c. 187, added the proviso at the end of this section relating to notices of resale.

CHAPTER 65

PROBATE AND REGISTRATION

Art. 1. Probate

§ 3301(a). Probate before stockholders in banking corporations.

Under this section where a mortgage is executed on the equity in lands in order to secure endorsers on a note against loss and the note is discounted at a bank, the contract to secure the endorsers against loss is a collateral agreement between the makers and endorsers to which the bank is not a party, and the acknowledgment to the mortgage taken by an official of the bank is valid. Watkins v. Simonds, 202 N. C. 746, 164 S. E. 363.

Art. 2. Registration

§ 3308. Probate and registration sufficient without livery.

Probate May Be Sufficient as Contract.—While the order of probate cannot authorize the registration of an instrument in the form of a deed which has been defectively executed, it is sufficient, nevertheless, to authorize its registration as a contract to convey, which is expressly

provided for in this and the following section. Haas v. Rendleman, 62 F. (2d) 701.

§ 3309. Conveyances, contracts to convey, and leases of land.

IV. RIGHTS OF PERSONS PROTECTED.

Cross References.—For a construction of § 1138 in connection with this section see annotations under that section.

In General.—By virtue of this section only creditors of the donor, bargainor, or lessor, and purchasers for value are protected against an unregistered deed, contract to convey, or lease of land for more than three years. Gosney v. McCullers, 202 N. C. 326, 162 S. E. 746.

Right to Easement.—Under this section where a grantor conveys land by registered deed creating an easement in land reserved by grantor, his grantee is entitled to the easement unaffected by an unregistered contract to convey the reserved land executed prior to the deed. Walker v. Phelps, 202 N. C. 344, 162 S. E. 727.

Where a deed provides that it is subject to a written lease previously executed by the grantor, the grantee takes the premises subject to the lease although the lease is for more than three years and is not recorded. Hildebrand Machinery Co. v. Post, 204 N. C. 744, 169 S. E. 629.

§ 3311. Deeds of trust and mortgages, real and personal.

I. GENERAL CONSIDERATION.

Under this and the following section where a chattel mortgage is registered prior to the registration of the title-retaining contract the lien of the chattel mortgage is superior to that of the title-retaining contract. Jordan v. Wetmur, 202 N. C. 279, 162 S. E. 610.

III. INSTRUMENTS AFFECTED.

Absolute Sale Not Affected.—

It is not necessary under this section that a sale or conveyance of personal property by a corporation shall be in writing or shall be registered for any purpose when such sale is absolute and delivery of the property is made to the purchaser. Carolina Coach Co. v. Begnell, 203 N. C. 656, 166 S. E. 903.

Under this section where a transaction is in effect a pledge of security for borrowed money, it is not a chattel mortgage requiring registration as against creditors and third persons. Bundy v. Commercial Credit Co., 201 N. C. 604, 163 S. E. 676.

Advancement of Money to Pay Off Lien.—This section does not apply to the application of the equitable subrogation of lien in favor of one advancing money to pay off existing mortgage liens upon lands. Wallace v. Benner, 200 N. C. 124, 125, 156 S. E. 795.

§ 3312. Conditional sales of personal property.

Effect of Section.—

Where personal property is sold under a registered conditional sales contract and the purchase price is not paid in accordance with the agreement, the seller is the owner thereof and is entitled to possession as against the purchaser and all persons claiming under him. Brunswick-Balke-Collender Co. v. Carolina Bowling Alleys, 204 N. C. 609, 169 S. E. 186.

Other Notice Will Not Take Place of Registration.—No notice however full and formal can supply notice by registration and thus by virtue of this section where a conditional sale contract has not been registered a subsequent purchaser acquires title free from its lien. Brown v. Burlington Hotel Corp., 202 N. C. 82, 161 S. E. 735.

No Registration or Writing as Between Parties.—It has been uniformly held that a mortgage or conditional sales contract although not recorded, is valid as between the parties. It is void only as against creditors or purchasers for value. Cutter Realty Co. v. Dunn Moneyhun Co., 204 N. C. 651, 653, 169 S. E. 274.

Art. 4. Curative Statutes; Acknowledgments; Probates; Registration

§ 3333(a). Defective acknowledgment on old deeds validated.—The clerk of the superior court may order registered any deed, or other conveyance of land, in all cases where the instrument and probate bears date prior to January first, one thousand nine hundred and seven (1907) where the acknowledgment, private examination, or other proof of execution, has been taken or had before a notary public residing in the county where the land is situate, where said officer failed to affix his official seal, and where the certificate of said officer appears otherwise to be genuine. (1933, c. 439.)

§ 3337. Before justices of peace, where clerk's certificate or order or registration defective.

For amendment applicable in Clay county only, see P. L. 1933, c. 530.

§ 3345. Probates before officer of interested corporation.

Although a grantee in a chattel mortgage is not qualified to take the acknowledgment thereof, a chattel mortgage to a bank will not be declared void because the acknowledgment thereof was taken by its cashier. Bank of Duplin v. Hall, 203 N. C. 570, 166 S. E. 526.

§ 3366(i) 1. Validation of corporate deed with mistake as to officer's name.—In all cases where the deed of a corporation executed before the first day of January, 1918, is properly executed, properly recorded and there is error in the probate of said corporation's deed as to the name or names of the officers in said probate, said deed shall be construed to be a deed of the same force and effect as if said probate were in every way proper. (1933, c. 412, s. 1.)

CHAPTER 66

PROHIBITION

Art. 6. Seizure and Forfeiture of Property

§ 3401. Fee for seizure.

Editor's Note.—

Public Laws 1933, c. 246 provides that this section shall not apply to Moore and Lenoir counties. Public Laws 1933, c. 230 provides that the sum received by the officer in Warren county shall not exceed five dollars.

§ 3402(a). Sections 3401 and 3402, repealed, as to still rewards; counties excepted. — Sections three thousand four hundred and one and three thousand four hundred and two of article six, chapter sixty-six of the consolidated statutes of North Carolina, are hereby repealed: Provided the county commissioners of Surry, Avery, Northampton, Greene, Alamance counties shall pay the sum of ($5.00) five dollars for the capture of each distillery captured in said counties: Provided the commissioners of Radkin county may in their discretion pay not exceeding ($5.00) five dollars: Provided that the county commissioners of Graham and Jackson counties be allowed to pay, not to exceed, the sum of ($5.00) five dollars for seizure of a distillery: Provided that this section shall not apply to the counties of Caswell, Chowan, and Wilson counties.

This section shall not repeal any public-local law. (1933, c. 480, s. 1.)

Art. 8. National Liquor Law, Conformation of State Law

§ 3411(a). Definitions.

Beverages Not Enumerated.—It may be shown in evidence as a fact that other beverages than those defined by this section as intoxicating and prohibited are intoxicating in fact and come within the intent and meaning of the statute. State v. Fields, 201 N. C. 110, 159 S. E. 11.

§ 3411(b). Manufacture, sale, etc., forbidden; construction of law; nonbeverage liquor.

Effect on Recovery under Compensation Act.—The mere fact that an applicant for compensation under the provi-

sions of the Workmen's Compensation Act had in his possession whiskey contrary to this section does not alone prevent the recovery of compensation. Jackson v. Dairymen's Creamery, 202 N. C. 196, 162 S. E. 359.

§ 3411(x). Rewards for seizure of still.

Public Laws 1933, c. 246, provides that this section shall not apply in Moore and Lenoir counties. For an amendment of this section applicable in Burke County only, see Public Laws 1933, c. 136.

Art. 9. Legalization of Sale of Beverages with Not More Than 3.2% Alcoholic Content.

§ 3411(dd). Sale of beer and light wines in state allowed.—On an after the passage of this article it shall be lawful for any person, firm, or corporation to sell, barter, trade, exchange, or dispose of beer, lager beer, ale, porter, fruit juices, and/or light wines, containing not more than 3.2% of alcohol by weight, or such other percentage as may conform to any act of the congress of the United States, within the domains of the state of North Carolina, subject, however, to payment of tax hereinafter imposed. (1933, c. 216, s. 1.)

Editor's Note.—For local modifications prohibiting sales in or near certain specified places see Public Laws 1933, c. 454 (Quaker Children's Home and Wingate Junior College); c. 472 (Pelham M. E. Church, South); c. 395 (village of Macon); c. 396 (Montreat, Mars Hill and association grounds of Baptist assembly at Ridge Crest); c. 455 (Stumpy Point voting Precinct, Dare County); c. 381 (Cane Creek Church and Sylvan High School in Southern Alamance County); cc. 369, 406 (Guilford College); c. 564 (Wake Forest College); c. 370 (Oak Ridge Military Institute); c. 416 (Town of Bakersville); c. 417 (Elon College); c. 313 (Davidson College); and c. 512 (village of Worthville). For other local restrictions, see note to § 3411(1).

§ 3411(ee). Tax $2 per barrel; on bottles, 2c.—There shall be levied and collected on all beer, lager beer, ale, porter, fruit juices, and/or other light wines, containing not more than 3.2% of alcohol by weight, by whatever name the same may be called, offered for sale in this state a tax of two dollars ($2.00) for every barrel containing not more than thirty-one (31) gallons and at a proportionate rate for barrels containing more than thirty-one (31) gallons: Provided, however, that if such beer, lager beer, ale, porter, fruit juices, and/or other light wines be offered for sale in bottles, there shall be levied and collected a tax of two cents for every bottle containing not more than twelve (12) ounces, and a proportionate rate for bottles containing more than twelve (12) ounces. (1933, c. 216, s. 2.)

§ 3411(ff). Revenue department to make regulations; revenue to general fund. — The North Carolina department of revenue is hereby authorized, empowered and directed to promulgate rules and regulations governing the sale and distribution of such beer, lager beer, ale, porter, fruit juices, and/or other light wines, and the payment of the taxes hereby levied, which revenue derived from the sale of the aforesaid sale of beer, lager beer, ale, porter, fruit juices, and/or other light wines shall be placed in the general fund of the state of North Carolina. (1933, c. 216, s. 3.)

§ 3411(gg). County license fee of $25.—It shall be unlawful for any person, firm, or corporation to sell beer, lager beer, ale, porter, fruit juices, and/or other light wines in North Carolina without first applying for and receiving a permit or license from the board of commissioners of the several counties of the state, which license fee shall be fixed at the sum of twenty-five ($25.00) dollars and placed in the treasury of the county, to be used in the payment of the public debt of said counties. (1933, c. 216, s. 4.)

§ 3411(hh). Tax for municipalities, $10.—Each and every incorporated city or town in North Carolina may levy a similar license tax on each dealer inside, or two miles outside the incorporated limits of such city or town not exceeding the sum of ten ($10.00) dollars, the license for incorporated cities and towns, and the funds derived therefrom shall be put in the general funds of the city or town, to be used in their debt-service fund. (1933, c. 216, s. 5.)

§ 3411(ii). Sale in places used expressly for purpose prohibited.—It shall be unlawful to sell, barter, exchange, dispose of or allow to be sold, bartered, exchanged, disposed of any such beer, lager beer, ale, porter, fruit juices and/or other light wines in any container in any place, building, edifice or structure primarily and expressly used, rented, occupied or maintained for the sole or primary purpose of selling such beer, lager beer, ale, porter, fruit juices and/or other light wines, and no county, city or town shall license the sale of any beer, lager beer, ale, porter, fruit juices and/or other light wines, and shall revoke any license heretofore granted when it shall be made to appear that the same is being sold in any place, building, edifice or structure primarily and expressly used, rented, occupied or maintained for the sole and/or primary purpose of selling such beer, lager beer, ale, porter, fruit juices, and/or other light wines. (1933, c. 216, s. 6.)

§ 3411(jj). Sale without license made misdemeanor.—It shall be unlawful for any person, firm, or corporation to sell, barter, exchange, dispose of, or allow to be sold, bartered, exchanged, or disposed of such beer, lager beer, ale, porter, fruit juices, and/or other light wines on which the tax hereby levied be not paid to the state, county, city or town, and any person, firm, or corporation so selling, bartering, exchanging, disposing of, or allowing to be sold, bartered, exchanged, or disposed of such beer, lager beer, ale, porter, fruit juices and/or other light wines, or who shall fail to keep accurate records of wholesale purchases, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court, for each offense. (1933, c. 216, s. 7.)

§ 3411(kk). Sale to minors under 18 made misdemeanor.—It shall be unlawful for any person, firm, or corporation to sell or give any of the products herein authorized to be sold to any minor under eighteen years of age; and any person violating the terms of this section shall be guilty of a misdemeanor and punished for each offense in the discretion of the court. (1933, c. 216, s. 8.)

§ 3411(ll). Shipment into state of beer and light wines permitted.—It shall be lawful for any person, firm or corporation to transport and deliver beer, lager beer, ale, porter, fruit juices, light wines and/or other brewed or fermented beverages, containing not more than three and two-tenths (3.2%) per cent of alcohol by weight, or such other percentage as may conform to any act of the congress

of the United States, within the domains of the state of North Carolina. (1933, c. 297, s. 1.)

§ 3411(mm). Laws prohibiting advertisement of beer and light wines repealed. — All laws and clauses of laws prohibiting newspaper, radio, billboard or other forms of advertising for sale of beer, lager beer, ale, porter, fruit juices and/or other light wines containing not more than 3.2 per cent of alcohol by weight, are hereby repealed. (1933, c. 216, s. 11, c. 229.)

Art. 10. Beverage Control Act of 1933

§ 3411(1). Title.—This article shall be known as the beverage control act of one thousand nine hundred and thirty-three. (1933, c. 319, s. 1.)

Editor's Note.—For local restrictions on sale of beer and wine, see note to § 3411(dd). See also Public Laws 1933, c. 508, regulating sale in Yanceyville; c. 475 prohibiting sale in Frenches Creek Township; c. 398 restricting sale near Campbell College; and c. 358 prohibiting sale within mile of Pineland Junior College. See also note to § 3411(dd).

§ 3411(2). Definitions.—The term "beverages" as used in this article shall include beer, lager beer, ale, porter, wine, fruit juices and other brewed or fermented beverages containing one-half of one per cent (½) of alcohol by volume but not more than three and two-tenths per cent (3.2%) of alcohol by weight as authorized by the laws of the United States of America.

The term "person" used in this article shall mean any individual, firm, partnership, association, corporation, or other group or combination acting as a unit.

The term "sale" as used in this article shall include any transfer, trade, exchange or barter in any manner or by any means whatsoever. (1933, c. 319, s. 2.)

§ 3411(3). Regulations.—The beverages enumerated in section 3411(2) may be manufactured, transported or sold in this state in the manner and under the regulations hereinafter set out. (1933, c. 319, s. 3.)

§ 3411(4). Transportation.—The beverages enumerated in section 3411(2) may be transported into, out of or between points in this state by railroad companies, express companies or by steamboat companies engaged in public service as common carriers and having regularly established schedules of service upon condition that such companies shall keep accurate records of the character and volume of such shipments, the character and number of packages, or containers, shall keep records open at all times for inspection by the commissioner of revenue of this state or his authorized agent, and upon condition that such common carrier shall make report of all shipments of such beverages into, out of or between points in this state at such times and in such detail and form as may be required by the commissioner of revenue.

The beverages enumerated in section 3411(2) may be transported into, out of or between points in this state over the public highways of this state by motor vehicles upon condition that every person intending to make such use of the highways of this state shall as a prerequisite thereto register such intention with the commissioner of revenue in advance of such transportation, with notice of the kind and character of such products to be transported and the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of his act, the commissioner of revenue shall without charge therefor issue a numbered certificate to such owner or operator for each motor vehicle intended to be used for such transportation, which numbered certificate shall be prominently displayed on the motor vehicle used in transporting the products named in section 3411-(2). Every person transporting such products over any of the public highways of this state shall during the entire time he is so engaged have in his possession an invoice or bill of sale or other record evidence, showing the true name and address of the person from whom he has received such beverages, the character and contents of containers, the number of bottles, cases or gallons of such shipment, the true name and address of every person to whom deliveries are to be made. The person transporting such beverages shall, at the request of any representative of the commissioner of revenue, produce and offer for inspection said invoice or bill of sale or record evidence. If said person fails to produce invoice or bill of sale or record evidence, or if when produced, it fails to clearly and accurately disclose said information, the same shall be prima facie evidence of the violation of this article. Every person engaged in transporting such beverages over the public highways of this state, shall keep accurate records of the character and volume of such shipments, the character and number of packages or containers, shall keep records open at all times for inspection by the commissioner of revenue of this state, or his authorized agent, and upon condition that such person shall make report of all shipments of such beverages into, out of or between points in this state at such times and in such detail and form as may be required by the commissioner of revenue.

The purchase, transportation and possession of beverages enumerated in section 3411(2) by individuals for their own use is permitted without restriction or regulation. The provisions of this section as to transportation of beverages enumerated in section 3411(2) by motor vehicles over the public highways of this state shall in like manner apply to the owner or operator of any boat using the waters of this state for such transportation, and all of the provisions of this section with respect to permit for such transportation and reports to the commissioner of revenue by the operators of motor vehicles on public highways shall in like manner apply to the owner or operator of any boat using the waters of this state. (1933, c. 319, s. 4.)

§ 3411(5). Manufacture.—The brewing or manufacture of beverages for sale enumerated in section 3411(2) shall be permitted in this state upon the payment of an annual license tax to the commissioner of revenue in the sum of five hundred dollars ($500.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. Persons licensed under this section may sell such beverages in barrels, bottles, or other closed containers only to persons licensed under the provisions of this act for resale, and no other license tax shall be levied upon the business taxed in this section. The sale of malt, hops, and other ingredients used in the manufacture of beverages

for sale enumerated in section 3411(2) are hereby permitted and allowed: Provided, that it shall be lawful for any person to manufacture the wine, fruit juices and other fermented beverages made of fruit, described in section 3411(2) for his own use without obtaining the license required by this section. (1933, c. 319, s. 5.)

§ 3411(6). Bottlers' license.—License to receive shipments of beverages enumerated in section 3411(2) in barrels or other containers and bottling same for sale to others for resale shall be issued by the commissioner of revenue upon the payment of an annual license tax of two hundred and fifty dollars ($250.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter, and no other license tax shall be levied upon the business taxed in this section. Licensees under this section shall pay the tax of one cent per bottle levied in section 3411(16): Provided no tax shall be paid upon such beverages in barrels, where such beverages are to be bottled. (1933, c. 319, s. 6.)

§ 3411(7). Wholesalers' license.—License to sell at wholesale. which shall authorize licensees to sell beverages in barrels, bottles, or other containers in quantities of not less than one case or container to a customer, shall be issued as a state-wide license by the commissioner of revenue. The annual license under this section shall be one hundred and fifty dollars ($150.00) and shall expire on the next succeeding 30th day of April. The license issued under this section shall be revocable at any time by the commissioner of revenue for failure to comply with any of the conditions of this act with respect to the character of records required to be kept, reports to be made or payment of other taxes hereinafter set out.

If any wholesaler maintains more than one place of business or storage warehouse from which orders are received or beverages are distributed a separate license shall be paid for each separate place of business or warehouse.

The owner or operator of every distributing warehouse selling, distributing or supplying to retail stores beverages enumerated in section 3411(2) shall be deemed wholesale distributors within the meaning of this article and shall be liable for the tax imposed in this section and shall comply with the conditions imposed in this article upon wholesale distributors of beverages with respect to payment of taxes levied in this article and bond for the payment of such taxes. (1933, c. 319, s. 7.)

§ 3411(8). On railroad trains.—The sale of beverages enumerated in section 3411(2) shall be permitted on railroad trains in this state to be sold only in dining cars, buffet cars, pullman cars, or club cars, and for consumption on such cars upon payment to the commissioner of revenue of one hundred ($100.00) dollars for each railroad system over which such cars are operated in this state for an annual state-wide license expiring on the next succeeding thirtieth day of April. No other license shall be levied upon licensees under this section, but every licensee under this section shall make a report to the commissioner of revenue on or before the tenth day of each calendar month covering sales for the previous month and payment of the tax on such sales at the rate of tax levied in this article. (1933, c. 319, s. 8.)

§ 3411(9). Salesmen's license. — License for salesmen, which shall authorize the licensee to offer for sale within the state or solicit orders for the sale of within the state beverages enumerated in this article, shall be issued by the commissioner of revenue upon the payment of an annual license tax of twelve dollars and fifty cents ($12.50) to the commissioner of revenue, such license to expire on the next succeeding thirtieth day of April. License to salesmen shall be issued only upon the recommendation of the vendor whom they represent, and no other license tax shall be levied under this section. (1933, c. 319, s. 9.)

§ 3411(10). Character of license.—License issued under authority of this act shall be of two kinds:

(1) "On Premises" license which shall be issued for bona fide restaurants, cafes, cafeterias, hotels, lunch stands, drug stores, filling stations, grocery stores, cold drink stands, tea rooms, or incorporated or chartered clubs. Such license shall authorize the licenees to sell at retail beverages for consumption on the premises designated in the license, and to sell the beverages in original packages for consumption off the premises.

(2) "Off Premises" license which shall authorize the licensee to sell at retail beverages for consumption only off the premises designated in the license and only in the immediate container in which the beverage was received by the licensee.

In a municipality the governing board of such municipality shall determine whether an applicant for license is entitled to a "premises" license under the terms of this article, and outside of municipalities such determination shall be by the board of commissioners of the county. (1933, c. 319, s. 10.)

§ 3411(11). Amount of retail license tax.—The license tax to sell at retail under this article for municipalities shall be:

(1) For "On Premises" license fifteen dollars ($15.00).

(2) For "Off Premises" license ten dollars ($10.00).

The rate of license tax levied in this section shall be for the first license issued to one person and for each additional license issued to one person an additional tax of ten per cent of the base tax, such increase to apply progressively for each additional license issued to one person. (1933, c. 319, s. 11.)

§ 3411(12). Who may sell at retail.—Every person making application for license to sell at retail beverages enumerated in section 3411(2), if the place where such sale is to be made is within a municipality, shall make application first to the governing board of such municipality, and the application shall contain:

(1) Name and residence of the applicant and the length of his residence within the state of North Carolina.

(1½) That state, county or city shall not issue license under this article to any person, firm or

corporation who has not been a bona fide resident of North Carolina for one year.

That no resident of the state shall obtain a license under this act and employ or receive aid from a non-resident for the purpose of defeating the above section.

The penalty for violating item one and one-half shall be a misdemeanor. All persons convicted shall be imprisoned not more than thirty days, nor fined more than two hundred dollars.

That this shall only apply to the following counties: Currituck, Camden, Pasquotank, Perquimans, Chowan, Hertford, Dare, Gates, Polk and Henderson.

(2) The particular place for which the license is desired, designating the same by a street and number if practicable; if not, by such other apt description as definitely locates him.

(3) The name of the owner of the premises upon which the business licensed is to be carried on.

(4) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction.

(5) A statement that the applicant is a resident of the state of North Carolina and not less than twenty-one years of age, that such applicant is of good moral character and has never been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws, either state or federal, within the last two years prior to the filing of the application. The application must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oath. If it appear from the statement of applicant or otherwise that such applicant has been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws, either state or federal, within the last two years prior to the filing of the application, or within two years from the completion of sentence, such license shall not be granted, and if it shall afterwards appear that any false statement is knowingly made in any part of said application and license received thereon, the license of the applicant shall be revoked and the applicant subjected to the penalty provided by law for misdemeanors. Before any such license shall be issued, the governing body of the municipality shall be satisfied that statements required by subsections (1), (2), (3), (4) and (5) of this section are true. (1933, c. 319, s. 12, c. 444.)

§ 3411(13). County license to sell at retail.—License to sell at retail shall be issued by the board of commissioners of the county, and application for such license shall be made in the same manner and contain the same information set out in the preceding section with respect to municipal license. If the application is for license to sell within a municipality, the application must also show that license has been granted the applicant by the governing board of such municipality. The granting of a license by the governing board of a municipality shall determine the right of an applicant to receive a county license upon compliance with the conditions of this article.

If the application is for license to sell outside of a municipality within the county, the application shall also show the distance to the nearest church or public or private school from the place at which the applicant purposes to sell at retail. No license shall be granted to sell within three hundred (300) feet of any public or private school buildings or church building outside of incorporated cities and towns: Provided, the restriction set forth in this sentence shall not apply to unincorporated towns and villages having police protection.

The clerk of the board of commissioners of each county shall make prompt report to the commissioner of revenue of each license granted by the board of commissioners of such county. The county license fee shall be fixed at $25.00 and the same shall be placed in the county treasury, for the use of the county. (1933, c. 319, s. 13.)

§ 3411(14). Issuance of license mandatory; schools and churches protected.—It shall be mandatory that the governing body of a municipality or county issue license to any person applying for the same when such person shall have complied with the requirements of this article: Provided, no person shall dispense beverages herein authorized to be sold, within fifty feet of a church building in an incorporated city or town, or in a city or town having police protection whether incorporated or not, while religious services are being held in such church, or within 300 feet of a church building outside the incorporate limits of a city or town while church services are in progress. (1933, c. 319, s. 14.)

§ 3411(15). Expiration of licenses.—All licenses issued by counties and municipalities under this article shall be for the current year, and shall expire on the next succeeding thirtieth day of April. (1933, c. 394, s. 1.)

§ 3411(16). Revocation of license.—If any licensee violates any of the provisions of this article or any rules and regulations under authority of this article or fails to superintend in person or through a manager, the business for which the license was issued, or allows the premises with respect to which the license was issued to be used for any unlawful, disorderly or immoral purposes, or knowingly employs in the sale or distribution of beverages any person who has been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws within two years or otherwise fails to carry out in good faith the purposes of this article, the license of any such person may be revoked by the governing board of the municipality or by the board of county commissioners after the licensee has been given an opportunity to be heard in his defense. Whenever any person, being duly licensed under this article, shall be convicted of the violation of any of the prohibition laws on the premises herein licensed, it shall be the duty of the court to revoke said license. Whenever any license which has been issued by any municipality, any board of county commissioners or by the commissioner of revenue has been revoked, it shall be unlawful to reissue said license for said premises to any person for a term of six months after the revocation of said license. (1933, c. 319, s. 15.)

§ 3411(17). State license.—Every person who intends to engage in the business of retail sale of

the beverages enumerated in section 3411(2) shall also apply for and procure a state license from the commissioner of revenue, which license shall be issued by the commissioner of revenue upon information that license to such person has been issued by the board of commissioners of the county for the place at which such licensee proposes to sell, and if in a municipality that such license has been granted by the governing board of the municipality, and upon the payment to the commissioner of revenue an annual license tax as follows:

For the first license issued to each licensee five dollars ($5.00), and for each additional license issued to one person an additional tax of ten per cent (10%) of the five dollars base tax. That is to say, that for the second license issued the tax shall be five dollars and fifty cents ($5.50) annually, for the third license six dollars ($6.00) annually, and an additional fifty cents (50c.) per annum for each additional license issued to each person. (1933, c. 319, s. 16.)

§ 3411(18). Additional tax.—In addition to the license taxes herein levied a tax is hereby levied upon the sale of the beverages enumerated in section 3411(2) of three dollars ($3.00) per barrel of thirty-one (31) gallons, of the equivalent of such tax in containers of more or less than thirty-one (31) gallons, and in bottles of not more than twelve (12) ounces per bottle a tax of one cent (1c.) per bottle. (1933, c. 319, s. 17.)

§ 3411(19). Tax payable by wholesale distributors.—The tax levied in the preceding section shall be paid to the commissioner of revenue by the wholesale distributor or bottler of such beverages. The tax herein levied shall be paid by every wholesale distributor or bottler on or before the tenth day of each month for all beverages sold within the preceding month. As a condition precedent to the granting of license by the commissioner of revenue to any wholesale distributor or bottler of beverages under this article the commissioner of revenue shall require each such wholesale distributor or bottler to furnish bond in an indemnity company licensed to do business under the insurance laws of this state in such sum as the commissioner of revenue shall find adequate to cover the tax liability of each such wholesale distributor or bottler, proportioned to the volume of business of each such wholesale distributor or bottler but in no event to be less than one thousand dollars ($1,000) or to deposit federal, state, county or municipal bonds in required amounts, such county or municipal bonds to be approved by the commissioner of revenue. The commissioner of revenue may grant such extension of time for compliance with this condition as may be found to be reasonable. (1933, c. 319, s. 18.)

§ 3411(20). Payment of tax by retailers.—The granting of license by any municipality or county under this article to any person to sell at retail the beverages enumerated under section 3411(2) shall not be a valid license for such sale at retail until such person shall have filed with the commissioner of revenue a bond in a surety company licensed by the insurance department to do business in this state in such sum as the commissioner of revenue may find to be sufficient to cover the tax liability of every such person, but in no event to be less than one thousand dollars ($1,000). The commissioner of revenue may waive the requirement of this section for indemnity bond with respect to any such person who may file a satisfactory contract or agreement with the commissioner of revenue that such person will purchase and sell beverages enumerated in section 3411(2) only from wholesale distributors or bottlers licensed by the commissioner of revenue under this article who pay the tax under section 3411(18) upon all such beverages sold to retail dealers in this state. The violation of the terms of any such contract or agreement between any such retail dealer and the commissioner of revenue by the purchase or sale of any of the beverages enumerated in section 3411(2) from any one other than a licensed wholesale distributor or bottler under this article shall automatically cancel the license of any such retail dealer and shall be prima facie evidence of intent to defraud, and any person guilty of violation of any such contract or agreement shall be guilty of a misdemeanor. (1933, c. 319, s. 19.)

§ 3411(21). Books, records, reports.—Every person licensed under any of the provisions of this article shall keep accurate records of purchase and sale of all beverages taxable under this article, such records to be kept separate from all purchases and sales of merchandise taxable under this article, including a separate file and record of all invoices. The commissioner of revenue or any authorized agent, shall at any time during business hours have access to such records. The commissioner of revenue may also require regular or special reports to be made by every such person, at such times and in such form as the commissioner may require. (1933, c. 319, s. 20.)

§ 3411(22). No sales upon school or college grounds.—No license shall be issued for the sale of beverages enumerated in section 3411(2) upon the campus of property of any public or private school or college in this state. (1933, c. 319, s. 21.)

§ 3411(23). License shall be posted.—Each form of license required by this article shall be kept posted in a conspicuous place at each place where the business taxable under this article is carried on, and a separate license shall be required for each place of business. (1933, c. 319, s. 22.)

§ 3411(24). Administrative provisions.—The commissioner of revenue and the authorized agents of the state department of revenue shall have and exercise all the rights, duties, powers and responsibilities in enforcing this article that are enumerated in the act of the general assembly known as the revenue act in administering taxes levied in schedule B of said act, codified as sections 7880(30) et seq. (1933, c. 319, s. 23.)

§ 3411(25). Enforcement by commissioner of revenue of tax provisions; use of stamps, etc.—A discretion is herein vested in the commissioner of revenue to adopt such general rules and regulations as the commissioner may find expedient

for the enforcement of the tax provisions of this article, and it is specifically authorized to require the use of stamps upon all packages containing beverages taxable under this article and evidencing the payment of the tax upon every such package, and with respect to beverages taxable under this article which may be either manufactured or bottled in this state may require the use of crowns to be furnished by the state evidencing the payment of the tax upon all such beverages manufactured and/or bottled in this state. The commissioner of revenue is authorized to promulgate rules and regulations governing the purchase, sale and distribution of crowns with which to seal said bottled drinks within this state. Said crowns shall carry design approved by the commissioner of revenue, the use of which crowns may be evidence of the payment of the license taxes provided in this article. The commissioner is authorized to purchase and furnish crowns to manufacturers and/or bottlers at the manufacturer's price for such crowns, plus all transportation charges to consignee at destination, and an additional charge of one cent (1c.) per crown, when to be used upon bottled drinks taxable under this article and in bottles containing not more than twelve ounces and at a proportionate rate upon bottles containing more than twelve ounces. Such crowns may be sold to manufacturers and/or bottlers at a discount of four per cent (4%), such discount to apply to the tax and not to the manufacturer's price or transportation cost. If the commissioner shall by regulations require that stamps be used on beverages taxable under this article and not manufactured or bottled in this state, such stamps may be sold at the same rate of discount provided herein upon the sale of crowns, and either crowns or stamps may be sold to licensed bonded manufacturers or wholesale distributors payable not later than the tenth of the next succeeding month. The commissioner of revenue by and with the consent and approval of the council of state may make arrangements with the state's prison to manufacture and distribute the bottle crowns authorized under this article, and in the event such arrangement is made, only such bottle crowns as are manufactured by the state penitentiary shall be used in the bottling of beverages sold under authority of this article. If either the use of crowns or stamps shall be provided for by regulations adopted by the commissioner of revenue under authority of this article, such regulations as to crowns shall have application to all beverages taxable under this article that may be manufactured and/or bottled in this state, and such regulations as to the use of stamps shall have application to all beverages taxable under this article that may be sold in this state and not manufactured or bottled in this state, and any violation of such regulations shall constitute a violation of this article and be punishable as other violations of this article.

In any case where license taxes have been collected in rates in excess of the rates provided in this act the commissioner of revenue is authorized and directed to refund so much of license taxes as are in excess of the rates provided in this article. (1933, c. 558, ss. 3, 5.)

§ 3411(26). Appropriation of 3% of revenue for administration.—For the efficient administration of this article an appropriation is hereby made for the use of the department of revenue in addition to the appropriation in the appropriation bill of a sum equal to three per cent (3%) of the total revenue collections under this article to be expended under allotments made by the budget bureau of such part or the whole of such appropriation as may be found necessary for the administration of this article. The budget bureau may estimate the yield of revenue under this article and make advance apportionment based upon such estimate, and to provide for the necessary expense of providing materials, supplies, and other expenses needful to be incurred prior to the beginning of the next fiscal year, July 1, 1933, the budget bureau may make such advance allotment from such estimate of revenue yield as it may find proper for the convenient and efficient administration of this article. (1933, c. 319, s. 24.)

§ 3411(27). Violation of cited act made misdemeanor.—Whosoever violates any of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. If any licensee is convicted of the violation of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, the court shall immediately declare his permit revoked, and notify the county commissioners accordingly, and no permit shall thereafter be granted to him within a period of three years thereafter. Any licensee who shall sell or permit the sale on his premises or in connection with his business, or otherwise, of any alcoholic beverages not authorized under the terms of this article, unless otherwise permitted by law, shall, upon conviction thereof, forfeit his license in addition to any punishment imposed by law for such offense. (1933, c. 319, s. 25.)

§ 3411(28). Conflicting laws repealed. — All laws and clauses of laws in conflict with this article, and including the provisions of sections 3411(dd)-3411(kk), of this code if any are in conflict, are hereby repealed. (1933, c. 319, s. 27.)

CHAPTER 67
RAILROADS AND OTHER CARRIERS

Art. 7. Liability of Railroads for Injuries to Employees

§ 3465. Fellow-servant rule abrogated, defective machinery.

Cross Reference.—As to logging roads and tramroads see § 3470 and notes thereto.

I. EDITOR'S NOTE.

The act applies only to employees who are engaged in duties connected with or incidental to the operation of railroads, logging roads or tramroads. Gurganous v. Camp Mfg. Co., 204 N. C. 525, 168 S. E. 833.

§ 3467. Contributory negligence no bar, but mitigates damages.

The section applies only to employees who are engaged

in duties connected with or incidental to the operation of railroads, logging roads or tramroads. Gurganous v. Camp Mfg. Co., 204 N. C. 525, 168 S. E. 833.

Applied in Byers v. Boice Hardwood Co., 201 N. C. 75, 159 S. E. 3; Bateman v. Brooks, 204 S. C. 176, 167 S. E. 627.

§ 3468. Assumption of risk as defense.

Applied in Bateman v. Brooks, 204 N. C. 176, 167 S. E. 627.

§ 3470. Provisions of this article applicable to logging roads and tramroads.

Editor's Note.—

The provisions of §§ 3467, 3465, are applicable to tram or logging roads under the provisions of this section. Sampson v. Jackson Bros. Co., 203 N. C. 413, 166 S. E. 181.

The employee must be engaged in duties connected with or incidental to the operation of such roads. Gurganous v. Camp Mfg. Co., 204 N. C. 525, 168 S. E. 833.

Applied in Bateman v. Brooks, 204 N. C. 176, 167 S. E. 627.

Art. 8. Construction and Operation of Railroads

§ 3481. Operation of fast mail trains; discontinuance of passenger service.—The corporation commission is hereby empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall stop only at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train such railroad company shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday. The corporation commission, or its successor, however, shall have and it is hereby vested with the power in any case in which the convenience and necessity of the traveling public do not require the running of passenger trains upon its railroad to authorize such railroad company to cease the operation of passenger trains as long as the convenience and necessity of the traveling public shall not require such operation: Provided that this section and any ruling hereafter made by the corporation commission, or its successors, shall not be construed as abrogating or repealing the provisions of any charter or franchise requiring such common carrier to furnish daily freight service over its lines, nor cause the discontinuance of daily freight service where now maintained. (Rev., s. 2614; 1893, c. 97; 1933, c. 528.)

Editor's Note.—Public Laws 1933, c. 528, added the last sentence of this section relating to discontinuance of passenger service.

Art. 9. Railroad Police

§ 3484. Governor may appoint and commission railroad police; civil liability of railroads.—Any corporation operating a railroad on which steam or electricity is used as the motive power or any electric or water-power company or construction company or manufacturing company may apply to the governor to commission such persons as the corporation or company may designate to act as policemen for it. The governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability now existing by statute or under the common law for the act or acts of such policemen, in exercising or attempting to exercise the powers conferred by this section. (Rev., ss. 2605, 2606; Code, ss. 1988, 1989; 1871-2, c. 138, ss. 51, 52; 1907, c. 128, s. 1; 1923, c. 23; 1933, c. 61.)

Editor's Note.—

Public Laws 1933, c. 61, added the last sentence of this section providing that it shall not delete the railway from civil liability.

Art. 11. Carriage of Freight

§ 3522. Placing cars for loading.

Cited in Pinehurst Peach Co. v. Norfolk Southern R. Co., 201 N. C. 176, 159 S. E. 359.

Art. 12. Street and Interurban Railways

§ 3539(a). Sections 3536-3539, extended to motor busses used as common carriers.—The provisions of sections 2536-3539 are hereby extended to motor busses operated in the urban, interurban or suburban transportation of passengers for hire, and to the operator or operators thereof, and the agents, servants, and employees of such operators. (1933, c. 489.)

CHAPTER 68

REGISTER OF DEEDS

Art. 2. The Duties

§ 3561. Index and cross-index of registered instruments.

As to registration of instruments see § 3553 and the note thereto.

Liability for Failure to Index.—See Watkins v. Simonds, 202 N. C. 746, 164 S. E. 363, following statement under this catchline in code of 1931.

Priority of Second Mortgage to One Not Indexed.—

Under this and the previous section a duly recorded chattel mortgage which is indexed and cross-indexed in the general chattel mortgage index has priority over a mortgage covering the same personal property and also certain real estate which is previously executed and recorded and indexed in the general real estate mortgage index but subsequently indexed and cross-indexed in the general chattel mortgage index. Pruitt v. Parker, 201 N. C. 696, 161 S. E. 212.

CHAPTER 70

ROADS AND HIGHWAYS

Art. 13. Cartways, Church Roads, and the Like

§ 3836. Cartways, tramways, etc., laid out; procedure.

Tract Devised without Egress to Public Road.—Where a petition for a "way of necessity" over the lands of another is filed in the Superior Court, and the petition alleges that the petitioner was devised a tract of land without any way of egress to a public road except over the land of another devisee of the testator, and there is no allegation that such a way over the land of the other devisee had theretofore existed, and there is no stipulation in the devise for a way of ingress and egress to a given point, the petitioner's exclusive remedy is under the provisions of this and the previous section, and the proceedings in the Superior Court is properly nonsuited. White v. Coghill, 201 N. C. 421, 160 S. E. 472.

§ 3838(b). Neighborhood public roads.—All those portions of the public road system of the

state which have not been taken over and placed under maintenance or which have been abandoned by the state highway commission, but which remain open and in general used by the public, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the department of public welfare, are hereby declared to be neighborhood public roads, and they shall be subject to all of the provisions of this section with respect to the alteration, extension, or discontinuance thereof, and any interested citizen is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient. Upon request of the board of county commissioners of any county, the state highway commission is permitted, but is not required, to lend assistance to the local authorities in placing such roads in a passable condition without incorporating the same into the state or county systems, and without becoming obligated in any manner for the permanent maintenance thereof. (1933, c. 302.)

Art. 15. State Highway System (1921)

Part 2. State Highway Commission

§ 3846(f): Repealed by Public Laws 1933, c. 172, s. 15.

§ 3846(f1). Limit of compensation paid by commission.—It shall be unlawful for the state highway commission to pay or authorize the payment of an annual salary or compensation to any employee of that department in excess of the sum of six thousand dollars ($6,000.00). (1929, c. 182, s. 1; 1933, c. 172, s. 16.)

Editor's Note.—Public Laws of 1933, c. 172, reduced the maximum salary from $10,000 to $6,000.

§ 3846(j). Powers of commission.—The said state highway commission shall be vested with the following powers:

(a) The general supervision over all matters relating to the construction of the state highways, letting of contracts therefor, and the selection of materials to be used in the construction of state highways under the authority of this article.

(b) To take over and assume exclusive control for the benefit of the state of any existing county or township roads, and to locate and acquire rights of way for any new roads that may be necessary for a state highway system, with full power to widen, relocate, change or alter the grade or location thereof: to change or relocate any existing roads that the state highway commission may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a state highway system: Provided, that nothing in this article shall be construed to authorize or permit the highway commission to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore contructed by any such county, township, city or town, unless contract has already been entered into with the state highway commission.

(c) To provide for such road materials as may be necessary to carry on the work of the state highway commission, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary for the construction of the system of state highways provided herein, upon first entering into a contract to furnish the state highway commission any of such material, at a price to be fixed by said highway commission, the state highway commission shall have the right to condemn the necessary right of way under the provisions of chapter thirty-three, consolidated statutes, to connect said deposit with any part of the system of state highways or public carrier.

(d) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the state highway commission with other public bodies, corporations, or persons.

(e) To make rules, regulations and ordinances for the use of, and the police traffic on, the state highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the state highway commission shall constitute a misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns.

(f) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the state highway system, which information shall be a part of the public records of the state, and upon which information the state highway commission shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(g) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the state highway system from date of acquiring said roads: Provided, the commission may enter into contracts with counties as to the maintenance of highways which shall form a part of the state highway system. The state highway commission shall have authority to maintain all streets constructed by the state highway commission in towns of less than three thousand population by the last census, and such other streets as may be constructed in towns and cities at the expense of the state highway commission, whenever in the opinion of the state highway commission it is necessary and proper so to do.

(h) To give suitable names to state highways and change the names of any highways that shall become a part of the state system of highways.

(i) To coöperate with municipal or county authorities, civic bodies and individuals in the proper selection, planting and protection of road-

side trees, shrubs and vines for the beautification and protection of said highways.

(j) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, and other similar obstructions that may, in the opinion of said highway commission, contribute to the hazard upon any of the said highways or in anywise interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said highway commission shall require the removal of, or changes in, the location of telephone, telegraph, or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, or other similar obstructions, the owners thereof shall at their own expense move or change the same to conform to the order of the said highway commission. Any violation of such rules and regulations or non-compliance with such orders shall constitute a misdemeanor.

(k) To regulate, abandon and close to use, grade crossings on any road designated as part of the state highway system, and whenever a public highway has been designated as part of the state highway system and the state highway commission, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the commission shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the commission shall have power to close to use and abandon such grade crossing and any other crossings adjacent thereto.

(l) The said state highway commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, construction, improvement and maintenance of roads under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the secretary of agriculture or otherwise provided by federal acts, and to do all other things necessary to carry out fully the coöperation contemplated and provided for by present or future acts of congress, for the construction or improvement and maintenance of rural post roads. The good faith and credit of the state are further hereby pledged to make available funds necessary to meet the requirements of the acts of congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this state during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the state are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the state highway commission and in order to enable it to meet the requirements of acts of congress with respect to federal aid funds apportioned to the state of North Carolina, the state treasurer be and he is hereby authorized, with the approval of the governor and council of state, to issue short term notes from time to time, and in anticipation of state highway revenue, and to be payable out of state highway revenue for such sums as may be necessary to enable the state highway commission to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000.00).

(m) The state highway commission is authorized and empowered to construct and maintain all walkways and driveways within the Mansion Square in the city of Raleigh including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(n) The state highway commission shall have authority to provide roads for the connection of air ports in the state with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(o) The state highway commission shall have authority to provide facilities for the use of water-borne traffic by establishing connections between the highway system and the navigable waters of the state by means of connecting roads and piers.

(p) The state highway commission shall have authority to designate any highways upon the state system as "light traffic roads" when, in the opinion of the state highway commission, such roads are inadequate to carry and will be injuriously affected by the maximum legal traffic loads; and all such roads so designated shall be conspicuously posted as "light traffic roads" and shall be so shown by appropriate designation upon the official maps published by the state highway commission; and the maximum load limits allowed by law for highways in this state shall, as to such light traffic roads, be reduced to the extent of twenty per cent: Provided, that no standard concrete highway or other highway built of material of equivalent durability shall be designated as a light traffic road. (1921, c. 2, s. 10; 1923, c. 160, s. 1; 1923, c. 247; 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 517, s. 1.)

Editor's Note.—

Public Laws of 1933, c. 517, added the last sentence of this section, relating to designation of light traffic roads.

Where the State Highway Commission has taken over the construction of a street and bridge within the incorporated limits of a town, the town is not thereby relieved of liability for an injury proximately caused by a dangerous condition of the street at the bridge when the town has had implied notice of such condition which had existed for several months, this section expressly excepting from its provisions streets in towns and cities. Pickett v. Carolina, etc., Ry., 200 N. C. 750, 158 S. E. 398.

Part 4. County, City and Town Roads

§ 3846(ff). Connection of highway with improved streets; pipe lines and conduits; cost.

This section applies only where the width of the street and the regular highway are the same. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212.

Art. 18. State Highway Patrol

§ 3846(hhh). State highway patrol transferred to revenue department.—The state highway patrol and all its books, office records, office, motors and all other equipment created by the acts of 1929, chapter 218, and as amended by the acts of 1931, chapter 381 codified as sections 3846(yy)-3846(ggg), shall be and the same is hereby transferred from the highway department to the department of revenue and from and after the first day of April, 1933, the aforesaid state highway patrol shall be under the direction and control of the department of revenue and subject to such orders, rules and regulations as may be adopted and put in force by the commissioner of revenue, and shall be required to perform other and additional duties as may be required of it by the commissioner of revenue in connection with the work of the motor vehicle bureau of this department. Said patrol shall also be required to perform such other and additional duties as may be required of it from time to time by the governor. The funds necessary to carry out the provisions of this section shall be appropriated to the department of revenue from the highway fund. Whenever, in said acts, the highway commission appears, the same shall be stricken out and in lieu thereof shall be inserted "the commissioner of revenue." (1933, c. 214, ss. 1, 2.)

§ 3846(iii). Additional duties.—In addition to the duties prescribed by the Acts of 1929, codified as sections 3846(yy)-3846(ggg), required to be performed by the highway patrol, the said highway patrol shall from time to time make an inspection of the illuminating oils, gasoline, naphtha, benzine, other petroleum products and other like liquid fluids used for the purpose of generating power in internal combustion engines for propulsion of motor vehicles and under such rules and regulations as may be adopted by the department of revenue; to collect samples of such oils, gasoline and other petroleum products as are offered for sale in this state and to transmit the same under such regulations as may be prescribed therefor by the commissioner of revenue to the department of agriculture in the city of Raleigh for analysis, and otherwise to do and perform all duties of inspection now required by law to be made of such illuminating oils, gasoline, and other petroleum products. (1933, c. 214, s. 3.)

§ 3846(jjj). Deputy inspectors of weights and measures.—The aforesaid highway patrol, or such members thereof as have the necessary qualifications and so designated by the commissioner of revenue, shall act in the capacity of, and perform such duties as required of, deputy inspectors of weights and measures as defined in chapter 261, public laws 1927 [sections 8064(k)-8064(l)], and their activities shall be governed by the same supervision, rules and regulations as set forth in said chapter 261, public laws 1927, relating to deputy or local inspectors: Provided, however, that the appointment, employment and/or assignment of said highway patrolman shall be made by the commissioner of revenue. (1933, c. 214, s. 4.)

§ 3846(kkk). Inspection of pumps, etc.—The activities of the highway patrol as mentioned in this section shall relate to the inspection of measuring pumps, measures, containers, devices and apparatus used in measuring and/or dispensing to the public gasoline, lubricating oil and illuminating oil and other petroleum products. (1933, c. 214, s. 5.)

§ 3846(lll). Analysis by commissioner of agriculture.—The commissioner of agriculture shall from time to time, as samples may be transmitted to him for analysis, provide for the analysis and examination of such samples as may be transmitted to him by the department of revenue or others under its direction in the laboratory now provided for such analysis, and shall cause to be promptly reported to the commissioner of revenue the results of such analysis. (1933, c. 214, s. 6.)

Art. 19. Management of County Roads Vested in State Highway Commission

§ 3846(2). Allocation of State Highway funds for use in counties.

Where the complaint in an action on the bond given by a contractor for construction of a highway alleges that a statement of the claim against the surety on the bond was filed with the defendant surety company within six months after the project was completed, it is a sufficient allegation of compliance with the provisions of this section. Bank of Wadeboro v. Northwestern Casaulty, etc., Co., 202 N. C. 148, 162 S. E. 236.

Art. 20. District Prison Camps and Working Prisoners on Roads

§ 3846(25). Minimum term for commitment.—No person shall be committed to any of the district camps by any court in this state, nor shall any person be received into the district camps, whose term of imprisonment is less than thirty (30) days: Provided, that in criminal actions in which a justice of peace has final jurisdiction no county shall be liable for or taxed with any costs. (1931, c. 145, s. 32; 1933, c. 39.)

Editor's Note.—The sentence specified in this section was reduced from sixty to thirty days by Public Laws 1933, c. 39.

CHAPTER 71

SALARIES AND FEES

Art. 2. Legislative Department

§ 3857(a). Compensation of employees of general assembly; mileage.—The principal clerks of the general assembly and chief clerk appointed by secretary of state in the enrolling office and chief engrossing clerks of the house and senate shall be allowed the sum of six dollars per day during the session of the general assembly, and mileage at the rate of five cents per mile from their homes to Raleigh and return. The secretary to the speaker of the house of representatives, the secretary to the lieutenant governor, the sergeant-at-arms, the assistants to the engrossing clerks, the assistant clerks to the princi-

pal clerks, and the assistant sergeant-at-arms of the general assembly, and the assistants appointed by the secretary of state to supervise the enrolling of bills and resolutions, the reading clerks of the general assembly shall receive the sum of five dollars per day, and mileage at the rate of five cents per mile from their homes to Raleigh and return. The clerks to all committees which by the rules of either house of the general assembly are entitled to clerks, shall receive four dollars per day during the session of the general assembly, and mileage at the rate of five cents per mile from their homes to Raleigh and return. The chief page of the house of representatives and senate shall receive three dollars and fifty cents per day during the session of the general assembly and mileage at the rate of five cents per mile from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive two dollars and one-half per day during the session of the general assembly and mileage at the rate of five cents per mile from their homes to Raleigh and return. All laborers of the first class authorized by law or the rules of either the house of representatives or the senate shall receive three dollars per day during the session of the general assembly and all mileage at the rate of five cents per mile from their homes to Raleigh and return, and laborers of the second class the sum of two dollars per day and mileage at the rate of five cents per mile from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1.)

Editor's Note.—Public Laws 1933, c. 6, substituted the above section for the former reading. A comparison of the two sections is necessary to determine the changes.

§ 3857(b). Laws repealed; exceptions.—All laws, and clauses of laws, parts of laws, rules or regulations of either house of representatives or senate other than sections 3855 and 3855(a) in conflict with sections 3857(a), are hereby repealed and declared null and void. (1925, c. 72, s. 2; 1929, c. 3, s. 2; 1933, c. 6, s. 2.)

Editor's Note.—This section was re-enacted by Public Laws 1933, c. 6, without change.

Art. 3. Executive Department

§ 3878. Presidential electors.—Presidential electors shall receive, for their attendance at the meeting of said electors in the city of Raleigh, the sum of $10.00 (Ten dollars) per day and traveling expenses at the rate of 5c (five cents) per mile in going to and returning from said meeting. (Rev., s. 2761; 1901, c. 89, s. 84; 1933, c. 5.)

Editor's Note.—Prior to Public Laws 1933, c. 5, this section provided for travelling expenses and compensation the same as allowed members of the General Assembly.

Art. 5. Solicitors, Jurors, and Witnesses

§ 3890. Solicitors; general compensation.—The several solicitors of the judicial districts of the state of North Carolina shall each receive, as full compensation for their services as solicitor, the sum of three thousand nine hundred dollars ($3,900.00) per annum, to be paid in equal monthly installments out of the state treasury upon warrants duly drawn thereon, which said salary shall be paid in lieu of all fees or other compensation. (Rev., s. 2767; Code, s. 3736; 1879, c. 240, s. 12; 1923, c. 157, s. 1; 1933, c. 78, s. 1.)

Editor's Note.—
Public Laws 1933, c. 78, reduced the sum allowed from $4500 to $3900.

§ 3890(a): Repealed by Public Laws 1933, c. 78, s. 2.

§ 3893. Fees and mileage of witnesses.—The fees of witnesses, whether attending at a term of court or before the clerk, or a referee, or commissioner, or arbitrator, shall be such amount per day as the board of commissioners of the respective counties may fix, to be not less than one dollar per day and not more than three dollars per day, except in the counties of Union, Nash, Brunswick, Randolph, Haywood, Polk, Surry, Swain, Alleghany, Anson, Graham, Ashe, Dare, Alexander, Cleveland, Clay, Transylvania, Harnett, Stanly, Mitchell, Burke, Franklin, Greene, Johnston, and Henderson, in which counties the fees shall be one dollar per day. They shall also receive mileage, to be fixed by the county commissioners of their respective counties, at a rate not to exceed five cents per mile for every mile necessarily traveled from their respective homes in going to and returning from the place of examination by the ordinary route, and ferriage and toll paid in going and returning. If attending out of their counties, they shall receive one dollar per day and five cents per mile going and returning by the ordinary route, and toll and ferriage expenses: Provided, that witnesses before courts of justices of the peace shall receive fifty cents per day in civil cases, and in criminal actions of which justices of the peace have final jurisdiction, witnesses attending the courts of justices of the peace, under subpœna, shall receive fifty cents per day, and in hearings before coroners witnesses shall receive fifty cents per day and no mileage; but the party cast shall not pay for more than two witnesses subpœnaed to prove any one material fact and no prosecutor or complainant shall pay any costs, unless the justice shall find that the prosecution was malicious and frivolous: Provided further, that experts, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may in its discretion order. Witnesses attending before the corporation commission shall receive two dollars per day and five cents per mile traveled by the nearest practicable route. All witnesses subpœnaed to attend courts of justices of the peace in Franklin county in the trial of civil or criminal cases in any township other than their resident townships shall be paid the same per diem and mileage that is now paid witnesses attending the superior courts: Provided further, that any sheriff, deputy sheriff, chief of police, police, patrolman, state highway patrolman, and/or any other law enforcement officer who receives a salary or compensation for his services from any source or sources other than the collection of fees, shall prove no attendance, and shall receive no fee as a witness for attending at any superior or inferior criminal court sitting within the territorial boundaries in which such officer has authority to make an arrest. (Rev., s. 2803; Code, ss. 2860, 3756; 1891, c. 147; 1905, cc. 279,

522; P. L. 1911, c. 402; Ex. Sess. 1920, c. 61, ss. 2, 3; 1921, c. 62, s. 2; 1933, c. 40.)

Editor's Note.—
Public Laws 1933, c. 40, added the proviso, at the end of this section, abolishing witness fees for police officers on salaries. Public Laws 1933, c. 495 amends the prior 1933 amendment by providing that the act "shall not apply to officers who, under contract of employment, receive as part of their compensation fees allowed by law," but limits the application of this second amendment to Rutherford, Polk, McDowell, Cleveland and Henderson counties.

The amount to be paid an expert witness testifying at a hearing before a commissioner of the industrial commission in proceedings before him under the Workmen's Compensation Act is a question to be determined in the discretion of the court and the witness may not require that it be fixed in advance before testifying as to a material matter involved in the inquiry. In re Hayes, 200 N. C. 133, 156 S. E. 791.

Art. 7. County Officers

§ 3903. Clerk of superior court.

Editor's Note.—
For act regulating fees of courts and officers in county of Harnett, see 1933, c. 75. Public Laws 1933, c. 91 repealed the provision of Public Laws 1929, c. 45 which provided for fees in Halifax county.

§ 3904. Local modifications as to clerk's fees.—For the probate of a short-form lien bond, or lien bond and chattel mortgage combined, the clerk shall receive ten cents in the following counties: Alamance, Alleghany, Ashe, Beauford, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Greene, Harnett, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Union, Vance, Warren, Washington, Watauga, Wayne, Wilson. (Rev., s. 2773; 1907, c. 717; 1909, c. 502; 1917, c. 182; 1933, c. 84.)

In Anson, this fee is twenty cents. (1913, c. 49.)

In Bertie county the clerk of the superior court shall collect the sum of fifteen cents for each crop lien or lien bond probated by him for registration in Bertie county, including all services connected therewith. (1915, c. 163.)

In Forsyth county the clerk shall receive fifteen cents for the probate of a deed or other writing, acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof. He shall also receive fifteen cents for the probate of a deed or other writing, proved by a witness, including the certificate. (1913, c. 626.)

In Jackson county, in addition to the fees now allowed by law, the clerk shall receive the sum of five dollars for writing up the minutes of each day's session of the superior court of the county, to be paid by the county. (1913, c. 182.)

In Robeson county the board of county commissioners may make an allowance to the clerk of the superior court for keeping the records of the courts and transcribing the minutes, to be paid out of the general county fund. (Rev., s. 2773.)

From and after February 27, 1923, it shall be unlawful for the clerks of the superior courts of Vance, Warren, Northampton, Wayne and Bertie counties to charge fees for witness and juror tickets issued by them. (1923, c. 92.)

In Mitchell county, the clerk of superior court shall receive double the amount of fees and commissions as provided in section three thousand and nine hundred and three of this chapter. (1931, c. 53.)

Editor's Note.—Public Laws 1933, c. 84, inserted Scotland in the list of counties appearing in the first paragraph. For act regulating fees of courts and officers in county of Hartnett, see 1933, c. 75.

§ 3904(a). Fees for recording federal crop liens and chattel mortgages. — The fee to be charged by the clerk of the superior court for the probate of a federal crop lien or a federal chattel mortgage given to secure a seed and fertilizer loan from the United States government or crop production loans, live stock loans, and/or other loans made by the regional agriculture credit corporation of Raleigh, North Carolina, shall be limited to twenty-five cents for each probate; and the fee of the register of deeds for registering said instrument shall be limited to fifty cents for each lien or chattel mortgage: Provided that this section shall not apply to Brunswick, Caswell, Harnett, Haywood, Hertford, Jackson, Johnston, Macon, Moore, Person, Polk, Richmond, Stokes, Surry and Wilson counties. (1933, cc. 160, 176, 266, 281, 326, 393, 429, 479, 514.)

§ 3904(b). Fees for issuing certificates of encumbrances.—The fee charged by the register of deeds for preparing and issuing a certificate of encumbrance as required for federal chattel mortgages and/or crop liens shall be limited to fifty (50c) cents for each such certificate. (1933, c. 437.)

§ 3907. Local modification as to fees of registers of deeds.—The register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, fifty cents in the counties of Davidson, Halifax, Northampton, Union, Vance, Warren and Wayne; thirty cents in the counties of Alamance, Alleghany, Anson, Ashe, Beauford, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Washington, Watauga and Wilson; twenty cents in the counties of Chatham, Columbus, Cleveland, Iredell, Johnston and Mecklenburg. (Rev., s. 2776; 1907, cc. 421, 636, 717; 1909, cc. 23, 532; P. L. 1913, c. 49; P. L. 1917, c. 182; 1933, c. 48.)

In Alexander county the board of county commissioners are authorized and empowered to pay the register of deeds the sum of one cent each per name for indexing births and deaths in said county. Likewise in Cleveland county. (P. L. 1915, c. 513; P. L. 1917, c. 423.)

In Catawba county the register of deeds shall be allowed as a fee for his services for registering any deed of trust, in which real property is conveyed to a trustee to secure a loan from a

building and loan association, the sum of eighty cents. (1909, c. 43.)

In Forsyth county the register shall receive for registering any deed or other writing authorized to be registered with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, sixty-five cents; and for every additional copy-sheet, ten cents: Provided, that the registration of any deed of trust shall not cost more than one dollar and ten cents, where the same does not contain more than four copy-sheets, and for every additional copy-sheet, ten cents each. (Rev., s. 2776; P. L. 1913, c. 626; P. L. Ex. Sess. 1913, c. 177.)

In Jackson county the register shall, for his service in acting as clerk of the board of commissioners, for recording minutes, and doing other clerical work for or under the direction of the board of commissioners, receive three dollars per day, to be paid by the county. (P. L. 1913, c. 182.)

In Tyrrell county the register shall receive for canceling mortgages, deeds of trust or instruments intended to secure the payment of money, fifteen cents. (1909, c. 780.)

In Union county the county commissioners may revise the fees and commissions which may be charged by the register of deeds, and may fix all such fees and commissions at such amounts and rates as in their judgment will give the register of deeds and his deputies and assistants reasonable compensation. The fees and commissions so fixed shall be the legal fees chargeable by and payable to the register of deeds. (P. L. 1917, c. 366.)

In Gates county the register of deeds shall receive for canceling of a mortgage or deed of trust, ten cents. (P. L. 1919, c. 4.)

In Wake county the register of deeds shall charge and receive the following fees for registration of the papers herein mentioned, to wit: For registration lien bond, fifty cents; for registering short form of chattel mortgage provided for securing a sum not exceeding three hundred dollars, thirty cents; for registering short form of agricultural lien and chattel mortgage for advances, thirty cents; for registering short form of crop lien to secure advances and chattel mortgage to secure pre-existing debt, and to give additional security to the lien, thirty cents; for registering short-form notes given for the purchase price of personal property or combining also a conveyance of the property or other additional property as security, and retaining title to the property sold, twenty cents. (P. L. 1915, c. 138.)

In Yadkin county the fees for recording chattel mortgages, crop liens, conditional sales, etc., shall be twenty cents for the first two copy-sheets or fraction thereof and ten cents for each additional copy-sheet or fraction thereof. (P. L. 1911, c. 414.)

Editor's Note.—
Public Laws of 1933, c. 66, changed the fee for Scotland county from fifty cents to thirty cents.

Public Laws 1933, c. 91 repealed the provision of Public Laws 1929, c. 45 which provided for fees in Halifax county.

§ 3908. Sheriffs.—Sheriffs shall be allowed the following fees and expenses, and no other, namely:

Executing summons or any other writ or notice, sixty cents; but the board of county commissioners may fix a less sum than sixty cents, but not less than thirty cents, for the service of each road order.

Arrest of a defendant in a civil action and taking bail, including attendance to justify, and all services connected therewith, one dollar.

Arrest of a person indicted, including all services connected with the taking and justification of bail, one dollar.

Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents.

Executing subpoena on a witness, thirty cents.

Conveying a prisoner to jail to another county, five cents per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, one dollar.

In claim and delivery for serving the original papers in each case, sixty cents, and for taking the property claimed, one dollar, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, two dollars per day and actual necessary expenses; also one dollar a day and actual necessary expenses for each guard, not to exceed one guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the board of commissioners of the county in which the criminal proceedings were instituted.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commissions for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, fifteen cents.

Seizing specific property under order of a court, or exceeding any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, fifty cents.

The actual expense of keeping all property

seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

A capital execution, ten dollars, and actual expense of burying the body.

Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on the special venire.

For serving any writ or other process with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and five cents per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs.

For levying an attachment, one dollar.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, one dollar; and for attendance, to qualify commissioners for any other purpose, seventy-five cents.

Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser.

Service of writ of ejectment, one dollar.

For every execution, either in civil or criminal cases, fifty cents.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service not only the fees allowed by law, but a further compensation of five cents for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled. [Provided, that when the summons in a civil action or special proceedings shall be from any court of any county other than his own county, the sheriff's fees for serving the same shall be one dollar ($1) for each defendant named therein; and such service shall include the delivery of copy of said summons and complaint or petition attached to the original summons; and that for subpoenas served from other than the county of said sheriff he shall receive a fee of fifty cents (50c.) for each witness named therein.

The part of this section in brackets shall not affect fees provided in section three thousand nine hundred and nine of the consolidated statutes for service upon the waters of the counties of Carteret, Dare, Hyde, and Pamlico.] For the service of summons together with a copy of the complaint, petition or other pleading, the sheriff shall have the fees now prescribed by law in the respective counties for the service of summons only, and shall not be entitled to an additional fee for serving the copy of the pleading unless it is necessary that it be served separately. (Rev., s. 2777; Code, ss. 931, 2035, 2089, 2090, 3752; 1885, c. 262; 1891, cc. 112, 143; 1903, c. 541; 1901, c. 64; R. C., c. 102, s. 21; R. C. c. 31, s. 56; 1822, c. 1132; 1924, c. 101; 1925, c. 275, s. 6; 1929, c. 227; 1933, c. 132.)

Editor's Note.—

Public Laws of 1933, c. 132, reduced the mileage fee for bringing up a prisoner upon habeas corpus from ten cents per mile to five cents per mile. For act regulating fees of courts and officers in county of Harnett, see 1933, c. 75.

CHAPTER 71A

SECURITIES LAW

§ 3924(b). Definitions — When used in this act.—

(a) The term "commissioner" shall mean the member of the corporation commission of North Carolina, designated by the governor to administer this act, and the term "commission" shall mean the corporation commission of North Carolina, which is charged with certain duties under the terms of this act.

(b) The term "person" shall mean and include a natural person, firm, partnership, association, syndicate, joint-stock company, unincorporated company or organization, trust incorporated or unincorporated and any corporation organized under the laws of the District of Columbia, or of any foreign government. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.

(c) The term "securities" or "security" shall include any note, stock certificate, stock, treasury stock, bond, debenture, evidence of indebtedness, transferable certificate of interest or participation, certificate of interest in a profit-sharing agreement certificate of interest in an oil, gas or mining lease, collateral trust certificate, any transferable share, investment contract, or beneficial interest in or title to property or profits or any contract or agreement in the promotion of a plan or scheme whereby one party undertakes to purchase the increase or production of the other party from the article or thing sold under the plan or scheme, or whereby one party is to receive the profits arising from the increase or production of the article or thing sold under the plan or scheme, or any other instrument commonly known as security.

(d) The term "sale" shall include any agreement whereby a person transfers or agrees to transfer either the ownership of or an interest in a security. Any security given or delivered with or as a bonus on account of any purchase of securities, or of any other thing shall be deemed to constitute a part of the subject of such purchase and to have been sold for value. "Sale," or "sell" shall also include an attempt to sell, an option of a purchase or sale, a solicitation of a sale, a subscription, or an offer to sell, either directly or by agent, or by a circular letter, advertisement, or otherwise; but nothing herein shall limit or diminish the full meaning of the term "sell" or "sale" as used by or accepted in courts of law or equity:

Provided, that a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same issuer shall not be deemed a sale, or offer to sell, or option of sale of such other security within the meaning of this definition and such privilege shall not be construed as affecting the status of the security to which such privilege pertains with respect to exemption or registration under the provisions of this act, but when such privilege of conversion shall be exercised such conversion shall be subject to the limitations hereinafter provided in subsection (8) of section 3924(d); and provided further, that the issue or transfer of a right pertaining to a security entitling the holder to subscribe to another security of the same issuer, when such right is issued or transferred with the security to which it pertains, shall not be deemed a sale or offer to sell or option of sale of such other security within the meaning of this definition, and such right shall not be construed as affecting the status of the security to which such right pertains with respect to exemption or registration under the provisions of this act; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this act.

(e) The term "issuer" shall include every person who proposes to issue or who issues or who has issued or shall hereafter issue any security (sold or to be sold, offered or to be offered for sale).

(f) The term "intangible assets" shall mean and include patents, formula, good will, promotions, trade brands, franchises, evidences of indebtedness or corporate securities, titles or rights in and to intangible property, and all other like assets.

(g) "Tangible assets" shall mean all assets other than intangible assets, as above defined.

(h) "Mortgage" shall be deemed to include a deed of trust to secure a debt. (1925, c. 190, s. 2; 1927, c. 149, s. 2; 1933, c. 432.)

Editor's Note.—
Public Laws of 1933, c. 432, inserted in subsection (3) the provision relating to contracts "whereby one party undertakes to purchase an increase or production of the party," etc.

CHAPTER 76
SURETYSHIP

§ 3964. Subrogation of surety paying debt of deceased principal.

Applied, in subrogating widow to rights of mortgagee where policy in which she is named beneficiary is assigned to and paid to mortgagee, in Russel v. Owen, 203 N. C. 262, 165 S. E. 687.

CHAPTER 78
TRUSTEES

Art. 1. Investment and Deposit of Trust Funds

§ 4018(b). Investment in building and loan associations.—Guardians, executors, administrators, clerks of the superior court and others acting in a fiduciary capacity may invest funds in their hands as such fiduciaries in stock of any building and loan association organized and licensed under the laws of this state: Provided, that no such funds may be so invested unless and until authorized by the insurance commissioner. (1933, c. 549, s. 1.)

Art. 3. Resignation of Trustee

§ 4023. Clerk's power to accept resignations.

Section Not Extended to Give Jurisdiction. — The equitable jurisdiction of the Superior Courts does not extend to the clerks of court unless expressly given by statute, and this and following sections giving clerks of court a limited power to appoint trustees in certain instances will not be extended to give them jurisdiction of any proceeding unless clearly within the provisions of the statutes. In re Smith, 200 N. C. 272, 156 S. E. 494.

Art. 4. Charitable Trusts

§ 4033. Trustees to file accounts.

Trust Estate Is Not Forfeited.—The trustees of a charitable trust who violate the provisions of the trust are subject to the procedure prescribed by this section, and where the trust is created by will the trust estate is not forfeited in favor of a residuary legatee solely upon the ground that the moneys derived have been diverted to other uses than the testator intended. Humphrey v. Board of Trustees, 203 N. C. 201, 165 S. E. 547.

§ 4035(a). Indefiniteness; title in trustee; vacancies.

Details of Administration May Be Left to Trustee.—A charity in its legal sense is a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, and it is the policy of this State, as indicated by our statutes, not to declare such gift void because created for the benefit of an indefinite class, and if the founder describes the general nature of the charitable trust he may leave details of its administration to duly appointed trustees. Whitsett v. Clapp, 200 N. C. 647, 158 S. E. 183.

CHAPTER 80
WIDOWS

Art. 2. Dower

§ 4100. In what property widow entitled to dower.

II. PROPERTY SUBJECT TO DOWER.

A. In General.

Mortgaged Property.—Under this section where an entire transaction was in effect an indirect mortgage on the property of a father and his children received no consideration and acquired no beneficial interest in the lands, the sole beneficial interest in the lands was in the father, and upon his death his widow is entitled to her dower rights in the lands. Stack v. Stack, 202 N. C. 461, 163 S. E. 589.

§ 4102. Dower conveyed by wife's joinder in deed.

Dower Need Not Be Sold When Estate Is Solvent.—The widow may subject her dower to the payment of the debts of her husband's estate by joining in his mortgage deed or conveyance in conformity to the requirements of this section, yet if his estate is solvent the dower need not be sold, and in the event that it is insolvent the estate must be administered according to the established rules. Holt v. Lynch, 201 N. C. 404, 160 S. E. 469.

CHAPTER 81
WILLS

Art. 1. Execution of Will

§ 4131. Formal execution.

II. SIGNING ATTESTATION AND DATE.

Name in Body Sufficient.—
Under this section a paper-writing in the testator's handwriting, dispositive on its face, with the name of the testator inserted therein in his own handwriting followed by the words "this being my will" is sufficient in form to constitute a holographic will. In re Rowland, 202 N. C. 373, 162 S. E. 897.

Art. 4. Probate of Will

§ 4139. Executor may apply for probate.

Citation to those in interest is not necessary to the probate of a will in common form, the proceeding being ex parte, and when probated the paper-writing is valid and operative as a will and may not be attacked collaterally. In re Rowland, 202 N. C. 373, 162 S. E. 897.

Appointment Is Reviewable.—The power, conferred by this section, to appoint administrators or executors is reviewable to the judge of the Superior Court of the county. In re Estate of Wright and Wright v. Ball, 200 N. C. 620, 158 S. E. 192.

§ 4140(a). Clerk to notify legatees and devisees of probate of wills. — The clerks of the superior court of the state are hereby required and directed to notify by mail, all legatees and devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates. (1933, c. 133.)

§ 4145. Probate conclusive until vacated.

Cannot Be Collaterally Attacked.—
A will which has been duly probated in common form may not be collaterally attacked even for fraud. Crowell v. Bradsher, 203 N. C. 492, 166 S. E. 731.

§ 4147. Certified copy of will proved in another state. — When a will, made by a citizen of this state, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this state, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original. (Rev., s. 3130; Code, s. 2157; C. C. P., s. 445; R. C., c. 44, s. 9; 1802, c. 623.)

§ 4149. Probate when witnesses are nonresident. — Where one or more of the subscribing witnesses to the will of a testator, resident in this state, reside in another state, or in another county in this state than the one in which the will is being probated, the examination of such witnesses may be had, taken and subscribed in the form of an affidavit, before a notary public residing in the county and state in which the witnesses reside; and the affidavits, so taken and subscribed, shall be transmitted by the notary public, under his hand and official seal, to the clerk of the court before whom the will has been filed for probate. If such affidavits are, upon examination by the clerk, found to establish the facts necessary to be established before the clerk to authorize the probate of the will if the witnesses had appeared before him personally, then it shall be the duty of the clerk to order the will to probate, and record the will with the same effect as if the subscribing witnesses had appeared before him in person and been examined under oath. (1917, c. 183; 1933, c. 114.)

Editor's Note.—Public Laws 1933, c. 114, inserted, near the beginning of this section, the words "or in another county in this state than the one in which the will is being probated."

Art. 5. Caveat to Will

§ 4158. When and by whom caveat filed.

What Propounder Must Prove on Caveat Being Filed. — When an issue of devisavit vel non is raised by caveat, it is tried in the Superior Court in term by a jury. Upon such trial the propounder carries the burden of proof to establish the formal execution of the will. This he must do by proving the will per testes in solemn form. In re Rowland, 202 N. C. 373, 375, 162 S. E. 897.

§ 4161. Caveat suspends proceedings under will.

Effect of Caveat upon Rights and Duties of Representative.—In the observance of the mandate to preserve the property the executor may operate and manage the property in the exercise of that degree of care, diligence and honesty which he would exercise in the management of his own property, or he may institute a civil action in which all persons having an interest are made parties and request the court in its equity jurisdiction to authorize such operation, or he may apply to the clerk in his probate jurisdiction for such authorization. Hardy & Co. v. Turnage, 204 N. C. 538, 168 S. E. 823.

Art. 6. Construction of Will

§ 4162. Devise presumed to be in fee.

Editor's Note.—
The common-law rule that a devise without words of perpetuity or limitation conveyed a life estate only unless there is a manifest intention to convey the fee has been changed by this section. Henderson v. Western Carolina Power Co., 200 N. C. 443, 157 S. E. 425.

Unrestricted Devise Passes Fee.—
A devise will be construed to be in fee simple unless an intention to convey an estate of less dignity is apparent from the will, and regard will be had to the natural objects of the testator's bounty, and the testator's intention as gathered from the whole instrument will be given effect unless it is contrary to some rule of law or public policy. Jolley v. Humphries, 204 N. C. 672, 169 S. E. 417.

Under this section the fee generally passes upon a devise of the proceeds of land when an intention to separate the income from the principal is not expressed, or where the devise is general and the devisee is given the power of disposition, or a limitation over is made of such part as may not be disposed of by the first taker. Hambright v. Carroll, 204 N. C. 496, 168 S. E. 817.

In construing wills the courts will endeavor to ascertain the intent of the testator as expressed in the words used, and in cases of doubt resort may be had to the usual canons of interpretation, and a devise will be construed to be in fee unless it appears from the will that the testator intended to convey an estate of less dignity. Bell v. Gillam, 200 N. C. 411, 157 S. E. 60.

§ 4164. What property passes by will.

Where a will is susceptible to two reasonable constructions, one disposing of all of the testator's property, and the other leaving part of the property undisposed of, the former construction will be adopted and the latter rejected, there being a presumption against partial intestacy. Holmes v. York, 203 N. C. 709, 166 S. E. 889.

§ 4166. Lapsed and void devises pass under residuary clause.

Whether a clause is a residuary clause is not dependent upon any particular form of expression but upon the intention of the testator, and where a will provides that after the termination of a life estate that the whole estate should be reduced to cash and, after payment of certain specific bequests, distributed among a specific class, where the legacy of one of the class lapses by the death of the legatee prior to the testator's death, the amount of such legacy is thrown into the fund for distribution among the class named, and it does not go to the next of kin of the legatee. Stevenson v. Wachovia Bank, etc., Co., 202 N. C. 92, 161 S. E. 728.

CHAPTER 82

CRIMES AND PUNISHMENTS

SUBCHAPTER II. OFFENSES AGAINST THE STATE

Art. 4. Counterfeiting and Issuing Monetary Substitutes

§ 4183. Issuing substitutes for money without authority.

For act permitting the issuance of script in Currituck

county, see Public Laws 1933, c. 328. For act authorizing issuance of script in Cumberland county, see Acts of 1933, c. 33.

SUBCHAPTER III. OFFENSES AGAINST THE ELECTIVE FRANCHISE

Art. 5. Corrupt Practices at Elections

§ 4185(a). Intimidation of voters by officers made misdemeanor.—It shall be unlawful for any person holding any office, position, or employment in the state government, or under and with any department, institution, bureau, board, commission, or other state agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which such subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine and/or imprisonment, in the discretion of the court. (1933, c. 165, s. 25.)

SUBCHAPTER IV. OFFENSES AGAINST THE PERSON

Art. 7. Homicide

§ 4200. Murder in the first and second degree defined; punishment.

III. MURDER IN THE FIRST DEGREE.

Killing in Perpetration of Robbery.—

Where all the evidence for the State tends to show that the defendants killed the deceased while attempting to rob him, the crime is murder in the first degree, under this section, and the failure of the trial court to submit the issue of guilty of murder in the second degree is not error. State v. Donnell, 202 N. C. 782, 164 S. E. 352.

Where upon a trial for murder all the evidence and inferences therefrom unquestionably tend to show that the deceased was killed by one lying in wait and for the purpose of robbery, with evidence tending to establish that the defendant had perpetrated the crime, and there is no evidence in mitigation of the offense, the evidence establishes the crime of murder in the first degree under this section, and an instruction to the jury either to convict the defendant of murder in the first degree, or to aquit him is not error. State v. Myers, 202 N. C. 351, 162 S. E. 764.

Evidence tending to show that defendant killed the deceased with a deadly weapon while attempting to perpetrate a robbery is sufficient to be submitted to the jury on the issue of first degree murder, the credibility and probative force of the evidence being for the jury. State v. Langley, 204 N. C. 687.

Evidence tending to show that the prisoner with another entered a store with intent to rob its cash drawer, and shot and killed the deceased is of an attempt to commit a felony and sufficient to sustain a verdict of murder in the first degree, as defined by this section, under proper instructions from the court thereon upon conflicting evidence. State v. Sterling, 200 N. C. 18, 19, 156 S. E. 96.

§ 4201. Punishment for manslaughter.—If any person shall commit the crime of manslaughter he shall be punished by imprisonment in the county jail or state prison for not less than four months nor more than twenty years: Provided, however, that in cases of involuntary manslaughter, the punishment shall be in the discretion of the court, and the defendant may be fined or imprisoned, or both. (Rev., s. 3632; Code, s. 1055; 1879, c. 255; R. C., c. 34, s. 24; Hen. VII, c. 13; 1816, c. 918; 1933, c. 249.)

Editor's Note.—Public Laws of 1933, c. 249, added the proviso at the end of this section, relating to involuntary manslaughter.

Punishment Not Reviewable on Appeal.—The question of the imposition of a sentence on the prisoner convicted of manslaughter within the maximum and minimum allowed by this section, is within the discretion of the trial court and is not reviewable on appeal. State v. Fleming, 202 N. C. 512, 163 S. E. 453.

Art. 9. Assaults

§ 4213. Maliciously assaulting in a secret manner.

Instruction.—For charge not sufficiently explaining the offense, see State v. Vanderburg, 200 N. C. 713, 158 S. E. 248.

§ 4215. Punishment for assault. — In all cases of an assault, with or without intent to kill or injure, the person convicted shall be punished by fine or imprisonment, or both, at the discretion of the court: Provided, that where no deadly weapon has been used and no serious damage done, the punishment in assaults, assaults and batteries, and affrays shall not exceed a fine of fifty dollars or imprisonment for thirty days; but this proviso shall not apply to cases of assault with intent to kill or with intent to commit rape, or to cases of assault or assault and battery by any man or boy over eighteen years old on any female person: Provided, that in all cases of assault, assault and battery, and affrays, wherein deadly weapons are used and serious injury is inflicted, and the plea of the defendant is self-defense, evidence of former threats against the defendant by the person alleged to have been assaulted by him, if such threats shall have been communicated to the defendant before the altercation, shall be competent as bearing upon the reasonableness of the claim of apprehension by the defendant of death or serious bodily harm, and also as bearing upon the amount of force which reasonably appeared necessary to the defendant, under the circumstances, to repel his assailant. (Rev., s. 3620; Code, s. 987; 1870-1, c. 43, s. 2; 1873-4, c. 176, s. 6; 1879, c. 92, ss. 2, 6; 1911, c. 193; 1933, c. 189.)

Editor's Note.—Public Laws of 1933, c. 189, added the proviso, at the end of this section, relative to the admission of any evidence of threats of assailant.

Art. 11. Kidnapping and Abduction

§ 4221(a). Kidnapping. — It shall be unlawful for any person, firm or corporation, or any individual, male or female, or its or their agents, to kidnap or cause to be kidnapped any human being, or to demand a ransom of any person, firm or corporation, male or female, to be paid on account of kidnapping, or to hold any human being for ransom: Provided, however, that this section shall not apply to a father or mother for taking into their custody their own child.

Any person, or their agent, violating or causing to be violated any provisions of this section shall be guilty of a felony, and upon conviction

therefor, shall be punishable by imprisonment for life.

Any firm or corporation violating, or causing to be violated through their agent or agents, any of the provisions of this section, and upon being found guilty, shall be liable to the injured party suing therefor, the sum of twenty-five thousand dollars ($25,000), and shall forfeit its or their charter and right to do business in the state of North Carolina. (1933, c. 542.)

Art. 12. Abortion and Kindred Offenses

§ 4226. Using drugs or instruments to destroy unborn child.

Admissibility of Statement Made Four Months Prior to Abortion.—Upon the trial of a physician for procuring an abortion testimony of a conversation between the physician and the woman as to an abortion about four months prior to the time in controversy is irrelevant and incompetent and its admission in evidence is prejudicial to the defendant and constitutes reversible error. State v. Brown, 202 N. C. 221, 162 S. E. 216.

SUBCHAPTER V. OFFENSES AGAINST THE HABITATION AND OTHER BUILDINGS

Art. 15. Arson and Other Burnings

§ 4242. Setting fire to churches and certain other buildings.

IV. QUESTION FOR JURY.

Must Be Sufficient Evidence.—

Where, in a prosecution under this section, the evidence fails to establish the felonious origin of the fire or the identity of the defendant as the one who committed the offense charged, or circumstances from which these facts might reasonably be inferred, it is insufficient to be submitted to the jury. State v. Church, 202 N. C. 692, 163 S. E. 874.

§ 4245. Fraudulently setting fire to dwelling-houses.

Specifying Particular Fraudulent Purpose.—Where in a prosecution under this section the indictment charges that the defendant burned his dwelling-house for the fraudulent purpose of obtaining insurance money thereon, and the court charges the jury that if they should find beyond a reasonable doubt that the defendant did the act charged for a fraudulent purpose, it was not necessary for the bill of indictment to specify any particular fraudulent purpose, and the unnecessary allegation in the bill is not, necessarily, fatal. State v. Morrison, 202 N. C. 60, 161 S. E. 725.

SUBCHAPTER VI. OFFENSES AGAINST PROPERTY

Art. 16. Larceny

§ 4250. Receiving stolen goods.

The inference or presumption arising from the recent possession of stolen property, without more, does not extend to the charge of this section of receiving said property knowing it to have been feloniously stolen or taken. State v. Best, 202 N. C. 9, 10, 161 S. E. 535; State v. Lowe, 204 N. C. 572, 573, 169 S. E. 180.

Art. 18. Embezzlement

§ 4270. Embezzlement of funds by public officers and trustees.

Meaning of "Wilfully and Corruptly."—In a charge upon the trial of county officials for the misapplication of county funds under the provisions of this section, the definition that "wilfully and corruptly" meant with "bad faith and without regard to the rights of others and in the interest of such parties for whom the funds were held" is not erroneous under the circumstances of this case. State v. Shipman, 202 N. C. 518, 163 S. E. 657.

§ 4274(a). Appropriation of partnership funds by partner to personal use.

Fraudulent intent is an essential element of this crime and must be proved by the State, and in a prosecution under this section an instruction that the jury should return a verdict of guilty if they found beyond a reasonable doubt the facts to be as the evidence tended to show, is error, the question of fraudulent intent being a question for the jury to determine from the evidence. State v. Rawls, 202 N. C. 397, 162 S. E. 899.

§ 4276. Embezzlement by tax officers.

Inference of Fraudulent Intent.—While the intent to commit the offense of embezzlement is an essential ingredient of the crime, the fraudulent intent may be inferred by the jury under evidence sufficient to show it, and where under such evidence the trial court correctly defines such intent, and places the burden of proof throughout the trial on the State to show the intent beyond a reasonable doubt, an exception that the court failed to instruct the jury upon the element of felonious intent is untenable. State v. Lancaster, 202 N. C. 204, 162 S. E. 367.

Art. 19. False Pretenses and Cheats

§ 4283(a). Worthless checks.—It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor. [If the amount due on such check is not over fifty dollars, the punishment shall not exceed a fine of fifty dollars or imprisonment for thirty days.]

The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft. The part of this section in brackets shall only apply to Pitt county, Robeson county, Iredell county, Martin county, Lee county, Rutherford county, Bladen county, Cumberland county, Mecklenburg county, Catawba county, Sampson county, Alleghany county, Lenoir county, Randolph county, Gaston county, Hoke county, Madison county, Burke county, Transylvania county, Rockingham county, Halifax county, Hertford county, Richmond county, Chatham county, Pamlico county, Wake county, Haywood county, Davidson county, Anson county, Carteret county, Davie county, Forsyth county, Greene county, Jackson county, Henderson county, Stokes county, Onslow county, Macon county, Currituck county, Chowan county, Vance county, Edgecombe county, Northampton county, Stanly county, Cabarrus county, Mitchell county, Yancey county, Avery county, Alamance county, Franklin county, Yadkin county, Caldwell county, Gates county, Ashe county, Washington county, Nash county, Johnston county, Duplin county, Wayne county, Guilford county, Rowan county, Bertie county, Moore county, Harnett county, Columbus county, Watauga county, Lincoln county, Caswell county, Orange county, Buncombe county, Wilkes county, Hyde county, Durham county, Swain county, Clay county, Graham county, Cherokee county, Scotland county, Union county, and Surry county. (1927, c. 62; 1929, c. 273, ss. 1, 2; 1931, cc. 63, 138, 292; 1933, cc. 43, 64, 93, 170, 265, 362, 458.)

Editor's Note.—

The various amendments by Public Laws 1933, c. 43, did

not affect the substance of the section but merely added counties to the list in the last paragraph.

Cited in State v. Byrd, 204 N. C. 162, 167 S. E. 626.

§ 4284. Obtaining entertainment at hotels and boarding-houses without paying therefor.

Editor's Note.—

By P. L. 1933, c. 531, the application of the Act of 1929, c. 103, described in the Editor's note, is extended to Buncombe, Jackson and Franklin counties.

SUBCHAPTER VII. CRIMINAL TRESPASS.

Art. 22. Trespasses to Land and Fixtures.

§ 4309. Setting fire to grass and brush lands and wood lands.

No Evidence to Show Fire Started by Defendant.—Where the evidence tends only to show that the fire started on defendant's land and spread to the plaintiff's land, but that the defendant had ordered his employees not to set out a fire on account of the dry conditions, and there is neither direct nor circumstantial evidence tending to show the fire had been started either by the defendant or his employees under his authority, a judgment as of nonsuit is proper. Sutton v. Herrin, 202 N. C. 599, 163 S. E. 578.

Art. 23B. Regulating the Leasing of Storage Batteries

§ 4335(f). "Rental battery" defined; identification of rental storage batteries.—As used in this article the words "rental battery" are defined as an electric storage battery loaned, rented or furnished for temporary use by any person, firm or corporation engaged in the business of buying, selling, repairing or recharging electric storage batteries. All such persons, firms or corporations may mark any such rental batteries belonging to them with the word "rental," or any other word of similar meaning, printed or stamped upon or attached to such battery together with such words as shall identify such batteries as the property of the person, firm or corporation so marking the same. It shall be unlawful for any person, firm or corporation to so mark any such batteries which are not the property of such person, firm or corporation. (1933, c. 185, s. 1.)

§ 4335(g). Defacing word "rental" prohibited.—It is unlawful for any person, firm or corporation to remove, deface, alter or destroy the word "rental" on any rental battery or any other word, mark or character printed, painted or stamped upon or attached to any rental battery to identify the same as belonging to or being the property of any person, firm or corporation. (1933, c. 185, s. 2.)

§ 4335(h). Sale, etc., of rental battery prohibited. — It is unlawful for any person, firm or corporation other than the owner thereof to sell, dispose of, deliver, rent or give to any other person, firm or corporation any rental battery marked by the owner as provided by section 4335(f). (1933, c. 185, s. 3.)

§ 4335(i). Repairing another's rental battery prohibited.—It is unlawful for any person, firm or corporation engaged in the business of buying, selling, repairing or recharging electric storage batteries to recharge or repair any rental battery not owned by such person, firm or corporation marked by the owner thereof as provided by section 4335(f). (1933, c. 185, s. 4.)

§ 4335(j). Time limit on possession of rental battery without written consent.—It is unlawful for any person, firm or corporation to retain in his, their or its possession for a longer period than ten (10) days, without the written consent of the owner, any rental battery marked as such by the owner as provided by section one of this article. Demand must be made on any person who so retains a rental battery in his possession at least five days before a prosecution can be instituted: Provided, however, that proof of a registered letter having been sent to the person so offending at his last known address shall be accepted as conclusive evidence of such demand. (1933, c. 185, s. 5.)

§ 4335(k). Violation made misdemeanor.—Any person, firm or corporation, and the officers, agents, employees, and members of any firm or corporation violating any of the provisions of sections 4335(f)-4335(j) shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding fifty dollars or be imprisoned for a term of not exceeding thirty days in the discretion of the court. (1933, c. 185, s. 6.)

§ 4335(l). Rebuilding storage batteries out of old parts and sale of, regulated.—Any person, firm or corporation who assembles or rebuilds an electric storage battery for use on automobiles, in whole or in part, out of second-hand or used material such as containers, separators, plates, groups or other battery parts, and sells same or offers same for sale in the state of North Carolina without the word "rebuilt" placed in the side of the container, shall be guilty of a midemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two hundred and fifty dollars or imprisoned for a term not exceeding six months or both. (1933, c. 535.)

SUBCHAPTER VIII. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY

Art. 24. Offenses against Public Morality and Decency

§ 4339. Seduction.

Promise of Marriage Must Be Unconditional. — In order for conviction under this section, the promise of marriage must be absolute and unconditional, and a promise at the time to marry the woman in the event "anything should happen to her," is insufficient for a conviction under the statute. State v. Shatley, 201 N. C. 83, 159 S. E. 362.

Effect of Marriage upon Consent Judgment.—Where, in a prosecution for seduction a consent judgment is entered requiring the defendant to pay a certain sum to the prosecutrix, a subsequent marriage of the parties before the whole sum is paid does not discharge the judgment, the consent of all parties being necessary to set aside such judgment. For the defendant to get the benefit of this section the marriage must be before he is adjudged guilty. State v. McKay, 202 N. C. 470, 163 S. E. 586.

§ 4347. Certain evidence relative to keeping disorderly houses admissible; keepers of such houses defined.

Evidence.—This section authorizes the admission of evidence tending to show the lewd, dissolute, and boisterous conversation of the inmates and frequenters of the house, and especially provides that evidence of the general reputation or character of the house shall be admissible and competent. State v. Hilderbran, 201 N. C. 780, 161 S. E. 488.

§ 4352. Local: Using profane or indecent language on public highways.—If any person shall,

on any public road or highway and in the hearing of two or more persons, in a loud and boisterous manner, use indecent or profane language, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. The following counties shall be exempted from the provisions of this section: Dare, Tyrell, Washington, Beaufort, Martin, Pitt, Wautauga, Cleveland, Brunswick, Stanly, Perquimans, Pasquotank, Camden, Swain, Davie, Orange, Jones, Transylvania, Macon and Craven. (1913, c. 40; 1933, c. 309.)

Editor's Note.—Public Laws of 1933, c. 309, omitted Gates from the list of excepted counties.

SUBCHAPTER IX. OFFENSES AGAINST PUBLIC JUSTICE

Art. 26. Perjury

§ 4364. Punishment for perjury.

Where the defendant swears to an answer in a civil answer before one authorized to administer the oath and the answer contains a false statement of fact, in order to convict him of perjury under the provisions of this section it must be shown that he "willfully and corruptly" committed the offense. State v. Dowd, 201 N. C. 714, 161 S. E. 205.

Art. 27. Bribery

§ 4373. Offering bribes.

Not Necessary that Bribed Juror Received Fee.—In a prosecution under this section it is not necessary that the indictment should charge that the juror received any fee or other compensation, the statutes making a distinction between bribery and an offer to bribe. State v. Noland, 204 N. C. 329, 168 S. E. 412. As to venue, see note to § 4606.

Art. 29. Misconduct in Public Office

§ 4388. Director of public trust contracting for his own benefit.

Effect of Special Validating Act.—Although municipal bonds were sold to a corporation controlled by the mayor, an act passed by the legislature expressly confirming and validating the sale removes all objections based upon the violation of the provisions of this section. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649.

§ 4391(1). Soliciting during school hours without permission of school head.—No person, agent, representative or salesman shall solicit or attempt to sell or explain any article of property or proposition to any teacher or pupil of any public school on the school grounds or during the school day without having first secured the written permission and consent of the superintendent, principal or person actually in charge of the school and responsible for it.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1933, c. 220.)

SUBCHAPTER X. OFFENSES AGAINST THE PUBLIC PEACE

Art. 32. Offenses against the Public Peace

§ 4410. Carrying concealed weapons.

Concealment Is Gist of Offense.—

The possession of a pistol by one on the premises of another is not alone sufficient to convict of carrying a concealed weapon in violation of this section, although the statute makes such possession prima facie evidence of the concealment thereof. State v. Vanderburg, 200 N. C. 713, 158 S. E. 248.

SUBCHAPTER XII. GENERAL POLICE REGULATIONS

Art. 34. Lotteries and Gaming

§ 4428. Dealing in lotteries.—If any person shall open, set on foot, carry on, promote, make or draw publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known; or if any person, by such way and means, expose or set to sale any house, real estate, goods, chattels, cash, written evidence of debt, certificates of claims or any other thing of value whatsoever, every person so offending shall be guilty of a misdemeanor, and shall be fined not exceeding two thousand dollars or imprisoned not exceeding six months, or both, in the discretion of the court. Any person who engages in disposing of any species of property whatsoever, including money and evidences of debt, or in any manner distributes gifts or prizes upon tickets or certificates sold for that purpose, shall be held liable to prosecution under this section. Any person who shall have in his possession any tickets, certificates or orders used in the operation of any lottery shall be held liable under this section, and the mere possession of such tickets shall be prima facie evidence of the violation of this section. (Rev., s. 3726; Code, s. 1047; R. C., c. 34, s. 69; 1834, c. 19, s. 1; 1874-5, c. 96; 1933, c. 434.)

Editor's Note.—Public Laws of 1933, c. 434, added the last sentence of this section, relating to possession of tickets, certificates, etc.

Admissibility of Evidence.—In establishing the promotion of the lottery by circumstantial evidence it was permissible for the State to show the association of the defendants together with their financial relation and transactions. The declaration of one defendant as to the other's participation in the enterprise and as to their protection if they were caught was also competent. State v. Ingram, 204 N. C. 557, 559, 168 S. E. 837.

Art. 36. Protection of the Family

§ 4447. Abandonment of family by husband.

Cross Reference.—As to competency of wife's testimony upon trial of husband for abandonment of minor children, see § 1802 and the note thereto.

Condonation by Wife Does Not Bar Prosecution.—Abandonment of the wife by the husband is a statutory offense, and it is not condoned, so far as the State's right to prosecute is concerned, by a subsequent resumption of the marital relation. State v. Manon, 204 N. C. 52, 167 S. E. 493.

Autrefois Acquit and Convict.—In a prosecution for the violation of this section a plea by the defendant of former conviction of the same offense is good as to the period prior to the conviction, but it is not a bar to the prosecution for his failure to provide adequate support for his children subsequent thereto. State v. Jones, 201 N. C. 424, 160 S. E. 468

§ 4449. Order to support from husband's property or earnings.

A judgment under this section is not conditional because of an order that capias issue at any time on motion of the solicitor, for such order is void and not a part of judgment and capias may issue upon an order of the court. State v. Manon, 204 N. C. 52, 167 S. E. 493.

Art. 38. Public Drunkenness

§ 4457(a). Public drunkenness and disorderliness.

Verdict of guilty of disorderly conduct but not of drunkenness will not support conviction for drunken and disorderly conduct under this section. State v. Myrick, 203 N. C. 8, 164 S. E. 328.

§ 4458. Local: Public drunkenness. — If any person shall be found drunk or intoxicated on the public highway, or at any public place or meeting,

in any county, township, city, town, village or other place herein named, he shall be guilty of a misdemeanor, and upon conviction shall be punished as is provided in this section:

1. By a fine of not more than fifty dollars, or by imprisonment for not more than thirty days, in the counties of Ashe, Catawba, Cleveland, Dare, Gaston, Graham, Greene, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Northampton, Pitt, Richmond, Rutherford, Scotland, Stanly, Union, Vance, Warren, Franklin and Washington, in the townships of Fruitville and Poplar branch in Currituck county, and at Pungo in Beaufort county. (1907, cc. 305, 785, 900; 1908, c. 113; 1909, c. 815; P. L. 1915, c. 790; P. L. 1917, cc. 447, 475; P. L. 1919, cc. 148, 200.)

2. By a fine of not less than three dollars nor more than fifty dollars, or by imprisonment for not more than thirty days, in Yancey county. (1909, c. 256.)

3. By a fine of not less than two dollars and fifty cents nor more than fifty dollars, or by imprisonment for not more than thirty days, in Buncombe county. (1909, c. 271.)

4. By a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment for not more than ten days, in Cherokee and Yadkin counties. (1907, c. 976.)

5. By a fine of not less than three dollars nor more than five dollars in Clay county, all such fines to go to the public school fund of that county. (1907, c. 309.)

6. By a fine of not less than five dollars nor more than ten dollars in Wake county, all such fines to go to the general road fund of that county. (1907, c. 908.)

7. By a fine of not more than fifty dollars, or by imprisonment for not more than thirty days, in Mitchell county: Provided, that this subsection shall not apply to incorporated towns in that county. (1909, c. 111.)

8. By a fine of not less than five dollars nor more than fifty dollars, or by imprisonment for not more than ten days, in the village of Kannapolis, or on the premises or within one mile of the Kannapolis cotton mills. (1909, c. 46, s. 2.)

9. By a fine, for the first offense, of not less than ten nor more than twenty dollars; for second and further offense, no less than twenty nor more than thirty dollars, or imprisoned for not more than twenty days, in Transylvania county. (P. L. 1919, c. 190; Rev., 3733; 1897, c. 57; 1899, cc. 87, 208, 608, 638; 1901, c. 445; 1903, cc. 116, 124, 523, 758; 1924, c. 5; 1929, c. 135, s. 1; 1931, c. 219.)

10. By a fine of fifteen dollars or imprisonment for ten days for the first offense; by a fine of twenty-five dollars or imprisonment for twenty days for the second offense; by a fine of fifty dollars or imprisonment for thirty days for the third and subsequent offenses, in the King high school district, Stokes county. (1933, c. 287.)

11. By a fine of not less than five dollars or more than fifty dollars or by imprisonment for not more than thirty days, in the discretion of the court in Swain county. (1933, c. 10.)

Editor's Note.—

Public Laws of 1933, c. 287, added subdivision 10, relating to King High School District, Stokes county. Chapter 10 struck out Swain from the list of counties in subdivision 1, and added subdivision 11 applicable in that county only.

Art. 40. Regulation of Sales

§ 4468(a). Sale of convict-made goods prohibited.—Except as hereinafter provided, the sale anywhere within the state of North Carolina of any and all goods, wares and merchandise manufactured, produced or mined wholly or in part, by convicts or prisoners, except by convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions is hereby prohibited and declared to be unlawful.

The provisions of this section shall not apply to sales or exchanges between the state penitentiary and other penal, charitable, educational and/or custodial institutions, maintained wholly or in part by the state, or its political subdivisions, for use in said institution or by the wards thereof; nor shall the provisions of this section apply to the sale of cotton, corn, grain or other processed or unprocessed agricultural products, including seed for growing purposes, or to the sale of stone, quarried by convict labor, or to the sale of coal or chert mined by convict labor, in any mine operated by the state: Provided that this section shall apply with equal force to sales to the state or any political subdivision thereof by any state penal or correctional institution, including the state highway: Provided further that the state of North Carolina shall have the right of manufacturing in any of its penal or correctional institutions products to be used exclusively by the state or any of its agencies.

This section shall apply equally to convict or prison-made goods, wares or merchandise, whether manufactured, produced or mined within or without the state of North Carolina.

Any person, firm or corporation selling, undertaking to sell, or offering for sale any such prison-made or convict-made goods, wares or merchandise, anywhere within the State, in violation of the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to fine, or imprisonment, or both, in the discretion of the court. Each sale or offer to sell, in violation of the provisions of this section, shall constitute a separate offense. (1933, c. 146, ss. 1-4.)

Art. 44. Animal Diseases

§ 4492. Distributing, selling or using hog-cholera virus without permission.

For act permitting sale and use of virus in Edgecombe county, see Public Laws 1933, c. 139. For an act relating to the sale of virus in Wilson county, see Public Laws 1933, c. 58.

CHAPTER 83

CRIMINAL PROCEDURE

Art. 7. Preliminary Examination

§ 4561. Prisoner examined; advised of rights.

It is not necessary to competency of an extra judicial confession to a police officer that defendant be warned he is not compelled to answer. State v. Grier, 203 N. C. 586, 166 S. E. 595.

Art. 11. Venue

§ 4606. Improper venue met by plea in abatement; procedure.

Purpose of Section.—This section was evidently intended

to provide relief in difficulties originating in doubt entertained in good faith as to the county in which the offense was committed, and should not be construed to modify the common law beyond the reasonable scope of its manifest purpose. State v. Mitchell, 202 N. C. 439, 445, 163 S. E. 581.

The crime of offering a bribe to a juror is committed in the county where the offer is communicated to the juror, and the proper venue is the county in which the juror was serving and in which the defendant's offer was communicated to him by his wife, although defendant communicated with the juror's kinsmen and wife in the county of their residence. State v. Noland, 204 N. C. 329, 168 S. E. 412.

Art. 13. Indictment

§ 4611. Bills returned by foreman except in capital cases.

Indictment Need Not Be Signed.—
No endorsement by the foreman or otherwise is essential to the validity of an indictment, which has been duly returned into court by the grand jury under this section, and entered upon its records. State v. Avant, 202 N. C. 680, 683, 163 S. E. 806.

§ 4612. Substance of judicial proceedings set forth.

Refinements Abolished.—See State v. Morrison, 202 N. C. 60, 61, 161 S. E. 725, following the statement under this catchline in the Code of 1931.

§ 4613. Bill of particulars.

What Bill Will Not Supply.—
The provisions of this section cannot supply a deficiency in an indictment when the language of the indictment fails to adequately charge the essential concomitants of the offense. State v. Cole, 202 N. C. 592, 163 S. E. 594.

Motion to Quash Not Proper Remedy.—Where the criminal indictment sufficiently charges all the elements of the offense but is not as definite as the defendant may desire the defendant's remedy is by a motion for a bill of particulars, and not by a motion to quash. State v. Everhardt, 203 N. C. 610, 166 S. E. 738.

§ 4614. Essentials of bill for homicide.

An indictment charging the essential facts of murder as required by this section, is sufficient to sustain the court's charge based upon the evidence in the case relative to murder committed in the perpetration of robbery or other felony. State v. Fogleman, 204 N. C. 401, 168 S. E. 536.

§ 4622. Separate counts; consolidation.

Housebreaking and Larceny.—When not subject to legal objection, a motion by the solicitor to consolidate two criminal actions for trial is addressed to the discretion of the trial judge, and where prosecutions for housebreaking and larceny on two occasions during the same night against two defendants are consolidated without objection, and the charges are so connected in time and place that evidence of guilt in one action is competent in the other, the order of the trial judge consolidating the actions will not be held for error on appeal. State v. Combs, 200 N. C. 671, 158 S. E. 252.

Murder of One Person and Assault upon Another. — Upon the trial under an indictment charging the prisoner with murder of M., it is reversible error to the defendant's prejudice for the trial court upon his own motion, after a substantial part of the evidence had been introduced to consolidate the action with another action under a separate indictment charging the prisoner with an assault with a deadly weapon upon D., the prisoner being afforded no opportunity to pass upon the impartiality of the jury upon the assault charge or an opportunity to plead to the charge. State v. Rice, 202 N. C. 411, 163 S. E. 112.

Burglary and Rape.—A motion, made before the introduction of any evidence, to require the State to elect between two separate counts in the bill of indictment, one charging burglary in the first degree and the other rape, is properly denied, the two offenses being of the same class, which under this section may be joined in one indictment in separate counts, and it being within the sound discretion of the trial court as to whether he should compel an election between the counts and, if so, at what stage of the trial. State v. Smith, 201 N. C. 494, 160 S. E. 577.

§ 4623. Bill or warrant not quashed for informality.

II. GENERAL EFFECT.

Does Not Supply Essential Averments.—By the many adjudications construing this section it has been definitely settled that the section neither supplies nor remedies the omission of any distinct averment of any fact or circumstance which is an essential constituent of the offense charged. State v. Cole, 202 N. C. 592, 598, 163 S. E. 594.

Where the indictment contains sufficient matter to enable the court to proceed to judgment a motion to quash for duplicity or indefiniteness is properly refused, and a motion to quash for redundancy or inartificiality is addressed to the sound discretion of the trial court. State v. Davis, 203 N. C. 13, 14, 164 S. E. 737.

Plain Intelligible and Explicit Charge Sufficient.—See State v. Everhardt, 203 N. C. 610, 166 S. E. 738, following statement in Code of 1931.

Following Words of Statute.—See State v. Davis, 203 N. C. 47, 48, 164 S. E. 732, following statement in Code of 1931.

III. DEFECTS CURED.

B. Omissions and Mistakes.

Ownership of Property in Arson. — In a prosecution for arson under §§ 4175, 4245, an indictment stating that the defendant procured another to burn a certain house owned by the defendant and another as tenants in common is sufficient, and the fact that the same parties owned other houses in like capacity is not ground for demurrer or quashal. State v. McKeithan, 203 N. C. 494, 166 S. E. 336.

§ 4625. Defects which do not vitiate.

Jurisdiction. — Where the jurisdiction of the court is not ousted on the face of the indictment the position that the court does not have jurisdiction is not available on a plea in abatement. State v. Davis, 203 N. C. 13, 14, 164 S. E. 737.

Failure to specify a particular day in an indictment for abandonment is not fatal especially in view of an instruction that the jury should consider only such evidence as tends to show that the defendant violated the statute after a particular date. State v. Jones, 201 N. C. 424, 160 S. E. 468.

Art. 15. Trial in Superior Court

§ 4633. Peremptory challenges of jurors by defendant.

Where several defendants are tried together for a crime other than a capital felony each is entitled to four peremptory challenges to the jury, and where the court has ruled that the defense was a joint defense and has allowed but four peremptory challenges for all the defendants, a new trial will be granted upon appeal. State v. Burleson, 203 N. C. 779, 166 S. E. 905.

§ 4636(a). Waiving jury trial; pleas; demurrer to evidence.

—In all trials in the superior courts of this state, wherein the defendant stands charged with an offense not punishable with death, when represented by counsel, it shall be competent for the defendant to enter a conditional plea of guilty therein, or nolo contendere, if the court shall permit the latter plea; and thereupon, the court may hear and determine the matter, having the evidence recorded, if it be demanded by the defendant before, or at the time of entering plea. Upon the conclusion of the evidence for the state the defendant shall have the right to demur to the evidence, which demurrer shall have the same force and effect as such demurrers now have in the trial of criminal causes by jury, and in the event said demurrer is overruled, may again demur at the conclusion of all the evidence, with the like force and effect. When objection has been made and exception taken to the overruling of the demurrer, the defendant may appeal from final judgment and sentence of the court notwithstanding the plea theretofore entered. The judge shall pass upon the evidence with due regard of the weight and sufficiency thereof, as the same may be considered by a jury, and if he is satisfied beyond a reasonable doubt that the defendant is guilty, he shall proceed to judgment and sentence upon the plea entered, and dispose of the case in like manner as upon conviction by a jury. If he is not so satisfied, he shall cause the plea to be

stricken out and a verdict of not guilty entered: Provided, however, that, upon such plea, the judge hearing the matter may find the defendant guilty of any count or charge or decree of offense covered by the indictment or warrant, in the same manner as the jury may have been permitted to find in case of jury trial. (1933, cc. 23, 469.)

§ 4640. Conviction for a less degree or an attempt.

Evidence Must Justify Conviction in Lesser Degree. — The principle upon which a defendant may be convicted upon a less degree of the same crime charged in the bill of indictment applies only where there is evidence of guilt of the less degree, and where burglary in the first and second degree is charged in the indictment, and the question as to guilt on the first count is withdrawn, and the evidence does not support the charge of second degree burglary, the defendant cannot be convicted of the lesser offense. State v. Spain, 201 N. C. 571, 160 S. E. 825.

The provisions of this section in regard to conviction of a less degree of the crime charged in a bill of indictment applies only where there is some evidence that a less degree of the crime had been committed, and where the State's uncontradicted evidence is to the effect that the crime of rape had been committed and the defendant relies solely upon an alibi, the refusal of the court to charge upon the lesser degrees of the crime or of an attempt is not error. State v. Smith, 201 N. C. 494, 160 S. E. 577.

Where all the evidence at the trial of a criminal action, if believed by the jury, tends to show that the crime charged in the indictment was committed as alleged therein, and there is no evidence tending to show the commission of a crime of less degree, it is not error for the court to fail to instruct the jury that they may acquit the defendant of the crime charged in the indictment and convict him of a crime of less degree. State v. Cox, 201 N. C. 357, 361, 160 S. E. 358.

This section does not confer upon a jury in the trial of a criminal action the power arbitrarily to disregard the uncontradicted evidence tending to show that the crime charged in the indictment was committed as alleged therein and in the absence of evidence to sustain such conviction, to convict the defendant of a crime of less degree. Id.

§ 4643. Demurrer to the evidence.

Sufficiency of Evidence.—

Upon a motion as of nonsuit in a criminal action, made at the close of the State's evidence and renewed at the close of all of the evidence, all the evidence, whether offered by the State or elicited from defendant's witnesses, will be considered in the light most favorable to the State, and it is entitled to every reasonable intendment thereon and every reasonable inference therefrom, and only evidence favorable to the State will be considered, the weight and credibility of the evidence being for the jury. State v. Ammons, 204 N. C. 753, 169 S. E. 631.

On motion to dismiss or judgment of nonsuit, the evidence is to be taken in the light most favorable to the State, and it is entitled to the benefit of every reasonable intendment upon the evidence and every reasonable inference to be drawn therefrom. . . . The evidence favorable alone to the State is considered—defendant's evidence is discarded. State v. Shipman, 202 N. C. 518, 524, 163 S. E. 657.

Upon motion as of nonsuit in a criminal action, under this section, the evidence is to be considered in the light most favorable to the State, and if there is any evidence tending to prove the fact of guilt or which reasonably conduces to its conclusion as a fairly logical and legitimate deduction, and not such as merely raises a suspicion or conjecture of guilt, it is for the jury to say whether they are convinced beyond a reasonable doubt of the fact of guilt. State v. Marion, 200 N. C. 715, 158 S. E. 406.

See also State v. Lawrence, 196 N. C. 562, 564, 146 S. E. 395, and State v. Durham, 201 N. C. 724, 161 S. E. 398, 731, following third paragraph under this catchline in Code of 1931.

Same—Evidence Raising Suspicion Only. — Evidence that does no more than raise a suspicion, somewhat strong perhaps, of a homicide and the defendant's guilt, is not enough on a prosecution for murder and demurrer to the evidence will be sustained. State v. Carter, 204 N. C. 304, 305, 168 S. E. 204.

Same—Malicious Castration. — The direct evidence of the guilt of one of the defendants in a prosecution for malicious castration, and the circumstantial evidence as to the other's participation and guilt is held sufficient to overrule their motions as of nonsuit. State v. Ammons, 204 N. C. 753, 169 S. E. 631.

Same—Identity.—In a prosecution for homicide the evidence of the defendant's identity as the perpetrator of the crime is sufficient to be submitted to the jury, the weight and credibility of the wife's identification of the defendant being for their determination, and defendant's motion as of nonsuit on the ground that her testimony was based upon imagination and auto-suggestion was properly refused. State v. Fogleman, 204 N. C. 401, 168 S. E. 536.

Same—Conspiracy. — Where the direct circumstantial evidence in this case tends to show that defendant had quarreled with deceased and had entered into a conspiracy to kill him, that deceased was murdered and that all the conspirators, including the appealing defendant, were present, aiding and abetting in the commission of the crime, the evidence is sufficient to be submitted to the jury and motion for non-suit was properly overruled. State v. Brown, 204 N. C. 392, 168 S. E. 532.

Same—Assault with Intent to Kill.—In a prosecution, for a secret assault and battery with a deadly weapon with malice and intent to kill, evidence that there had been ill-feeling between the prosecuting witness and the defendant, that the prosecuting witness had seen and recognized the defendant standing outside a window in the witness's home, that the defendant appeared there suddenly at night and shot the prosecuting witness before he could do anything, and seriously wounded him, is sufficient to overrule defendant's motion as of nonsuit, and to show that the assault was done in a secret manner. State v. McLamb, 203 N. C. 442, 166 S. E. 507.

Variance.—Where there is a fatal variance between the indictment and the proof, it is proper to sustain the demurrer to the evidence, or to dismiss the action as in case of nonsuit. State v. Franklin, 204 N. C. 157, 158, 167 S. E. 569.

§ 4644. New trial to defendant.

Disqualification of Jurors and Newly Discovered Evidence. —Where a judgment of the Supreme Court in a criminal case has been certified to the Clerk of the Superior Court, the case is in the latter court for execution of the sentence, and a motion for a new trial may be there entertained for disqualification of jurors and for newly discovered evidence, State v. Casey, 201 N. C. 620, 161 S. E. 81.

Art. 16. Appeal

§ 4649. When state may appeal.

If a warrant charges simple assault, the State has no right of appeal from a judgment of a justice of the peace acquitting the defendant, the justice having, in such cases, exclusive original jurisdiction. State v. Myrick, 202 N. C. 688, 163 S. E. 803.

§ 4651. Defendant may appeal without security for costs.—In all cases of conviction in the superior courts, the defendant shall have the right to appeal without giving security for costs, upon filing an affidavit that he is wholly unable to give security for the costs, and is advised by counsel that he has reasonable cause for the appeal prayed, and that the application is in good faith.

And where it shall appear to the presiding judge that a defendant who has been convicted of a capital felony and who has prayed an appeal to the supreme court from the sentence of death pronounced against him upon such conviction is unable to defray the cost of perfecting his appeal on account of his poverty, it shall be the duty of the county in which the alleged capital felony was committed, upon the order of such judge, to pay the necessary cost of obtaining a transcript of the proceedings had and the evidence offered on the trial from the court reporter for the use of the defendant and the necessary cost of preparing the requisite copies of the record and briefs which the defendant is required to file in the supreme court under the rules of said court. The judge may fix the reasonable value of the services rendered in furnishing such transcript and preparing such copies of the record and briefs, and said copies of the record and briefs shall be prepared in the manner prescribed by the rules of

the supreme court in pauper appeals. Provided, that this paragraph shall apply only to those cases in which counsel has been assigned by the court. (Rev., s. 3278; Code, s. 1235; 1869-70, c. 196, s. 1; 1933, c. 197.)

Editor's Note.—Public Laws of 1933, c. 197, added the last two sentences of this section, relating to appeals in capital felony to the Supreme Court.

Essentials of Affidavit Cannot Be Waived.—The affidavit is jurisdictional and may not be waived by the solicitor. State v. Stafford, 203 N. C. 601, 166 S. E. 734.

In order that the Supreme Court may have jurisdiction of an appeal in forma pauperis in a criminal action it is required that the application for leave to appeal be supported by an affidavit of the appellant showing that he is wholly unable to give the security required by § 4650; that he is advised by counsel that he has reasonable cause for appeal, and that the application is made in good faith, and where any of these three statutory requirements have not been complied with the appeal will be dismissed. State v. Marion, 200 N. C. 715, 158 S. E. 406.

Compared with Security in Civil Actions. — The requirements of this section for prosecuting an appeal without making deposit or giving security for costs in a criminal prosecution, are different from those in a civil action, but the requirements of both statutes, are jurisdictional, and unless complied with in all respects, the appeal is not properly in this Court. Powell v. Moore, 204 N. C. 654, 655, 169 S. E. 281.

§ 4654. Appeal not to vacate judgment; stay of execution.

The effect of an appeal is to stay all proceedings in the lower court pending the disposition of the appeal, and where, after appeal bond has been given, the defendant makes motions before the Superior Court judge for a mistrial for prejudice of jurors and for a new trial for newly discovered evidence, the motions are coram non judice. State v. Casey, 201 N. C. 185, 187, 159 S. E. 337.

Applied in State v. Casey, 201 N. C. 620, 161 S. E. 81.

Art. 17. Execution

§ 4659. Sentence of death; prisoner taken to penitentiary.

Death Sentence without Reference to Crime.—Where in a prosecution for murder the jury returns a verdict of guilty of murder in the first degree, the judgment of the court, which alone is certified to the warden of the State prison, under this section and §§ 4658, 4660, must recite that the defendant had been convicted of murder in the first degree, and where it recites that the prisoner had been convicted of murder, and sentences the prisoner to death by electrocution, the case will be remanded. State v. Langley, 204 N. C. 687.

When No Reference to Trial or Crime Is Made. — A judgment, while somewhat informal, because it made no reference to the trial or the crime of which the prisoner was convicted, is, nevertheless, sufficient to meet the requirements of this section. State v. Edney, 202 N. C. 706, 707, 164 S. E. 23.

CHAPTER 84
AGRICULTURE

Art. 1A. North Carolina Fertilizer Law of 1933

§ 4689(1). Title.—This article shall be known by the short title of "The North Carolina fertilizer law of one thousand nine hundred and thirty-three." (1933, c. 324, s. 1.)

§ 4689(2). Enforcing official.—This article shall be administered by the commissioner of agriculture of the state of North Carolina, hereinafter referred to as the "commissioner." (1933, c. 324, s. 2.)

§ 4689(3). Definitions.—When used in this article:

(a) The word "person" includes individuals, partnerships, associations and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(c) The word "and" may be construed to mean "or," and the word "or" may be construed to mean "and."

(d) The term "manufacturer" means a person engaged in the business of preparing, mixing or manufacturing mixed fertilizers or fertilizer materials; and the term "manufacture" means preparation, mixing or manufacturing.

(e) The word "sell" or "sale" includes exchange.

(f) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid or potash or combinations of these ingredients in forms available to plants, which is or may be used with another such substance in the compounding of mixed fertilizers or for direct application to the soil, excepting unmanipulated animal manures and vegetable products. The materials covered in paragraph (e) of section 4 shall be considered as fertilizer materials but not suitable for use in mixed fertilizers. Unless such materials are animal products which in addition to phosphoric acid contain nitrogen in forms available as plant food.

(g) The term "mixed fertilizer" means any combination or mixture of fertilizer materials, except as noted in paragraph (f) of this section, designed and fitted for use in inducing crop yields or plant growth when applied to the soil.

(h) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trade mark, or other designation.

(i) The term "grade" means the minimum percentages of total nitrogen (N); phosphoric acid (P_2O_5) in available form (comprising the water and citrate soluble phosphoric acid) except as provided for in paragraph (e) of section 4; and potash (K_2O) soluble in water. These are to be stated in this order and, when applied to mixed fertilizers, in whole numbers only.

(j) The term "official sample" means any sample of mixed fertilizer or fertilizer material registered under this act which is taken by an authorized inspector of the department of agriculture according to the methods prescribed under section 9, paragraphs (b), (c), (d), (e) and (f).

(k) The word "ton" means a ton of 2000 pounds avoirdupois.

(l) The term "per cent" or "percentage" means the percentage by weight.

(m) The term "filler" shall mean any material that may be added to a mixed fertilizer or fertilizer material for any purpose other than the addition of available plant food.

(n) The word "formula" as used in this article means a statement of all the materials used in compounding the mixed fertilizer and the amount of each of such materials used in a ton, or a statement of the pounds or fractional parts of the nitrogen, available phosphoric acid and potash that are derived from each fertilizer material used. When the formula of any mixed fertilizer is printed on a tag attached to the container this constitutes an open formula.

(o) The term "plant food" as used in this article shall mean the nitrogen, phosphoric acid

or potash content of materials occurring in fertilizers. (1933, c. 324, s. 3.)

§ 4689(4). Registration.—(a) It shall be unlawful for any person, acting for himself, or as agent, to sell or offer for sale within the state any mixed fertilizer or fertilizer material that has not been registered as required by this section.

(b) Any person who may desire to sell or offer for sale, either by himself or through another person, mixed fertilizer or fertilizer material in this state shall first file with the commissioner on registration forms supplied by him a signed statement, giving the name and address of the applicant, and the following information with respect to each brand, grade or analysis, in the following order:

(1) Weight of each package in pounds.

(2) Brand name.

(3) Guaranteed analysis showing the minimum percentages of plant food in the following order:

A—In mixed fertilizers:

Total nitrogen, per cent (whole numbers only);

Water insoluble nitrogen, per cent;

Available phosphoric acid, per cent (whole numbers only);

Water soluble potash, per cent (whole numbers only).

B—In mixed fertilizers branded for tobacco:

Total nitrogen, per cent (whole numbers only);

Nitrogen in the form of nitrate, per cent;

Water insoluble nitrogen, per cent;

Available phosphoric acid, per cent (whole numbers only);

Water soluble potash, per cent (whole numbers only); and the maximum percentage of chloride expressed as:

Chlorine, per cent.

C—In fertilizer materials:

Total nitrogen, per cent;

Nitrogen in the form of nitrate, per cent;

Available phosphoric acid, per cent;

Water soluble potash, per cent.

(4) The name and address of the person guaranteeing the registration.

(5) The sources from which such nitrogen, phosphoric acid, and potash are derived.

(6) Whether or not the brand will be sold with an open formula.

(c) The grade of any brand of mixed fertilizer shall not be changed during the year for which registration is made, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed, provided prompt notification of such change is given to the commissioner and the change is noted on the container.

(d) The person offering for sale or selling any brand of mixed fertilizer or fertilizer material shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(e) In the case of bone, tankage, mineral phosphates or other unacidulated phosphatic fertilizer materials in which the phosphoric acid is not shown by laboratory methods to be available but eventually becomes available in the soil, the phosphoric acid may be guaranteed as total phosphoric acid. If the term available phosphoric acid be used in the statement of analyses, it shall mean the sum of the water soluble and citrate soluble phosphoric acid, except that when applied to basic slag phosphates the term available shall mean that part of the phosphoric acid found available by the Wagner citric acid method as adopted by the association of official agricultural chemists.

(f) In no case shall the term total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(g) Registration of mixed fertilizers or fertilizer materials shall be effective from the date of registration to and including December thirty-first of the same year. (1933, c. 324, s. 4.)

§ 4689(5). Marking. — (a) Each person who sells or offers for sale mixed fertilizer or fertilizer material in this state shall mark upon each container or associate with each shipment or some document relative thereto the information required by items (1) to (4), both inclusive, of paragraph (b) and by paragraph (e) of section 4689-(4). Said information may either be branded or printed directly on the bag or other shipping container, or may be printed on a tag, label or certificate which shall be affixed to the shipping container or otherwise associated with the shipment as provided for in this section.

(b) If shipped in bags, barrels or other containers commonly used, said information shall be printed (1) either directly on the package, or (2) on tags to be affixed to the package by the manufacturer.

(c) If shipped in bulk by rail, said information shall be printed on a suitable label which shall be fastened on the inside wall of the car near the door.

(d) If shipped in bulk by boat, truck, wagon, or other vehicle, said information shall be attached to the copy of the invoice delivered to the purchaser or other receiver.

(e) If shipped in packages weighing five pounds or less, said information may be printed on the container in which the material is delivered to the purchaser, or upon a common shipping container in which the smaller packages are shipped.

(f) If the fertilizer is not registered for sale with an open formula, there may be attached to the bag or container a tag showing the sources from which the plant food is derived and any other information, which in the opinion of the commissioner accurately describes the materials used: Provided, that if any nitrate is claimed as an ingredient, the percentage of nitrate nitrogen shall be guaranteed on this tag.

(g) If the fertilizer is registered for sale with an open formula it is required that a separate tag be attached to the container which tag shall state only the formula, the brand name and the name and address of the person guaranteeing the registration.

(h) The statement on the open formula tag shall constitute a guarantee of the kinds and amounts of fertilizer materials in the container to which the tag is attached.

(i) If the analysis of any brand of fertilizer sold or offered for sale with an open formula shall show that this statement is false, the commissioner may revoke the right to sell or offer for

sale such brand with an open formula for a period of two years.

(j) Any manufacturer or other producer who shall have suffered three such revocations in any two-year period shall not be permitted to register any brand with an open formula for two years following the last revocation.

(k) The tags, labels or certificates, required by this section, shall be furnished by the manufacturer. (1933, c. 324, s. 5.)

§ 4689(6). Use of the term "high grade."—(a) The words "high grade" shall not appear upon any bag or other container of any mixed fertilizer which contains, by the guaranteed analysis, a total of less than twenty(20) per cent of available plant food. (1933, c. 324, s. 6.)

§ 4689(7). Tonnage tax.

(a) Inspection Tax on Fertilizer; Tax Tags.—For the purposes of defraying expenses of the inspection and of otherwise determining the value of mixed fertilizers and fertilizer materials in this state, there shall be paid to the department of agriculture a charge of twenty cents per ton on such mixed fertilizers and fertilizer materials, except those which are sold to a manufacturer for the sole purpose of use in the manufacture of fertilizers, which charge shall be paid before a delivery is made to agents, dealers, or consumers in this state. Each bag, barrel, or other container of such mixed fertilizer or fertilizer material shall have attached thereto a tag to be furnished by the department of agriculture stating that all charges specified in this section have been paid, and the commissioner, with the advice and consent of the board, is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of mixed fertilizer or fertilizer material shall have paid the charges required by this section, his goods shall not be liable to further tax, whether by city, town, or county: Provided, this shall not exempt the mixed fertilizer or fertilizer material from an ad valorem tax.

(b) Issuance of Tax Tags.—The tax tags required under this section shall be issued each year by the commissioner and be sold to persons applying for the same at the tax rate provided in paragraph (a) of this section. Tags left in the possession of persons registering mixed fertilizers or fertilizer materials at the end of any calendar year may be exchanged for tags of the succeeding year.

(c) Tax Tags on Shipments in Bulk.—If any manufacturer, dealer, agent or other seller of fertilizer shall desire to ship in bulk any mixed fertilizer or fertilizer materials, the said manufacturer or seller of fertilizer shall send with the bill of lading sufficient tax tags to pay the tax on the amount of goods shipped, and the agent of the railroad or other transportation company shall deliver the tags to the consignee when the goods are delivered. (1933, c. 324, s. 7.)

§ 4689(8). Inspection.—It shall be the duty of the commissioner, personally or by agents, duly authorized in writing, to make such inspection of mixed fertilizer or fertilizer material in this state, to have such samples taken, and to have such analyses made as in his judgment may be necessary to ascertain whether or not persons offering, selling or distributing mixed fertilizer or fertilizer material are complying with the provisions of this article. (1933, c. 324, s. 8.)

§ 4689(9). Official sample; liability for deficiency or damage.—(a) Samples of mixed fertilizer or fertilizer material complying with the definition set forth in paragraph (j) of section 4689(3) and taken as hereafter prescribed in paragraphs (b), (c), (d), (e) and (f) of this section shall constitute official samples.

(b) For purposes of analysis by the commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the commissioner in accordance with sections 4689(4) and 4689(5), the commissioner, or an official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of mixed fertilizer or fertilizer material. No sample shall be taken from less than five (5) containers. If the lot comprises five (5) or more containers, portions shall be taken from each one up to a total of ten (10) containers and if there are more than ten (10) containers one additional portion shall be taken from each additional ton or fraction thereof included in the lot.

(c) In sampling mixed fertilizers or fertilizer materials in bulk, either in a factory or a car, at least ten portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(d) In sampling, a core sampler shall be used that removes a core from the bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of mixed fertilizer or fertilizer material under the provision of this paragraph shall be placed in a tight container and shall be forwarded to the commissioner with proper identification marks.

(e) The commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling mixed fertilizers or fertilizer materials which shall have been adopted by the association of official agricultural chemists. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this article in lieu of those prescribed in paragraphs (b), (c) and (d) of this section.

(f) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water, or otherwise.

(g) The commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and of section 4689(10).

(h) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed, in accordance with the provisions of this article, that the said lot of fertilizer as represented by a

sample or samples taken in accordance with the provisions of this section and section 4689(10) do not conform to the provisions of this article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this state during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods.

(i) In the trial of any suit or action wherein there is called in question the value of composition of any lot of mixed fertilizer or fertilizer material, a certificate signed by the fertilizer chemist and attested with the seal of the department of agriculture, setting forth the analysis made by the chemists of the department of any sample of said mixed fertilizer or fertilizer material, drawn under the provisions of this section or section 4689-(10) and analyzed by them under the provisions of the same, shall be prima facie proof that the fertilizer was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. (1933, c. 324, s. 9.)

§ 4689(10). Samples by purchaser or consumer.—Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(a) At least five (5) days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(b) The sample shall be drawn in the presence of the manufacturer, seller or a representative designated by either party together with two disinterested freeholders; or in case the manufacturer, seller or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders: Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the department of agriculture in taking samples and shall be drawn, mixed and divided as directed in paragraphs (b), (c), (d), (e) and (f) of section 4689-(9), except that the sample shall be divided into two parts each to consist of at least one (1) pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled and one sent to the commissioner for analysis and the other to the manufacturer. A certified statement in a form which will be prescribed and supplied by the commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a postoffice or to the office of the commissioner. No sample may be taken under the provisions of this section except within thirty (30) days after the actual delivery to the consumer.

(c) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the state as those drawn by an official inspector of the department as provided for in section 4689(9). (1933, c. 324, s. 10.)

§ 4689(11). Chemical analyses.—(a) The commissioner shall have the power at all times and in all places to have collected by an authorized inspector samples of any mixed fertilizer or fertilizer material offered for sale in the state and to have the same analyzed.

(b) The official methods of analysis prescribed by the association of official agricultural chemists shall be followed in making the chemical analyses provided for in this section. (1933, c. 324, s. 11.)

§ 4689(12). Plant food deficiency.—(a) Whenever the commissioner shall be satisfied that any fertilizer is five (5) per cent and not more than ten (10) per cent in value below the analysis guaranteed under section 4689(4) or claimed by the marking required under section 4689(5) in the total value of the sum of the nitrogen, phosphoric acid and potash, it shall be his duty to require that twice the value of the deficiency be paid by the manufacturer of such mixed fertilizer or fertilizer material to any person who purchases for his own use said deficient analysis fertilizer; and should any fertilizer fall more than ten (10) per cent below the value of the guaranteed plant food, it shall be the duty of the commissioner to assess three times the value of such deficiency against the manufacturer of the mixed fertilizer or fertilizer material and require the same to be paid to the consumer of such mixed fertilizer or fertilizer material, and the commissioner may seize any fertilizer belonging to such manufacturer if the deficiency shall not be paid within thirty (30) days after notice to such manufacturer. If the commissioner shall be satisfied that such deficiency in plant food was due to the intention of the manufacturer of the same to defraud, then he shall assess and collect from the said manufacturer double the amount which he would have assessed and collected as hereinbefore provided, and pay the same over to the consumer of such mixed fertilizer or fertilizer material. Any excess of any ingredient above the guarantee shall not be credited to the deficiency of any other ingredient if the deficiency is more than fifteen (15) per cent; and the penalty for deficiencies arising in this connection shall be four times the value of such deficiencies, such deficiencies to be assessed and paid as hereinbefore provided. In fixing the penalties mentioned in this section, or any other sections of this article, the commissioner shall estimate them by the wholesale price at the factory at the time of contract. If any manufacturer shall resist such collection or payment the commis-

sioner shall immediately publish the analysis and facts in the bulletin, and in one or more newspapers in the state, to be selected by him: Provided, that if the analysis made by the chemists of the department shall show more than twelve and one-half (12.5) per cent deficiency in the whole, the purchaser may, in lieu of accepting the penalty as provided by law, cancel the contract or purchase; but he must within five (5) days after receipt of said analysis notify the seller of his intention to cancel the contract and his refusal to keep the said fertilizer.

(b) The commissioner, in determining for administrative purposes whether or not any mixed fertilizer or fertilizer material is deficient in plant food, shall be guided solely by the official sample as defined in section 4689(3) and as provided for in paragraphs (b), (c), (d), (e) and (f) of section 4689(9) and the samples taken under the provisions of section 4689(10). (1933, c. 324, s. 12.)

§ 4689(13). Chlorine content. — If the chlorine content of any lot of fertilizer as found by official analysis shall exceed the maximum percentage by more than twenty-five (25) per cent of the guaranteed amount and not more than fifty (50) per cent, the person guaranteeing the registration, or his agent, shall be liable for a penalty equal to ten (10) per cent of the value of the lot of fertilizer from which the sample was taken. If the excess of chlorine is more than fifty (50) per cent and not more than one hundred (100) per cent the penalty shall be twenty (20) per cent of the value, and if the excess is more than one hundred (100) per cent the penalty shall be fifty (50) per cent of the value of the lot of fertilizer from which the sample was taken. All penalties assessed under this section shall be paid to the purchaser or consumer of the lot of fertilizer represented by the sample analyzed. (1933, c. 324, s. 13.)

§ 4689(14). Commercial value. — The approximate retail value per pound and per unit of the various ingredients of mixed fertilizers and fertilizer materials, namely, nitrogen, phosphoric acid and potash, may be computed by the commissioner and be used to establish the relative value of the mixed fertilizers and fertilizer materials sold or offered for sale in this state. The commissioner is authorized to furnish such relative values to any persons engaged in the manufacture or sale of mixed fertilizers or fertilizer materials in this state upon application and to publish the same under the provisions of section 4689(21). (1933, c. 324, s. 14.)

§ 4689(15). Minimum plant food content.—(a) No superphosphate, no fertilizer with a guarantee of two plant food ingredients, or no complete mixed fertilizer shall be sold or offered for sale for fertilizer purposes within this state, which contains less than 14 per cent of plant food, excepting potash in combination with lime which shall contain not less than two (2) per cent of potash soluble in water. This shall not apply to natural animal or vegetable products not mixed with other materials.

(b) No nitrate of soda containing less than fourteen and one-half (14.5) per cent of nitrogen and no sulphate of ammonia containing less than nineteen and one-half (19.5) per cent of nitrogen shall be registered, sold or offered for sale in this state.

(c) This section shall not apply to the sale or offer for sale of fertilizer materials to a fertilizer manufacturer for manufacturing purposes. (1933, c. 324, s. 15.)

§ 4689(16). Fillers.—It shall be unlawful for any person to manufacture, offer for sale or sell in this state any mixed fertilizer or fertilizer material containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer material as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of deceiving or defrauding the purchaser. (1933, c. 324, s. 16.)

§ 4689(17). Materials containing unavailable plant food.—(a) It shall be unlawful for any person to offer for sale or to sell in this state for fertilizer purposes any raw or untreated leather, hair, wool, waste, hoof, horn, or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(b) This section shall not apply to the substances mentioned in paragraph (a) when they have been treated or processed in such manner as to make available the plant food constituents contained therein.

(c) This section shall not apply to the substances mentioned in paragraph (a) which are shipped, offered for sale or sold to manufacturers of fertilizer. (1933, c. 324, s. 17.)

§ 4689(18). Deception and fraud.—It shall be unlawful for any person to make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this state, or to use any misleading or deceptive trade mark or brand name in connection therewith. The commissioner is hereby authorized to refuse registration for any mixed fertilizer or fertilizer material with respect to which this section is violated. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive or fraudulent. (1933, c. 324, s. 18.)

§ 4689(19). Sales of materials to consumers. — Nothing in this article shall abridge the right of a consumer of mixed fertilizer or fertilizer material to buy materials from any manufacturer or dealer for his own use: Provided, the tonnage tax has been paid thereon, if subject thereto, and that the provisions of this article otherwise in respect to such materials have been complied with. (1933, c. 324, s. 19.)

§ 4689(20). Reports of shipments. — It is required of each person registering mixed fertilizers and fertilizer materials under this article that he furnish the commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this state. Said statements shall include all sales for the periods of January first to and including June thirtieth and of July first to and including December thirty-first of each year.

These statements are to be made within 30 days of the expiration dates of each of these periods. (1933, c. 324, s. 20.)

§ 4689(21). Publications.—The commissioner is authorized to publish at such time and in such form as he may deem proper information concerning the production and use of mixed fertilizers and fertilizer materials, and shall publish an annual report which shall contain a statement of money received and expended from the sale of tax tags and appropriately classified statistics of fertilizer sales in the state. Reports of the department chemists' findings based on official samples of mixed fertilizer or fertilizer material sold within the state as compared with the guaranteed analyses registered under sections 4689(4) and 4689(5) shall be published by the commissioner as promptly as possible after the completion of analyses, or at least annually. (1933, c. 324, s. 21.)

§ 4689(22). Regulations.—For the enforcement of this article, the commissioner is authorized to prepare and issue such regulations as may be necessary, and to coöperate with any department or agency of the government of the state as he may elect in their enforcement. (1933, c. 324, s. 22.)

§ 4689(23). Misdemeanors.—Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(a) The violation of any one of the following provisions of this article: Section 4689(16); paragraph (a) of section 4689(17); and section 4689-(18).

(b) The filing with the commissioner of any false statement of fact in connection with the registration under section 4689(4) of any mixed fertilizer or fertilizer material.

(c) Forcibly obstructing the commissioner or any official inspector authorized by the commissioner in the lawful performance by him of his duties in the administration of this article.

(d) Knowingly taking a false sample of mixed fertilizer or fertilizer material for use under any provision of this article; or knowingly submitting to the commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any mixed fertilizer or fertilizer material sold or offered for sale in this state for the purpose of deceiving or defrauding such other person.

(e) The fraudulent tampering with any lot of mixed fertilizer or fertilizer material so that as a result thereof any sample of such mixed fertilizer or fertilizer material taken and submitted for analysis under this article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this article, if done prior to such analysis and disposition of the sample under the direction of the commissioner.

(f) The delivery to any person by the fertilizer chemist or his assistants or other employee of the commissioner of a report that is willfully false and misleading on any analysis of mixed fertilizer or fertilizer material made by the department in connection with the administration of this article. (1933, c. 324, s. 23.)

§ 4689(24). Penalties for unauthorized sale, sale without tax tags, and misuse of tax tags:

(a) Forfeiture for Unauthorized Sale, Release from Forfeiture.—All fertilizers and fertilizer materials sold or offered for sale contrary to the provisions of this article as stated in paragraphs (a), (c) and (f) of section 4689(4); (a), (b), (c), (d), (e), (f) and (g) of section 4689(5) and section 4689(6) shall be subject to seizure, condemnation, and sale by the commissioner. The net proceeds of such sale shall be placed to the credit of the state treasurer for the use of the department of agriculture. The commissioner, however, may in his discretion, release the fertilizers so seized and condemned upon payment of the required tax or charge, a fine of ten dollars ($10.00), and all costs and expenses incurred by the department in any proceeding connected with such seizure and condemnation, and upon compliance with all other requirements of this article.

(b) Method of Seizure and Sale of Forfeiture.—Such seizure and sale shall be made under the direction of the commissioner by any officer or agent of the department. The sale shall be made at the courthouse door in the county in which seizure is made, after thirty (30) days' advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand name or name of the goods, the quantity, and why seized and offered for sale.

(c) Sale without Tag; Misuse of Tag; Penalty; Forfeiture.—Every merchant, trader, manufacturer, broker, or agent who shall sell or offer for sale any mixed fertilizer or fertilizer material without having attached thereto such tags as are required by paragraphs (a) and (c) of section 4689(7), or who shall use the required tags a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any such fertilizer, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, or offered for sale, or removed, said penalty to be recovered by the commissioner by suit brought in the name of the state, and any amount so recovered shall be paid, one-half to the informer and one-half to the state treasurer for the use of the department of agriculture. If any such fertilizer shall be condemned as provided by law, it shall be the duty of the commissioner to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients thereof to be put upon each tag, barrel, or package, and shall fix the commercial value at which it may be sold. It shall be unlawful for any person to sell or offer for sale or remove any such fertilizer or for any agent of any railroad or other transportation company to deliver any such fertilizer in violation of this section. Any person who shall sell or offer for sale or remove any fertilizer in violation of the provisions of this section shall be guilty of a misdemeanor. (1933, c. 324, s. 24.)

Art. 2. Commercial Fertilizers

§ 4690(a). Certification of fertilizer laboratories.

—Commissioner of agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the commissioner of agriculture shall supply such information. (1933, c. 551.)

Art. 2A. Insecticides and Fungicides

§ 4703(h). Statement mailed; what shown.—Every manufacturer and dealer who has registered paris green, calcium arsenate or lead arsenate or any poisonous insecticide or fungicide for sale within the state of North Carolina shall mail to the commissioner on forms provided by the commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, and the initials and numbers of the car, if sold in car lots. (1927, c. 53, s. 8; 1933, c. 233.)

Editor's Note.—Public Laws of 1933, c. 233, substituted the word "poisonous" for the word "other" between the words "any" and "insecticide."

Art. 9. Marketing and Branding Farm Products

§ 4793(a). Division of purchase and contract directed to give preference to home products.—The division of purchase and contract or any other constituted department who is authorized to purchase food stuff and other supplies for state institutions, is hereby directed in all cases where the prices, product, or other supplies are available and equal, the said purchasing department shall in all such cases, contract with and purchase from the citizens of North Carolina and as far as is reasonable and practical, taking into consideration price and quality, shall purchase and use and give preference to all of such products and supplies as are grown or produced within the state of North Carolina. (1933, c. 168.)

Art. 12A. Farm Crop Seed Improvement Division

§ 4831(f). 1. False certification of pure-bred crop seeds made misdemeanor.—It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this article, or by a similiar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

Art. 14. Illuminating Oils and Gasoline

§ 4851. Inspection authorized; collection and analysis of samples.

See §§ 2621(127) et seq.

§ 4870(1). Division of inspection transferred to revenue department. — The division of inspection of illuminating oils, gasoline, and lubricating oils as existing and defined in consolidated statutes, chapter eighty-four (84), articles fourteen (14) and fourteen-A (14-A), being sections forty-eight hundred and fifty to forty-eight hundred and seventy of consolidated statutes, and all amendments thereto, are hereby transferred from the department of agriculture to the department of revenue and all of the duties required to be performed by the department of agriculture and/or the commissioner of agriculture are hereby required to be done and performed by the department of revenue and/or the commissioner of revenue, and wherever in said sections or either of them the board of agriculture or the commissioner of agriculture shall be designated to perform any of the duties, and make any regulations or reports concerning the same, such duties shall be done and performed and reports made thereof, and prosecution instituted, by the department of revenue and/or the commissioner of revenue. (1933, c. 214, s. 7.)

§ 4870(2). Existing laws amended so as to supply revenue department for department of agriculture.—Section forty-eight hundred and fifty (4850) to and including section forty-eight hundred and seventy (4870) of the consolidated statutes, and all acts or clauses of acts amendatory thereof wherein the board of agriculture or department of agriculture is mentioned, there shall be inserted "department of revenue" in lieu thereof and wherever in any or either of said sections there shall be named or designated "commissioner of agriculture," the same shall be stricken out and in lieu thereof shall be inserted the "commissioner of revenue" to the end that all the duties therein required to be done by the department of agriculture or the board of agriculture, the same shall be and are hereby required to be done and performed by the department of revenue, and all duties therein prescribed or required to be performed by the commissioner of agriculture shall be and the same are hereby required to be performed by the commissioner of revenue. (1933, c. 214, s. 8.)

Art. 14A. Lubricating Oils

§ 4870(f). Inspection duties devolve upon revenue department.—The duties of the inspection required by sections 4870(a)-4870(e) to be performed by the board of agriculture shall be performed by the department of revenue and the duties therein prescribed to be performed by the commissioner of agriculture shall be preformed by the commissioner of revenue. (1933, c. 214, s. 9.)

Art. 14B. Liquid Fuels, Lubricating Oils, Greases, etc.

§ 4870(g). Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.—It shall be unlawful for any person, firm, co-partnership, partnership or corporation to store, sell, offer or expose for sale any liquid fuels, lubricat-

ing oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale. (1933, c. 108, s. 1.)

§ 4870(h). Sale of fuels, etc., different from advertised name prohibited.—No person, firm, partnership, co-partnership, or corporation shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trade mark, symbol, sign or other distinguishing mark or device appearing upon said tank, container, pump or other distributing device in which said products were sold, offered for sale or distributed. (1933, c. 108, s. 2.)

§ 4870(i). Imitation of standard equipment prohibited.—It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol, trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed. (1933, 108, s. 3.)

§ 4870(j). Juggling trade names, etc., prohibited.—It shall be unlawful for any person, firm or corporation to expose or offer for sale or sell under any trade mark, trade name or name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trade mark or name or other distinguishing mark.. (1933, c. 108, s. 4.)

§ 4870(k). Mixing different brands for sale under standard trade name prohibited. — It shall be unlawful for any person or persons, firm or firms, corporation or corporations or any of their servants, agents or employees, to mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of the manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trade mark or name or other distinguishing mark of either of said manufacturers or distributors, or as the adulterated products of such manufacturer or distributor: Provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trade mark, trade name or symbol to any product or material. (1933, c. 108, § 5.)

§ 4870(l). Aiding and assisting in violation of article prohibited.—It shall be unlawful, and upon conviction punishable as will hereinafter be stated, for any person or persons, firm or firms, partnership or co-partnership, corporation or corporations or any of their agents or employees, to aid or assist any other person in violating any of the provisions of this act by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored, therein, as indicated by the name of the manufacturer or distributor, or the trade mark, the trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this article. (1933, c. 108, s. 6.)

§ 4870(m). Violation made misdemeanor.—Every person, firm or firms, partnership or co-partnership, corporation or corporations, or any of their agents, servants or employees, violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than one thousand ($1000.00) dollars and by imprisonment not to exceed twelve (12) months, or by either or both in the discretion of the trial judge. (1933, c. 108, s. 7.)

§ 4807(n). Valid parts of article upheld; article supplementary to existing laws. — Each and every section of this article is hereby declared to be independent sections and parts of sections and the holding of any section or part thereof, or the application to any person or circumstance, to be invalid or ineffective, shall not affect any other section or part thereof or the application of any section or part thereof to other persons or circumstances; and the provisions of this article shall be construed to be in addition to and supplementary to any existing laws relating to this section and not in repeal thereof. (1933, c. 109, s. 8.)

Art. 15. Animal Diseases

Part 3. Hog Cholera

§ 4879. Manufacture and use of serum and virus restricted.

For act permitting sale and use of virus in Edgecombe county, see Public Laws 1933, c. 139. For an act relating to the sale of virus in Wilson county, see Public Laws 1933, c. 58.

Art. 19. Leaf Tobacco Sales

§ 4930(a). Nested, shingled or overhung tobacco.—It shall be unlawful for any person, firm or corporation to sell or offer for sale, upon any leaf tobacco warehouse floor any pile or piles of tobacco, which are nested, or shingled, or overhung, or either, within the meaning of this act (1933, c. 467, s. 1.)

The preamble of the act of 1933 from whence this section derives contains the following definitions:

"1st. Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the botton of such pile for the purpose of inspection;

"2nd. Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and

"3rd. Overhanging tobacco: That is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco."

§ 4930(b) Sale under name other than that of true owner prohibited. — It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 4930(c). Allowance for weight of baskets and trucks.—It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933 c. 467, s. 3.)

§ 4930(d). Violation made misdemeanor.—Any person, firm or corporation violating the provisions of sections 4930(a)-4930(c) shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1933, c. 467, s. 4.)

§ 4930(e). Counties excepted. — The provisions of sections 4930(a)-4930(d) shall not apply to Alamance, Rockingham and Surry Counties, Person, Vance and Warren counties. (1933, c. 467, s. 5.)

§ 4930(f). Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited. — Tobacco warehousemen and the purchases of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as non-stock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to-wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than three million pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; A fee of one hundred dollars ($100.00) in those towns in which during said period of time more than three million and less than ten million pounds of tobacco was sold; A fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than ten million and less than twenty-five million pounds of tobacco was sold; A fee of three hundred dollars ($300.00) in those towns in which during said period of time more than twenty-five million pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. That any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268.)

CHAPTER 87A

AUTOPSIES

§ 5003(1). Limitation upon right to perform autopsy.—The right to perform an autopsy upon the dead body of a human being shall be limited to cases specially provided by statute or by direction or will of the deceased; cases where a coroner or the majority of a coroner's jury deem it necessary upon an inquest to have such an autopsy; and cases where the husband or wife or one of the next of kin or nearest known relative or other person charged by law with the duty of burial, in the order named and as known, shall authorize such examination or autopsy. (1931, c. 152; 1933, c. 209.)

Editor's Note.—
Public Laws 1933, c. 209, deleted a clause reading "for the purpose of ascertaining the cause of death," which formerly appeared at the end of this section.

CHAPTER 87B

BARBERS

§ 5003(p). Rules for sanitation in barber shops and schools; inspection; posting rules.—The state board of barber examiners shall have authority to make reasonable rules and regulations for the sanitary management of barber shops and barber schools and for the administration of the provisions of this chapter, and to enforce said rules and regulations. The sanitary rules and regulations so prescribed to be approved by the state board of health. Any member of the board, and its agents and assistants, shall have authority to enter upon and inspect any barber shop or barber school at any time during business hours in the performance of the duties conferred or imposed by this chapter. A copy of the rules and regulations adopted by the board of barber examiners shall be furnished by said board to the owner or manager of each barber shop or barber school in the state, and such copy shall be posted in a conspicuous place in each barber shop or barber school, together with the rating of the inspection so made. (1929, c. 119, s. 16; 1931, c. 32; 1933, c. 95, s. 2.)

Editor's Note.—Public Laws of 1933, c. 95, omitted a proviso, formerly appearing at the end of this section, requiring the courts by the State Board of Barber Examiners of violation of the health and sanitary laws.

Section 3 of c. 95 of the Public Laws of 1933 provides: "Section two, chapter thirty-two, Public Laws, one thousand nine hundred and thirty-one, and section twenty-three of chapter one hundred and nineteen of the Public Laws of one thousand nine hundred and twenty-nine, be and the same are hereby repealed. This act shall not apply to persons occasionally doing barber's work at a distance of five miles or more from any town, whether incorporated or not: Provided, the provisions of this act shall not apply to any person who shall perform the services of a barber for mem-

bers of his own family or for persons with whom he is in the relation of employer or employee or landlord and tenant: Provided, this act shall not apply to the Counties of Alleghany, Bertie, Camden, Clay, Carteret, Dare, Davie, Duplin, Gates, Hertford, Hoke, Hyde, Jones, Lincoln, Martin, Mitchell, Pamlico, Person, Pender, Rockingham, Stokes, Tyrrell, Wilkes and Yadkin." (1933, c. 95, § 3.)

§ 5003(u). Misdemeanors. — Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars, nor more than fifty ($50.00) dollars:

1. The violation of any of the provisions of section 5003(a).

2. Permitting any person in one's employ, supervision or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.

3. Permitting any person in one's employ, supervision or control, to practice, as a barber unless that person has a certificate as a registered barber.

4. Obtaining or attempting to obtain a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.

5. Practicing or attempting to practice by fraudulent misrepresentations.

6. The wilful failure to display a certificate of registration as required by section 5003(q).

7. The wilful and continued violation of the reasonable rules and regulations adopted by the state board of barber examiners for the sanitary management of barber schools. (1929, c. 119, s. 21; 1933, c. 95, s. 1.)

Editor's Note.—Public Laws of 1933, c. 95, changed in subsection 7 the words "State Board of Health" to "State Board of Barber Examiners."

§ 5003(y). Davie county exempted from barbers law.—Davie county is hereby exempted from the provisions of chapter one hundred and nineteen public laws one thousand nine hundred and twenty-nine, and all amendments thereto, the same being an act regulating the practice of barbering in North Carolina. (1933, c. 183, s. 1.)

CHAPTER 90
CHILD WELFARE

Art. 2. Juvenile courts

§ 5039. Exclusive original jurisdiction over children.

Where the father of a minor child brings a writ of habeas corpus in the Superior Court for the custody of the child, the respondent being the maternal grandmother of the child in whose care the child was left by its mother, the Superior Court has original jurisdiction, and the respondent's motion to transfer the hearing from the Superior Court to the juvenile court is properly overruled. In re Ten Hoopen, 202 N. C. 223, 162 S. E. 619.

CHAPTER 91
COMMERCE AND BUSINESS IN STATE

Art. 3. Sale of Weapons

§ 5112(a). Machine guns and other like weapons. —It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, sub-machine guns, or other like weapons: Provided, however, that this section shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the clerk of the superior court of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States army, when in discharge of their official duties, officers and soldiers of the militia and the state guard when called into actual service, officers of the state, or of any county, city or town, charged with the execution of the laws of the state, when acting in the discharge of their official duties: Provided, further, that automatic shotguns and pistols or other automatic weapons that shoot less than sixteen shots shall not be construed to be or mean a machine gun or sub-machine gun under this act; and that any bona fide resident of this state who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the clerk of the superior court of the county in which said person lives.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than five hundred ($500.00) dollars, or imprisoned for not less than six months, or both, in the discretion of the court. (1933, c. 261, s. 1.)

CHAPTER 92
CONFEDERATE HOMES AND PENSIONS

Art. 3. Pensions

Part 1. Pension Boards

§ 5168(d). County board.—The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the state auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 3; 1929, c. 296, s. 1; 1933, c. 465, s. 1.)

Editor's Note.—
Public Laws of 1933, c. 465, made grandsons and granddaughters of veterans eligible for the board.

CHAPTER 92A
CONTRACTORS

Art. 2. Plumbing and Heating Contractors

§ 5168(ww). Contractors licensed by Board; license fee; towns excepted.

If the classification of the subjects of taxation, provided for in this section, is not arbitrary and unjust it cannot be regarded in law as a breach of the rule of uniformity. Classification by population is not in itself arbitrary, unreasonable, or unjust. Roach v. Durham, 204 N. C. 587, 591, 169 S. E. 149.

§ 5168(yy). Revocation of license for cause.

The manifest purpose of the law is to promote the health, comfort, and safety of the people by regulating plumbing and heating in public and private buildings. Roach v. Durham, 204 N. C. 587, 591, 169 S. E. 149.

§ 5168(ddd). License fees payable in advance; application of; towns of less than 10,000.—All li-

cense fees shall be paid in advance to the secretary and treasurer of the board, and by him held as a fund for the use of the board. The compensation and expenses of the members of the board as herein provided, the salaries of its employees, and all expenses incurred in the discharge of its duties under this article shall be paid out of such fund, upon the warrant of the president and secretary and treasurer: Provided, upon the payment of the necessary expenses of the board as herein set out, and the retention by it of twenty-five per centum of the balance of funds collected hereunder, the residue, if any, shall be paid to the state treasurer: Provided further, that the fee of those doing business in towns of less than ten thousand inhabitants shall be required to pay a license fee of twenty-five dollars only, under the provisions of this article. The license may be renewed upon payment of one-half the yearly fee and payment of the balance on or before June thirtieth of the current year. (1931, c. 52, s. 13; 1933, c. 57.)

Editor's Note.—Public Laws of 1933, c. 57, made the last proviso, as the section now reads, applicable in towns of less than 10,000 instead of 5,000. The act also added the last sentence relating to renewals.

It is obvious that the pervading intent of this section is to provide for the maintenance of the board and not to impose a tax as a part of the general revenue of the State and thereby exclude the operation of the police power. It is true that the act does not in express words authorize the exercise of this power, but in our opinion it appears by implication that the exercise of such power was intended. Roach v. Durham, 204 N. C. 587, 591, 169 S. E. 149.

CHAPTER 93

CO-OPERATIVE ORGANIZATIONS

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATION

Art. 1. Organization

§ 5175(a). May become members of and hold stock in federal home loan bank.—Any building and loan association heretofore or hereafter organized under the laws of this state may subscribe to, purchase, hold, own and dispose of stock in any federal home loan bank, and may become members of any such bank authorized by or organized under an act of congress entitled "the federal home loan bank act," approved July 22, 1932. (1933, c. 20.)

§ 5175(b). Annual meetings.—The annual meeting of any such association shall be held at such time and place as shall be fixed in the notice of said meeting. There shall be published once a week for two weeks preceding such meeting, in a newspaper published in the county or town where the association has its principal office, a notice, signed by the secretary, of such meeting, and the time and place where the same is to be held: and such further notice shall be given as the charter or by-laws of the association may require. Notice of special meetings of shareholders shall be given in a like manner. Unless otherwise provided, twenty-five shareholders, present in person or represented by proxy, shall constitute a quorum at any regular or special shareholders' meeting. If no newspaper be published in the county or town in which any association has its principal office, then the notice above provided may be published by posting same at a conspicuous place in the office of the association, and a like notice at the door of the county court house. (1933, c. 19.)

Art. 2. Shares and Shareholders

§ 5176. Number of shares and entrance fee prescribed.

Applied in Dorrity v. Greater Durham Bldg., etc., Ass'n, 204 N. C. 698, 169 S. E. 640.

§ 5177. Different classes of shares; dividends; reserve fund.—Every building and loan association doing business in this state shall be authorized to issue as many series or classes and kinds of shares and at such stated periods as may be provided for in its charter or by-laws: Provided, the dividends on paid-up stock shall be less than the association is earning, and such stock may have the right to share in the dividends between the rate paid and the earned per centum. Every association shall at all times have on hand, investments in obligations of the United States government or the government of the state of North Carolina, or stock in the federal home loan bank, or bonds issued by the federal home loan bank, or on deposit in such bank or banks as may have been approved by a majority of the entire board of directors, an amount equal to at least five per centum of the aggregate amount of paid-up stock outstanding, as shown by the books of the association. When the aggregate of investment or funds in hand or on deposit as herein provided falls below the amount required under this section, the association shall make no new real estate loans until the required amount has been accumulated: Provided that the refinancing, recasting or renewal of loans previously made, and/or loans made as a result of foreclosure sales under instruments held by the interested building and loan association, shall not be considered as new loans within the meaning of this section. (Rev., s. 3889; 1905, c. 435, s. 6; 1907, c. 959, s. 3; 1919, c. 179, s. 3; 1931, c. 107; 1933, c. 26.)

Editor's Note.—

Public Laws of 1933, c. 26, substituted the above section in lieu of the former reading. A comparison of the old with the new is necessary to determine the changes.

Optional payment stock may be issued under this section. Lumpkin v. Durham Bldg., etc., Co., 204 N. C. 563, 169 S. E. 156.

Art. 3. Loans

§ 5184. Power to borrow money.—Any such association may in its certificate of incorporation, constitution or by-laws authorize the board of directors from time to time to borrow money, and the board of directors may from time to time, by resolution adopted by a vote of at least two-thirds of all the directors and duly recorded on the minutes, borrow money for the association on such terms and conditions as they may deem proper; but the total amount of money so borrowed shall at no time exceed thirty per centum of the gross assets of such association, and the same shall be used for no other purpose than to make loans to members in regular course of business or to pay maturing series of stock. In order to secure obligations for money borrowed under the provisions of this section, any such association may assign its notes, bonds and mortgages and/or other property, including the right to repledge the shares of

stock pledged as collateral security, without securing the consent of the owner thereto, as security for the repayment of its indebtedness as evidenced by its bond, obligation or note given for such borrowed money. (Rev., s. 3892; 1905, c. 435, s. 10; 1909, c. 898; 1911, c. 61; 1913, c. 21; 1933, c. 18.)

Editor's Note.—Public Laws of 1933, c. 18, substituted the above section in lieu of the former reading. A comparison of the old with the new is necessary to determine the changes.

Art. 4. Under Control of Insurance Commissioner

§ 5192. Agent must obtain certificate.—It shall be unlawful for any person to solicit business or act as agent for any building and loan association or company without having procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent. The fee for such license shall be $2.50, to be paid to the insurance commissioner at the time the certificate is issued; and no other license or fee shall be required for said business of an agent or solicitor so licensed. (Rev., s. 3898; 1895, c. 444, s. 3; 1899, c. 154, s. 2, subsec. 20; 1907, c. 959, s. 7; 1933, c. 17.)

Editor's Note.—Public Laws of 1933, c. 350, inserted the words, near the beginning of this section, following the word "members," the words "and other farmers."

§ 5193(a). Notice required before appointment of receivers. — No judge or court shall appoint a receiver for any building and loan association organized and incorporated under the laws of this state unless five days' advance notice of the motion, petition or application for appointment of a receiver shall have been given to such association and to the insurance commissioner of the state. (1933, c. 38.)

Art. 5A. Withdrawals

§ 5203(a). Month's notice required for withdrawals.—Any shareholder in a building and loan association may withdraw all or any part of his or her holdings of unpledged or unhypothecated stock in such association by giving to the secretary of such association one month's written notice of his or her intention so to do, and the right of such shareholder to make such withdrawal shall accrue one month after the giving of such notice, subject to the conditions set out in section 5203(b). (1933, c. 122, s. 1.)

§ 5203(b). Withdrawal or maturity fund. — Whenever any shareholder whose stock has matured or whose right to withdraw his or her stock has accrued, as set out in section 5203(a), has not been paid because of insufficiency of funds in the treasury of the association, the secretary of said association shall under instruction from the directors, create a separate fund to be known as the "withdrawal or maturity fund" and into such fund shall be paid one-half of the net receipts of the association monthly. Net receipts shall mean the receipts of the association from interest, installments, rent and other revenue producing sources, diminished by the expenses of the association, and by any sums directed by the board of directors to be set apart and held separately for the purpose of meeting bills payable or notes payable at the maturity thereof. From time to time as the board of directors may direct, the secretary shall make an equitable and ratable distribution of the funds in said "withdrawal or maturity fund" to the stockholders whose right to receive payment from said fund has accrued, as hereinbefore provided, at the date of such distribution. One-half of the net receipts of the association shall be added monthly to such fund so long as there remains any shareholder of the association entitled to receive a portion thereof as aforesaid. No shareholder whose stock has matured or whose right to withdraw his stock has accrued as hereinbefore set out, shall have the right to demand or receive any funds in excess of the amount equitably and ratably distributed as hereinbefore set out except on approval of board of directors of such association and/or the insurance commissioner. (1933, c. 122, s. 2.)

SUBCHAPTER V. MARKETING ASSOCIATIONS

Art. 16. Purpose and Organization

§ 5259(d). Purposes. — An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members and other farmers, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, of the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. (1921, c. 87, s. 4; 1933, c. 350, s. 2.)

Art. 18. Powers, Duties, and Liabilities

§ 5259(x). Powers. — Each association incorporated under this subchapter shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members and other farmers; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. An association organized hereunder shall not deal in the products of non-members to an amount greater in value than such as are handled by it for its members.

(b) To borrow money and to make advances to members and other farmers who deliver agricultural products to the association.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights or ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products, handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) To do each and everything necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conductive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights and powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this subchapter; and to do any such thing anywhere. (1921, c. 87, s. 6; 1933, c. 350, ss. 2-4.)

Editor's Note.—Public Laws of 1933, c. 350, made this section applicable to a certain extent to other farmers not members. Prior to the amendment the association could not handle the agricultural products of a non-member.

§ 5259(ee). Coöperative associations may form subsidiaries.—Nothing in this chapter shall prevent an association organizing, forming, operating, owning, controlling, having an interest in, owning stock of, or being a member of any other corporation (hereinafter referred to as a subsidiary corporation) from including or having included in the charter or by-laws of such subsidiary corporation provisions for the control or management of said subsidiary corporation by such association to such extent as shall by votes of the board of directors of such association, and the majority of the stockholders of such subsidiary corporation, be declared to be for the best interests of said association and said subsidiary corporation respectively. Such provisions may be so included in any such charter or by-laws and may by way of illustration, but not of limitation, include the following:

1. Representation of said association on the board of directors or other governing body of said subsidiary corporation, upon such terms as may be deemed advisable.

2. Ownership by an association of an interest or interests in a subsidiary corporation represented by stock of any class thereof, or otherwise, to such extent and upon such terms, and with such voting power, as may be deemed advisable.

3. Participation by said association in the profits of such subsidiary corporation to such extent and upon such terms as shall be deemed advisable. (1933, c. 350, § 1.)

CHAPTER 93A

COSMETIC ART REGULATED

§ 5259(1). Practice of Cosmetology regulated.—On and after June thirtieth, one thousand nine hundred and thirty-three, no person or combination of persons shall for pay, or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the state of North Carolina without a certificate of registration, either as a registered apprentice or as a registered "cosmetologist," issued pursuant to the provisions of this chapter by the state board of cosmetic art examiners hereinafter established. (1933, c. 179, s. 1.)

§ 5259(2). Cosmetic art.—Anyone or combination of the following practices, when done for pay, or reward, shall constitute the practice of cosmetic art in the meaning of this chapter:

The systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders and hands; the use of cosmetic preparations and antiseptics; manicuring; cutting, dyeing, cleansing, arranging, dressing, waving, and marcelling of the hair, and the use of electricity for stimulating growth of hair. (1933, c. 179, s. 2.)

§ 5259(3). Cosmetologist. — "Cosmetologist" is any person who, for compensation, practices cosmetic art, or conducts, or maintains a cosmetic art shop, beauty parlor, or hairdressing establishment. (1933, c. 179, s. 3.)

§ 5259(4). Beauty parlor, etc.—"Cosmetic art shop," "beauty parlor," or "hairdressing establishment" is any building, or part thereof wherein cosmetic art is practiced. (1933, c. 179, s. 4.)

§ 5259(5). Manager. — "Manager," or "managing cosmetologist," as used in this chapter is defined as any person who has direct supervision over operators, or apprentices in a cosmetic art shop, beauty parlor, or hairdressing establishment. (1933, c. 179, s. 5.)

§ 5259(6). Operator.—"Operator" is any person who is not a manager, itinerant, or apprentice cosmetologist, who practices cosmetic art under the direction and supervision of a managing cosmetologist. (1933, c. 179, s. 6.)

§ 5259(7) Itinerant cosmetologist. — "Itinerant cosmetologist" is any person who practices as a business cosmetic art outside of a cosmetic art shop, beauty parlor, or hairdressing establishment, either in going from house to house or from place to place at regular, or irregular intervals: Provided, this chapter shall not apply to persons attending female institutions of learning, who defray the cost or a part of the cost of such attendance by the occasional practice of cosmetic art as defined herein, or to persons practicing the cosmetic art in rural communities without the use of mechanical appliances. (1933, c. 179, s. 7.)

§ 5259(8). Manicurist. — "Manicurist" is any person who does manicuring only, outside of a cosmetic art shop, beauty parlor, or hairdressing establishment, for compensation. (1933, c. 179, s. 8.)

§ 5259(9). Apprentice. — "Apprentice" is any person who is not a manager, itinerant cosmetologist, or operator, who is engaged in learning and acquiring the practice of cosmetic art under the direction and supervision of a licensed managing cosmetologist. (1933, c. 179, s. 9.)

§ 5259(10). Qualifications for certificate of registration.—No person shall be issued a certificate of registration as a registered apprentice by the

state board of cosmetic art examiners, hereinafter established—

(a) Unless such person is at least eighteen years of age.

(b) Unless such person passes a satisfactory physical examination prescribed by the said board of cosmetic art examiners.

(c) Unless such person has completed at least four hundred and eighty hours in classes in a reliable cosmetic art school, or college approved by said board of cosmetic art examiners.

(d) Unless such person passes the examination prescribed by the board of cosmetic art examiners and pays the required fees hereinafter enumerated. (1933, c. 179, s. 10.)

§ 5259(11). Period of apprenticeship.—No registered apprentice, registered under the provisions of this chapter shall operate a cosmetic art beauty shop, beauty parlor, or hairdressing establishment in this state, but must serve his or her period of apprenticeship under the direct supervision of a registered managing cosmetologist as required by this chapter: Provided, however, that any apprentice who, at the time of the effective date of this act, is regularly employed under the direct supervision of one who is entitled to registration as a managing cosmetologist under the provisions of section 5259(19) shall, upon recommendation of such managing cosmetologist, and upon passing a satisfactory physical examination, be entitled to registration as a registered cosmetologist. (1933, c. 179, s. 11.)

§ 5259(12). Qualifications for registered cosmetologist.—Any person to practice cosmetic art as a registered cosmetologist must have worked as a registered apprentice for a period of at least six months under the direct supervision of a registered managing cosmetologist and this fact must be demonstrated to the board of cosmetic art examiners by the sworn affidavit of three registered cosmetologists, or such other methods of proof as the board may prescribe and deem necessary. A certificate of registration as a registered cosmetologist shall be issued by the board, hereinafter designated, to any person who is qualified under the provisions of this chapter, or meets the following qualifications:

(a) Who is qualified under the provisions of section ten of this chapter.

(b) Who is at least nineteen years of age.

(c) Who passes a satisfactory physical examination as prescribed by said board.

(d) Who has practiced as a registered apprentice for a period of six months, under the immediate personal supervision of a registered cosmetologist; and

(e) Who has passed a satisfactory examination, conducted by the board, to determine his or her fitness to practice cosmetic art, such examination to be prepared and conducted, as to determine whether or not the applicant is possessed of the requisite skill in such trade, to properly perform all the duties thereof, and services incident thereto, and has sufficient knowledge concerning the diseases of the face, skin, and scalp, to avoid the aggravation and spreading thereof in the practice of said profession. (1933, c. 179, s. 12.)

§ 5259(13). State board of cosmetic art examiners created and named by governor. — A board to be known as the state board of cosmetic art examiners is hereby established to consist of three members appointed by the governor of the state. Each member shall be an experienced cosmetologist, who has followed the practice of cosmetic art for at least five years next preceding his or her appointment, in the state. The members of the first board appointed shall serve for three years, two years, and one year respectively, after appointed, and members appointed thereafter shall serve for three years. The governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1933, c. 179, s. 13.)

§ 5259(14). Office in Raleigh. — The board of cosmetic art examiners shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. Said board shall elect its own officers, and in addition thereto, shall elect a full time secretary, which secretary shall receive an annual salary not to exceed one thousand eight hundred dollars, such salary, as well as all other expenses of said board, to be paid only out of the revenue derived from fees collected under the provisions of this chapter. Said full time secretary shall keep and preserve all the records of the board, issue all necessary notices to the registered cosmetologists and apprentices of the state, and perform such other duties, clerical and otherwise, as may be imposed upon him, or her, as the case may be, by said board of cosmetic art examiners. Said full time secretary is hereby authorized and empowered to collect, in the name and on behalf of the board, the fees prescribed in this act, and shall turn over all moneys so collected into such state or national bank or trust company as shall be designated and selected by the board as a depository for such funds; and said secretary shall make full and complete report of such collections from the records of his office as and when required by the chairman of the board. Such secretary shall, upon entering upon the duties of office, execute a bond unto the state of North Carolina with a duly licensed bonding company doing business in this state as surety, or with other surety acceptable to said board, such bond to be in the penal sum of ten thousand dollars and to be conditioned upon the faithful performance of the duties of the office, and faithful and correct accounting for the moneys received.

The fund thus accumulated shall be disbursed under the provisions of this chapter, or vouchers or checks signed by the chairman and secretary, for the purposes of this chapter, and accounting rendered annually of receipts and disbursements as hereinafter provided in section 5259(15). (1933, c. 179, s. 14.)

§ 5259(15). Pay of board members; expenses; annual report to governor.—Each member of the board of cosmetic art examiners, as herein created, shall receive for his or her services the sum of not more than seven dollars fifty cents per day for each day actually spent in the performance of his or her duties, and shall be reimbursed for ac-

tual necessary expenses incurred in the discharge of their duties, to be paid only from the funds derived from the fees collected in the administration of this chapter. The board shall report annually to the governor a full statement of its receipts and expenditures, and also a full statement of its work during the year, together with such recommendations as it may deem expedient. (1933, c. 179, s. 15.)

§ 5259(16). Applicants for examination.—Each applicant for an examination shall:

(a) Make application to the board of cosmetic art examiners on blank forms prepared and furnished by the full time secretary, such application to contain proof under the applicant's oath of the particular qualifications of the applicant.

(b) Pay to the secretary of the said board the required examination fee, hereinafter established.

(c) All applications for said examination must be filed with the full time secretary at least thirty days prior to the actual taking of such examination by applicant. (1933, c. 179, s. 16.)

§ 5259(17). Conduct of examinations. — The board of cosmetic art examiners shall conduct examinations of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificate of registration to practice as registered apprentices, not less than three times each year, at such times and places as will prove most convenient and as the said board may determine. The examination of applicants for certificates of registration as registered cosmetologists and registered apprentices shall include such practical demonstration and oral or written tests as the said board may determine. (1933, c. 179, s. 17.)

§ 5259(18). Certificate of registration.—Whenever the provisions of this chapter have been complied with, the said board shall issue or cause to be issued, a certificate of registration as registered cosmetologist, or as a registered apprentice to the applicant, as the case may be. (1933, c. 179, s. 18.)

§ 5259(19). Admitting operators from other states.—Persons who have practiced cosmetic art in another state and who move into this state shall prove and demonstrate his, or her fitness, physical and otherwise, as set out in section ten and twelve, to the board of cosmetic art examiners, as herein created, and as herein provided, before they will be issued a certificate of registration to practice cosmetic art, but said board may issue such temporary permits as are necessary. (1933, c. 179, s. 19.)

§ 5259(20). Registration procedure.—The procedure for the registration of present practitioners of cosmetic art shall be as follows:

(a) Every person who has been practicing cosmetic art in North Carolina and who is practicing such art at the time of the effective date of this chapter upon making an affidavit to that effect, and complying with the provisions of this chapter as to physical fitness, and upon paying the required fee to the board of cosmetic art examiners shall be issued a certificate of registration as a registered cosmetologist.

(b) Any person who, at the time of the effective date of this chapter, is operating a shop as a managing cosmetologist, shall, upon making an affidavit to that effect, and complying with the provisions of this chapter as to physical fitness and upon paying the required fee to the board of cosmetic art examiners be issued a certificate of registration as a managing cosmetologist.

(c) Any person who, at the time of the effective date of this chapter, is regularly employed under a person who has registered as a managing cosmetologist shall be entitled to register as a cosmetologist as provided in section eleven of this chapter.

(d) All persons who are not actively engaged in the practice of cosmetic art at the time of the effective date of this chapter shall be required to comply with all of the provisions of this chapter. (1933, c. 179, s. 20.)

§ 5259(21). Fees required.—The fee to be paid by an applicant for a certificate of registration to practice cosmetic art as an apprentice shall be three dollars. The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered cosmetologist shall be five dollars. The annual license fee of a registered cosmetologist shall be three dollars fifty cents, while the annual license fee of a registered apprentice shall be two dollars fifty cents. All licenses, both for apprentices and registered cosmetologists, shall be renewed as of the 30th day of June each and every year; such renewals for apprentices shall be two dollars fifty cents, and for registered cosmetologists three dollars fifty cents. The fees herein set out shall not be increased by the board of cosmetic art examiners, but said board may regulate the payment of said fees and pro-rate the license fees in such manner as it deems expedient. The fee for registration of an expired certificate for a registered cosmetologist shall be five dollars and registration of an expired certificate of an apprentice shall be three dollars. (1933, c. 179, s. 21.)

§ 5259(22). Persons exempt. — The following persons are exempt from the provisions of this chapter while engaged in the proper discharge of their professional duties:

(a) Persons authorized under the laws of the state to practice medicine and surgery.

(b) Commissioned medical or surgical officers of the United States army, navy, or marine hospital services.

(c) Registered nurses.

(d) Undertakers.

(e) Registered barbers.

(f) Manicurists as herein defined. (1933, c. 179, s. 22.)

§ 5259(23). Rules for sanitation. — The state board of cosmetic art examiners herein created shall have authority to make reasonable rules and regulations for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, and colleges, hereinafter called shops and schools, and to enforce such rules and regulations. The members of said board, or their duly authorized agents, shall have authority to enter upon and inspect any shop or school at any time during business hours.

A copy of the rules and regulations adopted by said board, and to be approved by the state board of health, shall be furnished by the board of cosmetic art examiners, or their duly authorized agents, to the owner or manager of each shop or school in the state, and such copy shall be posted in a conspicuous place in each shop and school. (1933, c. 179, s. 23.)

§ 5259(24). Posting of certificates. — Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his, or her work chair. (1933, c. 179, s. 24.)

§ 5259(25). Annual renewal of certificates. — Every registered cosmetologist and every registered apprentice, who continues in active practice or service shall annually, on or before June 30th, of each year, file with the secretary of the board, renewal certificate as to physical fitness, renew his, or her certificate of registration which has not been renewed prior to, or during the month of July in any year, and which shall expire on the first day of August in that year. A registered cosmetologist, or a registered apprentice whose certificate of registration has expired may have his or her certificate restored immediately upon payment of the required restoration fee, and furnishing to the secretary of the board renewal certificate as to physical fitness. Any registered cosmetologist who retires from the practice of cosmetic art for not more than three years may renew his or her certificate of registration upon payment of the required restoration fee, and by furnishing to the secretary of the board renewal certificate as to physical fitness. (1933, c. 179, s. 25.)

§ 5259(26). Causes for revocation of certificates. —The board of cosmetic art examiners may either refuse to issue or renew, or may suspend, or revoke any certificate of registration for any one, or combination of the following causes:

(a) Conviction of a felony shown by certified copy of the record of the court of conviction.

(b) Gross malpractice, or gross incompetency, which shall be determined by the board of cosmetic art examiners.

(c) Continued practice by a person knowingly having an infectious, or contagious disease.

(d) Advertising by means of knowingly false, or deceptive statements.

(e) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.

(f) The commission of any of the offenses described in section 5259(28), sub-sections three, four and six. (1933, c. 179, s. 26.)

§ 5259(27). Hearing on charges. — The board may neither refuse to issue, nor refuse to renew, nor suspend, nor revoke any certificate of registration, however, for any of these causes, unless the person accused has been given at least twenty days notice in writing of the charge against him or her and public hearing by the board of cosmetic art examiners.

(a) Upon the hearing of any such proceeding, the board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers.

(b) Any cosmetologist in the state whose case has been passed upon by the board of cosmetic art examiners shall have the right to appeal to the superior court of the state, which court may in its discretion reverse, or modify any order made by the said board of cosmetic art examiners. (1933, c. 179, s. 27.)

§ 5259(28). Acts made misdemeanors.—Each of the following constitutes a misdemeanor punishable upon conviction by a fine of not less than $10.00 and not more than $50.00, or imprisonment for not less than ten days, or more than thirty days:

(a) The violation of any of the provisions of section 5259(1).

(b) Permitting any person in one's employ, supervision, or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.

(c) Permitting any person in one's employ, supervision, or control, to practice as a cosmetologist unless that person has a certificate as a registered cosmetologist.

(d) Obtaining or attempting to obtain a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.

(e) Practicing or attempting to practice by fraudulent misrepresentations.

(f) The willful failure to display a certificate of registration as required by section 5259(24).

(g) The willful and continued violation of the reasonable rules and regulations adopted by the state board of cosmetic art examiners, and approved by the state board of health, for the sanitary management of shops and schools. (1933, c. 179, s. 28.)

§ 5259(29). Records to be kept by board.—The board of cosmetic art examiners shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business, and residence of each registered cosmetologist and registered apprentice, and the date and number of his certificate of registration. This record shall be open to public inspection during all days, excepting Sundays and legal holidays. (1933, c. 179, s. 29.)

CHAPTER 94

DRAINAGE

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS

Art. 1. Jurisdiction in clerk of Superior Court

Part 1. Petition by Individual Owner

§ 5275. Petition by servient owners against dominant owners.

Analogy to Drainage Law.—The procedure under this and the following sections is analogous to the general drainage law, and its provisions are applicable, and the proceedings are regarded as kept alive for further orders without being retained on the docket, and in this case the original assessment did not constitute a bar to the motion to vacate, and the assessment was properly set aside on the facts found. Spence v. Granger, 204 N. C. 247, 167 S. E. 805.

SUBCHAPTER III. DRAINAGE DISTRICTS

Art. 6. Drainage Commissioners

§ 5337. Election and organization under original act.

As to appointment of commissioner in Davidson Creek Drainage District, see Public Laws, 1933, c. 466.

Art. 8. Assessments and Bond Issue

§ 5373(g). No drainage assessments for original object may be levied on property when once paid in full.—Whenever any assessment has been made or may be made by any drainage district formed under the laws of the state of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. The provisions of the section shall not apply to Mecklenburg county. (1933, c. 504, s. 1.)

CHAPTER 95

EDUCATION

SUBCHAPTER III. DUTIES, POWERS AND RESPONSIBILITIES OF COUNTY BOARDS OF EDUCATION

Art. 4. The Board: Its Corporate Powers

§ 5410. How constituted.

Cross Reference.—As to such board being an agency of the State, see § 5489 and the note thereto.

Editor's Note.—

Public Laws 1933, c. 208, reduced the members in Wilkes county from seven to three.

§ 5411. Term of office.

Public Laws 1933, c. 421, contains an act similar to that passed in 1931, described in the Editor's note to this section.

§ 5427. Superior court to review board's action.

Where the county board of education orders the removal of school committeemen, § 5458, who appeal under the provisions of this section, the judgment of the Superior Court judge holding the act of the board of education in removing the committeemen invalid and dismissing the appeal for want of jurisdiction is inconsistent and erroneous. Board of Education v. Anderson, 200 N. C. 57, 156 S. E. 153.

Art. 5. The Direction and Supervision of the School System

§ 5429. General powers.

Where the county purchasing agent purchases equipment for a school and gives a note for the same signed by him in the name of the school the county is not liable on the note, the purchasing agent having no connection with the county board of education. Keith v. Henderson County, 204 N. C. 21, 167 S. E. 481.

§ 5430(a). Fuel for use in schools.—The county board of education in each county and the board of trustees in each special chartered district in North Carolina shall carefully canvass the fuel requirements of each school in their respective county or chartered district and shall determine whether it would be possible, practical and economical to use wood wholly or partly as fuel for heating the school buildings. In making this determination the school board or other governing bodies shall consider the costs of wood in comparison to the cost of coal or other fuels, the suitability of the equipment already installed and the need of establishing a local market for farm products. Each board of education or other governing bodies shall thus determine the amount, quality and size of wood that can be used as fuel in each school and shall receive bids, which shall be recorded in the minutes and compared with the cost of other fuels and when found to be economical the school board shall contract for a supply of standard grade wood of prescribed length and size to be used as fuel in heating the school building, or buildings, for the ensuing year.

The said school authorities shall have the right to reject any and all bids; and they shall further have the right, with a view of distributing the work of supplying fuel to as many persons as practicable, to let contracts with more than one bidder for the year's supply of fuel.

The state board of equalization and the state division of purchase and contract shall coöperate with the said school authorities and promote the use of wood by advising with them relative to the proper form for contracts and the relative costs and heating value of the different fuels.

This section shall not apply to Mecklenburg county. (1933, c. 473, ss. 1-4.)

Art. 6. Children at Orphanages

§ 5446. Permitted to attend public schools; expenses.

Failure of Purpose of Trust.—A trust fund created by will for the purpose of educating through high school a girl inmate of an orphan asylum to be chosen by the board of trustees from time to time does not fall into the residuary clause for failure of the purpose of the trust on the ground that the State educated orphan children through high school without charge under the provisions of this section; since this section makes the payment for the education of the children in orphan asylums permissive only. Humphrey v. Board of Trustees, 203 N. C. 201, 165 S. E. 547.

Art. 8. School Officials Selected by or Responsible to the Board of Education

§ 5458. Removal of committeemen for cause.

As to the Superior Court dismissing an appeal from such removal and at the same time holding it invalid see § 5427 and the note thereto.

Art. 9. Erection, Repair and Equipment of School Buildings

§ 5467. School buildings necessary.

In accordance with the provisions of this section, it is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a county-wide charge. Reeves v. Board of Education, 204 N. C. 74, 167 S. E. 454.

§ 5470: Repealed by Public Acts 1933, c. 494.

§ 5470(a). Sale of school property. — When in the opinion of the board, any schoolhouse, schoolhouse site or other public school property has become unnecessary for public school purposes, it may sell the same at public auction after advertising the said property for the period of time and in like manner as to places and publication in newspapers as now prescribed for sales of real estate under deeds of trust: Provided further,

that the sale shall be reported to the office of the clerk of the superior court and remain open for ten (10) days for an increase bid, and if the said bid is increased the property shall be re-advertised in the manner as re-sales under deeds of trusts, and if there is no raised or increased bid within ten (10) days, the chairman and secretary of the board shall execute a deed to the purchaser, and the proceeds shall be paid to the treasurer of the county school fund. (1933, c. 494, s. 2.)

Art. 10. Creating and Consolidating School Districts

§ 5481. County-wide plan of organization.

Maintenance of Elementary Schools.—Under this section and §§ 5483 and 5489 the Constitution requires by mandatory provision that at least one elementary school be maintained in each district. Elliott v. State Board of Equalization, 203 N. C. 749, 166 S. E. 918.

Art. 10A. Creation of School Districts

§ 5490(l). Property vested; conveyance of property; record.

Where under the provisions of this section, several school districts have been included in an enlarged district, and certain property in the former districts is not necessary to be used for school purposes in the enlarged district and the trustees of the enlarged district have not assumed any debt on such property, under the express provisions of this section the title to such property remains in the county board of education. Mitchell v. Board of Education, 201 N. C. 55, 158 S. E. 850.

SUBCHAPTER IV. COUNTY SUPERINTENDENT'S POWERS, DUTIES AND RESPONSIBILITIES

Art. 11. Election, Eligibility and General Duties

§ 5491. Election; term of office.

For an act relating to the appointment of county superintendents by the legislature of 1933, see Public Laws 1933, c. 202.

SUBCHAPTER V. SCHOOL COMMITTEES—THEIR DUTIES AND POWERS

Art. 14. In Non-Local Tax Districts

§ 5533. How to employ teachers.

Evidence.—Under the provisions of this section, refusal of the county superintendent to approve the election of a teacher on the ground that he did not have sufficiently high certificates as a teacher and that his election as a teacher would not be for the best interests of the school will not sustain the finding of the trial judge that the refusal of the county superintendent of schools to approve the election was arbitrary, captious and without just cause, and a mandamus to cause his approval is improvidently issued by the lower court. Cody v. Barrett, 200 N. C. 43, 156 S. E. 146.

SUBCHAPTER VI. TEACHERS AND PRINCIPALS

Art. 17. Certification of Teachers

§ 5584(a). Colleges to aid as to certificates. — Each and every college or university of the state is hereby authorized, to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates without restrictions, except as set forth in the rules and regulations of the state board of education, applying alike to all departments, work, and instructors of each and every college or university in this state. (1933, c. 497.)

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS

Art. 18. How to Estimate Amount Necessary for Six Months Term—Equalization Fund

§ 5598. How to estimate the salary fund for the special charter or city schools. — The salaries of teachers, principals, supervisors and superintendents for special charter districts shall be estimated as follows: The county board of education shall incorporate the budget of the special charter districts in the county budget and allow the actual salary for six months in accordance with the adopted salary schedule for each teacher permitted under section 5597. In all counties where the schools of a special charter district are operated as a part of the county system, and are under the control of the county board of education, and pupils living outside the special charter district are permitted, as the county board of education may direct, to attend free of all tuition charges, the amount of the salary budget of said special charter district shall be estimated in the same way as the budget for any other district school of the county is estimated.

The board of trustees of all special charter districts may petition the board of education to take over the management of the school or schools within the special charter district. When such a petition is presented, the county board of education shall grant the petition, and the school or schools within the district shall be governed as all other schools in local tax districts are governed: Provided, the county board of education shall not have the authority to change the method of electing the board of trustees unless the charter is surrendered and the title to the property is transferred to the county board of education. (1923, c. 136, s. 177; 1925, c. 138, s. 1; 1927, c. 239, s. 3.)

§ 5599. How to determine the amount of the current expense fund, the capital outlay fund, and the debt service fund.

Editor's Note.—

This section in its original form (c. 180, § 6, Public Laws of 1925) was not passed in accordance with the formalities required by § 14, Art. II of the Constitution but c. 239, § 6, Public Laws of 1927, which amended the section was regularly passed and the effect is to ratify and make valid any defect in the prior act for the two acts are construed together as one. Reeves v. Board of Education, 204 N. C. 74, 167 S. E. 454.

Assumption of Payment as County-Wide Obligation.—Where bonds to provide funds for buildings and equipment have been voted by special school districts and by a city constituting a special charter district which has since become a part of the general county schools, the county may assume the payment of such bonds as a county-wide obligation under the provisions of this section, and it is not necessary that payment therefor be made from taxes levied only in such special districts. Reeves v. Board of Education, 204 N. C. 74, 167 S. E. 454.

Art. 19. Powers, Duties and Responsibilities of the Board of County Commissioners in Providing Funds for Six Months Term

§ 5604. Commissioners required to raise full amount.

Cross Reference.—As to the permission of children at orphanages to attend public schools see § 5446 and notes thereto.

§ 5608. Procedure in cases of disagreement or refusal of county commissioners to levy school taxes.

Meeting Must Be Held.—Where the commissioners have

refused to levy a tax to provide an additional salary for the county superintendent and the meeting called for in this section has not been held nor the clerk called upon to arbitrate the matter it is erroneous to grant a writ of mandamus to the superintendent to compel the commissioners to levy the tax. Rollins v. Rogers, 204 N. C. 308, 168 S. E. 206.

SUBCHAPTER XI. TEXTBOOKS AND PUBLIC LIBRARIES

Art. 35. Textbooks for Elementary Grades

§ 5730. State board of education adopts.—The state board of education is hereby authorized to adopt, for the the exclusive use in the public elementary schools of North Carolina, supported wholly or in part out of the public funds, textbooks and publications, including instructional materials, to meet the needs of such schools in each grade and on each subject matter in which instruction is required to be given by law. And six months before the expiration of the contracts now in force it shall adopt for a period of five years from a multiple list submitted by the textbook commission, as hereinafter provided two basal primers for the first grade and two basal readers for each of the first three grades, and one basal book or series of books on all other subjects contained in the outline course of study for the elementary grades where a basal book or books are recommended for use: Provided, the state board of education may enter into contract with a publisher for a period less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1923, c. 136, s. 320; 1933, c. 464, s. 1.)

Editor's Note.—Prior to Public Laws of 1933, c. 464, the first sentence of this section read as follows: "The state board of education is hereby authorized to adopt text books for use in all elementary public schools of the state, supported wholly or in part out of public funds."

§ 5733. Basal and supplementary books. — All textbooks to be adopted by the state board of education shall be basal books or supplementary books necessary to complete the course of study. (1923, c. 136, s. 322; 1933, c. 464, s. 2.)

Editor's Note.—Prior to the Amendment of 1933, the section read: "All subjects on which text-books are to be adopted by the state board of education shall be the basal books, and all other books necessary to complete the course of study shall be supplementary books."

§ 5734. Basal books not to be displaced by supplementary.—The state board of education is hereby authorized to select and adopt all supplementary books and instructional material necessary to complete the course of study for all schools. Such supplementary books shall neither displace or (nor) be used to the exclusion of basal books. (1923, c. 136, s. 323; 1933, c. 464, s. 3.)

Editor's Note.—Prior to Public Laws of 1933, c. 464, county boards of education selected the supplementary books.

§ 5738. Duties of commission. — The textbook commission shall first prepare, subject to the approval of the superintendent of public instruction, and publish at the expense of the state, an outline course of study setting forth what subjects shall be taught in each of the elementary grades. It shall give in outline the number of basal and supplementary books on each subject to be used in each grade in accordance with the law. All textbooks which are to be adopted by the state board of education shall be basal books or supplementary books.

After the outline course of study has been prepared and published, the textbook commission shall then prepare a multiple list of basal books to be submitted to the state board of education. The multiple list shall contain not less than four nor more than eight books or series of books on all subjects for each grade.

On or before February first, one thousand nine hundred and twenty-two, the chairman of the textbook commission shall submit to the superintendent of public instruction a report setting forth the multiple list of books that have been selected in conformity with the outline course of study. No book shall be included in the multiple list that a majority of the textbook commission deems unsuitable, or that does not conform to the outline course of study.

The textbook commission shall report whether any of the major subjects containing a series of books may be divided, taking one part from one series and another part from another series of books on the same subject, and the commission's report in this respect shall be binding on the state board of education. (1923, c. 136, s. 328; 1933, c. 464, s. 4.)

Editor's Note.—Public Laws of 1933, c. 464, substituted the first paragraph of this section for two former paragraphs. A comparison of these paragraphs is necessary to determine the changes.

§ 5739. State board of education makes all contracts. — (a) The state board of education shall make all needful rules and regulations governing the advertisement for bids, when and how prices shall be submitted, when and how sample books for adoption shall be submitted, the nature of the contract to be entered into between the state board of education and the publishers, the nature and kind of bond, if any is necessary, and all other needful rules and regulations governing the adoption of books for all public schools not otherwise specified in this act. After a contract has been entered into between the state board of education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, etc., the attorney-general shall bring suit against said company, when requested by the state board of education, for such amount as may be sufficient to enforce the contract or to compensate the state because of the loss sustained by a failure to keep this contract. (b) It shall be unlawful for any local distributing agency distributing State-adopted textbooks to charge or to make any deduction from the purchase price of such textbooks when returned by the purchaser without having been subjected to use or damage. Any person violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction fined not less than fifty dollars or imprisoned (not) more than thirty days. (1923, c. 136, s. 329; 1925, c. 69; 1933, c. 464, s. 5.)

Editor's Note.—
Prior to Public Laws 1933, c. 464, this section applied to rules and regulations for elementary schools only. It now applies to all public schools.

§ 5742(a). Acquisition of manuscripts for text-

books permitted.—The said board of education be and it is hereby authorized and empowered in its discretion to purchase and/or acquire a manuscript or manuscripts for school textbooks or supplementary books used or to be used in any or all grades of the public schools of North Carolina and to procure the printing and publishing of such books under contract through competitive bids or otherwise as it may in its discretion determine to be for the best interest of the public schools of the state; and if said board of education finds that by the acquisition of any such manuscript or manuscripts, and that by the making of any such contract for any such school books, either basal or supplementary, such books can be furnished to the public schools of the state at a price less than the same may be acquired from publishers, then it shall be the duty of said board of education to acquire such manuscripts and cause the same to be published and said books to be distributed in accordance with such rules and regulations and under such terms and conditions as it may deem advisable, having due regard to the standard of the school books so published, after taking into consideration the substance of such books and their adaptability for use in the schools of the state. (1933, c. 464, s. 6.)

§ 5742(b). Contracts for distribution of textbooks through depositories or a state agency. — The state board of education is authorized and empowered to make and enter into all such contracts as may be necessary to provide for the proper distribution of textbooks either through a depository or depositories, or through the state division of purchase and contract or other state agency, utilizing county boards of education or city boards of trustees, if found feasible, for local distribution, as to it may seem advisable; and is further authorized and empowered to make all needed rules, regulations, and contracts governing the disposition, sale, and return of school books as are not disposed of to the patrons of the schools, and to determine the nature of the contract or contracts to be entered into between the state board of education and the publisher or publishers, for the distribution of school textbooks adopted by it or in use in any of the public schools of the state. It may also determine the nature and kind of bond, if necessary, to be given by any depository or other agency carrying out the terms of this act, to the end that school textbooks shall be delivered to the patrons of the schools at the lowest possible net cost. (1933, c. 464, s. 7.)

SUBCHAPTER XVIII. SCHOOL LAW OF 1933

§ 5780(1). Biennial appropriation for eight months term.—The appropriation made under title IX of section one of "an act to make appropriations for the maintenance of the state's departments, bureaus, institutions, and agencies, and for other purposes, and to reduce salaries of officers, employees and agents" of the sum of sixteen million ($16,000,000) dollars, "for a statewide eight months public school in place of the present six months and extended terms" for the year ending June thirtieth, one thousand nine hundred and thirty-four, and the sum of sixteen million ($16,000,000) dollars for an eight months school term for the year ending June thirtieth, one thousand nine hundred and thirty-five, shall be apportioned for the operation of an eight months state-wide school term as hereinafter provided. (1933, c. 562, s. 1.)

§ 5780(2). State board of equalization abolished; state school commission created; membership.—The term of office of the members of the state board of equalization shall terminate on the fifteenth of May, one thousand nine hundred and thirty-three. There is hereby created in lieu thereof a state school commission which shall be constituted as follows: the governor as ex-officio chairman, the lieutenant governor, state treasurer, and state superintendent of public instruction, and one member from each congressional district to be appointed by the governor. The said appointive members shall serve for a period of two years from the time of their appointment, and receive such compensation as now provided by law for members of the board of equalization. All of the powers and duties heretofore conferred by law upon the state board of equalization, together with such other powers and duties as may be conferred by this subchapter, shall be vested in the state school commission. The cost and expense of said commission shall be paid out of the appropriation made for the public schools: Provided, further, that the pay, expenses and travel allowance of any one member shall not exceed $1,000.00 per year, beginning with the second fiscal year: Provided, further, that no employee of the state school commission shall be paid a salary in excess of $2,800.00: Provided, further, that the salary of the executive secretary of said commission shall not exceed $3,600.00 per annum.

Upon the expiration of the two-year term above provided, the governor shall appoint four members of said commission for a term of two years, four for a term of four years and three for a term of six years from the date of their appointment. (1933, s. 562, s. 2.)

§ 5780(3). Uniform term of eight months adopted.—The six months school term required by article IX of the constitution is hereby extended to embrace a total of one hundred and sixty days of school in order that there shall be operated in every county and district in the state which shall request the same a uniform term of eight months: Provided, that the state school commission or the county board of education may suspend the operation of the school or schools in any county or district for a part, or all, of the last forty days of said consolidated term, when in the sound judgment of said commission or the county board of education the low average in any school does not justify its continuance or when necessity may require it: Provided further, that any balance of the state funds which may have been allocated to operate the last forty days, or any part thereof, of the consolidated term not actually operated as planned, shall be and remain in the state treasury and become a part of the state school fund for the next succeeding year. (1933, c. 562, s. 3.)

§ 5780(4). Special school districts abolished;

limit on tax levies; tax for vocational instruction allowed.—All school districts, special tax, special charter or otherwise, as now constituted for school administration or for tax levying purposes, are hereby declared non-existent and it shall be unlawful for any taxes to be levied in said districts for school operating purposes except as provided in this subchapter: Provided, that nothing herein contained shall be construed to prevent the tax-levying authorities in any administrative unit, with the approval of the state school commission, from levying taxes to provide the necessary funds for teaching vocational, agriculture and home economics in such unit when said tax levying authorities are now authorized by law to do so and are now levying taxes for such purposes. The terms of office of all school committeemen for the school districts as now constituted shall expire as of May first, 1933, and new members shall be named by the county board of education immediately upon the termination of the areas of the new districts as hereafter provided in this section. (1933, c. 562, s. 4.)

§ 5780(5). Counties as administrative units.—The state school commission in making provision for the operation of the schools shall classify each county as an administrative unit and shall with the advice of the county boards of education redistrict each county, thereby making provision for such convenient number of school districts as the commission may deem necessary for the economical administration and operation of the state school system and shall determine whether there shall be operated in such district an elementary or a union school. Provision shall not be made for a high school with an average attendance of less than sixty pupils nor an elementary school with an average attendance of less than twenty-five pupils, unless geographic or economic conditions make it impracticable to provide for them otherwise. Any newly constituted district having a school population of 1,000 or more for the school year 1932-1933 in which a special charter school is now operated may with the approval of the state school commission be classified as a city administrative unit and shall be dealt with by the state school authorities in all matters of school administration in the same way and manner as are county administrative units: Provided, that in all cases where any existing special charter district is included in a district as determined by the state school commission the trustees of the special charter district and their duly elected successors shall be retained as the governing body of such district and the title to all the property of the special charter district shall remain with such trustees. (1933, c. 562, s. 4.)

§ 5780(6). Consolidation of units for purposes of economy. — When convenience and economy would result, the state school commission may consolidate one or more schools within the same administrative unit and/or may consolidate portions of one administrative unit with portions of an adjoining administrative unit, into a district, which latter consolidation shall be made wherever the same shall be necessary to prevent division by a county line of any school system heretofore operated by a special charter district embracing territory about equally divided by said county line, having a school population of three thousand or more for the school year 1932-33, and in such case said special charter district shall be classified as a city administrative unit. (1933, c. 562, s. 4.)

§ 5780(7). Retention of bonded districts for debt purposes only.—In redistricting a county, if a boundary, territorial district or unit, in which a special bond tax has heretofore been voted or in any way assumed, shall be divided or consolidated, or the whole or a portion of which is otherwise integrated with a new district so established under such reorganization and redistricting, such territorial unit, boundary or district, special taxing or special charter, shall be abolished as a school district, but for the purpose of the levy and collection of the special taxes theretofore voted in any unit, boundary or district, special taxing or special charter, for the payment of bonds issued and/or other obligations so assumed, the said territorial boundary district or unit shall be maintained until all necessary taxes have been levied and collected therein for the payment of such bonds and/or other indebtedness so assumed. Such boundary unit or district shall be known and designated as the ..... "special bond tax unit" of ..... county. All uncollected taxes which have been levied in the respective school districts of the state for the purpose of meeting the operating costs of the schools shall remain as a lien against the property as originally assessed and shall be collectible as are other taxes so levied, and upon collection shall be made a part of the debt service fund of the special bond tax unit along with such other funds as may accrue to the credit of said unit; and in the event there is no debt service requirement upon such district, the amount so collected shall be covered into the county treasury to be used as a part of the county debt service for schools: Provided unpaid teachers' vouchers for the year in which the tax was levied shall be a prior lien: Provided, that nothing in this subchapter shall affect the right of any special charter district or special tax district to have the indebtedness of such district taken over by the county as provided by existing law, and nothing herein shall restrict the county board of education and/or the board of county commissioners in causing such indebtedness to be assumed by the county, as provided by existing law. (1933, c. 562, s. 4.)

§ 5780(8). County superintendents and city superintending-principals. — The administrative officer in each of the units designated by the state school commission shall be a county superintendent of schools for a county administrative unit and a superintending-principal for a city administrative unit. The salary of the superintendent of a county administrative unit shall be based upon the number of state teachers employed within the county administrative unit and under his supervision as follows: $1,400 per annum for the first 100 state teachers or fraction thereof, with an increase of $50 for each ten additional state teachers, not to exceed $2,800 in any county administrative unit: Provided, that it shall be law-

ful for the superintendent of public schools in any county, with the approval of the state superintendent of public instruction, to serve as principal of a high school of said county, and the sum not exceeding $300, to be paid from instructional service funds, may be added to his salary, and shall be included in the budget approved by the state school commission: Provided further, that a county superintendent may serve as welfare officer and have such additional compensation as may be allowed by the county commissioners of said county, to be paid from county funds, subject to the approval of the state school commission. The salary of the superintending-principal of a city administrative unit shall be in accordance with the principals' salary schedule as determined under the provisions of section 5780(16).

At a meeting to be held the first Monday in May, 1933, or as soon thereafter as practicable, and biennially thereafter during the month of May, the various county boards of education shall meet and elect a county superintendent of schools, subject to the approval of the state school commission and the state superintendent of public instruction, who shall take office June first and shall serve for a period of two years or until his successor is elected and qualified. A certification to the county board of education by the state superintendent of public instruction showing that the person proposed for the office of county superintendent of schools is a graduate of a four-year standard college, or at the present time holds a superintendent's certificate, and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious disease, shall make any citizen of the state eligible for this office.

In all city administrative units the superintending-principal of schools shall be elected annually by the board of trustees or other school governing agency of such unit or district and his qualifications shall be those of all school principals and shall be subject to the approval of the state school commission and the state superintendent of public instruction. (1933, c. 562, s. 5.)

§ 5780(9). Certification by local units to commission of school organization.—On or before the twentieth day of May in each year the several administrative units shall present to the state school commission a certified statement showing the organization of the schools in their respective units, together with such other information as said commission may require. The organization statement as filed by each unit of administration shall indicate the length of term the state is requested to operate the various schools for the following school year and the state shall base its allotment of funds upon such request. (1933, c. 532, s. 6.)

§ 5780(10). Determination of number of teachers required in each unit.—On a basis of the organization statement, together with all other available information and under such rules and regulations as said commission may promulgate, the state school commission shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the state budget.

That it shall be the duty of the state school commission, in the allocation of funds for the maintenance and operation of the schools of the state for one hundred and sixty days, on standards determined by the said state school commission and on the total appropriation made available by the general assembly, to allocate these funds, under the provisions of this subchapter, to the end that all of the modern school plants in a county may be utilized, that duplication of transportation routes be eliminated, and that pupils may be moved across now existing district lines to the end that the cost of instructional service may be lowered. (1933, c. 562, s. 7.)

§ 5780(11). High school instruction. — The county board of education shall also, in its application and budget, submitted for state funds, designate the schools in the county in which, in its opinion, high school instruction can be given in the most economical way. County boards of education of contiguous counties shall consult and make joint plans for high school instruction at convenient points for children of such contiguous counties, where the same can be done most economically and advantageously. The state school commission shall have authority to approve or disapprove all such plans and to designate the schools in which high school instruction shall be given, so as to provide such instruction for all the high school pupils of the state: Provided, that all public vocational and farm life schools, organized and administered separately from locally operated schools in communities where said vocational and farm life school is already serving as the high school of said community, shall be consolidated with said local schools and become an integral part of the local district system and administered as other public district schools are administered. (1933, c. 562, s. 7.)

§ 5780(12). Budget for each unit. — That the state budget estimate shall be determined by the state school commission for each county and city administrative unit by ascertaining the sum of the objects of expenditure according to and within the limits fixed by this act, and within the meaning of the rules and regulations promulgated by the state school commission, and a certification of same shall be made to each county and superintending-principal, the chairman of the board of commissioners, the state superintendent of public instruction, the state auditor, and the state budget bureau on or before June first of each year: Provided, that no funds shall be allotted for rural supervisors, and provided further, that the amount of funds allotted for school attendance officers shall be left to the discretion of the state school commission: Provided that the item of instructional service shall not be reduced by such allotment: Provided, that this proviso shall not be interpreted as prohibiting the utilization of privately donated funds under such arrangements as the state school commission may provide. (1933, c. 562, s. 8.)

§ 5780(13). Determination of salary requirements.—Upon receipt of notice from the state school commission of the total number of teachers, by races and for county and city administrative units separately, the state superintendent of public instruction shall then determine in ac-

cordance with the schedule of salaries established the total salary cost in each and every county for teachers, principals and superintendents to be included in the state budget for the next succeeding fiscal year for the consolidated school term as herein defined. This amount as determined from a check of the costs for the preceding year with adjustments resulting from changes in the allotment of teachers shall be certified to the state school commission, together with the number of elementary and high school teachers and principals employed in accordance with the provisions of this subchapter, separately by races, and for city and county administrative units. (1933, c. 562, s. 9.)

§ 5780(14). Cost of other items determined.—The cost of all items in the operation of the public schools not herein otherwise provided shall be determined on the basis of rules and regulations promulgated by the state school commission. Only those items that are deemed necessary by the commission for the efficient operation of the public schools shall be included in the state budget. (1933, c. 562, s. 10.)

§ 5780(15). Summer school requirement suspended.—No teacher or principal shall be required to attend summer school during the years 1933-35 and the certificate of such teachers as may have been required to attend such school shall not lapse but shall remain in full force and effect and all credits earned by summer school work and/or completing extension course or courses shall not be impaired, but shall continue in full force and effect. In the employment of teachers no rule shall be made or enforced on the ground of marriage or non-marriage. (1933, c. 562, s. 11.)

§ 5780(16). Standard salary schedule to be fixed. — The state board of education and the state school commission shall fix and determine a state standard salary schedule for teachers and principals which shall be the maximum standard state salaries to be paid to the teachers and principals; and all contracts for teachers shall be made locally by the county boards of education and/or the governing authorities or any other administrative unit, giving due consideration to the peculiar conditions surrounding each employment, the competency and experience of the teachers, the amount and character of work to be done, and any and all other things which might enter into the contract of employment, and shall also take into consideration the grade of certificate such teacher holds: Provided, however, that the compensation contracted to be paid out of the state fund to any teacher or principal shall be within the maximum salary limit to be fixed by the state board of education and the state school commission, as above provided, and within the allotment of funds as made to the administrative unit for the item of instructional salaries. (1933, c. 562, s. 12.)

§ 5780(17). Economies effected.—The state school commission shall effect all economies possible in providing state funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action shall have authority to increase or decrease on a uniform percentage basis the salary schedule of superintendents, superintending-principals, teachers, and principals in order that the appropriation of state funds for the public schools may insure their operation for the length of term provided in this subchapter. (1933, c. 562, s. 13.)

§ 5780(18). Principal as teacher in schools of certain size; number of principals.—In all schools with fewer than fifty teachers allowed under the provisions of this subchapter, the principal shall be included in the number of teachers allowed. In schools with fifty or more teachers one whole-time superintending-principal is allowed and for each forty teachers in addition to the first fifty, one additional whole-time principal, when and if actually employed, shall be allowed: Provided, that in schools with seventy-five allotted teachers, a teaching principal may be allowed: Provided further, that in the allocation of state funds, for principals, the salary of white principals shall be determined by the number of white teachers employed in the white schools, and the salary of colored principals shall be determined by the number of colored teachers employed in the colored schools. (1933, c. 562, s. 14.)

§ 5780(19). School month defined.—A school month shall consist of four weeks and not less than twenty teaching days, and salary warrants for the payment of all state teachers and principals shall be issued each month to such persons as are entitled to same.

Provided, that with the approval of the local school authorities and the state school commission, any local school may increase its school week from five to six days, or may increase its school day by adding one hour of instructional service to the present school day, for and during the six months school term, and thereby provide for an eight months school term under the provisions of this subchapter; and the state school commission shall have the power and right to adjust teachers' salaries on an equitable basis in such schools. (1933, c. 562, s. 15.)

§ 5780(20). Items of school cost; supplying funds for other objects. — The appropriation of state funds as provided under the provisions of this subchapter shall be used for meeting the costs, as determined by the state school commission, for the items under: (1) general control, (2) instructional service, (3) operation of plant, (4) auxiliary agencies.

The objects of expenditures designated as maintenance of plant and fixed charges shall be supplied from funds required by law to be placed to the credit of the public school fund of the county and derived from fines, forfeitures, penalties, dog taxes, poll taxes, and from all other sources except state funds: Provided, that with the approval of the state school commission all of the above funds not needed for maintenance of plant and fixed charges may be used to supplement state costs for other objects of expenditure: Provided, that where the funds received from the above sources are insufficient for meeting the objects of fixed charges and maintenance of plant, that the tax levying authorities of the said administrative unit shall levy an amount sufficient to meet said needs. (1933, c. 562, s. 16.)

§ 5780(21). Provision for supplementing items of school expenditure.—The county board of education in any county administrative unit and the

board of trustees in any city administrative unit, with the approval of the tax levying authorities in said county or city administrative unit and the state school commission, in order to operate the schools of a higher standard than those provided for by state support, but in no event to provide for a term of more than 180 days, may supplement any object or item of school expenditure: Provided, that before making any levy for supplementing state budget allotments an election shall be held in each administrative unit to determine whether there shall be levied a tax to provide said supplemental funds, and to determine the maximum rate which may be levied therefor. Upon the request of the members of the county board of education in a county unit and/or the board of trustees in a city administrative unit the tax levying authorities of such unit shall provide for an election to be held under laws governing such election, as set forth in articles 23, 24 and 26 of chapter 95 of the consolidated statutes of North Carolina, volume III: Provided, the rate voted shall remain the maximum until revoked or changed by another election. This section shall not be construed as conferring additional powers to levy taxes on county boards of commissioners, boards of aldermen, or other tax levying authorities, but as a limitation on existing powers to levy taxes for the purposes mentioned in this subchapter and contained in other public, public-local or private laws.

The request for funds to supplement state school funds as permitted under the above conditions shall be filed with the tax levying authorities in each county and city administrative unit on or before the fifteenth day of June on forms provided by the state school commission. The tax levying authorities may approve or disapprove this supplemental budget in whole or in part. In the event of approval, the same shall be shown in detail upon the minutes of said tax levying body and a special levy shall be made therefor, and the tax receipt shall show upon the face thereof the purpose of said levy.

In the same manner and at the same time each county, "special bond tax unit" and city administrative unit shall file a debt service budget subject to the approval of the tax levying authorities in each unit and the state school commission.

In the same manner and at the same time each county and city administrative unit may file a capital outlay budget subject to the approval of the tax levying authorities and the state school commission.

The tax levying authorities in each of the above units filing budgets from local funds shall report their action on said budgets on or before the fifteenth day of July, and the same shall be reported to the state school commission on or before the first day of August. The action of the state school commission on all requests for local funds budgets shall be reported to boards of education, boards of trustees in city administrative units and tax levying authorities on or before the first day of September.

It shall be the duty of the county board of education in each county and the board of trustees in each city administrative unit, upon receipt of the tentative allotment of state funds for operating the schools and the approval of all local funds budgets including supplements to state funds for operating schools of a higher standard, funds for extending the term, funds for debt service, and funds for capital outlay, to prepare an operating budget on forms provided by the state and file same with the state superintendent of public instruction and the state school commission on or before the first day of October. Each operating budget shall be checked by the state school commission to ascertain if it is in accordance with the allotments of state funds and the approvals of local funds; and when found to be in accordance with same shall be the total school budget for said county or city administrative unit.

All county-wide school funds shall be apportioned to county and city administrative units on a per capita basis.

Provided, that no county, municipality, or other unit, may vote to extend the term of school beyond the eight months term, so long as such county, municipality, or other unit, is in default in the payment of its bonds or other evidences of indebtedness: Provided, however, that it shall be unlawful to operate the schools in Currituck county and Cherokee county for more than eight months and no supplements shall be allowed, and no ad valorem taxes shall be levied for the operation of the eight months schools: Provided, no taxes shall be levied on property in Martin county for the purpose of supplementing salaries or any term of school in addition to the eight months term provided for in this subchapter. (1933, c. 562, s. 17.)

§ 5780(22). Bonds for protection of school funds.—The state school commission, subject to the approval of the local government commission, shall determine and provide all bonds necessary for the protection of the state school funds.

That the tax levying authorities in each county and city administrative unit, subject to the approval of the local government commission, shall provide such bonds as the state school commission may require for the protection of county and district school funds. (1933, c. 562, s. 18.)

§ 5780(23). Payment of state funds in monthly installments.—The payment of the state fund to the county and city administrative units may be made in monthly installments, at such time and in such amounts as may be practical to meet the needs and necessities of the eight months school term in the various county and city administrative units: Provided, that prior to the payment of any monthly installment it shall be the duty of the county board of education or the board of trustees to file with the state superintendent of public instruction and state school commission a certified statement of all salaries, together with all other obligations, that may be due and payable, said statement to be filed on or before the fifteenth day of each month next preceding the maturity of the obligations.

When it shall appear to the state superintendent of public instruction from said certified statement that any sums are within the provisions of this subchapter, and without objection by the state school commission, he shall draw his requisition on the state auditor for any monthly installment from the funds allocated for the purpose approved by the state school commission. The signature of the chairman of the county board of education

and the county superintendent or the chairman of the board of trustees and the city superintendent on a warrant for the payment out of state funds for any service rendered shall be sufficient, when done in accordance with the provisions of this subchapter. (1933, c. 562, s. 19.)

§ 5780(24). Method of disbursing school funds.—School funds shall be paid out as follows:

(1) State School Funds.—That state school funds shall be released only on warrants drawn on the state treasurer signed by the chairman and secretary of the county board of education for county administrative units and by the chairman and secretary of the board of trustees for city administrative units and countersigned by such officer as the county government laws may require.

(2) County and District Funds.—All county and district funds shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties and the chairman and secretary of the board of trustees for city administrative units and countersigned by such officer as the county government laws may require. (1933, c. 562, s. 20.)

§ 5780(25). Audit of all school funds ordered.—The state school commission in coöperation with the director of local government shall cause to be made an audit of all school funds—state, county, and district—and the cost of said audit shall be borne by each fund audited in proportion to the total funds audited as determined by the state school commission: Provided, that the provisions of this subchapter shall apply for 1932-1933.

The tax levying authorities for county and city administrative units shall make provision for meeting their proportionate part of the cost of the audit as provided in this subchapter. (1933, c. 562, s. 21.)

§ 5780(26). Taxes for debt service unaffected.—Nothing in this subchapter shall prevent counties, local taxing districts, and special charter districts from levying taxes to provide for debt service requirements. (1933, c. 562, s. 22.)

§ 5780(27). Checking school requirements.—It shall be the duty of county boards of education after the opening of the schools in the county to make a careful check of the school organization and to request the state school commission to make changes in the allocation of teachers to meet requirements. (1933, c. 562, s. 23.)

§ 5780(28). Workmen's compensation act applicable to school employees.—The provisions of the workmen's compensation act shall be applicable to all school bus drivers, mechanics, and janitors. The state school commission shall make such arrangements as are necessary to carry out the provisions of the workmen's compensation act as applicable to this class of school employees. All other school employees paid from state funds are declared to be exempt from any and all provisions of the workmen's compensation act or any amendments thereto. (1933, c. 562, s. 24.)

§ 5780(29). General supervision of commission.—It shall be the duty of the state school commission to provide all general control, instructional service, operation of plant, and auxiliary agencies, as hereinbefore specified, for the operation of the eight months school term as provided for by the state.

It shall be the duty of the state school commission and county boards of education, and boards of trustees in city administrative units, to act through and with the approval of the state purchasing agency in the purchase of all materials and supplies to be used in all the schools of the state. This provision shall apply to all extended terms as well as to the eight months term. The state purchasing agent and the state school commission shall promulgate rules and regulations to carry out the provision of this subchapter. (1933, c. 562, s. 25.)

§ 5780(30). School transportation.—That from and after May 1, 1933, the control and management of all facilities for the transportation of public school children as now operated by the various counties and other local subdivisions of government shall be vested in the state of North Carolina under the direction and supervision of the state school commission. Authority is hereby given the state school commission in addition to the provisions of this subchapter to make such rules and regulations as are necessary for the efficient and economical operation of the school transportation system. Said regulations shall include provisions for the adequate inspection each thirty days of every vehicle used in the transportation of school children, and a record filed in the office of the county board of education. (1933, c. 562, s. 26.)

§ 5780(31). Surrender of all locally owned transportation facilities to commission.—On June 1, 1933, the county boards of education and/or boards of county commissioners and the district trustees or committeemen of whatever nature in each county shall turn over to the state school commission, or its duly authorized agents, all school transportation equipment, material, and supplies of every kind and all such property as may have been used in connection with school transportation; and all such property shall be duly inventoried and appraised by the state school commission or its duly authorized agents. From and after the ratification of this act, all local authorities of any and all local units of government are prohibited from selling or in any way disposing of any transportation equipment or supplies without the approval of the state school commission. (1933, c. 562, s. 27.)

§ 5780(32). Laying out of routes of school trucks.—At least thirty days before the opening date of the schools in any county a meeting of the county board of education in each of the one hundred counties shall be called by the county superintendent of schools for the purpose of laying out and determining the route to be followed by each school truck to be operated in the county. Notice of this meeting shall be published in all county newspapers at least one week prior to the date of meeting and the purpose of the meeting shall be set forth. It shall be the duty of the principal of each school to which pupils are transported to attend this meeting and the state school commission shall be represented by either a member or duly authorized agent. After a careful study of the schools operated and the transporta-

tion needs in the county, giving due consideration to road facilities and availability of drivers, the county board of education shall determine the routes to be followed by all busses used in transporting children to and from school. In all districts where transportation is provided, provision shall be made for transporting all children living more than two miles from the school building by way of the nearest traveled route; and unless road conditions or other reasons make it inadvisable busses shall be routed so as to get within one and one-half miles of all children entitled to transportation in said districts: Provided, that within five days from the date of the meeting for determining the routes of the school busses, the county superintendent shall file a map with the state school commission showing the route to be followed by each truck and the location of the home of the driver with such other information as may be requested, and the state school commission shall have authority to approve or disapprove in whole or in part the proposed routings: Provided further, that an appeal from the decision of the county board of education may be taken to the state school commission by any citizen by giving notice of such appeal to the county superintendent within thirty days after the adoption of the routings to be followed during the ensuing year. (1933, c. 562, s. 28.)

§ 5780(33). Employment of drivers.—The authority for selecting and employing the drivers of school busses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school, and the county superintendent of schools: Provided, that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible; and it shall be lawful to employ student drivers wherever the same is deemed advisable.

The selection of all mechanics and employees other than drivers for the operation of the transportation system shall be made by the county superintendent of schools, with the approval of the county board of education. (1933, c. 562, s. 29.)

§ 5780(34). Salaries.—The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the state school commission for that particular class of employees. (1933, c. 562, s. 30.)

§ 5780(35). Coördination with department of highways and public works as to repair agencies.—The state school commission is hereby authorized to begin immediately negotiations with the department of highways and public works authorities looking to the coördination of all the agencies for the repair, maintenance and upkeep of equipment to be used by the state school commission in the school transportation system. The state highway commission is directed to make available wherever possible such repairs, maintenance equipment, and labor forces as may be used advantageously in the economical operation of the school transportation system. In all cases where such equipment and labor forces are used, the state highway commission shall be reimbursed in the amount of the actual cost involved, to be determined by an itemized statement, filed with the state school commission. (1933, c. 562, s. 31.)

§ 5780(36). Pupils from one unit attending school in another in interest of economy.—It shall be within the discretion of the state school commission, wherever it shall appear to be more economical for the efficient operation of the schools, to permit children living in one administrative district to attend the school in another district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such districts to which the said children are transferred. (1933, c. 562, s. 32.)

§ 5780(37). Accounting as to special school funds.—It shall be the duty of the county superintendent of public instruction to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes are correctly accounted for to the school fund each year, and to examine the records of the several courts of the county, including courts of justices of the peace, at least once every three months to see that all fines, forfeitures and penalties, and any other special funds accruing to the county school fund are correctly and promptly accounted for to the school fund; and if the county superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be his duty to make prompt report thereof to the state school commission and also to the solicitor of the superior court holding the courts in the district: Provided, that in any county having a county auditor, county accountant, or county manager, that the duties enjoined under the provisions of this section shall be performed by one of said officers; and if there are two or more such officers in any county, then by one of such officers in the order named.

The state school commission shall allow in the state budget for compensation for each county board of education an amount not to exceed one hundred dollars per county and each board shall meet at least four times per annum. (1933, c. 562, s. 33.)

§ 5780(38). City superintendent made secretary to city board of trustees.—The city superintendent of the city administrative unit established under this subchapter is hereby made ex-officio secretary to the board of trustees of said city administrative unit. (1933, c. 562, s. 34.)

§ 5780(39). Intent of act to effect reduction in ad valorem taxes.—It is intended by this subchapter to effect a reduction of ad valorem taxes in the several counties and school districts of the state, and it is hereby declared to be unlawful, for any board of county commissioners or other school units for the years 1933, 1934 and other fiscal years succeeding to make any tax levy which in the gross does not reflect the savings to the taxpayer of the fifteen cent ad valorem statewide tax for schools, and all reductions in special school district ad valorem taxes affected under the provisions of this subchapter. (1933, c. 562, s. 34½.)

§ 5780(40). Conflicting laws repealed.—All public, public-local or private laws and clauses of laws in conflict with this subchapter, to the ex-

tent of such conflict only, are hereby repealed. If any section, part, paragraph, sentence or clause of this subchapter shall be declared unconstitutional or invalid the same shall not affect the validity of any of the remaining parts of this subchapter. (1933, c. 562, s. 35.)

CHAPTER 96
EDUCATIONAL INSTITUTIONS OF THE STATE

Art. 1. University of North Carolina

§ 5784. Escheats to university.

Land held by incorporated town held to escheat upon repeal of town charter under the facts of this case. University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511.

§ 5784(a). Evidence making prima facie case.

The provisions of this section, applies only to proof and not to pleading. University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511.

§ 5800. Tuition fees, free tuition.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 2. North Carolina State College of Agriculture and Engineering

§ 5820. Free scholarship.

This section is repealed in so far as it conflicts with § 5912(k).

§ 5821. Free tuition.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 3. Negro Agricultural and Technical College of North Carolina

§ 5831. Admission of pupils.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 4. North Carolina College for Women

§ 5835. Objects of institution; free tuition to teachers.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 5. Western Carolina Teachers' College

§ 5842. Management and rules; free tuition.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 6. Cherokee Indian Normal School of Robeson County

§ 5847. Admission and qualification of pupils.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 7. Negro Normal Schools

§ 5851. Beneficiaries expected to teach three years.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 8. Appalachian Training School

§ 5856. Object of the corporation; free tuition provided.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 9. East Carolina Teachers' College

§ 5865. Free tuition; diplomas and certificates.

This section is repealed in so far as it conflicts with § 5912(k).

Art. 15. Tuition Fees

§ 5912(j). State-supported institutions required to charge tuition fees.—The trustees of the University of North Carolina, including the University of North Carolina, the State College of Agriculture and Engineering, the North Carolina College for Women, and the trustees of the East Carolina Teachers' College, the Western Carolina Teachers' College, the Appalachian State Teachers' College, the Negro Agricultural and Technical College, the Winston-Salem Teachers' College, the Fayetteville State Normal School, the Elizabeth City Normal School, the North Carolina College for Negroes and the Cherokee Indian Normal School, be and they are hereby authorized and directed to fix the tuition fees for their several state supported institutions, each board of trustees acting separately for their respective institutions, in such amount or amounts as they may deem best taking into consideration the nature of each department and institution and the cost of equipment and maintaining the same; and are further instructed to charge and collect from each student, at the beginning of each semester, tuition fees and an amount sufficient to pay room rent, servants' hire and other expenses for the term. Indigent cripples are exempt from the provisions of this article.

In the event that said students are unable to pay the cost of tuition, as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in state institutions of higher learning shall be required to pay tuition, and that free tuition be and the same is hereby abolished, except such students as are physically disabled, and are so certified to be by the vocational rehabilitation division of the state board for vocational education, who shall be entitled to free tuition in any of the institutions named in this article. (1933, c. 320, s. 1.)

§ 5912(k). Sections repealed. — Sections 5800, 5820, 5821, 5831, 5835, 5842, 5847, 5851, 5856, 5865, and chapter 56, Private Laws 1925, be and the same are hereby repealed only in so far as they are in direct conflict with the provisions of this article, and that all other laws and clauses of laws in conflict with this article be and the same are hereby repealed. (1933, c. 320, s. 2.)

§ 5912(l). Higher fees from non-residents may be charged.—The provisions of this article shall not be construed to prohibit the several boards of trustees from charging non-resident students tuition in excess of that charged resident students. (1933, c. 320, s. 3.)

CHAPTER 97.
ELECTIONS
SUBCHAPTER I. GENERAL ELECTIONS

Art. 1. Definitions

§ 5913. Political party defined; creation of new party.—A political party within the meaning of

the election laws of this state shall be any group of voters which, at the last preceding general state election, polled for its candidate for governor, or for presidential electors, in the state at least three per cent of the entire vote cast therein for governor, or for presidential electors; or any group of voters which shall have filed with the state board of elections, at least ninety days before a general state election, a petition signed by ten thousand qualified voters, declaring their intention of organizing a state political party, the name of which shall be stated in the petition together with the name and address of the state chairman thereof, and also declaring their intention of participating in the next succeeding election. No such group of electors shall assume a name or designation which shall be so similar, in the opinion of the state board of elections, to that of an existing political party, as to confuse or mislead the voters at an election. When any new political party has qualified for participation in an election as herein required, and has furnished to the state board of elections the names of such of its nominees as is desired to be printed on the official ballots by the first day of September prior to the election, it shall be the duty of the state board of elections to cause to be printed on the official ballots furnished by it to the counties the names of such nominees. When any political party fails to cast three per cent of the total vote cast at an election for governor, or for presidential electors, it shall cease to be a political party within the meaning of this chapter. (Rev., s. 4292; 1901, c. 89, s. 85; 1933, c. 165, s. 1.)

For an interesting note on the definition of political parties see 11 N. C. Law Rev. 148 et seq.

Art. 3. State Board of Elections

§ 5921. State board of elections; appointment; term of office.—There shall be a state board of elections, consisting of five electors, whose terms of office shall begin on the first day of January, nineteen hundred and thirty-four, and continue for four years and until their successors are appointed and qualified. The governor shall appoint the members of this board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of said board shall be of the same political party. The terms of the present members and officers of said board shall continue until January first, nineteen hundred and thirty-four, or until their successors are appointed and qualified. (Rev., s. 4300; 1901, c. 89, s. 5; 1933, c. 165, s. 1.)

§ 5922. Meetings of board; vacancies; pay.—The state board of elections shall meet in Raleigh whenever the chairman of said board shall call such meetings as may be necessary to discharge the duties and functions imposed upon said board by this chapter at such times and places as he may appoint. At the first meeting held after the appointment of members for a new term, the members shall take the oath of office and the board shall then organize by electing one of its members chairman and another secretary of said board.

The chairman of the state board of elections shall call a meeting of the board upon the application in writing of any two members thereof, or if there be no chairman, or if the chairman does not call such meeting, any three members of said board shall have power to call a meeting of the board and any duties imposed or power conferred by this chapter may be performed or exercised at such meeting, although the time for performing or exercising the same prescribed by this chapter may have expired; and if at any meeting any member of said board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day, for not more than three days, at the end of which time, if there should be no quorum, the governor may remove the members so failing to attend summarily and appoint their successors.

Any vacancy occurring in the said board shall be filled by the governor, and the person so appointed shall fill the unexpired term.

The members of the board shall receive in full compensation for their services four dollars per day for the time they are actually engaged in the discharge of their duties, together with their actual traveling expenses, and such other expenses as are necessary and incidental to the discharge of the duties imposed by this chapter. (Rev., ss. 2760, 4301; 1901, c. 89, s. 7; 1933, c. 165, s. 1.)

§ 5923. Duties of the state board of elections.—It shall be the duty of the state board of elections:

1. To appoint, in the manner provided by law, all members of the county boards of elections, and to advise such members of such boards as to the proper methods of conducting primaries and elections.

2. To prepare rules, regulations and instructions for the conduct of primaries and elections.

3. To publish and furnish to the county boards of elections and other election officials, from time to time, a sufficient number of indexed copies of all election laws then in force.

4. To publish, issue and distribute such explanatory pamphlets as in the opinion of the board should be issued to the electorate.

5. To furnish to the county boards of elections such registration and poll books, cards, blanks, instructions and forms as may be necessary for the registration of voters and holding elections in the respective counties.

6. To determine, in the manner provided by law, the forms of ballots, the forms of all blanks, instructions, poll books, tally sheets, abstract and return forms, and certificates of elections to be used in primaries and elections.

7. To prepare, print and distribute to the county boards of elections all ballots for the use in any primary or election held in the state which the law provides shall be printed and furnished by the state to the counties, and to instruct the county boards of elections as to the printing of their county and local ballots.

8. To certify to the several county boards of elections the names of such candidates for district offices who are required to file notice of candidacy with the state board of elections, but whose names are required to be printed on the county ballots.

9. To require such reports from the several county boards and election officers as are provided by law, or as may be deemed necessary.

10. To compel the observance, by election officers in the counties, of the requirements of the election laws, and the state board of elections shall

have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws pertaining to their duties thereunder. And the state board of elections shall have power to remove any member of a county board of elections for neglect or failure in his duties and to appoint a successor.

11. To investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and to report violations of the election laws to the attorney general or solicitor of the district for further investigation and prosecution.

12. To tabulate the primary and election returns and to declare the results of same, and to prepare abstracts of the votes cast in each county in the state for such offices as is provided by law shall be tabulated by the state board of elections.

13. To keep a minute book showing a record of all proceedings and findings at each meeting of the state board of elections, which book shall be kept in the office of the state board of elections.

14. To make such recommendations to the governor and legislature relative to the conduct and administration of the primaries and the elections in the state as it may deem advisable.

15. To have the general supervision over the primaries and elections in the state and it shall have the authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable: Provided same shall not conflict with any provisions of the law.

In the performance of these enumerated duties, the chairman of the state board of elections shall have the power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records and other evidence; and to fix the time and place for hearing any matter relating to the administration and the enforcement of the election laws: Provided, however, the place of hearing shall be had in the county where the irregularities are alleged to have been committed. (Rev., s. 4302; 1901, c. 89, s. 7; 1933, c. 165, s. 1.)

Art. 4. County Boards of Elections

§ 5924. County boards of elections; appointments; term of office and qualifications.—There shall be in every county in the state a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the state board of elections on the tenth Saturday preceding each primary election, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party, and the state chairman of each political party shall have the right to recommend three electors in each county for such offices, and it shall be the duty of the state board of elections to appoint said county board from the names thus recommended: Provided, that said chairman shall recommend such persons on or before the tenth Saturday before a primary election is to be held.

No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office in the primary or election. (Rev., s. 4303; 1901, c. 89, s. 6; 1933, c. 165, s. 2.)

§ 5925. Meetings of county elections boards; vacancies; pay.—The county board of elections in each county in the state shall meet in their respective counties at the courthouse at noon on the seventh Saturday before each primary election, and a majority being present, they shall take the oath of office and shall then organize by electing one of its members chairman and another member secretary, and it may meet at such other times and places as the chairman of said board, or any two members thereof may direct, for the performance of such duties as required by law.

Vacancies in the membership of the county boards of elections shall be filled by the state board of elections and the persons so appointed shall fill the unexpired term.

The members of the county board of elections shall receive in full compensation for their services three dollars per day for the time they are actually engaged in the discharge of their duties, together with such other expenses as are necessary and incidental to the discharge of their duties. (Rev., s. 4304; 1901, c. 89, s. 11; 1923, c. 111, s. 1; 1933, c. 165, s. 2.)

§ 5926. Removal of member of county board of elections.—The state board of elections shall have the power to remove from office any member of the county board of elections for incompetency, failure of duty, fraud, or for any other satisfactory cause. When any member of the county board shall be removed by the state board, the vacancy occurring shall be filled by the state board of elections; a vacancy occurring in the county board of elections for any other cause than removal by the state board of elections may be filled by either the board or by the chairman of the state board of elections, but the person so appointed shall be of the same political party as his predecessor. (Rev., s. 4305; 1901, c. 89, s. 11; 1913, c. 138; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, s. 2.)

§ 5927. Duties of county boards of elections. — The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this chapter, and shall perform all the duties imposed by law which shall include the following:

1. To establish, define, provide, rearrange and combine election precincts.

2. To fix and provide the places for registration, when required, and for holding primaries and elections.

3. To provide for the purchase, preservation and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers and equipment as may be used in registration, nominations and elections.

4. To appoint and remove its clerk, assistant clerks, and employees, and all registrars, judges, clerks and other officers of elections, and to fill vacancies, and to designate the ward or district and precinct in which each shall serve.

5. To make and issue such rules and regulations and instructions, not inconsistent with law, or the rules established by the state board of elections

as they may deem necessary for the guidance of election officers and voters.

6. To advertise and contract for the printing of ballots, and other supplies used in registrations and elections.

7. To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

8. To provide for the delivery of ballots, poll books and other required papers and materials to the polling places.

9. To cause the polling places to be suitably provided with stalls and other supplies required by law.

10. To investigate irregularities, non-performance of duties, or violations of laws by election officers and other persons; to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney.

11. To review, examine and certify the sufficiency and validity of petitions and nomination papers.

12. To receive the returns of primaries and elections, canvass the returns, make abstracts thereof and transmit such abstracts to the proper authorities provided by law.

13. To issue certificates of election to county officers and members of the general assembly, except state senators in districts composed of more than one county.

14. To keep minute book of proceedings of board.

15. To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

16. To perform such other duties as may be prescribed by law or the rules of the state board of elections. (Rev., s. 4306; 1901, c. 89, s. 11; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2.)

Art. 5. Precinct Election Officers and Election Precincts

§ 5928. Appointment of registrars and judges of elections; qualifications.—The county boards of elections, at the first meeting herein provided to be held on the seventh Saturday before each primary election, shall select one person of good repute who shall act as registrar and two other persons of good repute who shall act as judges of election for each election precinct in the respective counties for both the ensuing primary and general election, whose terms of office shall continue for two years from the time of their appointment, or until their successors are appointed and qualified, and who shall conduct the primaries and elections within their respective precincts. Each registrar and judge of election so appointed shall be able to read and write and they shall be residents of the precincts for which they are appointed. The chairman of each political party in each county shall have the right to recommend from three to five electors in each precinct, who are residents of the precinct, and who shall be of good moral character and able to read and write, for appointment as registrar and for judges of election in each precinct, and such appointments may be made from such names so recommended; Provided, such recommendations are made by the seventh Saturday before each primary election: Provided, further, that in any primary, when only one political party participates in such primary then all of the precinct officials selected for holding such primary shall be chosen only from such political party so participating. In a primary, where more than one political party participates, and in the general election, not more than one judge of election in each precinct shall be of the same political party with that of the registrar. The county boards of elections shall also have the right to appoint assistants for such precincts where there are more than three hundred registered voters when deemed advisable. No person holding any office or place of trust or profit under the government of the United States, or of the state of North Carolina, or any political sub-division thereof, except justices of the peace, shall be eligible to appointment as an election official. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant.

The registrars, judges and assistants shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. (Rev., s. 4307; 1901, c. 89, s. 8; 1933, c. 165, s. 3.)

§ 5929. Names of precinct officers published by board.—The county board of elections shall, immediately after the appointment of the registrars and judges of elections as herein provided, publish the names of the persons so appointed, at the courthouse door of said county, and shall notify each person appointed of his or her appointment, either by letter or by having a notice to be served upon said persons by the sheriff. (Rev., s. 4308, c. 89, s. 16; 1923, c. 111, s. 2; 1933, c. 165, s. 3.)

§ 5930. Vacancies in precinct offices; how filled.—If any registrar or judge of election shall fail to perform the duties of his office, and for that, or for any other cause be removed from office, or shall die or resign, or if there shall for any other cause be a vacancy in said office, the chairman of the county board of elections may appoint another in his place, of the same political party, and have such person or persons notified of the appointment. If any person appointed judge of election shall fail to attend at the polls at the hour of opening the same, the registrar of the township, ward or precinct shall appoint some suitable elector of the same political party as the judge failing to attend, if practicable, to act in his stead, who shall be by him sworn before acting. If the registrar shall fail to appear at the polls, then the judges of election may appoint another to act as registrar, who shall also be sworn before acting. (Rev., s. 4309; 1901, c. 89, s. 9; 1933, c. 165, s. 3.)

§ 5931. Removal of precinct officers; reasons for.—The county board of elections shall have power to remove any registrar or judge of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud or for any other satisfactory cause. (Rev., s. 4310; 1901, c. 89, s. 10; 1933, c. 165, s. 3.)

§ 5932. Compensation of precinct officers. — Judges of elections and assistants shall each receive for their services on the day of a primary or election the sum of two dollars. The registrar

shall receive the sum of two dollars per day for his services on the day of a primary or election, and shall also receive the sum of two dollars per day for each Saturday during the period of registration that he attends at the polling place for the purpose of registering voters, and said registrar shall receive no other compensation whatsoever. Any person sworn in to act as registrar or judge of election shall receive the same compensation as the registrar and judge: Provided, that markers appointed for assisting voters in marking their ballots shall not receive any compensation therefor. (Rev., s. 4311; 1901, c. 89, s. 42; 1927, c. 270, s. 2; 1931, c. 254, c. 16; 1933, c. 165, s. 3.)

§ 5933. Duties of registrars and judges of election.—The registrars and judges of election shall perform such duties as is provided by law, which duties shall consist of:

1. The fair and impartial conduct of the primaries and elections within their respective precincts on the day of election.

2. The enforcement of peace and good order in and about the place of registration and voting. They shall especially keep the place of access of the electors to the polling place open and unobstructed, prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult or disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election law, but such arrest shall not prevent such person from registering or voting if he is entitled so to do. The sheriff, all constables, police officers and other officers of the peace, shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws.

3. The registrar shall have in his charge the actual registration of voters within his precinct and shall attend the polling place on the days required for the registration of new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe not inconsistent with the law.

4. The registrar shall have charge of the registration book on the day of election or primary for passing on the registration of voters who present themselves at the polls for the purpose of voting.

5. One of the judges of election shall keep a poll book in which shall be entered the name of every person who shall vote in the primary or election. The poll and registration books shall be signed by the registrar and judges of election at the close of any primary or election and filed with the clerk of the superior court.

6. The registrars and judges shall hear challenges on the right of electors to vote as provided by law.

The registrars and judges shall count the votes cast in their precinct and make such return of same as is required by law.

8. The precinct officers shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as required by law. (Rev., s. 4312; 1901, c. 89, s. 41; 1933, c. 165, s. 3.)

§ 5934. Election precincts established or altered.—The county board of elections may, in their respective counties, adopt the present election precincts, or they may establish new precincts, but the election precincts and polling places as now fixed in each county shall remain as they now are until altered. In the case of the alteration of the election precincts or polling places therein, they shall give twenty days' notice thereof, prior to the beginning of the registration period, in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. And the county board of elections shall have power from time to time, after dividing their counties into election precincts, to establish, alter, discontinue, or create such new election precincts in their respective counties as they may deem expedient, giving twenty days' notice thereof, prior to the beginning of registration period, by advertising in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. If any polling place is changed in any precinct, like advertisement of such change shall be given. And there shall be at least one polling place in every township, conveniently located for a majority of the voters. (Rev., s. 4313; 1913, c. 53; 1921, c. 180; 1933, c. 165, s. 3.)

§ 5935. New registration of voters or revision of registration books; how made.—The county board of elections shall have power from time to time to order a revision of the registration book of any precinct in any township and to order a new registration for any precinct; and if and when a new registration is ordered, notice shall be given as hereinbefore provided for the alteration of an election precinct or polling place: Provided, however, when a new registration or revision is ordered as herein provided for, the names of all persons who have been registered under the absentee voters' law shall remain upon the registration books unless the said persons so registered have died or otherwise become disqualified electors. The several county boards of elections shall have power to revise the registration books of any precinct and may require them to be purged of illegal or disqualified voters, after notice to such voters as herein directed. When an order for revision is made by said county board of elections, it shall be directed to the registrar and judges of election of the precinct to which it relates, directing said officials to meet at the polling place on the first Saturday for the registration of voters, before any primary or general election, and to prepare from the registration books a list of the names of registered voters, with their names and addresses as appearing on the registration books, who are, in the opinion of said precinct officials, dead or disqualified by removal from said precinct or county for the length of time prescribed by law to be disqualified to vote in that particular precinct. When such list is prepared it shall, within forty-eight hours, be delivered to the chairman of

the county board of elections, who shall cause to be mailed to each of the names on said list, at his or her address as shown on said list, a notice requiring such person to appear at the polling place for the precinct in which they are registered, on the Saturday prescribed for hearing challenges, and show that they are legally entitled to vote in that particular precinct, or in lieu of a personal appearance at the precinct on the day named for hearing challenges, such person may furnish such satisfactory evidence by mail or otherwise, that he or she is qualified to vote in said precinct. Upon failure of such person to make such personal appearance on challenge day, or upon failure of such person to offer satisfactory evidence that he or she is qualified and entitled to vote in said precinct in the approaching primary or general election, their names shall be stricken off the registration book. After due investigation, such precinct officers shall strike from the registration book the names of all such persons found by them to be dead or disqualified to vote by removal from the precinct for such time as prescribed by law shall disqualify them from voting in such precinct.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in that precinct, should appear at the polling place on election day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the registration book and he shall be allowed to vote in said precinct as before. (Rev., s. 4314; 1905, c. 510; 1909, c. 894; 1921, c. 181, s. 3; 1933, c. 165, s. 3.)

Art. 6 Qualification of Voters

§ 5937. Qualifications of electors.—Subject to the exceptions contained in the preceding section, every person who has been naturalized, and who shall have resided in the state of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, four months next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward, or township in which he resides: Provided, that removal from one precinct, ward, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which he has removed until four months after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the state prison, shall be permitted to vote, unless the said person shall be first restored to citizenship in the manner prescribed by law.

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

b. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

c. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

d. The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence; except that where the husband and wife have separated and live apart, the place where he or she resides the length of time required by the provisions of this article to entitle a person to vote, shall be considered and held to be his or her residence.

e. If a person remove to another state or county within this state, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.

f. If a person remove to another state or county within this state, with the intention of remaining there an indefinite time and making such state or county his place of residence, he shall be considered to have lost his place of residence in this state or county from which he has removed, notwithstanding, he may entertain an intention to return at some future time.

g. School teachers who remove to a county for the purpose only of teaching in the schools of that county temporarily and with the intention or expectation of returning to the county of their parents or other relatives during the vacation period to live, and who do not have the intention of becoming residents of the county in which they have moved to teach, shall be considered residents of that county of their parents or other relatives for the purpose of voting.

h. If a person remove to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this state during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence. This rule shall also apply to employees of the state government who remove from one county to another within the state, unless a contrary intention is shown by such employee.

i. If a person goes into another state or county, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this state or county.

j. All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the registrar and judges of election in the precinct where the question arose. (Rev., s. 4316; 1901, c. 89, s. 15; 19th amendt. U. S. Const.; amendt. State Const., 1920; 1920 (Ex. Sess.), c. 18, s. 1; 1933, c. 165, s. 4.)

Art. 7. Registration of Voters

§ 5940. Qualification as to residence for voters; oath to be taken.—In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name,

age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. If the applicant has removed from another precinct, ward or election district in the same city, town or township since his last registration, such applicant shall, before being allowed to register, present to the registrar a written certificate signed by the registrar of the precinct, ward or election district from which he has so removed, showing that the applicant's name has been removed from the registration book of such precinct, ward or election district, and that he is no longer a registered voter therein. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race, opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from which he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of North Carolina not inconsistent therewith; that I have been a resident of the state of North Carolina for two years, and of the county of.....for six months, and of.....township (precinct or ward) for four months; or that I was a resident of..... township (ward or precinct) on the..... day of..... (being four months, preceding the election) and removed therefrom to..... township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register. (Rev., s. 4319; 1901, c. 89, s. 12; 1933, c. 165, s. 5.)

§ 5947. Time when registration books shall be opened and closed; oath and duty of registrar. — The registration books shall be opened for the registration of voters at nine o'clock a. m., on the fourth Saturday before each election. The said books shall be closed at sunset on the second Saturday before each election. Every registrar, before entering upon the discharge of the duties of his office, shall take an oath before a justice of the peace or some other person authorized to administer oaths, that he will support the constitution of the United States and the constitution of North Carolina not inconsistent therewith, and that he will honestly and impartially discharge his duties as registrar, and honestly and fairly conduct such election. The registrar of each township, ward or precinct shall be furnished with a registration book prepared as hereinbefore provided, and it shall be his duty, between the hours of nine o'clock a. m. and sunset on each day during the period when registration books are open, to keep open said books for the registration of any voters residing within such township, ward or precinct, and entitled to registration. On each Saturday during the period of registration the registrar shall attend with his registration books at the polling place of his precinct or ward, betwen the hours of nine o'clock a. m. and sunset, for the registration of voters. (Rev., s. 4323; 1901, c. 89, s. 18; 1923, c. 111, s. 3; 1933, c. 165, s. 5.)

Art. 8. Permanent Registration

Editor's Note.—Public Acts 1933, c. 165, s. 6, provided that this article which was formerly number 7 be renumbered article 8.

Art. 9. Absent Voters

§ 5960. Absent from county; or physically unable to attend; certificate, etc.

For amendment applicable in Graham, Jackson, Rutherford and Swain counties, see Public Laws 1933, c. 364.

Jurat Is Prima Facie Evidence Only that Ballots Have Been Sworn to.—In an action in the nature of quo warranto proceedings to test the right of the defendant to hold a municipal office of a city on the ground that ballots of absentee voters were cast for the encumbent that should have been excluded for the reason that contrary to the jurat on the ballots the voters thereof had not in fact been sworn, as required by this section, the jurat is but prima facie evidence that the ballots had been sworn to by the respective voters, which may be rebutted by parol evidence, in this case by the testimony of those who had cast them. Bouldin v. Davis, 200 N. C. 24, 156 S. E. 103.

§ 5968(b). Not applicable to Union county. — Sections five thousand nine hundred and sixty to five thousand nine hundred and sixty-eight shall not apply to elections held in Union county, primary or general. (1933, c. 56, s. 1.)

§ 5968(c). Only applicable to certain elections in Yancey county.—Sections five thousand nine hundred and sixty, five thousand nine hundred and sixty-two, five thousand nine hundred and sixty-three, five thousand nine hundred and sixty-four, five thousand nine hundred and sixty-six, five thousand nine hundred and sixty-seven, and five thousand nine hundred and sixty-eight, North Carolina consolidated statutes, and any and all amendments thereto are hereby repealed, in so far only as they relate to the election of county officials of Yancey, and township officials therein, and members of the general assembly of Yancey.

This section shall apply only to the election of county officials of Yancey, township officials in said county, and the members of general assembly of said county. (1933, c. 65, ss. 1, 3.)

§ 5968(d). Not applicable to Randolph county.— The provisions of article eight, chapter ninety-seven, sections five thousand nine hundred and sixty to five thousand nine hundred and sixty-eight, inclusive, of the consolidated statutes and all amendments thereto, shall not apply to elections, primary or general, held in Randolph county. (1933, c. 83, s. 1.)

§ 5968(e). Not applicable to Yadkin county. — Sections five thousand nine hundred sixty, five thousand nine hundred and sixty-two, five thousand nine hundred sixty-three, five thousand nine hundred sixty-four, five thousand nine hundred sixty-five, five thousand nine hundred sixty-six, five thousand nine hundred sixty-seven, and five thousand nine hundred sixty-eight of the consoli-

dated statutes, and section one of chapter three hundred twenty, public laws of one thousand nine hundred twenty-nine, and any and all amendments thereto, in so far as said statutes relate to primaries and elections in Yadkin county, and any and all other laws, whether general, public, public-local, special or private, allowing or permitting absentee voting in Yadkin county, be, and they are hereby, repealed, and upon the ratification of this section, no person shall be permitted to vote in any primary or election in Yadkin county, except by personally presenting himself or herself for that purpose at the ballot box, at the polling place, in the precinct of which such person is a qualified and registered voter. This section shall apply to Yadkin county only. (1933, c. 141, ss. 1, 2.)

§ 5968(f). Not applicable to Mitchell county.—Sections 5960, 5962, 5963, 5964, 5966, 5967, and 5968, North Carolina consolidated statutes, and any and all amendments thereto be and the same are hereby repealed in so far only as they relate to the election of county officials of Mitchell county, and township officials therein and members of the general assembly of Mitchell county.

This section shall apply only to the election of county officials of Mitchell county, township officials in said county, and the members of the general assembly of said county. (1933, c. 104, s. 1.)

Art. 9. (Old) Judges of Election

§§ 5969-5971: Repealed by Public Laws 1933, ch. 165, § 7.

Art. 12. Counting of Ballots; Precinct Returns; Canvass of Votes and Preparation of Abstracts; Certification of Results by County Board of Elections.

§ 5984. Proceedings when polls close; counting of ballots.—At the time for closing the polls the registrar shall announce that the polls are closed, but any qualified electors who are in the process of voting, or are in line within the voting enclosure waiting to vote, shall be allowed to vote before the polls close. After the polls are closed the registrar shall then proceed to open one ballot box at a time for the purpose of counting the ballots in that box in the presence of all election officials, witnesses and watchers, if there are any present.

The counting of ballots shall be conducted as follows: One of the ballots shall be taken out of the ballot box by one of the judges and opened in full view of all the judges and witnesses. If the judges and registrar all agree as to how the ballot shall be counted, one of them shall place it where it can be seen by any one present and shall read aloud distinctly the names of the candidates voted for and the vote on any issue submitted; and the tally-man shall tally the same directly on the tally sheets. In the event the registrar and judges cannot agree as to how the ballot shall be counted, such ballot shall not be counted, but shall be placed in an envelope and marked "disputed ballots" and returned to the county board of elections.

No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice.

The counting of ballots shall be continuous until completed. From the time the ballot box is opened and the count of votes begun, until the votes are counted and returns are made out, signed and certified as herein required, and given to the presiding judge or registrar for delivery to the county board as required herein, the registrar and judges of election in each precinct shall not separate, nor shall a registrar or judge leave the polling place except from unavoidable necessity. In case of illness or unavoidable necessity, the board of elections may substitute another qualified person for any precinct official so incapacitated. (1933, c. 165, s. 8.)

§ 5985. How precinct returns are to be made and canvassed.—When the results of the counting of the ballots have been ascertained, such results shall be embodied in a duplicate statement to be prepared by the registrar and judges on forms provided by the county board of elections and certified to by said officers. One of the statements of the voting in the precinct shall be placed in a sealed envelope and delivered to the registrar or judge selected by them for the purpose of delivery to the county board of elections, at its meeting to be held on the second day after the election or primary. The other duplicate statement shall be mailed by one of the other precinct election officers to the chairman of the county board of elections immediately.

The county board of elections shall meet on the second day next after every primary or election, at eleven o'clock A. M. of that day, at the courthouse of the county, for the purpose of canvassing the votes cast in the county and the preparation of the county abstracts. Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver those returns at the meeting of the county board of elections by twelve o'clock A. M. on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. In the event any precinct returns have not been received by the county board by twelve o'clock M. on the first day of its meeting, or if any returns are incomplete or defective, it shall have authority to dispatch an officer to the residence of such precinct officials for the purpose of securing the proper returns for such precinct. (1933, c. 165, s. 8.)

§ 5986. County board of elections to canvass returns and declare results. — The county board of elections at their said meeting required to be held on the second day after every primary or election, in the presence of such electors as choose to attend, shall open the returns and canvass and judicially determine the results of the voting in the respective counties, stating the number of legal ballots cast in each precinct for each candidate, the name of each person voted for and the political party with which he affiliated, and the number of votes given to each person for each different office, and shall sign the same. The said county board of elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall have power and authority to send for papers and persons and examine the same, and to pass upon the legality of any disputed ballots transmitted to them by any precinct officer. (1933, c. 165, s. 8.)

§ 5987. What returns placed on same abstract.—The abstract of votes for each of the following classes of officers shall be made on a different sheet:

1. President and vice president.
2. Governor and all state officers; justices of the supreme court; judges of the superior court; and United States senator.
3. Representatives in congress.
4. Solicitor.
5. Senators and representatives of the general assembly.
6. County officers.
7. Township officers.

(1933, c. 165, s. 8.)

§ 5988. Preparation of original abstracts; where filed.—When the canvass has been completed, the county board of elections shall prepare on forms furnished by the state original statements of the results showing:

1. Upon a single sheet an abstract of votes for president and vice-president of the United States, when a presidential election is held.
2. Upon another sheet an abstract of votes for Governor, and all state officers, judges of the supreme court, judges of the superior court and United States senator.
3. Upon another sheet an abstract of votes for representatives to congress.
4. Upon another sheet an abstract of votes for solicitor.
5. Upon another sheet an abstract of votes for state senators and representatives in the general assembly.
6. Upon another sheet an abstract of votes for county officers.
7. Upon another sheet an abstract of votes for township officers for each township in the county.
8. Upon another sheet an abstract of votes for all constitutional amendments and propositions submitted to the people. Each of these abstracts shall be so prepared as to show the total number of votes cast for each candidate of each political party for each office in each precinct in the county.

Each of these original abstracts shall be signed by the members of the county board of elections with their certificate as to their correctness, and each of the original abstracts together with the original precinct returns shall be filed with the clerk of the superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8.)

§ 5989. County elections board to prepare duplicate abstracts to be sent to state board of elections; penalty. — When the county boards of elections shall have completed the original abstracts, they shall also prepare separate duplicate abstracts for all offices for which the state board of elections is required to canvass the votes and declare the results, which shall include the following: For president and vice-president; for state officers and United States senator; for representatives to congress; for solicitors; and for state senators in senatorial districts composed of more than one county; and for amendments and propositions submitted.

When said duplicate abstracts shall have been prepared, the county board of elections shall sign an affidavit on each abstract that they are true and correct; then the chairman of said board shall mail said duplicate abstracts, within five days after the primary or election is held, to the chairman of the state board of elections at Raleigh, so that said abstracts shall be received by the chairman of the state board of elections within one week after the primary or election.

The chairman of the county board of elections, failing or neglecting to transmit said abstracts to the chairman of the state board of elections within the time above prescribed shall be guilty of a misdemeanor and subject to a fine of one thousand dollars: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 5990. Clerk of superior court to send statement of votes to secretary of state in general election.—In a general election, the clerk of the superior court shall, within two days after the original abstracts are filed in his office by the county board of elections, certify under his official seal to the secretary of state, upon blanks furnished to him by the state for that purpose, a statement of the votes cast in his county for all national, state and district officers, and for and against constitutional amendments and propositions submitted to the people. The clerk of superior court shall at the same time also certify under his official seal to the secretary of state a list of all the persons voted for as members of the state senate and house of representatives and all county officers, together with the votes cast for each and their postoffice address.

The clerk of the superior court, failing or neglecting to transmit these returns to the secretary of state within the time herein provided, shall be subject to a fine of five hundred dollars and be guilty of a misdemeanor: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 5991. Who declared elected by county board; proclamation of result.—In the general election, the person having the greatest number of legal votes for a county or township office, or for the house of representatives, or for the state senate in a district composed of only one county, shall be declared elected by the county board of elections. But, if two or more county candidates, having the greatest number of votes, shall have an equal number the county board of elections shall determine which shall be elected.

When the county board of elections shall have completed the canvass, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door with the number of votes cast for each. (1933, c. 165, s. 8.)

§ 5992. Chairman of county board of elections to furnish county officers certificate of election. — The chairman of the county board of elections of each county shall furnish, within ten days, the

member or members elected to the house of representatives and the county officers, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified. (1933, c. 165, s. 8.)

Art. 13. Canvass of Returns for Higher Offices and Preparation of State Abstracts

§ 5993. State board of elections to canvass returns for higher offices.—The state board of elections shall constitute the legal canvassing board for the state of all national, state and district offices, including the office of state senator in those districts consisting of more than one county. No member of the state board of elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9.)

§ 5994. Meeting of state board of elections to canvass returns of the election.—The state board of elections shall meet in the city of Raleigh on the Tuesday following the third Monday after each general election held in this state under the provisions of this chapter, in the hall of the house of representatives, at eleven o'clock A. M. for the purpose of canvassing the votes cast in all the counties of the state for all national, state and district officers and to determine whom they ascertain and declare by the count to be elected to the respective offices, and shall prepare abstracts of same as hereinafter provided. At this meeting, the board shall examine the county abstracts, if they shall have been received from all of the counties, and if all have not been they may adjourn, not exceeding ten days for the purpose of obtaining the abstracts and returns from the missing counties, and when they have all been received the board shall proceed with the canvass, which shall be conducted publicly in the hall of the house of representatives. In obtaining the abstracts from the counties whose abstracts have not been received by the date of this meeting, the board is authorized to obtain from the clerk of the superior court or the county board of elections, at the expense of such counties, the original abstracts or returns, or if they have been forwarded, copies of them. The state board of elections shall be authorized to enforce the penalties provided by law for the failure of a clerk of a superior court or a chairman of the county board of elections to comply with the law in making their returns of an election. (1933, c. 165, s. 9.)

§ 5995. Meeting of state board of elections to canvass returns of a special election for congressmen.—In all cases of special elections ordered by the governor to fill vacancies in the representation of the state in congress as provided for in C. S. six thousand and seven, the state board of elections may meet as soon as the chairman of said board shall have received returns from all of the counties entitled to vote in said special elections for the purpose of canvassing the returns of said special election and for preparing an abstract of same. It shall be the duty of the chairman of the state board of elections to fix the day of meeting which shall not be later than ten days after such elections, and it shall be the duty of all returning officers to make their returns promptly so that the same may be received within the ten days. (1933, c. 165, s. 9.)

§ 5996. Board to prepare abstracts and declare results of elections.—The state board of elections, at the conclusion of its canvass of the general election, shall cause to be prepared the following abstracts:

1. Upon a single sheet an abstract of votes for president and vice-president of the United States when an election is held for same.
2. Upon another sheet an abstract of votes for governor and all state officers, justices of the supreme court, judges of the superior court, and United States senators.
3. Upon another sheet an abstract of votes for representatives to congress for the several congressional districts in the state.
4. Upon another sheet an abstract of votes for solicitor in the several judicial districts in the state.
5. Upon another sheet an abstract of votes for state senators in the several senatorial districts in the state, where such districts are composed of more than one county.
6. Upon another sheet an abstract of votes for and against any constitutional amendments or propositions submitted to the people.

These abstracts so prepared by said board shall state the number of legal ballots cast for each candidate, the names of all persons voted for, for what office they respectively receive the votes, the number of votes each receive, and whom said board shall ascertain and judicially determine and declare by the count to be elected to the office. These abstracts shall be signed by the state board of elections in their official capacity and have the great seal of the state affixed thereto. (1933, c. 165, s. 9.)

§ 5997. Results certified to the secretary of state; certificate of election issued. — After the state board of elections shall have ascertained the result of the election as hereinbefore provided, they shall cause the result to be certified to the secretary of state, who shall prepare a certificate for each person elected, and shall sign the same, which certificate he shall deliver to the person elected, when he shall demand the same.

The state board of elections shall also file with the secretary of state the original abstracts prepared by it, also the original county abstracts to be filed in his office. (1933, c. 165, s. 9.)

§ 5998. Secretary of state to record abstracts. — The secretary of state shall record the abstracts filed with him by the state board of elections in a book to be kept by him for recording the results of elections and to be called the election book, and shall also file the county abstracts. (1933, c. 165, s. 9.)

Art. 14. State Officers, Senators and Congressmen

§ 5999. Contested elections—how tie broken. — The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto by the state board of elections but if two or more be equal and highest in votes for said office, then one of them shall be chosen by joint ballot of both houses of the general assem-

bly. In contested elections, the state board of elections shall certify to the speaker of the house of representatives a statement of such facts as the board has relative thereto and such contests shall be determined by joint vote of both houses of the general assembly in the same manner and under the same rules as described in cases of contested elections for members of the general assembly. (Rev., s. 4363; 1901, c. 89, s. 44; 1915, c. 121, s. 1; 1927, c. 260, s. 14; 1933, c. 165, s. 10.)

Art. 15. Election of Presidential Electors

§ 6009. Conduct of presidential election. — The election of presidential electors shall be conducted and the returns made as nearly as may be directed in relation to the election of state officers, except as herein otherwise expressed. (Rev., s. 4369; 1901, c. 89, s. 60; 1933, c. 165, s. 11.)

§ 6010. Arrangement of names of presidential electors.—The names of candidates for electors of president and vice-president of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each party or group of petitioners and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. (Rev., s. 4372; 1901, c. 89, s. 78; 1933, c. 165, s. 11.)

§ 6011. How returns for president shall be made. —The county board of elections shall meet at the courthouse on the second day next after every election for president and vice-president, and shall ascertain and determine the number of legal votes cast for the electors for president and vice-president and shall prepare abstracts and make their returns to the state board of elections in the same manner as hereinbefore provided for state officers. (Rev., s. 4373; 1901, c. 89, s. 80; 1927, c. 260, s. 16; 1933, c. 165, s. 11.)

§ 6012. Declaration and proclamation of results by state board; casting of state's votes for president and vice-president.—The state board of elections shall canvass the returns for electors for president and vice-president at the same time and place as hereinbefore required to be made for state officers, and an abstract for same shall be prepared and certified to the secretary of state in the same manner.

The secretary of state shall, under his hand and seal of his office, certify to the governor the names of as many persons receiving the highest number of votes for electors of president and vice-president of the United States as the state may be entitled to in the electoral college. The governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon on the second Monday of January next after his election, at which time the said electors shall meet, and in case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for the president and vice-president of the United States. And the governor shall, on or before the second Monday of January, make out six lists of the names of the said persons so elected and appointed electors and cause the same to be delivered to them, as directed by the act of congress. (Rev., s. 4347; 1917, c. 176, s. 2; 1901, c. 89, s. 81; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11.)

§ 6013. Penalty for presidential elector failing to attend and vote.—Each elector, with his own consent previously signified, failing to attend and vote for a president and vice-president of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident), shall forfeit and pay to the state five hundred dollars, to be recovered by the attorney-general in the superior court of Wake county. (Rev., s. 4375; 1901, c. 80, s. 83; 1933, c. 165, s. 11.)

SUBCHAPTER II. PRIMARY ELECTIONS.

Art. 17. Primary Elections

§ 6022. Notices and pledges of candidates; with whom filed.—Every candidate for selection as the nominee of any political party for the offices of governor and all state officers, justices of the supreme court, the judges of the superior court, United states senators, members of congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the state board of elections, by six o'clock P. M. on or before the seventh Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as ..... in the primary election to be held on ..... I affiliate with the ..... party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the ..... party."

Every candidate for selection as the nominee of any political party for the office of state senator in a primary election, member of the house of representatives, and all county and township offices shall file with and place in the possession of the county board of elections of the county in which they reside by six o'clock P. M. on or before the fourth Saturday before such primary is to be held a like notice and pledge. (1915, c. 101, s. 6; 1917, c. 218; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12.)

§ 6023. Filing fees required of candidates in primary.—At the time of filing a notice of candidacy for nomination for any congressional or state office, including judges of the supreme and superior court and solicitors, each candidate for such office shall pay to the state board of elections a filing fee of one per-cent of the annual salary of such office. At the time of filing a notice of candidacy for nomination for any legislative or county office, each candidate for such office shall pay to the county

board of elections of the county of their residence a filing fee of one-half of one per cent of the annual salary of such office. Provided, that candidates for nomination for the office of surveyor, coroner, county commissioners, members of the county board of education, and for any township office shall be required to pay to the county board of elections a filing fee of one dollar. All such filing fees so received by the state board of elections shall be paid into the treasury of the state, and all such filing fees received by the county board of elections shall be paid into the treasury of the county. (1915, c. 101, s. 4; 1917, c. 218; 1919, c. 139; 1927, c. 260, s. 20; 1933, c. 165, s. 12.)

§ 6025: Repealed by Acts 1933, ch. 165, s. 13.

§ 6026. Payment of expense for primary elections.—The expense of printing and distributing the poll and registration books, blanks, ballots for those offices hereinafter provided to be furnished by the state, and the per diem and expenses of the state board of elections while engaged in the discharge of the duties herein imposed, shall be paid by the state; and the expenses of printing and distributing the ballots hereinafter provided to be furnished by the counties, and the per diem and expenses of the county board of elections, and the registrars and judges of election, while engaged in the discharge of the duties herein imposed, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections. (1915, c. 101, s. 7; 1917, c. 218; 1927, c. 260, s. 21; 1933, c. 165, s. 14.)

§ 6030. How choice indicated on ballot; how names of candidates placed thereon.—Each elector wishing to participate in such primary election shall be permitted to vote for his choice of candidates for the nomination for all other offices provided for by and subject to the provisions of this article, including candidates for the United States senate, by making a cross-mark in the small squares opposite the names of the respective candidates for whom he elects to vote. It shall be the duty of the board of elections having in charge the duty of printing the ballots for primary elections to be held under the provisions of this article to so print the ballots that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots, and distribute the said ballots, when so printed, impartially and without discrimination. (1915, c. 101, s. 10; 1917, c. 218; 1933, c. 165, s. 15.)

§ 6037. Primary ballots; provisions as to names of candidates printed thereon. — It shall be the duty of the state board of elections to print and furnish to the counties for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed for in C. S. six thousand and twenty-eight, which official ballots shall have printed thereon the names of candidates for the United States senate, for the national house of representatives, and for governor and for all other state offices, with the exception of the office of solicitor and judge of the superior court. All of these candidates, ballots for which are required to be furnished by the state, may be printed on one form of ballot or they may be printed on a number of forms of ballots as may be decided by the state board of elections.

It shall be the duty of the county board of elections to print and furnish to the voting precincts in the county for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed in C. S. six thousand and twenty-eight, which official ballots shall have printed thereon the names of candidates for the following offices in the order in which they are named and shall be known as the "official primary ballot for judge superior court, solicitor, state senator and county and township offices" when candidates for all of said offices are participating in the primary within the county. Whenever there is no contest for any of the aforesaid offices, then such names will not appear on the county ballot. The county board of elections may print the township ballot separate from the county ballot if it should so desire.

The ballots to be printed by the counties shall be of such width, color, form and printed in such type and on such paper as the state board of elections may direct.

It shall be the duty of the chairman of the state board of elections to certify to the chairman of the county board of elections in each county, by the fourth Saturday before each primary election, the names of such candidates for the nomination for judge of the superior court and solicitor as have filed the required notice and pledge and filing fee with the state board of elections and entitled to have their names placed on the official county ballot, and it shall be the duty of each county chairman to acknowledge receipt within two days after the receipt of the letter of certification to the chairman of the state board of elections so that the state chairman will know that each candidate's name has been properly certified and received. (1915, c. 101, s. 17; 1917, c. 218; 1933, c. 165, s. 16.)

§ 6040. Primaries for township and precinct officers.—The several county boards of elections shall provide for holding in their respective counties primary elections for the choice of candidates for the nomination for township and precinct officers, which primary elections shall be held at the same time and places as the primaries for county officers: Provided, that in the counties exempt from the operation of the primary law for the nomination of county officers, township officers may also be nominated in the same manner as county officers within such counties. The expenses for holding primaries for township officers shall be paid for by the counties. (1915, c. 101, s. 19; 1917, c. 218; 1933, c. 165, s. 17.)

§ 6052. Political party defined for primary elections. — A political party within the meaning of the primary law shall mean any political group of voters which, at the last preceding general elec-

tion, polled at least three per cent of the total vote cast therein for such offices as are described in section 5913 of the C. S. as amended. (1915, c. 101, s. 31; 1917, c. 218; 1033, c. 165, s. 17.)

§ 6054. Certain counties excepted.—This article on primary elections shall not apply to nominations for candidates for county offices, members of the house of representatives, and for the state senate when there exist agreements for rotation of candidates in senatorial districts of more than one county under C. S. six thousand and fourteen, and when there is but one county in a senatorial district, in the following counties, to-wit: Alexander, Ashe, Avery, Burke, Cabarrus, Catawba, Cherokee, Clay, Dare, Duplin, Edgecombe, Graham, Hyde, Lee, New Hanover, Northampton, Stanley, Stokes, Surry, Union, Watauga: Provided, that in any county whose county offices are hereby exempted, if voters in number as great as one-fifth of the total vote cast for governor in such county at the preceding gubernatorial election shall petition the board of county commissioners of such county for an election thereon, it shall be the duty of the said board to order an election at the next succeeding general election upon the method of nominating county officers and member or members of the house of representatives. At such election those favoring the nomination of county and legislative officers by primary shall cast ballots on which is written or printed "for county primary;" those opposed shall cast ballots bearing the words "against county primary." If a majority of the votes cast in such election shall be "for county primary," then the provisions of this article shall thereafter apply to such county, and it shall be no longer exempted. Otherwise, such exceptions shall remain in force. (1915, c. 101, s. 34; 1915, c. 102; 1917, cc. 53, 86, 89, 90, 91, 92, 112, 137, 218. 222, 225; P. L. 1917, cc. 312, 327, 351, 373; 1919, cc. 41, 81, 95, 173, 278, 283, 337; Ex. Sess. 1920, cc. 16, 57; 1923, cc. 21, 30, 44, 50, 88, 137, 226; 1925, c. 20, s. 1; c. 147; c. 197; 1927, c. 106, ss. 1, 2; 1929, c. 70, s. 1; 1929, c. 77, s. 1; 1931, cc. 16, 93, 108, 190, 203, 450; 1933, c. 70; c. 165, s. 18; c. 327, s. 1.)

§ 6054(b). Contests over primary results. — All contests over the results of a primary election shall be determined according to the law applicable to similar contests over the results of a general election. (1933, c. 165, s. 19.)

SUBCHAPTER III. GENERAL ELECTION LAWS

Art. 18. Election Laws of 1929

§ 6055(a1). Former laws repealed; enactments in lieu thereof.

Chapter 557 of the Public Laws of 1933 provides that this subchapter shall not apply in Ashe county.

§ 6055(a9). Number of ballots; what ballots shall contain; arrangement.—There shall be seven kinds of ballots, called respectively: official ballot for presidential electors; official ballot for United States senator; official ballot for members of congress; official state ballot; official county ballot; official township ballot; and official ballot on constitutional amendments or other proposition submitted. In addition to these, there shall be a definite form of ballot for primary elections as hereinafter provided and a ballot for municipal elections as hereinafter provided: Provided, further, that the state board of elections, or the county board of elections may, in their discretion, combine any one or more of the ballots for either the primary or the general election. The ballots herein provided for shall be used for the purpose for which their names severally indicate, and not otherwise, that is to say:

(a) On the official presidential ballot, the names of candidates for electors of president and vice-president of the United States of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballot the names, of the candidates for president and vice-president of the United States respectively, of each such political party or group of petitioners, and they shall be arranged under the title of the offices. The party columns shall be separated by black ink lines. At the head of each party column shall be printed the party name in large type and below this a circle one-half inch in diameter, below this the names of the candidates for president and vice-president in the order prescribed. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle."

If the state board of elections, in its discretion, should combine the presidential ballot with some other kind of ballots, such as the state, senatorial, or congressional ballots, then in that event, there shall be printed at the left of the names of such candidates for president and vice-president of each party or group, a single voting square large enough so that a voter, desiring to vote for candidates for other officers of another party, may vote for the candidates for president and vice-president together in the one single square. When the presidential ballot is combined with another ballot, instruction number two on the state ballot shall be included with the instructions given herein for the presidential ballot.

On the face of the ballot, at the top, shall be printed in heavy black type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. A vote for the names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(aa) On the official ballot for United States senator the names of the nominees or candidates for United States senator, of each party, and of

each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the state board of elections, as to all ballots herein required to be printed and distributed by such state board of elections, and by the county board of elections with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(aaa) On the official ballot for members of congress, the names of the nominees or candidates for members of congress, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the state board of elections, as to all ballots herein required to be printed and distributed by such state board of elections, and by the county board of elections, with respect to all ballots, required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(b) On the official state ballot shall be printed the names of all candidates for state public offices, including candidates for judges of the superior court, and all other candidates for state offices not otherwise provided for. The names of all such state candidates to go upon the said official ballot which is herein provided, of each party and group of independent candidates, if any, shall be printed in one column and the party column shall be parallel and shall be separated by distinct black lines. At the head of each party column shall be printed the party name and under this shall be a blank circle one-half of an inch in diameter, which party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle." The columns for the independent candidates shall be similar to the party columns, except that above each column shall be printed the words "independent candidate." In each party column the names of all nominees of that party shall be printed in the customary order of the office, and the names of all candidates of each party for any one office shall be printed in a separate section, and at the top of each section shall be printed on one line the title of the office and a direction as to the number of candidates for whom a vote may be cast, unless there shall not be room for the direction, in which case it shall be printed directly below the title. If two or more candidates are nominated for the same office for different terms the term for which each is nominated shall be printed as a part of the title for the office. Each section shall be blocked in by black lines and the voting squares shall be set in a perpendicular column or columns to the left of each candidate's name. The printing on said ballot shall be plain and legible, and in no case shall it exceed in size ten-point type.

On the face of the ballot, at the top, shall be printed in heavy type, the following instructions:

1. To vote a straight party ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. To vote for some but not all the candidates of one party, make a cross (x) mark in the square at the left of the name of every candidate printed on the ballot for whom you wish to vote. If you mark any one candidate you must mark all for whom you wish to vote. A mark in the circle will not be counted if any one candidate on the ballot is marked.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

The instructions hereby given for the state ballot shall be used when there are two or more state offices to be filled at an election, or when two or more kinds of ballots as herein given are printed on one ballot.

(c) On the official county ballot shall be printed the names of all candidates for solicitor for the judicial district in which the county is situated; for member of the general assembly, and all county offices. It shall conform as nearly as possible to the rules prescribed for printing the state official ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(d) The township ballot shall contain the names of the candidates for constable and justices of the peace, and the municipal ballot shall contain the names of all offices to be filled in the municipality at the election for which the ballot is to be used, and shall conform as near as may be to the provisions herein set out with respect to the county ballot.

(e) On the official ballot on constitutional amendements or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other body submitting such amendment or proposition. Each amendment or proposition shall be printed in a separate section and the section shall be numbered consecutively, if there be more than one. At the left of each question shall be printed two voting squares, one above the other, each at least one-fourth (¼) inch square. At the left of the upper square shall be printed the word "yes" and at the left of the lower square shall be printed the word "no." At the top of the ballot shall be printed the following instructions:

1. To vote "yes" on any question, make a cross (X) mark in the square to the right of the word "yes."

2. To vote "no" on any question, make a cross (X) mark in the square to the right of the word "no."

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of each ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(f) In primary elections there shall be no provision for designating the choice of a party ticket by one act or mark, but there shall be a separate ballot for each party and of different colors. The ballots containing the names of the respective candidates shall be so printed that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the said ballots shall be distributed impartially and without discrimination. A square shall be to the left of the name of each candidate in which the voter may make a cross (X) mark indicating his choice for each candidate. On the bottom of each ballot in such primary election printed by the state board of elections shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

And on the bottom of each ballot printed by the county board of elections shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(g) In all city or municipal elections and primaries there shall be an official ballot on which shall be printed the names of all candidates for city or town offices. It shall conform as nearly as possible to the rules prescribed for the printing of the official general ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of city clerk. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21.)

§ 6055(a10). Ballots for each precinct wrapped separately.—All ballots for use in each precinct shall be wrapped in packages, each package to contain whatever number of ballots the chairman of the county board of elections may deem advisable for the respective precincts in his own county, but each package shall have written or stamped thereon the number of ballots contained therein so the registrar will know how many ballots to account for in his precinct. (1929, s. 164, s. 10; 1933, c. 165, s. 22.)

§ 6055(a11). Number of ballots to be furnished polling places.—There shall be provided for each voting place at which an election or primary is to be held such a number of ballots that there shall be at least one hundred and twenty-five ballots for every one hundred registered voters at each polling place, or an excess of ballots of twenty-five per cent over the registration at each precinct. (1929, c. 164, s. 11; 1933, c. 165, s. 22.)

§ 6055(a26). Assistance to voters.—Prior to the date of any election hereunder the county board of elections, together with the registrar of each precinct of each county, shall designate for each precinct therein a sufficient number of persons of good moral character and of the requisite educational qualifications, who shall be bona fide electors of the precinct for which they are appointed, to act as markers, whose duty it shall be to assist voters in the preparation of their ballots. The assistants or markers so appointed by the said county board of elections shall be so appointed as to give fair representation to each political party whose candidates appear upon the ballot. The chairman of the county organization of any political party may, not more than ten days before any election to be held, hereunder, submit to the county board of elections the names of not less than ten qualified voters in any voting precinct of the county, and thereupon the marker or markers

appointed to represent such party in said election at said voting precinct shall be selected from among those so named. Such persons shall remain within the enclosure prepared for the holding of elections, but shall not come within ten feet of the guard-rail, except when going to or returning from the booth with any elector who has requested assistance. Such marker or assistant shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way, and shall not make or keep any memorandum of anything occurring within such booth, and shall not directly, or indirectly, reveal to any other person how in any particular such voter marked his ballot, unless he, or they, be called upon to testify in a judicial proceeding for a violation of the election laws. Every such marker or assistant, together with the registrar and judge of election, shall, before the opening of the polls, take and subscribe an oath that he will not, in any manner, seek to persuade or induce any voter to vote for or against any particular candidate, or for or against any particular proposition, and that he will not make or keep any memorandum of anything occurring within the booth, and will not disclose the same, unless he be called upon to testify in a judicial proceeding for a violation of the election laws of this state. The said oath, after first being taken by the registrar, may be administered by him to the two judges of election and to the markers or assistants, as herein provided: Provided however, that no markers shall be named for or permitted in primary elections conducted under the provisions of this subchapter: Provided further, that in any primary election held hereunder, any voter may ask and secure from any election official at his voting precinct, aid in the preparation of his ballot or in voting: Provided, that in all general and primary elections held under the provisions of this article any voter may select another member of his or her family who shall have the right to accompany such voter into the voting booth and assist in the preparation of the ballot, but immediately after rendering such assistance the person so assisting shall vacate the booth and withdraw from the voting arena: Provided, that any voter in primary elections may be accompanied into the voting booth by any member of his or her family for the purpose of aiding in the marking of his or her ballot or by any other person requested by the voter. (1929, c. 164, s. 26; 1933, c. 165, s. 24.)

Public Laws 1933, c. 164 exempts Brunswick county from the provision of this section and makes provisions for marking ballots for those asking aid in that county.

§ 6055(a27). Aid to persons suffering from physical disability or illiteracy.

Public Laws 1933, c. 164 exempts Brunswick county from the provision of this section and makes provisions for marking ballots for those asking aid in that county.

§ 6055(a28). Method of marking ballots; improperly marked ballots not counted; when.—The voter shall observe the following rules in marking his ballot:

1. If the elector desires to vote a straight ticket, or in other words, for each and every candidate of one party for whatever office nominated, he shall, either—

(a) Make a cross mark in the circular space below the name of the party at the head of the ticket; or

(b) Make a cross mark on the left of and opposite the name of each and every candidate of such party in the blank space provided therefor.

2. If the elector desires to vote a mixed ticket or in other words for candidates of different parties, he shall:

(a) Omit making a cross mark in the circular space above the name of any party and make a cross mark in the blank space before the name of each candidate for whom he desires to vote on whatever ticket he may be.

3. If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in with a pencil or ink in the proper place, and making a cross (x) mark in the blank space at the left of the name so written in. When a name is written in on the official ballot, the new name so written in is to be treated like any other name on the ballot. No sticker is to be used.

4. If the elector marks more names than there are persons to be elected to an office, or, if for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office but shall be returned as a blank vote for such office.

5. If a voter shall do any act extrinsic to the ballot itself, such as enclosing any paper or other article in the folded ballot, such ballot shall be void.

6. No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

7. Every elector who does not vote a ballot delivered by the election officer shall, before leaving the polling place, return such ballot to such officer.

8. A cross (x) mark shall consist of any straight line crossing any other straight line at an angle within a voting circle or square. A voter may designate his choice of candidate by the cross (x) mark or by a check mark, or any other clear indicative mark. Any ballot which is defaced or torn by the voter shall be void. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23.)

§ 6055(a35). Assistants at polls; when allowed and amount to be paid. — The county board of elections may appoint one clerk or assistant at any precinct in the county which has as many as five hundred qualified registered voters on the registration books in such precinct, and one additional such clerk or assistant for each additional five hundred qualified registered voters at such precinct. No other clerk or assistant shall be appointed for any precinct except as herein set out. Such assistants and clerks shall, in all cases, be qualified voters of the ward, or precinct, for which they are appointed, and they shall be paid the same compensation as is provided by law for the judges of election to be paid. (1929, c. 134, s. 35; 1933, c. 165, s. 24.)

CHAPTER 100
GENERAL ASSEMBLY

Art. 6 Acts and Journals

§ 6108. Enrollment of acts.—All bills passed by the general assembly shall be enrolled for ratification under the supervision and direction of the secretary of state. All bills so enrolled shall be typewritten and carefully proofread. The secretary of state is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the general assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars ($6.00) per day for his services, and each of the others so employed shall receive not to exceed the sum of five dollars ($5.00) per day for his services: Provided, the rules committees of the house of representatives and senate in joint session may increase or decrease the number of persons so employed. (Rev., s. 4422; 1903, c. 5; 1933, c. 173, s. 1.)

Editor's Note.—Public Laws of 1933, c. 173, substituted the above section for the former reading. A comparison of the two sections is necessary to determine the changes.

Art. 9. Lobbying

§ 6116(d). Lobbying defined; registration of lobbyists.—Every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the general assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the state, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed, to be entered upon a legislative docket as hereinafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee. (1933, c. 11, s. 1.)

§ 6116(e). Legislative docket for registration.—The secretary of state shall prepare and keep the legislative docket for the uses provided in this article. In such docket shall be entered the name, occupation or business, and business address of the employer, the name, residence and occupation of the person employed, the date of employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the subject or subjects of legislation to which the employment relates. Such docket shall be a public record and open to the inspection of any citizen at any time during the regular business hours of the office of the secretary of state. (1933, c. 11, s. 2.)

§ 6116(f). Contingent fees prohibited.—No person shall be employed as a legislative counsel or agent for a compensation dependent, in any manner, upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the general assembly, or of either branch thereof, or any committee thereof. (1933, c. 11, s. 3.)

§ 6116(g). Written authority from employer to be filed.—Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the secretary of state within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them. (1933, c. 11, s. 4.)

§ 6116(h). Detailed statement of expenses to be filed.—Within thirty days after the final adjournment of the general assembly every person, corporation or association, whose name appears upon the legislative docket of the session, shall file with the secretary of state a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with promoting or opposing in any manner the passage by the general assembly of any legislation coming within the terms of this article. Such statements shall be in such form as shall be prescribed by the secretary of state and shall be open to public inspection. (1933, c. 11, s. 5.)

§ 6116(i). Going upon floor during session prohibited.—It shall be unlawful for any person, employed for a pecuniary consideration to act as legislative counsel or agent, as defined by this article, to go upon the floor of either house of the general assembly while the same is in session, except upon invitation of such house. (1933, c. 11, s. 6.)

§ 6116(j). Application of article. — The provisions of this article shall not apply to any county, city, town or municipality, but shall apply to the executive officers of all other corporations who undertake, in such capacity, to perform services as legislative counsel or agent for such corporations, regardless of whether they receive additional compensation for such services. (1933, c. 11, s. 7.)

§ 6116(k). Punishment for violation.—Any legislative counsel or agent, and any employer of such legislative counsel or agent, violating any provision of this article, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty nor more than one thousand dollars, or imprisoned not exceeding two years, or both. (1933, c. 11, s. 8.)

CHAPTER 101
GEOLOGICAL SURVEY AND FORESTS

Art. 3. State Forests by Donation or Purchase

§ 6126(b). Such monies directed to county general funds.—All funds paid by the national gov-

ernment to the various counties of North Carolina, under section 6126(a), shall hereafter be paid to the proper county officers and said funds shall, when received, be placed in the account of the general county funds. (1933, c. 537, s. 1.)

§ 6126(c). License fees for hunting and fishing on government-owned property unaffected.— No wording in section two thousand and ninety-nine, consolidated statutes, nineteen nineteen, or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the state of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government owned stream in North Carolina including the license for county, state or non-resident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the state of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2.)

Art. 5. Protection against Forest Fires

§ 6137. Powers of forest wardens to prevent and extinguish fires.

A forest warden of a county is given authority by this section to appoint persons between certain ages to assist him in fighting forest fires with pain of penalty upon refusal, and a person so appointed is entitled to receive a small hourly compensation for the services so rendered, and one so appointed is an employee of the state within the meaning of the Workmen's Compensation Act, and is entitled to compensation thereunder for an injury received in the course of and arising out of his duties imposed by such appointment. Moore v. State, 200 N. C., 300, 156 S. E. 806.

Art. 6. Corporations for Protection and Development of Forests

§ 6140(c). Private limited dividend corporations may be thus formed. — Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited divided corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the director of the department of conservation and development shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of state of North Carolina, except where such provisions are in conflict with this article. (1933, c. 178, s. 1.)

§ 6140(d). Manner of organizing.—A corporation formed under this article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of state of North Carolina, except where such provisions are in conflict with this article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this article and that it consents to be and shall be at all times subject to the rules, regulations and supervision of the director of the department of conservation and development, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules and regulations from time to time imposed by the director of the department of conservation and development. (1933, c. 178, s. 2.)

§ 6140(e). Directors. — There shall not be less than three directors, one of whom shall always be a person designated by the director of the department of conservation and development, which one need not be a stockholder. (1933, c. 178, s. 3.)

§ 6140(f). Duties of supervision by director of department of conservation and development. — Corporations formed under this article shall be regulated by the director of the department of conservation and development in the manner provided in this article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties, which cannot be fairly charged to any particular corporation or corporations, shall be charged to and paid by, all the corporations then organized and existing under this article pro-rata according to their respective stock capitalizations. The director of the department of conservation and development shall:

(a) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this article and for the protection and development of forests subject to its jurisdiction.

(b) Order all corporations organized under this article to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the director of the department of conservation and development, or to refrain from doing any acts in violation thereof.

(c) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the director of the department of conservation and development.

(d) Require every such corporation to file with the director of the department of conservation and development annual reports and, if the director of the department of conservation and development shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the director of the department of conservation and development may require. (1933, c. 178, s. 4.)

§ 6140(g). Powers of director. — The director of the department of conservation and development may

(a) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(b) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe

by order accounts in which particular outlays and receipts are to be entered, charged or credited. The director of the department of conservation and development shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(c) Enforce the provisions of this article and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5.)

§ 6140(h). Provision for appeal by corporations to governor.—If any corporation organized under this article is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the director of the department of conservation and development, or any valuation or appraisal of any of its property made by the director of the department of conservation and development, or any failure of or refusal by the director of the department of conservation and development to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the governor by filing with him a claim of appeal upon which the decision of the governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the governor in a written mandate to the director of the department of conservation and development, who shall abide thereby and take such action as the same may direct. (1933, c. 178, s. 6.)

§ 6140(i). Limitations as to dividends. — The shares of stock of corporations organized under this article shall have a par value and, except as provided in section 6140(k) in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum per annum on stock having a preference as to dividends, or eight per centum per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7.)

§ 6140(j). Issuance of securities prohibited. — No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the state of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the director of the department of conservation and development. (1933, c. 178, s. 8.)

§ 6140(k). Limitation on bounties to stockholders.—Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in section 6140(i) except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9.)

§ 6140(l). Earnings above dividend requirements payable to state. — Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in section 6140(i) shall be paid over to the state of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the director of the department of conservation and development shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10.)

§ 6140(m). Dissolution of corporation. — Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the state of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within twenty years of the date of its organization unless the same is accompanied by a certificate of the director of the department of conservation and development consenting to such dissolution. (1933, c. 178, s. 11.)

§ 6140(n). Cutting and sale of timber. — Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the director of the department of conservation and development, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12.)

§ 6140(o). Corporation may not sell or convey without consent of director, or pay higher interest rate than 6%.—No such corporation shall:

(a) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the director of the department of conservation and development of the terms of such sale, transfer or assignment, and unless the director of the department of conservation and development shall consent thereto, and if the director of the department of conservation and development shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and su-

pervision of the director of the department of conservation and development for such period as the latter may require;

(b) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum per annum without the consent of the director of the department of conservation and development.

(c) Mortgage any real property without first having obtained the consent of the director of the department of conservation and development. (1933, c. 178, s. 13.)

§ 6140(p). Power to borrow money limited. — Any such corporation formed under this article may, subject to the approval of the director of the department of conservation and development, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the director of the department of conservation and development, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the director of the department of conservation and development for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14.)

§ 6140(q). Director to approve development of forests. — No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the director of the department of conservation and development, and such approval shall not be given unless:

(1) The director of the department of conservation and development shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the director of the department of conservation and development shall require of the activities to be included in the project, such statement to set forth the proposals as to (a) fire prevention and protection, (b) protection against insects and tree diseases, (c) protection against damage by livestock and game, (d) means, methods and rate of, and restrictions upon cutting, and other utilization of the forests, and (e) planting and spacing of trees.

(2) There shall be submitted to the director of the department of conservation and development a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the director of the department of conservation and development as to where such funds are to be secured.

(3) The director of the department of conservation and development shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained yield basis except in so far as the director of the department of conservation and development shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the director of the department of conservation and development, and that it will at all times comply with such rules and regulations concerning the project as the director of the department of conservation and development shall from time to time impose. (1933, c. 178, s. 15.)

§ 6140(r). Application of corporate income. — The gross annual income of any such corporation, where received from sales of timber, timber operations, stumpage permits or other sources shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurances, amortization charges in amounts approved by the director of the department of conservation and development to amortize mortgage or other indebtedness and reserves essential to operation, second, to surplus and/or to the payment of dividends not exceeding the maximum fixed by this act, third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16.)

§ 6140(s). Reorganization of corporations. — Reorganization of corporations organized under this article shall be subject to the supervision of the director of the department of conservation and development and no such reorganization shall be had without the authorization of the director of the department of conservation and development. (1933, c. 178, s. 17.)

CHAPTER 102

HISTORICAL COMMISSION

Art. 2. Legislative Reference Library

§ 6150(a). Legislative reference librarian transferred to attorney-general's department; duties as assistant.—The department and office of the legislative reference librarian heretofore existing as a part of the historical commission shall be and the same is hereby transferred to the department of the attorney-general with all the duties and functions prescribed by section six thousand one hundred and forty-seven (6147) of the consolidated statutes.

In addition to the duties prescribed by section six thousand one hundred and forty-seven (6147) of the consolidated statutes for the legislative reference librarian, the said officer shall act as assistant in the office of the attorney-general and in addition to the duties required by section six thousand one hundred and forty-seven (6147) of the consolidated statutes, shall render to the attorney-general such assistance as he may be able to give in the conduct and administration of the office and duties of the said attorney-general, and shall perform such duties as may be assigned to him by the attorney-general consistent with and not to interfere with the duties now required of him by law. (1933, c. 21, ss. 1, 2.)

CHAPTER 103
HOSPITALS FOR THE INSANE

Art. 1. Organization and Management

§ 6153(a). Same; Raleigh and Morganton for white insane.—The state hospital at Raleigh and the state hospital at Morganton shall be exclusively for the accommodation, maintenance, care and treatment of the white insane of the state, and the state hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment of the colored insane, epileptics, feebleminded and inebriates of the state. The line heretofore agreed upon by the directors of the state hospital at Raleigh and the state hospital at Morganton shall be the line of division between the territories of said hospitals, and white insane persons settled in counties east of said line shall be admitted to the state hospital at Raleigh, and white insane persons settled in counties west of said line shall be admitted to the state hospital at Morganton; epileptics shall be admitted as now provided by law. White inebriates shall be admitted to the state hospital at Raleigh. (1929, c. 265, s. 1; 1933, c. 342, s. 1.)

Editor's Note.—Public Laws of 1933, c. 342, places epileptic and feebleminded under the jurisdiction of the State Hospital at Goldsboro.

§ 6159(c). Building committee; selection; duties. An architect selected by the building committee under the authority conferred by this section, and who is to bear all the expenses incidental to carrying out his work, being paid on the basis of a percentage of the moneys expended, is an independent contractor and not a state employee. Underwood v. Com'r of Internal Revenue, 56 F. (2d) 67.

Art. 3. Admission of Patients

§ 6185. Idiots not admitted.—No idiot shall be admitted to any hospital, and for the purpose of this chapter an idiot is defined to be a person born deficient in mind, with the exception that the state hospital at Goldsboro shall admit feebleminded negroes, under such rules and regulations as the hospital board and the superintendent may prescribe, in such numbers as the capacity and the appropriations to the hospital will permit. (Rev., s. 4572; 1899, c. 1, s. 18; 1933, c. 342, s. 2.)

Editor's Note.—Public Laws of 1933, c. 342, added the exception appearing at the end of this section.

Art. 4. Discharge of Patients

§ 6214. Discharge of patient from hospital; sheriff's duty; expense paid.

Discharge as Evidence of Sanity in Will Case.—Upon the issue of testamentary capacity an instruction that "a will duly probated in accordance with the formalities of law is presumed to be valid" is not objectionable, there being no presumption of mental incapacity by reason of commitment in an asylum when it has been shown that the testator had been discharged as restored or cured by a certificate issued in accordance with the provisions of this section. In re Crabtree, 200 N. C. 4, 156 S. E. 98.

CHAPTER 106
INSURANCE

SUBCHAPTER I. INSURANCE DEPARTMENT

Art. 3. General Regulations for Insurance

§ 6287. State law governs insurance contracts.

Applied in Fountain v. Mutual Life Ins. Co., 55 F. (2d) 120.

§ 6289. Statements in application not warranties.

Material Representations.—Answers made in response to questions in the application as to applications for other insurance, where the applicant declares that they are true and offers them as an inducement to the issuance of the policy, are deemed material as a matter of law. Fountain v. Mutual Life Ins. Co., 55 F. (2d) 120, 123.

§ 6304. Payment of premium to agent valid; obtaining by fraud a crime.

Where the insurer has credited the amount of the unearned premium to its broker's account, who in turn has credited the amount to account of the broker who has procured the employer's application for the insurance, the insurer is liable to the employer for the amount of the unearned premium not actually paid to the employer by the broker. Hughes v. Lewis, 203 N. C. 775, 166 S. E. 909.

SUBCHAPTER II. INSURANCE COMPANIES

Art. 9. Assessment Companies.

§ 6358. "Assessment plan" printed on application and policy; waiver by commissioner. — Every policy or certificate issued to a resident of the state by any corporation transacting in the state the business of life insurance upon the assessment plan, or admitted to do business in this state on the assessment plan, shall print in bold type and red ink, near the top of the front page of the policy, upon every policy, or certificate issued upon the life of any such resident of the state, the words "issued upon the assessment plan"; and the words "assessment plan" shall be printed conspicuously in red ink in and upon every application, circular card, and any and all printed documents issued, circulated or caused to be circulated by such corporation within the state, save and except, however, in advertising in newspapers within the state, in which case the words may be printed in black. The insurance commissioner may waive the provisions of this section as to assessment companies or associations who conduct their business on an annual premium basis and maintain a full reserve of at least four per cent, based on any recognized table of mortality, and at all times maintain a net surplus over and above all liabilities and available for the payment of claims, sufficient to preclude the possibility of an extra assessment being levied against policyholders. Said waiver must be in writing and the insurance commissioner may revoke it at any time for cause. (1913, c. 159, s. 1; 1929, c. 93, s. 1; 1933, c. 34.)

Editor's Note.—
Public Laws 1933, c. 34, changes the waiver provision of this section to apply to associations maintaining a reserve of four per cent., rather than three and one-half per cent., based on any recognized Mortality Table, rather than the American Experience Mortality Table.

§ 6360. Deposits and advance assessments required.—Every domestic insurance company, association, order, or fraternal benefit society doing business on the assessment plan shall collect and keep at all times in its treasury one regular loss assessment sufficient to pay one regular average loss; and no such company, association, order, or fraternal benefit society shall be licensed by the insurance commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by federal loan banks, or in the bonds of some

city, county, or town of North Carolina to be approved by the insurance commissioner, or deposit with him a good and sufficient bond, secured by a deed of trust on real estate situated in North Carolina and approved by him, or by depositing with the insurance commissioner a bond in an amount of not less than five thousand ($5,000) dollars, issued by any corporate surety company authorized to do business in this state. Such companies, association, orders, or societies now doing business in this state and not issuing policies or certificates for more than two hundred dollars, shall be permitted to deposit five hundred dollars on the first day of July, one thousand nine hundred and thirteen, and five hundred dollars each six months thereafter until the required amount is deposited; and the last named association when hereafter organized may be allowed by the insurance commissioner to make such deposit in like installments. The insurance commissioner may increase the amount of deposit to the amount of reserve on the contracts of the association or society. The provisions of this section shall not apply to the farmers mutual fire insurance associations now doing business in the state and restricting their activities to not more than two adjacent counties. (Rev. s. 4792; 1913, c. 119, s. 1; 1917, c. 191, s. 2; 1933, c. 47.)

Editor's Note.—Public Laws of 1933, c. 47, inserted the clause at the end of the first sentence of the section and also added the sentence appearing at the end of the section.

Art. 11. Fidelity Insurance Companies

§ 6376. May act as fiduciaries.

Applied in Quinton v. Cain, 203 N. C. 162, 165 S. E. 543.

§ 6377. License to do business.

Applied in Quinton v. Cain, 203 N. C. 162, 165 S. E. 543.

§ 6382. Limitation of liability assumed.

Joint-Control Agreements.—It would seem that in cases coming within the purview of this section, and perforce to the extent thereof, joint-control agreements between fiduciaries and their sureties are sanctioned in this State by act of Assembly. Pierce v. Pierce, 197 N. C. 348, 148 S. E. 438; Leonard v. York, 202 N. C. 704, 706, 163 S. E. 878.

Art. 16. Foreign Insurance Companies

§ 6411. Conditions of admission.

Power of Corporation to Sue and Be Sued.—Where a foreign insurance corporation has fully complied with the provisions of this section, and has moved its head office to this State and has domesticated here, it acquires the right to sue and be sued in the courts of this State as a domestic corporation. Occidental Life Ins. Co. v. Lawrence, 204 N. C. 707, 169 S. E. 636.

SUBCHAPTER III. FIRE INSURANCE

Art. 17. General Regulations of Business

§ 6421: Impliedly repealed by c. 542, 1933 codified as 4221(a).

Art. 18. Fire Insurance Policies

§ 6437. Form of standard policy.

II. TITLE OR INTEREST OF INSURED.

Unconditional Ownership.—The provision in a policy of fire insurance written in accordance with the standard statutory form, that the policy should be void if the insured was not the unconditional owner of the property in fee simple is not waived by a written agreement providing that the agreement was solely for the purpose of determining the loss and to save time to the parties and that it should not operate as a waiver of any conditions or provisions of the policy. Sasser v. Pilot Fire Ins. Co., 203 N. C. 232, 165 S. E. 684.

III. CERTAIN OTHER CONDITIONS.

Additional Insurance—In General.—Where a standard fire insurance policy under this section, provides that the policy should be void if the insured procures other contemporaneous insurance on the same property during the term covered, unless the insurer agrees thereto and a writing to that effect is attached to the policy contract, the provision is valid and binding. Johnson v. Aetna Ins. Co., 201 N. C. 362, 160 S. E. 454.

§ 6438. Size of policy; notice; umpire; statement and blanks; policy issued to husband or wife on joint property.—No provisions of this chapter limit insurance companies to use of any particular size or manner of folding the paper upon which their policies are issued. If notice in writing signed by the insured, or his agent, is given before loss or damage by fire to the agent of the company of any fact or condition stated in paragraphs (a), (b), (c), (d), (e), (f), of the foregoing form of policy, it is equivalent to an agreement in writing added thereto, and has the force of the agreement in writing referred to in the foregoing form of policy with respect to the liability of the company and the waiver; but this notice does not affect the right of the company to cancel the policy as herein stipulated.

The resident judge of the superior court of the district in which the property insured is located is designated as the judge of the court of record to select the umpire referred to in the foregoing form of policy. When any company demands or requires the insured, under any fire insurance policy, to furnish a statement in writing as prescribed in the standard policy form, after a fire or loss occurs, the company or its representative shall furnish to the insured a blank or blanks in duplicate to be used for the purpose, which blanks shall be of standard form such as the insurance commissioner has approved. The failure to furnish these blanks is a waiver of the provision requiring such statement. Any policy of fire insurance issued to husband or wife, on buildings and household furniture owned by the husband and wife, either by entirety, in common, or jointly, either name of one of the parties in interest named as the assured or beneficiary therein, shall be sufficient and the policy shall not be void for failure to disclose the interest of the other, unless it appears that in the procuring of the issuance of such policy, fraudulent means or methods were used by the insured or owner thereof. (Rev. c. 54, s. 43; 1907, c. 575, s. 1; 1915, c. 109, s. 11; 1929, c. 60, s. 1.)

Art. 19. Deposits by Foreign Fire Insurance Companies

§ 6442. Amount and nature of deposits required.—Unless otherwise provided in this article, every fire insurance company chartered by any other state or foreign government shall, by their general agent or through some authorized officer, deliver under oath to the insurance commissioner of this state a statement of the amount of capital stock of the company, and deposit with him bonds of the United States, or of the state of North Carolina, or of the cities or counties of this state, or first mortgages on real estate situated in this state to be approved by the insurance commissioner, as follows: Companies whose capital stock is five hundred thousand dollars or less, ten thousand

dollars; companies whose capital stock is more than five hundred thousand dollars and not over one million dollars, twenty thousand dollars; companies whose capital stock is in excess of one million dollars, twenty-five thousand dollars, and every insurance company writing a fidelity, surety or casualty business in this state shall be required to deposit with the state securities of the same class enumerated above in the following amounts: Companies whose premium income derived from this state is less than $100,000.00 per annum, $25,000.00; companies whose premium income is in excess of $100,000.00 per annum, $50,000.00; and the insurance commissioner shall thereupon give the agent a receipt for the same. With securities so deposited the company shall at the same time deliver to the insurance commissioner a power of attorney authorizing him to transfer said securities or any part thereof for the purpose of paying any of the liabilities provided for in this article. The insurance commissioner shall require each company to make good any depreciation or reduction in value of the securities. The securities required to be deposited by each insurance company in this article shall be delivered for safekeeping by the insurance commissioner to the treasurer of the state, who shall receipt him therefor. For securities so deposited the faith of the state is pledged that they shall be returned to the parties entitled to receive them or disposed of as hereinafter provided for. The securities deposited by any company under this article shall not, on account of such securities being in this state, be subjected to taxation, but shall be held exclusively and solely for the protection of contract holders. (1909, c. 923, s. 1; 1911, c. 164, s. 1; Ex. Sess. 1913, c. 62, ss. 1, 2, 3; 1915, c. 166, s. 6; 1933, c. 60.)

Editor's Note.—Public Laws of 1933, c. 60, inserted the clause, about the middle of the section, requiring special deposits from casualty and surety companies.

SUBCHAPTER IV. LIFE INSURANCE

Art. 21. General Regulations of Business

§ 6457. Soliciting agent represents the company.

This section does not attempt to prescribe the extent of the agent's authority or to convert a special or limited agency into one with general powers. Fountain v. Mutual Life Ins. Co., 55 F. (2d) 120, 125.

§ 6464. Rights of beneficiaries.

A beneficiary in a policy of life insurance has only a contingent interest therein, and where the insured retains the right to change the beneficiary by the terms of the policy, he may do so, and where upon the death of the beneficiary the insured changes the beneficiary, in accordance with the terms of the policy, to a trustee for the use of certain creditors and heirs at law of the insured, the other creditors may not claim that the change in the beneficiary was void as being fraudulent as to them. Teague v. Pilot Life Ins. Co., 200 N. C. 450, 157 S. E. 421.

Applied in Russell v. Owen, 203 N. C. 262, 165 S. E. 687.

Change of Beneficiary by Insolvent Insured.—While formerly an insolvent insured could not change, according to a provision in his policy, the beneficiary of his policy of life insurance from his estate to his wife, without consideration against the rights of his creditors, this is now changed by this section. Meadows Fert. Co. v. Godley, 204 N. C. 243, 245, 167 S. E. 816.

§ 6464(a). Creditors deprived of benefits of life insurance policies except in cases of fraud.

This section cannot affect policies written before the effective date of the statute. Com'r of Banks v. Yelverton, 204 N. C. 441, 168 S. E. 505.

Art. 22B. Mutual Burial or Assessment Insurance Associations

§ 6476(z). Must pay death benefits in coin instead of services.—No corporation, society, or organization now doing business in this state or that may hereafter be authorized to do business in this state upon a mutual or assessment insurance plan and issuing contracts to its members providing benefits in excess of one hundred ($100) dollars in the event of death of its members or policy holders shall issue any contract to such members providing for the payment of benefits in merchandise or service to be rendered to such member or his beneficiary; but all contracts hereafter issued by any such corporation, society, or organization, shall provide by the terms of its contract for the payment of such benefits only in lawful currency or coin.

All funeral or burial associations, heretofore or hereafter organized, operating under what is known as the assessment plan, shall in their contracts, by-laws or other provisions provide:

(a) That in the event a member of such funeral or burial association, in good standing, shall die at a place so far removed from the home of such funeral or burial association that it is not deemed practicable by said association or its officers to provide a burial or funeral in services and merchandise, the said association shall cause to be paid in cash for the burial of such member the amount contracted for and stipulated in the rules, contracts or by-laws of such association not exceeding one hundred ($100.00) dollars, as provided for in said chapter, or cause such member to receive a funeral or burial equal to that agreed in such contracts, rules or by-laws of said association.

(b) If the membership of any association providing benefits of one hundred ($100.00) dollars or less, in funerals or burials, as permitted by chapter seventy-one of the public laws of one thousand nine hundred thirty-one, shall not prove sufficient at any time to yield the benefit contracted for, then such benefits as the amount of the assessment, according to such rules and by-laws made or levied on the total assessable membership, shall be paid or provided.

(c) That each contract shall contain a schedule of the merchandise and services to be supplied under the said contract.

(d) That such mutual burial association shall file semiannually on the first days of July and January of each year, beginning July first, one thousand nine hundred and thirty-three, with the insurance commissioner, a sworn statement of the number of its membership, and no funeral or burial association shall be permitted or allowed to continue in operation if its membership shall continue for three months to be below the number of eight hundred. (This shall not apply to burial associations operated for people of the colored race, but such association shall file with the commissioner of insurance a statement of its membership and assessments, and if in the opinion of the commissioner of insurance such association becomes at any time in such condition as to render it probably unable to carry out its provisions the com-

missioner of insurance is authorized to discontinue the operation of such association.)

(e) That in the report to be filed semi-annually with the insurance commissioner each mutual burial association providing benefits to its members of one hundred ($100.00) dollars or less shall embrace in its report the amount of assessments levied per member and a statement of each person buried last prior to such report wherever funeral or burial benefits were rendered by such association.

(f) If the insurance commissioner shall find at any time that any statements made by an association are untrue and falsely made or in case the association shall fail or refuse to obey the provisions of this said chapter, or if upon examination the insurance commissioner finds that such association is insolvent, that it has failed to or become unable to carry out its contract with its members, or has exceeded its powers, or has failed to comply with any provisions of law, or its mode of business is not feasible for the purposes of carrying out successfully its plans, or that its condition is such as to render its further proceedings hazardous to the members, he shall thereupon have power to revoke and cancel such license. The said association shall have the right to appeal from such revocation or cancellation by the insurance commissioner to the superior court of the county in which such association has its principal office. (1931, c. 71; 1933, c. 222, s. 1.)

Editor's Note.—Public Laws of 1933, c. 222, added the last paragraphs, numbered (a) to (f) to this section.

SUBCHAPTER VI. FRATERNAL ORDERS AND SOCIETIES

Art. 25. Fraternal Orders

§ 6518. Certain societies not included.

Personal service on resident secretary of fraternal insurance association allowed to do business in the State without a license under this section and §§ 6274, 6474, and 6479, held valid service on the association in action on policy. Winchester v. Grand Lodge of Brotherhood of Railroad Trainmen, 203 N. C. 735, 167 S. E. 49.

CHAPTER 108

LABOR REGULATIONS

Art. 1. Various Regulations

§ 6554(a). Hours of work for women in industry.—It shall be unlawful for any person, firm, or corporation, proprietor or owner of any retail, or wholesale mercantile establishment or other business where any female help is employed for the purpose of serving the public in the capacity of clerks, salesladies or waitresses and other employees of public eating places to employ or permit to work any female longer than ten hours in any one day or over fifty-five hours in any one week; nor shall any female be employed or permitted to work for more than six hours continuously at any one time without an interval of at least half an hour except where the terms of employment do not call for more than six and a half hours in any one day or period.

Nothing in this section shall be construed to apply to females whose full time is employed as bookkeepers, cashiers or office assistants or to any establishment that does not have in it employment three or more persons at any one time: Provided, further, that this section shall not apply to females employed in any establishments located in any town or city of less than five thousand inhabitants as shown in the census taken by the United States Government in one thousand nine hundred and thirty.

Every employer shall post in a conspicuous place in every room of the establishment in which females are employed a printed notice stating the provisions of this section and the hours of labor. The printed form of such notice shall be furnished, upon request, by the commissioner of labor.

Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars or imprisonment not exceeding sixty days and each day's work exceeding the said hours shall constitute a separate offense. (1933, c. 35.)

CHAPTER 110

MEDICINE AND ALLIED OCCUPATIONS

Art. 1. Practice of Medicine

§ 6618. Board may rescind license.—The board shall have the power to revoke and rescind any license granted by it, when, after due notice and hearing, it shall find that any physician licensed by it has been guilty of grossly immoral conduct, or of producing or attempting to produce a criminal abortion, or, by false and fraudulent representations, has obtained or attempted to obtain, practice in his profession, or is habitually addicted to the use of morphine, cocaine or other narcotic drugs, or has by false or fraudulent representations of his professional skill obtained, or attempted to obtain, money or anything of value, or has advertised or held himself out under a name other than his own, or has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he holds a license, or is guilty of any fraud or deceit by which he was admitted to practice, or has been guilty of any unprofessional or dishonorable conduct unworthy of, and affecting, the practice of his profession, or has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude. Upon the hearing before said board of any charge involving a conviction of such felony or other criminal offense, a transcript of the record thereof certified by the clerk of the court in which such conviction is had, shall be sufficient evidence to justify the revocation or rescinding of such license. The findings and action of said board shall, in all such cases and hearings, be final and conclusive. And, for any of the above reasons, the said board of medical examiners may refuse to issue a license to an applicant. The said board of medical examiners may, in its discretion, restore a license so revoked and rescinded, upon due notice being given and hearing had, and satisfactory evidence produced of reformation of the licentiate. (1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32.)

Editor's Note.—Public Laws of 1933, c. 32, substituted the above section for the former reading. A comparison of the two sections is necessary to determine the changes.

Unprofessional Conduct. — While the board does not

have the power to revoke a license on the sole ground that the holder thereof has been convicted of the violation of a criminal statute in force in the State or in the United States, the board has the power to revoke a license upon a finding that the holder thereof was guilty of unprofessional conduct in that he had violated the provisions of the act. Board of Medical Examiners v. Gardner, 201 N. C. 123, 159 S. E. 8.

Art. 2. Dentistry

§ 6649. Revocation of license. — Whenever it shall appear to the North Carolina state board of dental examiners that any licensed dentist practicing in the state has been guilty of fraud, deceit, or misrepresentation in obtaining license, or of gross immorality; or is an habitual user of intoxicants or drugs, rendering him unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent, or is guilty of wilful negligence in the practice of dentistry, or has been employing unlicensed persons to perform work which under this article can only be legally done by persons holding a license to practice dentistry in this state; or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice; or of false notice, advertisement, publication, or circulation of false claims, or fraudulent misleading statements of his art, skill, or knowledge, or of his methods of treatment or practice, or shall be guilty of any offense involving moral turpitude, or has by himself or another solicited professional business, the board shall revoke the license of such person. An accusation may be filed with the secretary-treasurer of the board, charging any licensed dentist with the commission of any of the offenses herein enumerated, such accusation to be in writing, signed by the accuser and verified under oath.

Whenever such accusation is filed, the secretary-treasurer of the board shall set a day for hearing, and shall transmit to the accused a true copy of all papers filed with him relating to such accusation, and shall notify in writing the accused that on the day fixed for hearing, which day shall not be less than ten days from the date of such notice, he may appear and show cause, if any, why his license to practice dentistry in the state should not be revoked; and for the purpose of such hearing the board is hereby empowered to require by subpœna the attendance of witnesses, to administer oaths and hear testimony, either oral or documentary, for and against the accused.

If at such hearing of the accused the board shall be satisfied that the accused has been guilty of the offense charged in the accusation they shall thereupon, without further notice, revoke the license of the person so accused: Provided, the accused shall not be barred the right of appeal to the superior courts. (1911, c. 137; 1915, c. 178, s. 22; 1933, c. 270.)

Editor's Note.—Public Laws of 1933, c. 270, inserted, near the end of the first sentence of the section, the clause reading, "or has by himself or another solicited professional business."

Art. 3. Pharmacy

Part 1. Practice of Pharmacy

§ 6658. Application and examination for license, prerequisites.—Every person now licensed or registered as a pharmacist under the laws of this state shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist or assistant pharmacist shall file with the secretary of the board of pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the board of pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist or assistant pharmacist. The application referred to above shall be prepared and furnished by the board of pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article, an applicant shall be not less than twenty-one years of age, he shall present to the board of pharmacy satisfactory evidence that he has had four years experience in pharmacy under the instruction of a licensed pharmacist, and that he is a graduate of a reputable school or college of pharmacy, and he shall also pass a satisfactory examination of the board of pharmacy: Provided, however, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed two years, may be deducted from the time of experience required. In order to be licensed as an assistant pharmacist, within the meaning of this article, an applicant shall be not less than eighteen years of age; shall have had a sufficient preliminary general education, and shall have had not less than two years experience in pharmacy under the instruction of a licensed pharmacist, and shall also pass a satisfactory examination by, or under the direction of, the board of pharmacy: Provided, however, that applicants for licenses as assistant pharmacists, who have attended a reputable school or college of pharmacy, may have deducted from the time of experience required the actual time of attendance at such school or college of pharmacy, such time not to exceed one year: Provided, that any person legally registered or licensed as a pharmacist by another state board of pharmacy, and who has had fifteen years continuous experience in North Carolina under the instruction of a licensed pharmacist next preceding his application shall be permitted to stand the examination to practice pharmacy in North Carolina upon application filed with said board prior to the first day of July, one thousand nine hundred and thirty-three. Any person who has had two years of college training and has been filling prescriptions in a drug store or stores for twenty years or longer may take the examination as provided in the above proviso. (Rev., ss. 4479, 4480; 1905, c. 108, s. 13; 1915, c. 165; 1921, c. 52; 1933, c. 206, ss. 1, 2.)

Editor's Note.—Public Laws of 1933, c. 206, inserted the last proviso of this section relative to barbers in another state taking the examination in North Carolina.

Part 2. Dealing in Specific Drugs Regulated

§ 6683. Narcotics and certain other drugs; violation of law a misdemeanor.

This section confers no power on the Board to revoke the license of a physician who has been convicted of its violation. Board of Medical Examiners v. Gardner, 201 N. C. 123, 127, 159 S. E. 8.

Art. 4. Optometry

§ 6696. Annual fees; failure to pay; revocation of license; collection by suit.—For the use of the board in performing its duties under this article, every registered optometrist shall, in every year after the year one thousand nine hundred and thirty-two (1932) pay to the board of examiners the sum of not exceeding five and no/100 dollars ($5.00), the amount to be fixed by the board, as a license fee for the year. Such payments shall be made prior to the first day of April in each year, and in case of default in payment by any registered optometrist his certificate may be revoked by the board at the next regular meeting of the board after notice as herein provided. But no license shall be revoked for non-payment if the person so notified shall pay, before or at the time of consideration, his fee and such penalty as may be imposed by the board. The penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed five and no/100 dollars ($5.00). The board of examiners may collect any dues or fees provided for in this section by suit in the name of the board. The notice hereinbefore mentioned shall be in writing, addressed to the person in default in the payment of dues or fees herein mentioned at his last known address as shown by the records of the board, and shall be sent by the secretary of the board by registered mail, with proper postage attached, at least twenty (20) days before the date upon which revocation of license is considered, and the secretary shall keep a record of the fact and of the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of the license of the person to whom such notice is addressed. (1909, c. 444, s. 12; 1923, c. 42, s. 5; 1933, c. 492, s. 1.)

Editor's Note.—Public Laws of 1933, c. 42, struck out the former section and inserted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

Art. 6. Chiropractic

§ 6711. Appointment; term; successors; recommendations.—The governor shall appoint the members of the state board of chiropractic examiners, whose terms of office shall be as follows: One member shall be appointed for a term of one year from the close of the next regular annual meeting of the North Carolina chiropractic association; one member shall be appointed for a term of two years from such time, and one member shall be appointed for a term of three years from such time. Annually thereafter, at the time of the annual meeting or immediately thereafter, the governor shall appoint one member of the state board of chiropractic examiners, whose term of office shall be three years, and such members of the board of examiners shall be appointed from a number of not less than five who shall be recommended by the North Carolina board of chiropractors. (1917, c. 73, s. 2; 1933, c. 442, s. 1.)

Editor's Note.—Public Laws of 1933, c. 442, changed "North Carolina board of chiropractors" to "North Carolina chiropractic association."

§ 6712. First appointments.—Until the members of the board are appointed as aforesaid the governor shall appoint the state board of chiropractic examiners, who shall hold office until the close of the next regular annual meeting of the North Carolina chiropractic association. (1917, c. 73, s. 3; 1933, c. 442, s. 1.)

Editor's Note.—Public Laws of 1933, c. 442, changed "North Carolina board of chiropractors" to "North Carolina chiropractic association."

§ 6713. Organization and vacancies.—The board of chiropractic examiners shall elect such officers as they may deem necessary, and in case of a vacancy, caused by death or in any other manner, a majority of the board shall have the right to fill the vacancy by the election of some other member of the North Carolina chiropractic association. (1917, c. 73, s. 4; 1933, c. 442, s. 1.)

Editor's Note.—Public Laws of 1933, c. 442, changed "North Carolina board of chiropractors" to "North Carolina chiropractic association."

§ 6715. Definitions of chiropractic; examinations; educational requirements.—Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the twenty-four movable vertebrae of the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the board of examiners to examine all applicants who shall furnish satisfactory proof of good character and of graduation from a regular chiropractic school of good standing, and such examination shall embrace such branches of study as are usually included in the regular course of study for chiropractors in chiropractic schools or colleges of good standing, including especially an examination of each applicant in the science of chiropractic as herein defined. Every applicant for license shall, after the organization of the North Carolina chiropractic association which organization shall be perfected immediately after the passage of this law, furnish to said board of examiners sufficient and satisfactory evidence that, prior to the beginning of his course in chiropractic, he had obtained a high school education, or what is equivalent thereto, entitling him to admission in a reputable college or university; and he shall also exhibit to said board of chiropractic examiners, or satisfy them that he holds, a diploma from a reputable chiropractic college, and not a correspondence school, and that said diploma was granted to him on a personal attendance and completion of a regular four years' course in such chiropractic college, and such applicant shall be examined in the following studies: Chiropractic analysis, chiropractic philosophy, chiropractic neurology, palpation, nerve tracing, microscopy, histology, anatomy, gynecology, jurisprudence, chemistry, pathology, hygiene, physiology, embryology, eye, ear, nose, and throat, hermatology, symptomology, spinograph, chiropractic orghopogy, and

the theory, teaching and practicing of chiropractic.

Any person who has been practicing chiropractic in this state prior to the first day of January, one thousand nine hundred and eighteen, may apply for and receive license to practice chiropractic in this state upon proof of good character and proper proficiency upon examination; and all those practicing chiropractic prior to the first day of January, one thousand nine hundred and seventeen, shall be granted license without an examination.

Any chiropractor holding license issued to him in another state by a regular board of chiropractic examiners may apply for and receive a license to practice chiropractic in this state upon proof of good moral character and that he has been practicing chiropractic under such license for one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; 1933, c. 442, s. 1.)

Editor's Note.—Public Laws of 1933, c. 442, changed "North Carolina board of chiropractors" to "North Carolina chiropractic association." The act also raised the personal attendance course from three to four years.

§ 6716. Annual meetings.—The board of chiropractic examiners and the North Carolina board of chiropractors shall hold their annual meetings at the same time and place. But the said board of examiners may, in their discretion, meet not more than three days in advance of the annual meeting of the North Carolina chiropractic association. (1917, c. 73, s. 6; 1933, c. 442, s. 1.)

Editor's Note.—Public Laws of 1933, c. 442, changed "North Carolina board of chiropractors" to "North Carolina chiropractic association."

§ 6721(a). Exempt from jury service.—All duly licensed chiropractors of this state shall be exempt from service as jurors in any of the courts of this state. (1933, c. 442, s. 2.)

§ 6722. Extent and limitation of license.—Any person obtaining a license from the board of chiropractic examiners shall have the right to practice the science known as chiropractic, in accordance with the method, thought, and practice of chiropractors, as taught in recognized chiropractic schools and colleges but shall not prescribe for or administer to any person any medicine or drugs, nor practice osteopathy or surgery. (1917, c. 73, s. 12; 1933, c. 442, s. 3.)

Editor's Note.—Public Laws of 1933, c. 442, inserted, near the middle of this section, the words "as taught in recognized chiropractic schools and colleges."

§ 6726. Annual fee for renewal of license.—All persons practicing chiropractic in this state shall, on or before the first Tuesday after the first Monday in January in each year after licenses issued to them as herein provided, pay to the secretary of the board of chiropractic examiners a renewal license fee of two dollars, the payment of which, and a receipt from the secretary of the board, shall work a renewal of the license fee for twelve months.

Any license or certificate granted by the board under this article shall automatically be cancelled if the holder thereof fails to secure a renewal within three months from the time herein provided; but any license thus cancelled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of ten ($10.00) dollars. (1917, c. 73, s. 15; 1933, c. 442, s. 4.)

Editor's Note.—Public Laws of 1933, c. 442, added the last sentence of this section as it now reads.

Art. 7. Trained Nurses

§ 6729(a). Committee on standardization. — A joint committee on standardization, consisting of three members appointed from the North Carolina state nurses' association, and four members from the North Carolina state hospital association, whose members shall serve for a term of three years, or until their successors are elected, is hereby created. The joint committee on standardization shall advise with the board of nurse examiners herein created in the adoption of regulations governing the education of nurses, and shall jointly with the North Carolina board of nurse examiners have power to establish standards and provide minimum requirements for the conduct of schools of nursing of which applicants for examination for nurse's license under this chapter must be graduates before taking such examination. (1925, c. 87, s. 3; 1931, c. 56; 1933, c. 203, s. 2.)

Editor's Note.—
Public Laws of 1933, c. 203, changed the number of the North Carolina State Hospital Association from three to four, and inserted the provision making the exercise of power joint with the North Carolina board of nurse examiners.

CHAPTER 111
MILITIA

Art. 7. Pay of Militia

§ 6864. Rations and pay on service.

Cross Reference. — As to National Guardsmen coming within the Workmen's Compensation Act when on duty, see § 6889 and the note thereto.

Art. 10. Support of Militia

§ 6889. Allowances made to different organizations; appropriation.

By this and § 6864 the State has provided for payment in a certain manner to privates who have enlisted in the North Carolina National Guard, and a private therein who has taken the prescribed oath is an employee of the State within the meaning of the Workmen's Compensation Act, and where he has sustained an injury arising out of and in the course of the performance of his duties as an enlisted man he is entitled to the compensation prescribed by the statute. Baker v. State, 200 N. C. 232, 156 S. E. 917.

CHAPTER 114
NAVIGATION

Art. 1. Cape Fear River

§ 6943(m). When employment compulsory; rates of pilotage.

A barge of over sixty gross tons having a United States licensed pilot on board is subject to pilotage, tender and refusal under this section upon entering North Carolina waters. Craig v. Gulf Barge, etc., Co., 201 N. C. 250, 159 S. E. 424.

Art. 5. General Provisions

§ 6988. Acting as pilot without license.—If any person shall act as a pilot, who is not qualified and licensed in the manner prescribed in this chapter, he shall be guilty of a misdemeanor and upon conviction shall be fined not more than $50.00 and not less than $25.00, or imprisoned not more than

thirty days at the discretion of the court: Provided, that should there be no licensed pilot in attendance, any person may conduct into port any vessel in danger from stress of weather or in a leaky condition. (Rev., s. 4974; Code, s. 3519; R. C. c. 85, s. 29; 1783, c. 194, s. 3; 1784, c. 208, s. 1; 1933, c. 325, ss. 1, 2, 3.)

Editor's Note.—Public Laws of 1933, c. 325, struck out the former provision and inserted the present reading in lieu thereof. A comparison of the two sections is necessary to determine the changes.

CHAPTER 118

PUBLIC HEALTH

SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW

Art. 3. County Organization

§ 7075. County commissioners may levy special tax to protect health.

Maintenance of Public Welfare Departments.—No authority is given by this section to levy a special tax for the purpose of raising revenue for the maintenance of the public welfare departments. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 157 S. E. 610.

Art. 4A. Sanitary Districts in General

§ 7077(g). Corporate powers.—When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

1. Under the supervision of the state board of health to acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant or such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district.

2. To issue certificates of indebtedness against the district in the manner hereinafter provided.

3. To issue bonds of the district in the manner hereinafter provided.

4. To cause taxes to be levied and collected upon all the taxable property within the district sufficient to meet the obligations evidenced by bonds and certificates of indebtedness issued against the district.

5. To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within and/or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

6. To employ such engineers, counsel and other such persons as may be necessary to carry into effect any projects undertaken and to fix compensation thereof.

7. To negotiate and enter into agreement with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this article.

8. To formulate rules and regulations necessary for proper functioning of the works of the district.

9. (a) To contract with any person, firm, corporation, city, town, village or political subdivision of the state both within and/or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the state in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district, when in the opinion of the sanitary district board it will be for the best interest of the district and subject to the approval of the state board of health.

(b) To contract with any person, firm, corporation, city, town, village or political subdivision of the state within and/or without the corporate limits of the district to supply raw and/or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the state where the service is available: Provided, however, that for service supplied outside the corporate limits of the districts, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.

10. After the final approval and adoption of the plan as set forth in section 7077(m), and the election as provided in section 7077(n), and subject to the approval of the state board of health, to adopt a plan different from that adopted by said board and heretofore or hereafter voted upon by the qualified voters of the district, where the newly-adopted plan would not in the opinion of said board and the state board of health constitute a material deviation from the original plan, which new plan may provide among other things for the construction of a water line for the supply of any person, firm, corporation, city, town, village or political subdivision of the state either within and/or without the corporate limits of the district instead of a sewage disposal line and other improvements, where the change in said plans would permit the disposal of sewage at a point nearer the district either within and/or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the state to whom the water is to be supplied and would effect a saving to the district, and to reappropriate for carrying out the new plan a sufficient amount of bond money theretofore appropriated by the vote of the qualified voters of the district to pay the costs of construction of the plan thereafter adopted. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2.)

Editor's Note.—Public Laws 1933, c. 8, struck out subsection 5 of this section and inserted the present reading in lieu thereof. The act also added subsection 9, consisting of clauses (a) and (b), and subsection 10.

§ 7077(i). Power to condemn property.—When, in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and

sale, or the amount of damage to be awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of chapter thirty-three of the consolidated statutes entitled "eminent domain" shall apply. Section one thousand seven hundred and fourteen, consolidated statutes, shall not, however, be applicable to such condemnation proceedings. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the sanitary board to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action. (1927, c. 100, s. 9; 1933, c. 8, s. 3.)

Editor's Note.—Public Laws 1933, c. 8, inserted the clause appearing twice in this section, reading "within and/or without the corporate limits of the city."

§ 7077(p). Additional bonds. — Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to have an election held for the issuance of such additional bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds from the sale of the bonds shall be in excess of the amount necessary to complete the costs of the completed works of the district and pay the interest and principal due on said bonds before the placing into service of the works of the district and the collection of taxes levied or to be levied for that purpose, then the sanitary district board shall be required to purchase with said surplus, at par and accrued interest, any part of the outstanding issue of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4.)

Editor's Note.—Public Laws of 1933, c. 8, added the last sentence of this section as it now appears.

§ 7077(t). Service charges and rates.—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not be unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds, to the retirement of bonds or both. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5.)

Editor's Note.—Public Laws of 1933, c. 8, added the qualifying clause at the end of the second sentence of this section.

Art. 5. Special-Tax Sanitary Districts

§ 7078. Question of special sanitary tax submitted; district formal.

For an act providing for the creation of sanitary districts in Moore County, see Public Laws 1933, c. 453.

SUBCHAPTER II. VITAL STATISTICS

Art. 6. Registration of Births and Deaths

§ 7088(a). Control of board over districts.—The state board of health shall have authority to abolish or consolidate existing registration districts, and/or create new districts when, in the judgment of the board, economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3.)

§ 7089(a). County health officer may act as registrar.—The state board of health shall have authority and power to designate and appoint the whole-time health officer of the county as registrar for that county, or fractional part or parts thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by the county health officer under such appointment, shall be used by the local board of health in its discretion for health service. (1933, c. 9, s. 3.)

§ 7093. Stillborn children to be registered.—A stillborn child shall be registered as a birth and also as a death, but only one certificate shall be required of such birth and death, which shall be filed with the local registrar, the certificate to contain, in place of the name of the child, the word stillbirth; but no certificate of birth nor certificate of death shall be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in this article. (1913, c. 109, s. 6; 1933, c. 9, s. 2.)

Editor's Note.—Prior to Public Laws of 1933, c. 9, this section required a separate certificate of birth and death of a stillborn child.

§ 7109. Duties of local registrar as to certificates; reports.—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall

be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state registrar, which record book the local registrar shall deposit with the register of deeds of the county not later than the fifteenth of February each year. And the register of deeds shall make and keep an index, the form of which shall be of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. And he shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month the local registrar shall, on the fifth day of the following month, report that fact to the state registrar, on a card provided for such purpose. (1931, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1.)

Editor's Note.—

Public Laws of 1933, c. 9, omitted a provision, formerly appearing at the end of the next to the last sentence, that the registrar shall transmit an exact copy of the certificate to the register of deeds.

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC

Art. 7A. State Housing Law

§ 7128(1). Title.—This article shall be known as the "state housing law." (1933, c. 384, § 1.)

§ 7128(2). Public interest demands housing for families of low income. — It is hereby declared that it is necessary in the public interest to make provision for housing for families of low income, and that, the providing of such housing being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit their rental or sale at prices which families of low income can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination. (1933, c. 384, s. 2.)

§ 7128(3). State board of housing created. — There is hereby created a state board of housing of the state of North Carolina, which will consist of five (5) members, to be appointed by the governor. Two of the five members shall be appointed for two years, and three for four years, and at the expiration of these terms their successors shall be appointed for a term of four years. All vacancies which may occur for any unexpired term shall be filled by the governor. The members of the board shall receive no salary, but shall be entitled to the necessary traveling and other expenses incurred in the discharges of their duties. (1933, c. 384, s. 3.)

§ 7128(4). Choosing officers and employees. — The members of the board shall choose from among their number a chairman and vice-chairman, and the board may appoint such other officers and employees, including a secretary, as it may require, for the performance of its duties, and shall fix and determine their qualifications, duties and salaries. (1933, c. 384, s. 4.)

§ 7128(5). Approval of housing projects.—No housing project proposed by a limited dividend housing corporation incorporated under this article shall be undertaken, and no building or other construction shall be placed under contract or started without the approval of the board. No housing project shall be approved by the board unless:

(a) It shall appear practicable to rent or sell the housing accommodations to be created at prices not exceeding those prescribed by the board. No such project shall be approved in contravention of any zoning or building ordinance in effect in the locality in which designated areas are located.

(b) There shall be submitted to the board a financial plan in such form and with such assurances as the board may prescribe to raise the actual cost of the lands and projected improvements by subscriptions to or the sale of the stock, income debentures and mortgage bonds of such corporation. Whenever reference is made in this act to cost of projects or of buildings and improvements in projects, such cost shall include charges for financing and supervision approved by the board and carrying charges during construction required in the project including interest on borrowed and, where approved by the board, on invested capital.

(c) There shall be such plans of site development and buildings as show conformity to reasonable standards of health, sanitation, safety and provisions for light and air, accompanied by proper specifications and estimates of cost. Such plans and specification shall not in any case fall below the requirements of the health, sanitation, safety and housing laws of the state and shall meet superior requirements if prescribed by local laws and ordinances.

(d) The corporation agrees to accept a designee of the board of housing as a member of the board of directors of said corporation.

(e) If required by the board, the corporation shall deposit all monies received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the state of North Carolina and to perform trust functions, and such trustee shall receive such monies and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements upon presentation of draft, check or order signed by a proper officer of the corporation, and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation. (1933, c. 384, s. 5.)

§ 7128(6). Investigation into limited dividend housing corporations.—The board shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this article, and into the dealings, transactions or relationships of such companies with other persons. Any of the investigations provided for in this article may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this article, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the board or excused from attendance. (1933, c. 384, s. 6.)

§ 7128(7). Powers of board as to study of housing conditions and approval of housing projects.—The board is hereby empowered to (a) study housing conditions and needs throughout the state to determine in what areas congested and insanitary housing conditions constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state, (b) prepare programs for correcting such conditions, (c) collect and distribute information relating to housing, (d) investigate all matters affecting the cost of construction or production of dwellings, (e) study means of securing economy in the construction and arrangement of buildings, (f) recommend and approve the areas within which or adjacent to which the construction of housing projects by limited dividend housing companies may be undertaken, and (g) cooperate with local housing officials and planning commissions or similar bodies in cities and other localities in developments of projects they at any time may have under consideration. (1933, c. 384, s. 7.)

§ 7128(8). Consolidation of projects. — The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project or the consolidation of any approved project with a proposed project. In any of these events, the consolidation project shall be treated as an original project and an application shall be submitted as in the case of an original project and rents may be averaged throughout the consolidated or extended project. The board may likewise permit or decline to permit any limited dividend corporation to organize and operate more than one project or to take over any project heretofore approved by the board and to operate it independently of other projects of the corporation. (1933, c. 384, s. 8.)

§ 7128(9). Powers of board over housing corporations.—In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this article the board may:

(a) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations.

(b) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board or by the terms of any project approved by the board, or to refrain from doing any acts in violation thereof.

(c) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed.

(d) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof.

(e) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipt shall be entered, charged or credited.

(f) Require every such corporation to file with the board an annual report setting forth such information as the board may require verified by the oath of the president and general manager or receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the board. The board may further require specific answers to questions upon which the board may desire information and may also require such corporation to file periodic reports in the form covering the period and at the time prescribed by the board.

(g) From time to time make, amend and repeal

rules and regulations for carrying into effect the provisions of this article. (1933, c. 384, s. 9.)

§ 7128(10). Fixing of rental and purchase prices.—The board shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be (a) all fixed charges, and all operating and maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the board; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the board. (b) A dividend not exceeding the maximum fixed by this article upon the stock of the corporation allotted to the project by the board. (c) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock, and income debentures of the corporation to the extent permitted by this article.

Letting, subletting or assignment of leases of apartments in such buildings or structures at greater rentals than prescribed by the order of the board are prohibited and all such leases will be voted for all purposes. (1933, c. 384, s. 10.)

§ 7128(11). Reorganization of limited dividend corporations.—(1) Reorganization of limited dividend housing companies shall be subject to the supervision and control of the board and no such reorganization shall be had without the authorization of such board.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by the board which in making its determination, shall not exceed the fair value of the property involved. (1933, c. 384, s. 11.)

§ 7128(12). Injunction against corporations violating law.—Whenever the board shall be of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the board and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the superior court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said superior court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding thirty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 384, s. 12.)

§ 7128(13). Acquisition of housing property after approval of project.—When the board shall have approved a project for the construction of housing accommodations presented to it by a limited dividend housing company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest, or purchase. (1933, c. 384, s. 13.)

§ 7128(14). Articles of incorporation. — Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing in the office of the secretary of state, articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the state, except as herein modified or changed.

(a) The purposes for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the board of housing.

(b) The shares of which the capital shall consist shall have a par value.

(c) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the state housing law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at the rate of six per centum per an-

num, and that any surplus in excess of such amount if said company shall be dissolved shall revert to the state of North Carolina.

(d) The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend housing companies, except where such provisions are in conflict therewith. (1933, c. 384, s. 14.)

§ 7128(15). Further limitation on dividends. — No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six per centum per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years. (1933, c. 384, s. 15.)

§ 7128(16). Limit on stocks and bonds. — No limited dividend housing company incorporated under this article shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the board of housing and such valuation shall be used in computing actual or estimated cost. (1933, c. 384, s. 16.)

§ 7128(17). Income debenture certificates. — The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than six per centum per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of housing for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanges therefor. (1933, c. 384, s. 17.)

§ 7128(18). Powers of corporations limited. — No limited dividend housing company incorporated shall under this article:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purpose defined in this article.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the board: Provided, however, that leases conforming to the regulations and rules of the board and for actual occupancy by the lessees may be made without the consent of the board. Any conveyance, incumbrance, lease or sub-lease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six per centum per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the board.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, coöperative or community purposes, and when permitted by law the roof may be used for coöperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the board.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the board.

(11) Make any guaranty without the approval of the board. (1933, c. 384, s. 18.)

§ 7128(19). Loans and security therefor regulated.—Any company formed under this article may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgage or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the board under this article. Provisions for the amortization of the bonded indebtedness of companies formed under this article shall be subject to the approval of the board. (1933, c. 384, s. 19.)

§ 7128(20). Earnings transferred to surplus.— The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b) and (c) of section 7128(10) shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen per centum of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends of interest, less any payment or distributions theretofore made other than by dividends provided in

section 7128(15), and any remaining surplus or other undistributed earnings shall be paid into the general fund of the state of North Carolina, or shall be disposed of in such other manner as the board may direct and the then governor may approve. (1933, c. 384, s. 20.)

§ 7128(21). Annual surpluses applied to rent reductions.—If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in section 7128(10), the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the board of housing shall deem such balance too small for the purposes, be applied to the reduction of rentals. (1933, c. 384, s. 21.)

§ 7128(22). Board as defendant in foreclosure actions.—(1) In any foreclosure action the board shall be made a party defendant; and such board shall take all steps in such action necessary to project the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lien-holder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court shall be authorized to make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend housing corporation organized under this article: Provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this article.

(2) Notwithstanding the foregoing provisions of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage which is a lien upon any such property such corporation shall have all the remedies available to a mortgagee under the laws of the state of North Carolina, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public and no costs shall be awarded against it. (1933, c. 384, s. 22.)

§ 7128(23). Application to, and approval of board as to transfer of housing property.—Before any limited dividend housing corporation incorporated under this article shall purchase the property of any other limited dividend housing corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this article, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this article. (1933, c. 384, s. 23.)

§ 7128(24). Notice to board before execution on judgments. — In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties. (1933, c. 384, s. 24.)

§ 7128(25). Fees of board for examination chargeable against housing corporation. — The board may charge and collect for a limited dividend housing corporation, incorporated under this article, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of one per cent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the board, or any of its employees, in performance of their duties under this act an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in section 7128(10) pursuant to rules to be established by the board. (1933, c. 384, s. 25.)

§ 7128(26). Limit of existence of housing corporations.—The corporate existence of any corporation authorized hereunder shall not extend beyond twenty-five years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the incorporation board, by approval of the state board of housing, should grant an extension for an additional period of time. (1933, c. 384, s. 27.)

Art. 20. Ice Cream Plants, Creameries, and Cheese Factories

§ 7251(a). Cleanliness and sanitation enjoined; wash rooms and toilets, living and sleeping rooms; animals.—For the protection of the health of the people of the state, all places where ice-cream, frozen custard, milk sherbet, sherbet, water ices, and other similar frozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceiling of all work rooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in

a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable wash rooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows, or other openings. (1921, c. 169, s. 1; 1933, c. 431, s. 1.)

Editor's Note.—Public Laws of 1933, c. 431, made this section applicable to frozen custard, milk sherbet, etc. Section 5 of the amendatory act provides that the amendment shall not apply to Mecklenburg and Cabarrus counties.

§ 7251(c). Purity of products.—All cream, ice-cream, butter, cheese, or other products produced in places named herein shall be pure, wholesome, and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the board of agriculture provided for in section 7251(h), and whole milk, sweet cream, and ice cream mix shipped into this state from other states shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing grade or standard of quality of product. (1921, c. 169, s. 3; 1933, c. 431, s. 2.)

Editor's Note.—Public Laws 1933, c. 431, added the last clause of the section relating to products shipped into the state. Section 5 of the amendatory act provides that the amendment shall not apply to Mecklenburg and Cabarrus counties.

§ 7251(h). Standards of purity and sanitation.—The board of agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. (1921, c. 169, s. 8; 1933, c. 431, s. 3.)

Editor's Note.—Public Laws 1933, c. 431, added the clause "to make such definitions and." Section 5 of the amendatory act provides that the amendment shall not apply to Mecklenburg and Cabarrus counties.

§ 7251(i). Inspection fees; wholesalers; retailers and cheese factories.—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor, or operator of each ice-cream factory where ice cream, frozen custard, milk sherbet, sherbet, water ices and/or other similar frozen food products are made or stored or cheese factory or creamery in this state that disposes of its product at wholesale to retail dealers, to be resold, shall pay to the commissioner of agriculture during the month of July of each year an inspection fee of twenty dollars ($20), and each maker of ice-cream, frozen custard, milk sherbet, sherbet, water ices, and/or other similar frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the commissioner of agriculture an inspection fee of five dollars ($5) during the month of July of each year. (1921, c. 169, s. 9; 1933, c. 431, s. 4.)

Editor's Note.—Public Laws of 1933, c. 433, made this section applicable to frozen custards, milk sherbets, etc. Section 5 of the amendatory act provides that the amendment shall not apply to Mecklenburg and Cabarrus counties.

Art. 21A. Milk and Milk Bottles, Crates, Cans and Other Containers of Dairy Products

§ 7251(w)1. Regulation of use of milk containers.—No person, firm or corporation shall use, or permit to be used a milk bottle, or other receptacle designed as a milk container, or container of dairy products, and having the name, brand or trade mark of any other person, firm or corporation thereon, for any purpose other than as a milk container, or as a container of dairy products.

It shall be unlawful for any person, firm or corporation to use or permit to be used any milk bottle, can, crate, or any other container for milk or milk products which has the name, label, trade name or inscription of any other person, firm or corporation blown, embossed or marked thereon. (1933, c. 284, ss. 1, 2.)

§ 7251(w) 2. Purchase of containers regulated.—It shall be unlawful for any person, firm or corporation to purchase milk bottles except from a wholesale dealer, retail store or dairyman having the same for sale and it shall also be unlawful for any person, firm or corporation, other than dealers having the same for sale, to sell any milk bottles: Provided, that this section shall not apply to judicial sales. (1933, c. 284, s. 3.)

§ 7251(w) 3. Violation made misdemeanor.—Any person, firm or corporation or agent willfully violating any of the sections of this statute shall be guilty of a misdemeanor, and shall be subject to a penalty of a fine of not more than fifty ($50.00) dollars, or imprisonment of not more than thirty days for each and every violation thereof. (1933, c. 284, s. 4.)

§ 7251(w) 4. Supervision of dairy products by department of agriculture.—The state department of agriculture shall have full power to make and promulgate rules and regulations for the dairy division of the department of agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this state; to regulate the manner of testing the same not inconsistent with the standard methods as promulgated by the American public health association, and of all inspections which may be lawfully made except those relating to public health and sanitation, in the handling, treatment, and sale of the said milk products, and such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the commissioner of agriculture on this subject, and may license Babcock testers and revoke license.

The commissioner of agriculture shall be given authority to inspect all Babcock testers, glassware, and scales, as provided for in these regulations, and condemn such as are not found accu-

rate and in good repair. He shall visit either in person, or by a deputy, all creameries, cheese factories, milk depots, etc., where milk and cream, and milk products are sold in this state, as often as may be necessary, and shall supervise in any practical way, the work of all licensed testers as provided for in this section.

The commissioner of agriculture and his deputies shall be authorized and empowered to make such tests as are necessary to settle disputes when called upon by either buyer or seller of milk, cream, or other dairy products where such disputes arise over dissatisfaction regarding weight or tests of dairy products. Such tests shall be regarded as correct, and shall be used as a basis for settlement in such disputes. (1933, c. 550, ss. 1-3.)

§ 7251(w) 5. Misbranding milk or cream prohibited.—It shall be unlawful for any person, firm, association or corporation to sell or offer for sale in any city, county, or other unit of local government which has adopted the public health service milk ordinance, or within one mile of the boundaries thereof, milk or cream in any container, bottle, or can bearing any legend, letter or symbol likely to be misleading, or indicating that such milk or cream has been graded, unless said milk or cream does conform in every respect with the requirements of said public health service milk ordinance. Any person violating the provisions of this section is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $50.00, nor less than $10.00. (1933, c. 343, s. 1.)

Art. 22. Manufacture, etc., of Bedding.

§ 7251(hh) 1. Definitions.—As used in this article:

The word "mattress" means: Any mattress, upholstered spring, comforter, pad, cushion or pillow to be used in reclining or sleeping. This article shall not apply to any mattress smaller than 12 inches in its greatest dimension.

The word "person" means: Any individual, corporation, partnership, or association.

The term "new material" means: Any material which has not been used in the manufacture of another article or used for any other purpose.

The term "previously used material" means: (a) Any material which has been used in the manufacture of another article or used for any other purpose; (b) any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated.

The word "sell" or "sold" shall, in the corresponding tense, include: sell, offer to sell, or deliver or consign in sale, or possess with intent to sell, deliver or consign in sale.

Possession of one or more articles covered by this article when found in any store, warehouse or place of business, other than a private home, hotel or other place where such articles are ordinarily used, shall constitute prima facie evidence that the article or articles so possessed are possessed with intent to sell, and in violation of this article.

All words shall include plural and singular, masculine and feminine, as the case demands. (1933, c. 339, s. 1.)

§ 7251(hh) 2. Sterilization.—No person shall in making, remaking or renovating a mattress for another person, use any previously used material which, since last used, was not sterilized by a process approved by the state health officer.

No person shall sell a used mattress unless sterilized, since last used, by a process approved by the state health officer; but nothing in this article shall be construed or interpreted as preventing a sale by an executor or administrator of the mattresses of a decedent.

A detailed drawing and description of any sterilizing apparatus and process to be used under this article shall be submitted to the state health officer who shall, if the process effectively sterilizes, approve such process and give the person submitting it a dated sterilizing license expiring at the end of the calendar year in which issued, and the fee for which shall be fifty dollars a year.

Any person who receives a mattress for renovation shall keep attached thereto, from the time received, a tag on which is written the date of receipt and the name and address of the owner. (1933, c. 339, s. 2.)

§ 7251(hh) 3. Tagging.—No person shall sell a mattress to which is not securely sewed by at least two edges, a cloth or clothbacked tag at least two inches by three inches in size, to which has been affixed the adhesive stamp provided in section 7251(hh)5.

Upon said tag shall be legibly stamped or printed with ink in English, (a) the name of the material or materials used to fill such mattress; (b) the name and address of the maker or vendor of the mattress; (c) in letters at least one-eighth inch high, the words "made of new material," if such mattress contains no previously used material; or the words "made of previously used material," if such mattress contains any previously used material; or the word "SECOND-HAND" on any mattress which has been used but not remade.

Nothing likely to mislead shall appear on said tag and it shall contain all statements required by this article, and shall be sewed to the outside covering of every mattress being manufactured, before the filling material has been inserted.

Material known in the cotton waste trade as "sweeps" or "oily sweeps" shall be named "mill floor sweepings" on the tag required by this article, and shall not be used unless previously sterilized by a process approved by the state health officer.

The name "felt" shall not be used unless the material has been carded in layers by a garnett machine. (1933, c. 339, s. 3.)

§ 7251(hh) 4. Defacing tag forbidden.—No person, other than a purchaser for his own use, shall remove from a mattress, or deface or alter the tag or stamp required by this article. (1933, c. 339, s. 4.)

§ 7251(hh) 5. Enforcement funds.—The state health officer is hereby charged with the administration and enforcement of this article, and he shall provide especially designed adhesive stamps for use under section 7251(hh)3. Upon request he shall furnish no less than one thousand said stamps to any person paying in advance twenty

dollars per thousand stamps. State institutions engaged in the manufacture of bedding for their own use or that of any other state institution shall not be required to pay a fee for such stamps as they may use.

All money collected under this article shall be paid to the state health officer, who shall place all such money in a special "bedding law fund" which is hereby created and specifically appropriated to the state board of health, solely for expenses in furtherance of the enforcement of this article. The state health officer shall semi-annually render to the state auditor a true statement of all receipts and disbursements under said fund, and the state auditor shall furnish a true copy of said statement to any person requesting it. (1933, c. 339, s. 5.)

§ 7251(hh) 6. Enforcement.—The state board of health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this article.

Every place where mattresses are made, remade, renovated, sterilized, or sold, or where previously used material is sterilized under this article, shall be inspected by duly authorized representatives of the state board of health.

When an authorized representative of the state board of health has good evidence that a mattress is not tagged as required by this article, he shall have authority to open a seam of such mattress to examine the filling; and if unable, after such examination, to determine if the filling is of the kind stated on the tag, he shall have power to examine any purchase records necessary to determine definitely the kind of material used in such mattress, and he shall have power to seize and hold for evidence any mattress or material made, possessed, or offered for sale contrary to this article. (1933, c. 339, s. 6.)

§ 7251(hh) 7. Licenses.—No person, except for his own use, shall make, remake or renovate mattresses until he has secured a license from, and has paid to, the state health officer an annual inspection fee of fifty dollars. The license so issued shall be valid until the end of the calendar year in which issued, or until voided for violation of this article.

The state health officer may revoke and void the aforesaid license of any person convicted of violating this article; and such person shall not make, remake, renovate, or sell a mattress until he has paid another inspection fee of fifty dollars, whereupon the state health officer shall issue a new license to said person. This section shall not apply to blind persons engaged in making, remaking or renovating mattresses. (1933, c. 339, s. 7.)

§ 7251(hh) 8. Unit of offense.—Any person who fails to comply with any provision of this article, or who counterfeits the stamp provided in section 7251(hh)5 shall be guilty of a violation of this article. Each stamp so counterfeited, and each mattress made, remade, renovated, or sold contrary to this article shall be a separate violation. (1933, c. 339, s. 8.)

§ 7251(hh) 9. Swearing out warrants.—If any person submits reasonable proof to any officer, or a representative of the state board of health, it shall be the duty of said officer or representative of the state board of health to swear out a warrant against the offender. (1933, c. 339, s. 9.)

§ 7251(hh) 10. Penalty.—A person who violates this article shall, upon conviction thereof, be fined not less than ten nor more than fifty dollars, or imprisonment in the county jail not to exceed thirty days. (1933, c. 339, s. 10.)

§ 7251(hh) 11. Effective date.—This article shall become effective July 1, 1933: Provided, however, that any official linen or muslin labels or tags issued by the state board of health prior to July 1, 1933, may be used after July 1, 1933, in lieu of the tags and stamps provided for in this article. (1933, c. 339, s. 13.)

§ 7251(hh) 12. Blind persons exempt from tax.—Provided that in cases where mattresses are made solely by blind persons that such blind persons shall be exempt from paying the tax provided in said Senate Bill 318. (1933, c. 538.)

Editor's Note.—The caption of this act states that it is an act to amend Senate bill 318 so as to exempt Edgecombe, Wilson and Lenoir Counties. It will be seen that the subject is not covered by this caption. It is to be presumed that the Legislature intended the section to apply only in the counties mentioned.

Art. 24. Electrical Materials, Devices, Appliances and Equipment

§ 7251(jj). Sale of electrical goods regulated.—Every person, firm or corporation before selling, offering for sale or exposing for sale, at retail to the general public or disposing of by gift as premiums or in any similar manner any electrical material, devices, appliances or equipment shall first determine if such electrical materials, devices, appliances and equipment complies with the provision of this law. (1933, c. 555, s. 1.)

§ 7251(kk). Identification marks required.—All electrical materials, devices, appliances and equipment offered for sale, exposed for sale at retail to the general public or disposed of by gift, as premiums or in any similar manner shall have the maker's name, trademark, or other identification symbol placed thereon, together with such other markings giving voltage, current, wattage, or other appropriate ratings as may be necessary to determine the character of the material, device, appliance or equipment and the use for which it is intended; and it shall be unlawful for any person, firm or corporation to remove, alter, change or deface the maker's name, trademark or other identification symbol. (1933, c. 555, s. 2.)

§ 7251(ll). Acceptable listings as to safety of goods.—The electrical inspector shall accept, without further examination or test, the listings of Underwriters' Laboratories, Inc., as evidence of safety of such materials, etc. (so long as the listing continues in effect to his knowledge and), so long as information and experience have not demonstrated, in his judgment, that any specific listed materials, etc., are not safe.

The electrical inspector may accept as evidence of safety of such materials, etc., where not of types for which such Underwriters' laboratories listings are in effect, such evidence by way of records of tests and examinations by bodies he deems properly qualified, as he deems necessary

to assure him of the safety of such materials, etc. But such acceptance cannot be made to apply to other than the stock of materials, etc., for which such evidence has been specifically secure. One body whose evidence of safety shall be accepted by the electrical inspector for specific stocks is the insurance commission of the state of North Carolina, if the stock in question has been submitted to the examinations and tests required by that commission, and that commission has certified that in its judgment the stock conforms to the state law, to the requirements of this law, and to any additional requirements deemed necessary for safety in the judgment of that commission.

The electrical inspector may decline to accept any evidence of safety other than that provided by Underwriters' laboratories listings, for specific materials, etc., of types for which such listings are available.

The electrical inspector, in accepting listings of Underwriters' laboratories, shall keep in file as far as practicable, copies of all Underwriters' laboratories listings in effect, and copies of the recorded standards, requirements, test and examinations of Underwriters' laboratories for such materials, etc., or shall when necessary refer to the files of such information maintained by the insurance commission of North Carolina. The words "electrical inspector" when used in this act shall be construed to refer to any duly licensed and employed electrical inspector of the state or any governmental agency thereof. (1933, c. 555, s. 3.)

§ 7251(mm). Legal responsibility of proper installations unaffected.—This article shall not be construed to relieve from or to lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical materials, devices, appliances or equipment for damages to persons or property caused by any defect therein, nor shall the electrical inspector be held as assuming any such liability by reason of the approval of any material, device, appliance or equipment authorized herein. (1933, c. 555, s. 4.)

§ 7251(nn). Violation made misdemeanor.—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than fifty ($50.00) dollars or imprisonment for not more than thirty days. (1933, c. 555, s. 5.)

CHAPTER 119

PUBLIC HOSPITALS

Art. 4. Funds of Deceased Inmates

§ 7284(8). Applied to debts due by such inmates to such hospitals or institutions.—Whenever any funds shall be placed or deposited with the officials of any state hospital or other charitable institution by or for any patient or inmate thereof, and the person by or for whom such deposit is made dies while a patient or inmate of such state hospital or other charitable institution or who shall leave such institution and at the time of such death, or departure, such patient or inmate is indebted to said hospital or other charitable institution for care and maintenance while such patient or inmate, the board of directors or trustees of such state hospital or other charitable institution are hereby authorized, empowered and directed to apply such deposit, or so much thereof as may be necessary, and which may remain in their hands unclaimed for the space of three years after such death or departure on and in satisfaction of the indebtedness of such patient or inmate, to said state hospital or other charitable institution for said care and maintenance. If the whole of such amount so on deposit shall not be required or necessary for the payment in full of such indebtedness for such care and maintenance, the remainder shall continue to be held by said officials, and paid and applied as may be by law required. (1933, c. 352, s. 1.)

CHAPTER 120

PUBLIC PRINTING AND DEPARTMENT OF LABOR

Art. 2. Department of Labor

§ 7310(b). Authority, powers and duties of commissioner.—The commissioner of labor shall be the executive and administrative head of the department of labor. He shall be vested with all of the authority and powers and charged with the performance of all the duties vested in and imposed upon the commissioner of labor and printing and the assistant commissioner under sections 7312(a) to 7312(x).

In addition to the other powers and duties conferred upon the commissioner of labor by this article, the said commissioner shall have authority and be charged with the duty:

(a) To appoint and assign to duty such clerks, stenographers, and other employers in the various divisions of the department, with approval of said director of division as may be necessary to perform the work of the department, and fix their compensation, subject to the approval of the salary and wage commission or such other agency of government as shall succeed to the powers and duties of the salary and wage commission. The commissioner of labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subsection shall not apply to the industrial commission, or the division of workmen's compensation.

(b) To make such rules and regulations with reference to the work of the department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said commissioner and the work of the department; such rules and regulations to be made subject to the approval of the governor.

(c) The commissioner of labor shall have power to take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the state, any factory, store, workshop, laundry, public eat-

ing-house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within thirty days of the receipt of said list of questions.

(d) He shall secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating-places, and commercial institutions in the state and to aid him in the work shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the commissioner of labor.

(e) The commissioner of labor, his assistants and factory inspectors, shall visit and inspect at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating-places, and commercial institutions in the state, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.

(f) It shall be the duty of the commissioner of labor to enforce the provisions of this section, and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating-houses, and commercial institutions in this state before any justice of the peace or court of competent jurisdiction.

(g) It shall be the duty of every employer to keep posted in a conspicuous place in every room where five or more persons are employed printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The commissioner of labor shall furnish the printed form of such notice upon request.

(h) It shall be the duty of the solicitor of the proper district or the prosecuting attorney of any city or county court, upon the request of the commissioner of labor, or any of his assistants or deputies, to prosecute any violation of law, which is made the duty of the said commissioner of labor to enforce. (1931, c. 312, ss. 5, 6; 1933, s. 24.)

Editor's Note.—Public Laws of 1933, c. 244, added subsections (c) to (h) of this section as they now appear.

CHAPTER 120A
PUBLIC WORKS

§ 7312 (y). Employment of architects, etc., on public works when interested in sale of materials prohibited.—It shall be unlawful for any person, firm or corporation to employ on any city, county or state work, supported wholly or in part with public funds, any architect, engineer, designer or draftsman, who is in any way connected with the sale or promotion of or in the manufacture of any material or items used in the construction of such works, or who is a stockholder, officer, partner, or owner of any manufacturing concern, or of any sales organization, engaged in the manufacture or sale of such material, or items, which may be used in the construction of such works. (1933, c. 66, s. 1.)

§ 7312(z). Drawing of plans by material furnisher prohibited.—It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, state, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 7312(aa). Specifications to carry competitive items.—All architects, engineers, designers, or draftsmen, when designing, or writing specifications for materials to be used in any city, county or state work, shall specify in their plans at least three items of equal design or their equivalent design, which would be acceptable upon such works. Where it is impossible to specify three items due to the fact that there are not that many items in competition, then as many items as are available shall be specified. (1933, c. 66, s. 3.)

§ 7312(bb). Violation of chapter made misdemeanor.—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction, license to practice his profession in this state shall be withdrawn for a period of one year and he shall be subject to a fine of not more than five hundred dollars. (1933, c. 66, s. 4.)

CHAPTER 121
REFORMATORIES

Art. 1. Stonewall Jackson Manual Training and Industrial School

§ 7328(f). Cherokee Indians admitted. — The governing authorities of the Stonewall Jackson Training School at Concord and the state home and industrial school for girls at Samarcand are hereby authorized and directed to make proper provisions for admitting delinquent boys and girls respectively of the Cherokee Indian Race of Robeson county to these institutions under the same rules and regulations as are now provided for admitting delinquent boys and girls of the white race: Provided, however, that the boys and girls so admitted shall be separated from the white inmates of the said institutions. (1933, c. 490, s. 1.)

Art. 2A. The Industrial Farm Colony for Women

§ 7343(k). Women subject to committal.

As to admission of Cherokee Indians, see § 7328(f).

CHAPTER 126
STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS

Art. 2A. Building Code

§ 7494(1). N. C. building code.—This law shall be known and may be cited as the North Carolina building code. (1933, c. 392, s. 1.)

§ 7494(2). Purpose of article.—It is the purpose of this article to protect life, health, and property and all its provisions shall be construed liberally to that end. (1933, c. 392, s. 2.)

§ 7494(3). Administration by insurance commissioner.—The administration of such reasonable

rules and regulations which may be hereafter adopted by the building code council which is herein provided for shall be enforced by the insurance commissioner or his deputy or deputies in coöperation with local officials in accordance with the consolidated statutes of North Carolina, sections 2738 to 2745, inclusive.

City ordinances may go more into detail, if desired, or may contain more stringent requirements, provided the same do not conflict with the rules and regulations hereafter adopted by the said building code council. (1933, c. 392, s. 3.)

§ 7494(4). Building code council created. — There is hereby created a building code council which shall consist of the following members registered in accordance with the laws of North Carolina where registration laws apply: One architect, one general contractor, one structural engineer, one plumbing and heating contractor, and one representative of organized labor. Members of the building code council shall be appointed or removed by the governor. The terms of office shall be as follows: One architect five years, one general contractor four years, one structural engineer three years, one plumbing and heating contractor two years and one representative of organized labor one year. Vacancies caused by expiration of term of office shall be filled by the governor and appointments made for a period of five years. Vacancies caused by resignation or otherwise shall be filled by the governor for the unexpired term of the person leaving office.

Within thirty days after the passage and publication of this article, the building code council shall meet and organize and shall have power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties and it shall keep an accurate record of all its proceedings. (1933, c. 392, s. 4.)

§ 7494(5). Appeals to council.—An appeal from the decision of the insurance commissioner upon any matter affecting the building code may be taken to the building code council as hereinafter provided. (1933, c. 392, s. 5.)

§ 7494(6). Pay of members.—The members of the building code council may each receive five dollars per day as compensation for the time given in the performance of his duty and may be reimbursed for compensation and actual traveling expenses from funds of the organization which he represents.

When the insurance commissioner shall reject or refuse to approve the mode or manner of construction proposed to be followed, or materials to be used in the erection or alteration of any building or structure, or when it is claimed that the provisions of this code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, the owner of such building or structure, or his duly authorized agent, may demand that the decision of the insurance commissioner be reviewed by the chairman and two or more members of the building code council who are qualified to render a fair and impartial decision where the amount in question shall exceed the sum of $1,000.00. The members best qualified in the opinion of the chairman shall be selected to review the decision of the insurance commissioner.

After a review of the decision of the insurance commissioner the chairman shall forward the findings and recommendations to the insurance commissioner immediately. It is understood that the building code council shall serve in an advisory capacity only and that the final decision and responsibility for such decision shall rest upon the insurance commissioner: Provided, nothing in this article shall prohibit the owner his right of appeal to the superior courts.

It shall be the duty of the council not only to make recommendations to the insurance commissioner relative to the proper construction of the pertinent provisions of the building code but it shall also recommend that he shall allow materials and methods of construction other than those required by the building code to be used, when in its opinion such other material and methods of construction are as good as those required by the code, and for this purpose the requirements of the building code as to such matters shall be considered simply as a standard to which construction shall conform. (1933, c. 392, s. 6.)

§ 7494(7). Violation of act subjects offender to fine.—If any employer, owner or other person shall violate any of the provisions of this article, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined within the time prescribed by the insurance commissioner or his deputy or shall fail, neglect, or refuse, to obey any lawful order given or made by the insurance commissioner, for each such violation, failure, or refusal, such employer, owner or other person upon conviction thereof shall be fined in any sum not less than ten dollars ($10.00), nor more than fifty dollars ($50.00) for each offense. Each seven days neglect shall constitute a separate and distinct offense. (1933, c. 392, s. 7.)

Art. 3A. Division of Purchase and Contract

§ 7502(f). Consolidation of estimates by director; bids; awarding of contract.—The director of purchase and contract shall compile and consolidate all such estimates of supplies, materials and equipment needed and required by all state departments, institutions and agencies to determine the total requirements for any given commodity. If the total requirements of any given commodity will involve an expenditure in excess of two thousand dollars, sealed bids shall be solicited by advertisement in a newspaper of state-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the division of purchase and contract, with the approval of the advisory budget commission, when such other method is deemed more advantageous for the particular item to be purchased. Regardless of the amount of the expenditure, it shall be the duty of the director of purchase and contract to solicit bids direct by mail from reputable sources of supply. Except as otherwise provided for in

this article, all contracts for the purchase of supplies, materials or equipment made under the provisions of this article shall wherever possible be based on competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied, their conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the director of purchase and contract with the approval of the advisory budget commission, which rules and regulations shall prescribe among other things the manner, time and place for proper advertisement for such bids, indicating the time and place when such bids will be received, the articles for which such bids are to be submitted and the standard specifications prescribed for such articles, the amount or number of the articles desired and for which the bids are to be made and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids received may be rejected. Each and every bid conforming to the terms of the advertisement herein provided for, together with the name of the bidder, shall be entered on the records, and all such records with the name of the successful bidder indicated thereon shall, after the award or letting of the contract, be open to public inspection. Bids shall be opened in public. A bond for the faithful performance of any contract may be required of the successful bidder in the discretion of the director of purchase and contract. After the contracts have been awarded, the director of purchase and contract shall certify to the several departments, institutions and agencies of the state government the sources of supply and the contract price of the various supplies, materials and equipment so contracted for.

The advisory budget commission shall have the necessary authority to adopt rules and regulations governing the following:

(a) Designating a board of award, composed of members of the budget commission, or other regular employees of the state or its institutions (who shall serve without added compensation), to act with the director in canvassing bids and awarding contracts.

(b) Fixing a quorum of the board of award and prescribing the routine and conditions to be followed in canvassing bids and awarding contracts.

(c) Prescribing routine for securing bids and awarding contracts on items that do not exceed $2,000 in value.

(d) Prescribing items and quantities to be purchased locally.

(e) Providing that where bids are unsatisfactory the division, with the approval and consent of the budget commission, may reject all bids and purchase the article in the open market, but only at a lower price.

(f) Prescribing procedure to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(g) Adopting any other rules and regulations necessary to carry out the purpose of this article. (1931, c. 261, s. 5; 1933, c. 441, s. 1.)

Editor's Note.—Public Laws of 1933, c. 441, added to this section the part containing subsections (a) to (g).

§ 7502(k). Preference given to North Carolina products and articles manufactured by state agencies; sales tax considered.—The director of purchase and contract shall in the purchase of and/or in the contracting for supplies, materials, equipment, and/or printing give preference as far as may be practicable to materials, supplies, equipment and/or printing manufactured or produced in North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and, Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other state departments, institutions, or agencies which are available for distribution:

Provided further, that in canvassing and comparing bids there shall be taken into consideration any sales tax or excise tax that will accrue to the state of North Carolina which is levied now or hereafter may be levied and in no case shall a bidder subject to such tax suffer in comparison with bids from those to whom such tax would not apply. (1931, c. 261, s. 10; 1933, c. 441, s. 2.)

Editor's Note.—Public Laws of 1933, c. 441, added the last proviso of this section as it now reads.

Art. 6(C). Division of Personnel under the Budget Bureau

§ 7521(k). Division established.—There is hereby established in the governor's office under the budget bureau a division of personnel, to be under the supervision of the assistant director of the budget, who shall, subject to the provisions of this article, be vested with the powers and authorities and charged with duties and obligations herein described: Provided, that no additional compensation shall be allowed said assistant director of the budget on account of the duties performed hereunder. (1931, c. 277, s. 1; 1933, c. 46, s. 1.)

Editor's Note.—
Public Laws of 1933, c. 46, repealed the former section and inserted the above in lieu thereof. A comparison of the two sections is necessary to determine the changes.

§ 7521(l): Repealed by Public Laws 1933, c. 46, s. 2.)

§ 7521(m). Survey of needs for personal service in all branches of state government.—The assistant director of the budget, together with the head of each and every department, bureau and/or commission of the state, shall make a survey and investigation of the needs for personal service in all state departments and bureaus and of the cost in value of the services rendered by all subordinates and employees of such departments and bureaus, and from time to time publish the information so assembled. (1931, c. 277, s. 3; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(n). Classification of number of employees needed; nature of work; standard of salaries

and wages; hours of labor, etc.—The assistant director of the budget shall, after making such survey and investigation and upon the information so assembled, together with the head of each and every department, bureau and/or commission, fix, determine and classify the necessary number of subordinates and employees in any and all departments and bureaus, the type and nature of work to be performed by such subordinates and employees, and/or positions to be filled by subordinates and employees in said departments and bureaus, and together with the head of each and every department, bureau and/or commission, and with the approval of the advisory budget commission fix, establish and classify a standard of salaries and wages with a minimum salary rate and a maximum salary rate and/or such intermediate salary rate or rates as may be deemed necessary and equitable, to be paid for all such services and positions and to all such subordinates and employees of said departments and bureaus. The assistant director of the budget, together with the head of each and every department, bureau and commission shall also fix, determine and establish the hours of labor in such department and/or bureau and make all such rules and regulations with respect to holidays, vacations or sick leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor as shall be approved as herein provided: Provided that the provisions of this article shall not apply to the maintenance or construction forces of the state highway commission employed on an hourly basis of wages: Provided further, the provisos of this article shall not apply to the supreme court. (1931, c. 277, s. 4; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(o). Report of survey to governor and agency heads.—As such survey and investigation proceeds and is completed with respect to a particular department or bureau, the assistant director of the budget shall file a report with the governor and with the head of such department or bureau, setting out in such report the number of allowable subordinates and employees, the services to be performed, and/or the positions to be filled and the salaries or wages to be paid to each of the subordinates and employees in said department or bureau. (1931, c. 277, s. 5; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(q). Changes in need for personal service made by assistant director of the budget. — It shall be the duty of the assistant director of the budget to keep informed from time to time of changes in the needs for personal services in the several state departments and bureaus and to reconsider the report hereinbefore provided for, and with the approval of the advisory budget commission to make changes therein in accordance with his findings; and upon report by him to the head of any department or bureau, setting out such findings and changes, it shall be the duty of the head thereof to put such findings and changes into effect on the first day of the next month, beginning not less than thirty days after the receipt by him of such report. (1931, c. 277, s. 7; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(r). Employment of persons by certification of name to assistant director of the budget and by his investigation.—All persons employed in any bureau, department or commission on the first day of July, one thousand nine hundred and thirty-one, shall be deemed qualified. From and after the first day of July, one thousand nine hundred and thirty-one, if the head of any department or bureau shall desire to fill any vacancy or to employ other and further subordinates or employees, such head may certify the name or names of any applicant or applicants to the assistant director of the budget who shall immediately inquire into the qualifications of such person and if such person is found duly qualified and the assistant director of the budget shall deem it necessary that the employment be made, the said assistant director of the budget shall fix the salary and approve of the employment. (1933, c. 277, s. 8; 1933, c. 46, ss. 3, 4.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(s). Applications for employment to be filed with assistant director of the budget; list of qualified applicants.—The assistant director of the budget may adopt rules and regulations to the end that applicants for positions in the various departments, bureaus, and/or commissions, may file with the assistant director of the budget such application for employment and the assistant director of the budget shall examine into the qualifications of such person and may certify for and keep a list of such persons so qualified, which said list shall be open to the inspection of the heads of the various departments, bureaus and commissions and such heads may from time to time fill the positions from such list. (1931, c. 277, s. 9; 1931, c. 46, ss. 3, 5; 1933, c. 46.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(t). Copies of personnel reports to state auditor. — The assistant director of the budget shall transmit to the state auditor copies of his report or reports with respect to the various departments and bureaus, and the salaries and wages for such subordinates and employees in the several departments and bureaus shall be paid out of the appropriations for such purpose and in accordance with the schedule set out in said report or reports. (1931, c. 277, s. 10; 1933; c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(u). Disputes between assistant director of the budget and agency heads settled by advisory budget commission. — In the event there shall be disagreement between the assistant director of the budget and the head of any depart-

ment or bureau over the ruling of the assistant director of the budget upon any question involving such department or bureau or any of its subordinates or employees, the matters in dispute shall be heard by the advisory budget commission and the action of said commission thereon shall be final. (1931, c. 277, s. 11; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(v). Payrolls submitted to assistant director of the budget; approval of payment of vouchers.—From and after July first, one thousand nine hundred and thirty-one, all payrolls of all departments, institutions, and agencies of the state government shall prior to the issuance of vouchers in payment therefor be submitted in triplicate to the assistant director of the budget, who shall check the same against the budget allotments to such departments, institutions and agencies for such purposes, and if found to be within said budget allotments, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the state auditor, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the assistant director of the budget. (1931, c. 277, s. 12; 1933, c. 46, s. 3.)

Editor's Note.—Public Laws of 1933, c. 46, substituted "assistant director of the budget" for "director of personnel."

§ 7521(w): Repealed by Public Laws 1933, c. 46, s. 6.

§ 7521(y). Appropriation for expenses of division of personnel.—The necessary expenses of the division of personnel under the budget bureau as authorized by this article shall be paid in accordance with the appropriation act of one thousand nine hundred thirty-one; but for lack thereof, or of a sufficient appropriation, said expenses shall be paid out of the contingency and emergency fund. (1931, c. 277, s. 16; 1933, c. 46, s. 7.)

Editor's Note.—Formerly this section provided for the expenses of the department of personnel.

Art. 9. State Building Contracts

§ 7534(o) 1. Competitive bids required before letting public construction contracts. — No construction or repair work, or purchase of apparatus, supplies, materials, or equipment requiring the expenditure of public money, the estimated cost of which equals or exceeds one thousand ($1,000.00) dollars, except in cases of special emergency involving the health and safety of the people or their property: Provided that nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the state or federal government, shall be performed or contract awarded by any board or governing body of the state or sub-divisions thereof, unless proposals shall have been invited by advertisement at least one week before the time specified for opening of said proposals in a newspaper having circulation in the state of North Carolina. Such advertisement shall state the time and place where plans and specifications of proposed work or complete description of apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals. Proposals shall not be rejected for the purpose of evading the provisions of this act and no board or governing body of the state or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor. All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality and the time specified in the proposals for the performance of the contract. Each proposal shall be accompanied with a deposit to the board or governing body of cash or a certified check on some bank or trust company authorized to do business under the laws of the state of North Carolina in an amount equal to not less than two per centum of the proposal; said deposit to be retained in the event of failure to execute the contract within ten days after the award, or to give satisfactory security as required herein. All contracts required herein shall be executed in writing, and where the amount involved is one thousand ($1,000.00) dollars or more, the board or governing body shall require the person, firm or corporation to whom the award of contract is made to furnish bond in some surety company authorized to do business in the state, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects. (1933, c. 400, s. 1.)

§ 7534(o) 2. Allowance for convict labor must be specified.—In cases where the board or governing body may furnish convict or other labor to the contractor, manufacturer or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2.)

§ 7534(o) 3. No evasion permitted.—No bill or contract shall be divided for the purpose of evading the provisions of this article. (1933, c. 400, s. 3.)

§ 7534(o) 4. Highway and prison departments excepted.—This article shall not apply to the state highway and prison department of the state of North Carolina. (1933, c. 400 s. 3-A.)

§ 7534(o) 5. Limitation of application of sections.—Sections 7534(o) 1 to 7534(o) 4 shall not

apply in so far as they affect governmental agencies of sub-divisions of the state of North Carolina doing or performing by or through its or their duly elected officers or agents work for such agency up to and including an amount not to exceed five thousand ($5.000.00) dollars. (1933, c. 552, ss. 1, 2.)

CHAPTER 128
STATE LANDS

SUBCHAPTER 1. ENTRIES AND GRANTS

Art. 1. Lands Subject to Grant

§ 7544. Certain lakes not to be sold.

For an act to preserve the recreational advantages of the State Lakes, see Public Laws 1933, c. 516.

Art. 5. Grants

§ 7575. Price to be paid for land. — Whenever an entry and survey of any vacant and unappropriated land belonging to the state shall be filed in the office of the secretary of state, he shall immediately investigate the character of the land and determine its market value from its character and location, and thereupon fix the price per acre for said lands. Said price so fixed by the secretary of state shall be paid by the enterer to the treasurer of the state before any grant of the same is made by the secretary of state: Provided, that for each acre of land entered in Cherokee, Clay, Graham, Macon and Swain counties, there shall be paid to the state treasurer the sum of one and one-half dollars. (Rev., s. 1733; 1909, c. 447; 1927, cc. 8, 83; 1929, cc. 78, 210; 1931, c. 119; 1933, c. 72.)

Editor's Note.—
Public Laws of 1933, c. 72, added the proviso of the section as it now reads.

CHAPTER 129
STATE OFFICERS

Art. 3. The Governor

§§ 7642(a)-7642(c): Repealed by Public Laws 1933, c. 30.

Art. 4. Secretary of State

§ 7661. Transmits statutes and reports to other states.—The secretary of state, as soon as published, shall transmit, at the expense of this state, to the executive of every state and territory in the union, one copy of the statutes of each year, and of the reports of the supreme court, and request a similar transmission to be made to him of the statutes and reports of the higher courts of the several states and territories. When the statutes of any state or territory are received, he shall deposit one copy in the executive library, but in case only one copy is received it shall be deposited in the supreme court library.

The secretary of state shall furnish the library of the University of North Carolina at Chapel Hill twenty-five copies, in addition to all now furnished, of the public, public-local, and private laws of the house and senate journals, legislative documents and all reports and publications of the state of North Carolina and its several agencies, institutions and departments, for use in exchange with other southern states, municipalities and institutions and with a selected list of states outside of the south: Provided that no re-printing of the public, public-local, and private laws of the house and senate journals, legislative documents and reports and publications of the state of North Carolina and its several agencies, institutions and departments shall be made to comply with the provisions hereof. (Rev., s. 5351; Code, ss. 3321, 3344; 1868-9, c. 270, ss. 28, 48; 1933, c. 355.)

Editor's Note.—Public Laws of 1933, c. 355, added the last sentence of this section relating to exchanging documents for libraries.

§ 7663. Distribution of statutes.—The secretary of state shall distribute copies of the public, public-local, and private laws, as follows: To the governor, lieutenant governor, treasurer, secretary of state, auditor, superintendent of public instruction, attorney-general, commissioner of agriculture, commissioner of labor and printing, insurance commissioner, corporation commission, legislative reference library, state board of health, state highway commission, state board of charities and public welfare, state geologist, superintendents of the several state hospitals for the insane, and of the several institutions for the deaf, dumb, and the blind, and of the state's prison, to the North Carolina state college of agriculture and engineering, to the several justices of the supreme court, the judges of the superior courts, the judges of the United States courts, the several solicitors and United States district attorneys, the clerks of the superior and federal courts, the sheriffs of the several counties, the several registers of deeds, members and clerks of the general assembly, and county commissioners, one copy each; to the state library, twenty copies; to the library of the University, ten copies of the public laws and four copies of the public-local laws, and private laws; to the supreme court library, eleven copies; to the library of the supreme court of the United States, one copy; to the several states and territories of the Union, including the District of Columbia, and to the Dominion of Canada, to the provinces of Canada, to Australia and to New Zealand, one copy each, and to each of said states, territories, districts, dominions and provinces which shall be willing to exchange their own similar publications therefor, an additional copy of the public laws, such publications received in exchange to be sent to the library of the University for the use of the school of law; and two copies to be deposited in the offices of each department of the state government; to the clerks of the superior court of the several counties of the state for distribution among such justices of the peace as said clerk may deem advisable, the number of copies to be furnished in their respective counties being as follows: five copies in each county with a population under ten thousand according to the last Federal census, fifteen copies for each county with a population of more than ten thousand and less than thirty thousand, and twenty copies for each county with a population over thirty-five thousand: Provided, however, that

no copies of the public-local and private laws shall be distributed to clerks of the superior court for the justices of the peace of the county. (Rev., s. 5353; Code, s. 3632; R. C., c. 93, ss. 8, 19; 1870-1, c. 111, s. 2; 1872-3, c. 45, ss. 7, 8; 1879, c. 271; 1881, c. 107; 1885, c. 82; 1891, c. 471; 1893, c. 146, s. 2; 1897, c. 135; 1901, cc. 88, 401, s. 2; 1903, c. 801; 1919, c. 195, s. 1; 1927, c. 87, s. 1, c. 217, s. 3; 1933, c. 2.)

Editor's Note.—
Public Laws of 1933, c. 2, provided for twenty instead of two copies to the state library.

Art. 6. Treasurer

§ 7684. Deposits of state funds in banks regulated.—Banks having state deposits shall furnish to the auditor of the state, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the auditor. The treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No depository bank shall make any charge for exchange or for the collection of the treasurer's checks or for the transmission of any funds which may come into his hands as state treasurer. The corporation commission and the bank examiners, when so required by the state treasurer, shall keep the state treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the state from loss. The state treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

The payment of interest on deposits of state money in any bank or banks shall be controlled by the governor and council of state, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. The interest collected on the bank balances from time to time shall be paid into the state's general fund; but the treasurer shall credit to the funds of the agricultural department all money which is received as interest on the funds of the department, and he shall notify the commissioner of agriculture when such amounts are paid. (Rev., s. 5371; 1905, c. 520; 1915, c. 168; 1917, c. 159; 1933, c. 175, s. 1.)

Editor's Note.—
Public Laws of 1933, c. 175, struck out the first sentence of the last paragraph of this section and substituted the present reading in lieu thereof.

§ 7691(b) 1. Deposits of state funds in banks that have provided for safety of deposits without requiring depository bonds.—Where any bank or trust company, state or national, has come within the provisions of the national banking laws, providing guarantee or insurance on security, in full, for the deposits in such bank or trust company, and for payment thereof upon demand of the depositor, and when thereby such protection is afforded depositors of such bank or trust company, and where any such bank or trust company may be properly designated as a depository for the deposits of moneys of the state of North Carolina, or of any county, city, town, or other political subdivision of the state of North Carolina, it shall be permissible and lawful to deposit the moneys of the state, or of such county, city, town, or other political subdivision therein, without requiring of the said bank or trust company to furnish any additional security for the protection of such deposits, or the payment thereof upon demand, as now required by law: Provided, however, that the council of state shall have previously passed upon the character and extent of the guarantee afforded by the United States banking laws, and shall have approved the same as satisfactory: Provided further, that the approval of such bank or trust company as a depository for moneys of the state of North Carolina must be given by the council of state, and approval by the local government commission must be secured for such bank or trust company to act as a depository for any county, city, town, or other political subdivision of the state: Provided further, that any action in regard to these matters shall be discretionary with the council of state as far as this section applies to them, and with the local government commission as far as this section applies to it.

Where the deposits are guaranteed or insured only in part, the bank or trust company receiving such deposits shall be required to deposit bonds or security only to the extent of the unguaranteed portion of said deposits. (1933, c. 461, ss. 1, 1½.)

§ 7692. Fiscal year.

Applied, as fixing salary of sheriff, in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843.

CHAPTER 130
STATE PRISON

Art 1. Government by Board of Directors

§§ 7698 to 7702: Repealed by Acts 1933, ch. 172, § 6.

§§ 7708 to 7711: Repealed by Acts 1933, ch. 172, § 6.

Art. 2. Prisoners Sent to State Prison

§ 7716. Sentencing of persons for felonies and misdemeanors. — From and after the ratification of this section all persons who may be convicted of a felony in any of the courts of this state, and sentenced to imprisonment, shall be sentenced to the state's prison and assigned to do labor under the supervision of state highway and public works commission; and all persons sentenced to imprisonment upon conviction of crime of less degree than a felony shall be sentenced to the common jail of the county in which the trial is conducted and assigned to do labor under the supervision of state highway and public works commission. No persons shall be assigned to labor under the supervision of state highway and public works commission whose term of imprisonment, as fixed by the judgment of the court, is less than thirty days. (1933, c. 172, s. 13.)

Editor's Note.—
Public Laws of 1933, c. 172, repealed the former wording

of this section and inserted the above in lieu thereof. A comparison of the two sections is necessary to ascertain the changes.

Art. 3A. Labor on Roads

§ 7748(a). Intent of State to maintain public roads with prison labor.—It is hereby declared to be the public policy of this state to build and maintain a state system of dependable highways and to maintain and improve the public roads in the several counties at the state's expense; and to that end to make the most economical use of the prison labor of the state in the construction, improvement and maintenance of said highways and roads. (1933, c. 172, s. 1.)

§ 7748(b). State highway and public works commission created.—A highway and public works commission is hereby created, to be and continue a department of the state government and to be known as "state highway and public works commission." Said commission shall consist of a chairman and six (6) members, the chairman and three of said commissioners shall be appointed by the governor for a term of four years and three of said commissioners shall be appointed for a term of two years, and until their successors are appointed and qualified: Provided, that the chairman, or any commissioner, appointed pursuant to this article may be removed by the governor for cause. In case of the death, resignation or removal from office of said chairman or any commissioner prior to the expiration of his term of office, his successor shall be appointed by the governor to fill out the unexpired term. At the expiration of the term for which said chairman and commissioners are first appointed, their successors shall be appointed for a term of four (4) years each. The chairman shall devote his entire time and attention to the work of the commission, and shall receive as compensation not exceeding six thousand ($6,000.00) dollars per annum, to be fixed by the governor and advisory budget commission, payable monthly, and his actual traveling expenses when engaged in the discharge of his duties. Said chairman shall be vested with all authority of the commission when same is not in session, and shall be the executive officer of said commission, and shall execute all orders, rules and regulations established by said commission. The members of said commission, other than the chairman, shall each receive seven ($7.00) dollars per day while engaged in the discharge of the duties of his office, and his actual traveling expenses. The governor and the state treasurer shall be privileged to attend any and all meetings of said commission in an advisory capacity, but they shall not have the authority to vote upon any question before said commission. The headquarters and main office of said commission shall be located at the state capital, Raleigh. The first meeting of said commission shall be called by the governor, and at said meeting the commission shall organize and adopt a common seal, and shall automatically succeed to all the rights, powers, duties and obligations of the present state highway commission and of the present state prison department. Said commission shall keep minutes of all of its meetings, which shall at all times be open to public inspection; it shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the commission; and to make all necessary rules and regulations for carrying out the intent and purposes of this article, and the duties and powers heretofore conferred by law upon the state highway commission and the state prison department. Said commission shall meet at its main office at least once in each ninety days, or at such regular time as the commission may by rule provide, and may hold special meetings at any time and place within the state at the call of the chairman, or the governor, or any three members of the commission. It is the intent and purpose of this article that all of said commissioners and the chairman shall represent the state at large and not be representative of any particular district. (1933, c. 172, s. 2.)

§ 7748(c). Surrender of highway and prison property to new commission. — It shall be the duty of the superintendent of the state's prison and the directors of the present state prison department, and of the chairman and commissioners of the present state highway commission, to turn over and to deliver to state highway and public works commission, created by this article, immediately upon its organization, all of their respective books, accounts, records and property of every kind and description; and to facilitate the transfer of said books, records, accounts and property state highway and public works commission is authorized and empowered to adopt and enforce such rules and regulations as it may deem necessary. (1933, c. 172, s. 3.)

§ 7748(d). Control of prison property to new commission.—The control and custody of all state highway prison camps, together with all property of every kind assigned thereto, the central prison at Raleigh, and all farms, camps and places of whatever kind now under the control of the state prison department, together with all property of every kind and description, together with all books, accounts and records, shall pass to the control and management of state highway and public works commission herein created; and it shall be the duty of every person connected with either the state highway commission or the state prison department in any wise exercising any control or authority over said property to relinquish said control to the duly appointed agents of said commission. (1933, c. 172, s. 4.)

§ 7748(e). Control and custody of prisoners.—The control and custody of all prisoners serving sentence either in the state's prison or in the prison camps now under the control of the state highway commission shall pass under the control of state highway and public works commission, herein provided for, and subject to all the rules and regulations of said commission legally adopted. (1933, c. 172, s. 5.)

§ 7748(f). Prisoners previously sentenced. — Any prisoners in any of the jails of the several counties, or out on bail, or who have escaped custody and are thereafter captured, who have been previously sentenced by any court of competent jurisdiction to serve a term either in the

state's prison or in a common jail to be assigned to work on the public roads, shall thereafter, with proper commitments, be delivered to state highway and public works commission herein created at such place as their respective sentences may require, according to the terms of this article. (1933, c. 172, s. 6.)

§ 7748(g). Sentencing of prisoners to central prison.—The several judges of the superior courts of this state are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offence or the character or condition of the defendant makes it advisable to do so, to sentence such person to the central prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the central prison. (1933, c. 172, s. 7.)

§ 7748(h). Sentencing to public roads.—In all cases not provided for in the preceding sections, the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under state highway and public works commission, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the commission as he may be advised by them is the proper person to receive such notice. Whereupon, the commission shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the commission shall designate: Provided, however, the commission shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. (1933, c. 172, s. 8.)

§ 7748(i). Existing prison and highway departments abolished. — State prison department and the present state highway commission are hereby abolished, but each shall continue in operation as heretofore provided by law until the governor, by executive order, declares state highway and public works commission organized as provided by this article and ready to function. (1933, c. 172, s. 9.)

§ 7748(j). Oath of office of new commission members.—Before entering upon the performance of their duties, the chairman and each member of state highway and public works commission shall take and subscribe to oath of office before some person authorized to administer oaths that he will faithfully support the constitution of the state of North Carolina and all laws enacted pursuant thereto and not inconsistent therewith, and that he will faithfully perform the duties of said office. Said oath shall be filed and preserved by the commission as a part of its permanent records. No member of the highway and public works commission shall be eligible to any other employment in connection with said commission, and no member of said commission, or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to said commission. (1933, c. 172, s. 10.)

§ 7748(k). Annual reports to governor.—State highway and public works commission shall make to the budget bureau, or to the governor, a full report of its finances and the physical condition of the state's prison, prison camps, and other buildings, depots and properties under its supervision and control, on the first day of July of each year, and at such other times as the governor or directors of the budget may call for the same. (1933, c. 172. s. 11.)

§ 7748(l). Central prison at Raleigh retained; warden to be named; powers and duties; gainful employment of prisoners intended.—It is intended and directed that provisions shall be made under the provisions of this article for the maintenance of the central prison at Raleigh in such manner as to conform to all of the requirements of the constitution, article eleven, relating to a state's prison, and that a suitable person shall be selected and appointed, under the terms of this act, as a warden of said central prison, and such warden shall succeed to and be invested with all the rights, duties, and powers now invested by law in the superintendent of the state's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of said prison not herein otherwise provided for.

It is further declared to be the intent and purpose of this act to provide for the gainful employment of all able-bodied prisoners of the state; and to this end state highway and public works commission is directed to provide for the employment in the maintenance and construction of the public roads of the state of as many of the male prisoners as, under the terms of their sentences, may be thus employed and who are physically fit for such work, the commission can arrange economically to use for such purpose, and that the remainder of the inmates of such prison division shall be employed as far as practicable, with due regard to their physical condition, in agriculture, prison industries, and forestry work, giving preference to the production of food supplies and necessary articles of use in state highway department and other state supported institutions or activities, and the development and improvement of state-owned properties. (1933, c. 172, s. 14.)

§ 7748(m). Chapter 2, Pubilc Laws 1921, amended.—Chapter two, public laws of 1921, and all acts amendatory thereof and additional thereto relating to the state highway system and the state highway commission, and not expressly repealed by this article, are hereby amended conformably to this article, so that wherever in said laws reference is made to "state highway commission," "highway commission," "chairman of the state highway commission," there shall be substituted for such words the appropriate terms "highway and public works commission" or "chairman of state highway and public works commission" as the context may require to the end that state highway and public works commission and the chairman of state highway and public works commis-

sion shall have and exercise all the powers and duties heretofore conferred by law upon the state highway commission or the chairman of the state highway commission. (1933, c. 172, s. 17.)

§ 7748(n). Consolidated statutes ch. 130, likewise amended.—Chapter one hundred thirty of the consolidated statutes relating to the state's prison and/or state's prison department, and all acts amendatory thereof and additional thereto and not expressly repealed by this article, are hereby amended so that wherever, in said laws, reference is made to "the state prison department," "prison department," "superintendent of state's prison," "superintendent of prison department," "board of directors," "directors of the state's prison," "directors of the prison department," there shall be substituted for such words the appropriate terms "highway and public works commission," "chairman of state highway and public works commission" as the context may require, to the end that state highway and public works commission and the chairman of state highway and public works commission shall have and exercise all the powers and duties heretofore conferred by law upon the state prison department and the board of directors of the state prison department and the superintendent of the state prison department. (1933, c. 172, s. 18.)

§ 7748(o). Additional prison camps authorized.—In addition to the highway prison camps now operated by the state highway commission and the farms now operated by the state's prison, the commission is hereby authorized to establish such additional camps for use for the division of prisons as are necessary, such camps to be either of a permanent type of construction, or of temporary or movable type as the commission may find most advantageous to the particular needs, to the end that work to be done by the prisoners under its supervision may be so distributed throughout the state as to render their employment most economical and profitable, the said commission to be the sole judges of the type and character of such buildings without the control of any other department. To this end, and for this purpose state highway and public works commission shall have authority to purchase or lease camp sites and suitable lands adjacent thereto, and to erect necessary buildings thereon, all within the limits of allotments as approved from time to time by the budget bureau for this purpose. (1933, c. 172, s. 19.)

§ 7748(p). Nineteen hundred and twenty seven bond issue directed to providing needed prison facilities.—In order to provide for the necessary employment of the prisoners under the control of the division of prisons the proceeds of the four hundred thousand dollars bond issue authorized by chapter one hundred and fifty-two (152) of the public laws of 1927, and amendments thereto, shall be made available from time to time in such allotments as the governor and advisory budget bureau may authorize for use by state highway and public works commission in providing for the purchase or lease of additional lands the erection of additional buildings, or the remodeling of existing buildings, and for the establishment and installation of industries suitable for prison employment, and the proper stocking and equipment of prison farms, and the establishments of plants for storage, and/or processing of supplies and farm products for use in the state's several institutions, and for the production of agricultural lime, with the right to sell the surplus either directly or through the department of agriculture to the farmers of the state. (1933, c. 172, s. 20.)

§ 7748(q). Recapture of escaped prisoners.—State highway and public works commission may, in the rules and regulations to be adopted by it, provide for the recapture of convicts that may escape, or any convicts that may have prior to the effect of this article escaped from the state's prison or highway prison camps, or county road camps of this state, and may pay such reward or expense of recapture as the commission may by regulation provide to any person making the same. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the division of prisons. (1933, c. 172, s. 21.)

§ 7748(r). Sanitary and health conditions supervised by board of health.—The state board of health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the division of prisons and shall make periodic examinations of same and report to the commission the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1933, c. 172, s. 22.)

§ 7748(s). Grading prisoners.—State highway and public works commission in the adoption of rules and regulations hereinbefore provided for shall provide for the classification of prisoners according to conduct into at least three classes known and designated as "A," "B" and "C" grade prisoners. The several classes of prisoners may be designated by appropriate and distinguishing uniforms, but no person not convicted of a felony shall be required to wear a uniform of stripes such as are usually used to designate felons. A system of rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct may be adopted, and the commutation of time within the maximum limits of the provisions now provided by law in consolidated statutes 7725 may be included in said rules and regulations. (1933, c. 172, s. 23.)

§ 7748(t). Indeterminate sentences.—The several judges of the superior court are authorized in their discretion in sentencing prisoners for a term in excess of twelve months to provide for a minimum and maximum sentence, and the commission is authorized to consider at least once in every six (6) months the cases of such prisoners that have thus been committed with indeterminate sentences, and to take into consideration the prisoners' conduct, and to authorize his discharge at any time after the service of the minimum term subject to his earned allowance for good behavior

which his conduct may justify. (1933, c. 172, s. 24.)

§ 7748(u). Segregation as to race, sex and age.—The commission shall provide separate sleeping quarters and separate eating space for the different races and the different sexes; and, in so far as it is practical to do so, shall provide for youthful convicts to segregate to themselves. (1933, c. 172, s. 25.)

§ 7748(v). Penalty for escaping or assisting in.—Any prisoner who escapes or attempts to escape, or in any manner connives, aids or assists in helping other persons to escape or attempt to escape shall be guilty of a misdemeanor, and upon conviction shall be imprisoned at the discretion of the court, such term of imprisonment to commence at the termination of the sentence being served at the time of the offense, and such offending prisoner shall likewise forfeit all gained time that he has earned by previous good conduct. (1933, c. 172, s. 26.)

§ 7748(w). Degree of protection against violence allowed.—When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape. (1933, c. 172, s. 27.)

§ 7748(x). Disposition of child born of female prisoner.—Any child born of a female convict while she is in custody shall upon the arrival of a suitable age be surrendered to the clerk of the superior court of Wake county for disposition as the law provides in the case of children whose parents are dead or unable to provide for them. (1933, c. 172, s. 28.)

§ 7748(y). Parole powers of governor unaffected. — But nothing herein contained shall be construed to limit or restrict the power of the governor to parole prisoners under such conditions as he may himself impose or prevent the reimprisonment of such prisoners upon the violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29.)

§ 7748(z). Prison labor furnished other state agencies.—State highway and public works commission may furnish to any of the other state departments, state institutions, or agencies, upon such conditions as may be agreed upon from time to time between the commission and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any state department, institution or agency, and such other employment as is now provided by law for inmates of the state's prison under the provisions of consolidated statutes 7707: Provided that such prisoners shall at all times be under the custody and controlled by the duly authorized agent of such commission. (1933, c. 172, s. 30.)

§ 7748(aa). Power of sentencing prisoners to work on county property unaffected.—But nothing contained in this act shall be construed to prevent the courts of appropriate jurisdiction from sentencing prisoners to the county jail to be assigned to work at the county home, at the county farm or other county supported institution, and the commission may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent or agents of the division of prisons. (1933, c. 172, s. 31.)

§ 7748(bb). Purpose of act as to consolidation, explained.—It is hereby declared to be the purpose of this article to effect a consolidation of the present state prison department and the present state highway commission into a single department to be known as state highway and public works commission, and this article and all laws heretofore enacted relating to the state prison department and/or to the state highway commission, and not expressly repealed by this article shall be liberally construed so as to confer upon state highway and public works commission all the powers, duties and responsibilities heretofore exercised by or conferred upon the state prison department and/or the state highway commission. All laws inconsistent and in conflict with the purpose of this article are hereby repealed. (1933, c. 172, s. 32.)

§ 7748(cc). Prison indebtedness not assumed by highway commission.—Nothing in this article shall be construed to permit the state highway commission to assume or pay off any part of the present deficit of the state prison, nor to convert or use any part of the funds derived from the sale of the four hundred thousand ($400,000.00) dollar prison building bonds except in accordance with the provisions of section 7748(p) both of which are expressly prohibited by this article. (1933, c. 172, s. 33.)

Art. 4. Paroles

§ 7757(a). Governor empowered to set up new parole system.—The governor of North Carolina is hereby authorized and empowered to set up rules and regulations according to which he will hear applications for pardons, reprieves, and commutations or by which such proceedings may be initiated. He may designate some one as commissioner of parole who shall, under his direction, aid him in more fully performing all the duties required of him in examining, hearing, sorting and arranging such material as is presented in connection with this article and to do such other service as the governor may assign him. Such person shall be paid a salary of not more than three thousand dollars per annum, with reasonable clerical assistance, and shall serve at the will of the governor. (1933, c. 111, s. 1.)

§ 7757(b). Method of paroling prisoners.—Such rules and regulations shall include a system of parole whereby prisoners who have served a rea-

sonable part of their sentences and have shown their worthiness of such consideration may be allowed to complete their terms outside the custody of the prison or prison camps, and without expense thereto, but under supervision and in accordance with conditions set forth in their parole. And such conditions shall include one whereby the released person may be immediately retaken and returned to prison in case of his willful violation of the conditions under which he has been paroled, and be required to complete his original term. (1933, c. 111, s. 2.)

§ 7757(c). Appointment of parole supervisors.—For the purpose of exercising authority over paroled prisoners, to assist paroled prisoners or those about to be paroled to find and retain self-supporting means, to maintain contact with such prisoners to see that they observe the conditions of their parole and assist them in so doing, the governor is hereby authorized to require the support by the state prison and the state highway commission of not more than four competent parole supervisors, particularly adapted for such work, one to be selected by the commissioner of parole as soon as needed and the others when the number of paroled prisoners to be supervised requires their services. Such parole supervisors are to be designated by the governor from among personnel now maintained by the state prison and/or the highway commission, or are to replace a like number of the present personnel, and in no case are to be an addition to the number of persons now maintained by the said state prison and highway commission. Each of the said parole supervisors shall perform his duties under the sole direction of the governor. (1933, c. 111, s. 3.)

§ 7757(d). Case histories of prisoners provided for.—The governor is authorized and empowered to direct any employee of the state department of public welfare, the state prison, or the state highway commission, and any county superintendent of public welfare, to prepare and submit case histories or other information in connection with any case under consideration for parole, such work to be done without extra compensation and as a part of the regular duties of such employees or county superintendents. (1933, c. 111, s. 4.)

CHAPTER 131
TAXATION

SUBCHAPTER I. LEVY OF TAXES (REVENUE ACT OF 1933)

Art. 1. Schedule A. Inheritance Tax

§ 7880(1). General provisions.—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

First. When the transfer is by will or by the intestate laws of this state from any person dying, seized or possessed of the property while a resident of the state.

Second. When the transfer is by will or intestate laws of this or any other state of real property or of goods, wares and merchandise within this state, or of any property, real, personal, or mixed, tangible or intangible, over which the state of North Carolina has a taxing jurisdiction, including state and municipal bonds, and the decedent was a resident of the state at the time of death; when the transfer is of real property or tangible personal property within the state, or intangible personal property that has acquired a situs in this state, and the decedent was a non-resident of the state at the time of death.

Third. When the transfer of property made by a resident or non-resident is of real property within this state, or of goods, wares and merchandise within this state, or of any other property, real, personal, or mixed, tangible or intangible, over which the state of North Carolina has taxing jurisdiction, including state and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (a) the possession or enjoyment of, or the income from, the property or (b) the right to designate the persons who shall possess or enjoy the property or the income therefrom. Every transfer by deed, grant, bargain, sale, or gift, made within three years prior to the death of the grantor, vendor, or donor, exceeding three per cent of his or her estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section.

Fourth. When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a non-resident decedent, when such non-resident decedent's property consists of real property within this state or tangible personal property within the state, or intangible personal property that has acquired a situs in this state, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument.

Fifth. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will, and the rate shall be determined by the relationship between the beneficiary under the power and the donor; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the

time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related and succeeded thereto by will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Sixth. Whenever any real or personal property, or both, of whatever kind or nature, tangible or intangible, is disposed of by will or by deed to any person or persons for life, or the life of the survivor, or for a term of years, or to any corporation for a term of years, with the power of appointment in such person or persons, or in such corporation, or reserving to the grantor or devisor the power of revocation, the tax, upon the death of the person making such will or deed, shall, on the whole amount of property so disposed of, be due and payable as in other cases, and the said tax shall be computed according to the relationship of the first donee, or devisee, to the devisor.

Seventh. Where real property is held by husband and wife as tenants by the entirety, the surviving tenant shall be taxable only on one-half of the value of the property so transferred, unless, where it shall appear that the husband supplied the entire purchase money and the husband predeceases the wife, the wife shall be chargeable with the entire value of the property for inheritance tax, and where it appears that the wife supplied the entire purchase money and the wife predeceases the husband, the husband is chargeable with the value of the property for inheritance tax; and in the absence of evidence as to the proportions of the purchase price paid by the husband and wife, the presumption will be that each paid equal amounts, and only one-half of the value of the property shall be charged to the survivor for inheritance tax. (1933, c. 445, s. 1.)

§ 7880(2). Property exempt.—The following property shall be exempt from taxation under this article:

(a) Property passing to or for the use of the state of North Carolina, or to or for the use of municipal corporations within the state or other political subdivisions thereof, for exclusively public purposes.

(b) Property passing to religious, charitable, or educational corporations, or to churches, hospitals, orphan asylums, public libraries, religious, benevolent, or charitable organizations, or passing to any trustee or trustees for religious, benevolent, or charitable purposes, where such religious, charitable, or educational institutions, corporations, churches, trusts, etc., are located within the state and not conducted for profit.

(c) Property passing to religious, educational, or charitable corporations, not conducted for profit, incorporated under the laws of any other state, and receiving and disbursing funds donated in this state for religious, educational, or charitable purposes.

(d) Proceeds of life insurance policies, not exceeding in the aggregate twenty thousand dollars, when payable to a beneficiary or beneficiaries named in such policy or policies, and such beneficiary or beneficiaries are any such person or persons as are designated in section three (a) of this article, and also proceeds of all life insurance policies payable to beneficaries named in subsections (a), (b), and (c) of this section. And also proceeds of all policies of insurance paid by the United States Government to the beneficary or beneficiaries or heirs at law of any deceased soldier of the World War, under the present laws of congress or any amendment that may be hereafter made thereto. (1933, c. 445, s. 2.)

§ 7880(3). Rate of tax—Class A.—(a) Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, or husband or wife, or stepchild of the person who died possessed of such property aforesaid, or child adopted by the decedent in conformity with the laws of this state or of any of the United States, or of any foreign kingdom or nation, at the following rates of tax (for each one hundred dollars) of the clear market value of such interest:

First $10,000, above exemption	1 per cent
Over $10,000 and to $25,000	2 per cent
Over $25,000 and to $50,000	3 per cent
Over $50,000 and to $100,000	4 per cent
Over $100,000 and to $200,000	5 per cent
Over $200,000 and to $500,000	6 per cent
Over $500,000 and to $1,000,000	7 per cent
Over $1,000,000 and to $1,500,000	8 per cent
Over $1,500,000 and to $2,000,000	9 per cent
Over $2,000,000 and to $2,500,000	10 per cent
Over $2,500,000 and to $3,000,000	11 per cent
Over $3,000,000	12 per cent

(b) The persons mentioned in this class shall be entitled to the following exemptions: Widows, ten thousand dollars; each child under twenty-one (21) years of age, five thousand dollars; all other beneficiaries mentioned in this subsection, two thousand dollars each: Provided, a grandchild or grandchildren shall be allowed the single exemption or pro rata part of the exemption of the parent which he or they represent. The same rule shall apply to the taking under a will, and also in case of a specific legacy or devise: Provided, that when any person shall die leaving a widow and child or children under twenty-one years of age, and leaving all or substantially all of his property by will to his wife, the wife shall be allowed an additional exemption of five thousand dollars for each child under twenty-one years of age. (1933, c. 445, s. 3.)

§ 7880(4). Rate of tax—Class B.—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or descendant of the brother or sister, or shall be the uncle or aunt by blood of the person who died possessed as aforesaid, at the following rates of tax (for each one hundred dollars) of the clear market value of such interest:

First $5,000	4 per cent
Over $5,000 and to $10,000	5 per cent
Over $10,000 and to $25,000	6 per cent
Over $25,000 and to $50,000	7 per cent
Over $50,000 and to $100,000	8 per cent
Over $100,000 and to $250,000	10 per cent

Over $250,000 and to $500,000.....12 per cent
Over $500,000 and to $1,000,000.....14 per cent
Over $1,000,000 and to $1,500,000.....16 per cent
Over $1,500,000 and to $2,000,000.....18 per cent
Over $2,000,000 and to $2,500,000.....20 per cent
Over $2,500,000 and to $3,000,000.....22 per cent
Over $3,000,000 .....24 per cent
(1933, c. 445, s. 4.)

§ 7880(5). Rate of tax—Class C.—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of relationship or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the following rates of tax (for each one hundred dollars) of the clear market value of such interest:

First $10,000 .....8 per cent
Over $10,000 and to $25,000.....9 per cent
Over $25,000 and to $50,000.....10 per cent
Over $50,000 and to $100,000.....11 per cent
Over $100,000 and to $250,000.....13 per cent
Over $250,000 and to $500,000.....15 per cent
Over $500,000 and to $1,000,000.....17 per cent
Over $1,000,000 and to $1,500,000.....19 per cent
Over $1,500,000 and to $2,000,000.....21 per cent
Over $2,000,000 and to $2,500,000.....23 per cent
Over $2,500,000 .....25 per cent
(1933, c. 445, s. 5.)

§ 7880(6). Estate tax.—(a) A tax in addition to the inheritance tax imposed by this schedule is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this schedule, whether a resident or nonresident of the state, where the inheritance tax imposed by this schedule is in the aggregate of a lesser amount than the maximum credit of eighty per cent of the federal estate tax allowed by the federal estate tax act as contained in the Federal Revenue Act of 1926, or subsequent acts and amendments because of said tax herein imposed, then the inheritance tax provided for by this schedule shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this state shall be the maximum amount of credit allowed under said federal estate tax act; said additional tax shall be paid out of the same funds as any other tax against the estate.

(b) Where no tax is imposed by this schedule because of the exemptions herein or otherwise, and a tax is due the United States under the federal estate tax act, then a tax shall be due this state equal to the maximum amount of the credit allowed under said federal estate tax act.

(c) The administrative provisions of this schedule, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the federal estate tax act as contained in the Federal Revenue Act of 1926, or subsequent acts and amendments.

(d) If this section, or any subsection, phrase or clause thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion or portions of this schedule in force at the time of the enactment of this section, nor shall such decision effect the validity of the remaining portion or portions of this section. (1933, c. 445, s. 6.)

§ 7880(7). Deductions.—In determining the clear market value of property taxed under this article or schedule, the following deductions, and no others, shall be allowed:

(a) Taxes accrued and unpaid.

(b) Drainage and street assessments (due as of date of death).

(c) Funeral and burial expenses.

(d) Debts of decedent.

(e) Estate and inheritance taxes paid to other states, and death duties paid to foreign countries, and federal estates taxes, except additional estate taxes levied by act of Congress, effective June 6, 1932.

(f) Amount actually expended for monuments not exceeding the sum of five hundred dollars ($500).

(g) Commissions of executors and administrators actually allowed and paid.

(h) Costs of administration, including reasonable attorneys' fees. (1933, c. 445, s. 7.)

§ 7880(8). Where no personal representative appointed, clerk of superior court to certify same to commissioner of revenue.—Whenever an estate subject to the tax under this act shall be settled or divided among the heirs at law, legatees or devisees, without the qualification and appointment of a personal representative, the clerk of the superior court of the county wherein the estate is situated shall certify the same to the commissioner of revenue, whereupon the commissioner of revenue shall proceed to appraise said estate and collect the inheritance tax thereon as prescribed by this act. (1933, c. 445, s. 8.)

§ 7880(9). Tax to be paid on shares of stock before transferred, and penalty for violation.—(a) Property taxable within the meaning of this act shall include bonds or shares of stock in any incorporated company incorporated in this state, regardless of whether or not any such incorporated company shall have any or all of its capital stock invested in property outside of this state and doing business outside of this state, and the tax on the transfer of any bonds and/or shares of stock in any such incorporated company owning property and doing business outside of the state shall be paid before waivers are issued for the transfer of such shares of stock. No corporation of this state shall transfer any bonds or stock of said corporation standing in the name of or belonging to a decedent or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such transfer is served upon the commissioner of revenue at least ten days prior to such transfer, nor until said commissioner of revenue shall consent thereto in writing. Any corporation making such a transfer without first obtaining consent of the commissioner of revenue as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such bonds and/or stock, together with the interest thereon, and in addition thereto a penalty of one thousand dol-

lars, which liability for such tax, interest, and penalty may be enforced by an action brought by the state in the name of the commissioner of revenue. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by distribution, or by statute, descent, devise, bequest, grant, deed, bargain, sale, gift, or otherwise. A waiver signed by the commissioner of revenue of North Carolina shall be full protection for any such company in the transfer of any such stock.

(b) Any incorporated company not incorporated in this state and owning property in this state which shall transfer on its books the shares of stock of any resident decedent holder of bonds and/or shares of stock in such company exceeding in value two hundred dollars before the inheritance tax, if any, has been paid, shall become liable for the payment of said tax; and any property held by such company in this state shall be subject to execution to satisfy same. A receipt or waiver signed by the commissioner of revenue of North Carolina shall be full protection for any such company in the transfer of any such stock. (1933, c. 445, s. 9.)

§ 7880(10). Commissioner of revenue to furnish blanks and require reports of value of shares of stock. — (a) The commissioner of revenue shall prepare and furnish, upon application, blank forms covering such information as may be necessary to determine the amount of inheritance tax due the state of North Carolina on the transfer of any such bonds and/or stock; he shall determine the value of such bonds and/or stock, and shall have full authority to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due.

(b) The commissioner of revenue shall have authority, under penalties provided in this act, to require that any reports necessary to a proper enforcement of this act be made by any such incorporated company owning property in this state. (1933, c. 445, s. 10.)

§ 7880(11). Life insurance policies.—The proceeds of all life insurance policies payable at or after the death of the insured, when the premiums have been paid by the insured, and whether payable to the estate of the insured or to a beneficiary or beneficiaries named in the policy, shall be taxable at the rates provided for in this article, subject to the exemptions in section two of this article. (1933, c. 445, s. 11.)

§ 7880(12). Recurring taxes.—Where property transferred has been taxed under the provisions of this article, such property shall not be assessed and/or taxed on account of any other transfer of like kind occurring within two (2) years from the date of the death of the former decedent: Provided, that this section shall apply only to the transferees designated in sections three (3) and four (4) of this article. (1933, c. 445, s. 12.)

§ 7880(14). When all heirs, legatees, etc., are discharged from liability.—All heirs, legatees, devisees, administrators, executors, and trustees shall only be discharged from liability for the amount of such taxes, settlement of which they may be charged with, by paying the same for the use aforesaid as hereinafter provided. (1933, c. c. 445, s. 13.)

§ 7880(15). Discount for payment in six months; interest after twelve months; penalty after two years.—All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor, vendor, a discount of three per centum shall be allowed and deducted from such taxes; if not paid within twelve months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of six per centum per annum, to be computed from the expiration of twelve months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within two years from date of death of testator, intestate, grantor, donor or vendor, then and in such case a penalty of five per centum upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of five per centum herein imposed may be remitted by the commissioner of revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the commissioner of revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay: Provided, that time for payment and collection of such tax may be extended by the commissioner of revenue for good reasons shown. (1933, c. 445, s. 14.)

§ 7880(16). Collection to be made by sheriff if not paid in two years.—If taxes imposed by this act are not paid within two years after the death of the decedent, it shall be the duty of the commissioner of revenue to certify to the sheriff of the county in which the estate is located the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of two and one-half per cent as sheriff's fees for collecting same, which fees shall be in addition to any salary or other compensation allowed by law to the sheriffs for their services; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as is given in the machinery act for the collection of other taxes. The sheriff shall make return to the commissioner of revenue of all such taxes within thirty days after collection. (1933, c. 445, s. 15.)

§ 7880(17). Executor, etc., shall deduct tax.—The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to said tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money, he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for

the use of the state; and no executor or administrator shall pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law; and every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the state shall be paid by him to the proper officer without delay. (1933, c. 445, s. 16.)

§ 7880(18). Legacy for life, etc., tax to be retained, etc., upon the whole amount.—If the legacy or devise subject to said tax be given to a beneficiary for life or for a term of years, or upon condition or contingency, with remainder to take effect upon the termination of the life estate or the happening of the condition or contingency, the tax on the whole amount shall be due and payable as in other cases, and said tax shall be apportioned between such life tenant and the remainderman, such apportionment to be made by computation based upon the mortuary and annuity tables set out as sections one thousand seven hundred and ninety and one thousand seven hundred and ninety-one of the consolidated statutes, and upon the basis of six per centum of the gross value of the estate for the period of expectancy of the life tenant in determining the value of the respective interests. When property is transferred or limited in trust or otherwise, and the rights, interest, or estate of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate, within the discretion of the revenue commissioner, which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred, and the commissioner of revenue shall assess the tax on such property. (1933, c. 445, s. 17.)

§ 7880(19). Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc.—Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the commissioner of revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this act shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the state: Provided further, that no lien for inheritance or estate taxes which accrued prior to May first, one thousand nine hundred twenty-three, shall attach or affect the land. (1933, c. 445, s. 18.)

§ 7880(20). Computation of tax on non-resident decedents.—A tax shall be assessed on the transfer of property, including property specifically devised or bequeathed, made subject to tax as aforesaid in this state of a non-resident decedent, if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such non-resident decedent had been a resident of this state, and all his property, real and personal, had been located within this state, as such taxable property within this state bears to the entire estate, wherever situated. It shall be the duty of the personal representative to furnish to the commissioner of revenue such information as may be necessary or required to enable the commissioner to ascertain a proper computation of his tax. Where the personal representative fails or refuses to furnish information from which this assessment can be made, the property in this state liable to tax under this act shall be taxed at the highest rate applicable to those who are strangers in blood. (1933, c. 445, s. 19.)

§ 7880(22). Duties of the clerks of the superior court.—(a) It shall be the duty of the clerk of the superior court to obtain from any executor or administrator, at the time of the qualification of such executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs at law, legatees, distributors, devisees, etc., as far as practical; the approximate value and character of the property or estate, both real and personal; the relationship of the heirs at law, legatees, devisees, etc., to the decedent, and forward the same to the commissioner of revenue on or before the tenth day of each month; and the commissioner of revenue shall furnish the several clerks blanks upon which to make said report, but the failure to so furnish blanks shall not relieve the clerk from the duty herein imposed. The clerk shall make no report of a death where the estate of a decedent is less than two thousand dollars in value, when the beneficiary is husband or wife or child or grandchild of the decedent.

(b) It shall also be the duty of the clerk of the superior court of each of the several counties of the state to enter in a book, prepared and furnished by the commissioner of revenue, to be kept for that purpose, and which shall be a public record, a condensed copy of the settlement of inheritance taxes of each estate, together with a copy of the receipt showing payment, or a certificate showing no tax due, as shall be certified to him by the commissioner of revenue.

(c) For these services, where performed by the clerk, the clerk shall be paid by the commissioner of revenue, when certificates and receipts

are sent in to be recorded, as follows: For recording the certificate of the commissioner of revenue showing no tax due, the sum of fifty cents ($.50). For recording the certificate of the commissioner of revenue showing that the tax received by the state is one hundred dollars ($100) or less he shall be paid the sum of one dollar ($1.00). For recording the certificate of the commissioner of revenue showing that the tax received by the state is more than one hundred dollars ($100) and not over five hundred dollars ($500) he shall be paid the sum of two dollars ($2.00). For recording the certificate of the commissioner of revenue showing that the tax received by the state is more than five hundred dollars ($500) he shall be paid the sum of five dollars ($5.00), which sum shall be the maximum amount paid for recording the certificate of the commissioner of revenue for any one estate: Provided, that where the decedent owns real estate in one or more counties, other than the county in which the administration of the estate is had, then the fee of the clerks of the court of such other counties for recording the certificate of the commissioner of revenue shall be fifty cents ($0.50) each, and the same fee shall be paid for like service by the clerks in case of the settlement of the estates of non-residents. The clerk of the superior court shall receive the sum of fifty cents for making up and transmitting to the commissioner of revenue the report required in this section, containing a list of persons who died leaving property in his county during the preceding month, etc.: Provided further, that where the clerk of the superior court has failed or neglected to make the report required of him in this section, in that case he shall only receive for recording the certificate of the commissioner of revenue the sum of fifty cents ($0.50).

The clerks of the superior court of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this act are hereby repealed. (1933, c. 445, s. 20.)

§ 7880(23). Information by administrator and executor.—Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs at law and their relationship to decedent, and every executor shall prepare a like statement, accompanied by a copy of the will, showing the relationship to the decedent of all legatees, distributees, and devisees named in the will, and the age at the time of death of the decedent of all legatees, distributes, devisees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, together with the postoffice address of executor, administrator, or trustee. If any of the heirs at law, distributees, and devisees are minor children of the decedent, such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in the state, and of all personal property of the estate, of all insurance policies upon the life of the decedent, together with an appraisal under oath of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement; and also the full statement of all gifts or advancements made by deed, grant, or sale to any person or corporation, in trust or otherwise, within three years prior to the death of the decedent. The statement herein provided for shall be filed with the commissioner of revenue at Raleigh, N. C., six months after the qualification of the executor or administrator, upon blank forms to be prepared by the commissioner of revenue. If any administrator or executor fails or refuses to comply with any of the requirements of this section he shall be liable to a penalty in the sum of five hundred dollars, to be recovered by the commissioner of revenue in action to be brought by the commissioner of revenue to collect such sum in the superior court of Wake county against such administrator or executor. The commissioner of revenue, for good cause shown, may remit all or any portion of the penalty imposed under the provisions of this section. Every executor or administrator may make a tentative settlement of the inheritance tax with the commissioner of revenue, based on the sworn inventory provided in this section: Provided, that this does not apply to estates of less than two thousand dollars in value when the beneficiaries are husband or wife or children or grandchildren, or parent or parents of the decedent. (1933, c. 445, s. 21.)

§ 7880(23½). Regulations governing access to safe deposits of a decedent. — No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or in control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons without retaining a sufficient portion or amount thereof to pay taxes or interest which would thereafter be assessed thereon under this act; but the commissioner of revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank, or other institution, person or persons from the obligation herein imposed. Every safe deposit company, trust company, corporation, bank or other institution, person or persons engaged in the business of renting lock boxes for the safekeeping of valuable papers and personal effects or having in their posession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative, or co-tenant of such deceased person, require the presence of the clerk of the superior court, or deputy, or representative of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior

court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of any such lock box and to furnish a copy of such inventory to the commissioner of revenue, to the executor, administrator, personal representative, or co-tenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person or persons having possession of such lock box. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the commissioner of revenue a notice, in such form as the commissioner of revenue may prescribe, setting forth the fact of such payment, but if such notice be not mailed all of the provisions of this section shall apply.

Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this act on the succession to such securities, deposits, assets, or property, but in any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry. (1933, c. 445, s. 21½.)

§ 7880(24). Supervision by commissioner of revenue.—The commissioner of revenue shall have complete supervision of the enforcement of all provisions of the inheritance tax act and the collections of all inheritance taxes found to be due thereunder, and shall make all necessary rules and regulations for the just and equitable administration thereof. He shall regularly employ such deputies, attorneys, examiners, or special agents as may be necessary for the reasonable carrying out of its full intent and purpose. Such deputies, attorneys, examiners, or special agents shall, as often as required to do so, visit the several counties of the state to inquire and ascertain if all inheritance taxes due from estates of decedents, or heirs at law, legatees, devisees, or distributees thereof have been paid; to see that all statements required by this act are filed by administrators and executors, or by the beneficiaries under wills where no executor is appointed; to examine into all statements filed by such administrators and executors; to require such administrators and executors to furnish any additional information that may be deemed necessary to determine the amount of tax that should be paid by such estate. If not satisfied, after investigation, with valuation returned by the administrator or executor, the deputy, attorney, examiner, or appraiser shall make an additional appraisal after proper examination and inquiry, or may, in special cases, recommend the appointment by the commissioner of revenue of a special appraiser, who, in such case, shall be paid five dollars per day and expenses for his services. The administrator or executor, if not satisfied with such additional appraisal, may appeal within thirty days to the commissioner of revenue, which appeal shall be heard and determined as other cases. From this decision the administrator or executor shall have the right to appeal to the superior court of the county in which said estate is situated for the purpose of having said issue tried; said appeal to be made in the same way and manner as is now provided by law for appeals from the decisions of the corporation commission: Provided, that the tax shall first be paid, or satisfactory surety bond in double the amount of any alleged deficiency shall be filed with the commissioner pending an appeal; and if it shall be determined upon trial that said tax or any part thereof was illegal or excessive, judgment shall be rendered therefor with interest, and the amount of tax so adjudged overpaid or declared invalid shall be certified by the clerk of court to the commissioner of revenue, who is authorized and directed to draw his account on the state treasurer for the amount thereof. (1933, c. 445, s. 22.)

§ 7880(25). Proportion of tax to be repaid upon certain conditions. — Whenever debts shall be proven against the estate of a decedent after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer, if it has been so paid in, upon certificate of the commissioner of revenue. (1933, c. 445, s. 23.)

§ 7880(26). Commissioner of revenue may order executor, etc., to file account, etc.—If the commissioner of revenue shall discover that reports and accounts have not been filed, and the tax, if any, has not been paid as provided in this act, he shall issue a citation to the executor, administrator, or trustee of the decedent whose estate is subject to tax, to appear at a time and place therein mentioned, not to exceed twenty days from the date thereof, and show cause why said report and account should not be filed and said tax paid; and when personal service cannot be had, notice shall be given as provided for service of summons by publication in the county in which said estate is located; and if said tax shall be found to be due, the said delinquent shall be adjudged to pay said tax, interest and cost; if said tax shall remain due and unpaid for a period of thirty days after notice thereof, the commissioner of revenue shall certify the same to the sheriff, who shall make collection of said tax, cost and commissions for collection, as provided in section fourteen of this act. (1933, c. 445, s. 24.)

§ 7880(27). Failure of administrator, executor, or trustee to pay tax.—Any administrator, executor, or trustee who shall fail to pay the lawful inheritance taxes due upon any estate in his hands or under his control within two years from the time of his qualification shall be liable for the amount of the said taxes, and the same may be recovered in an action against such administrator, executor, or trustee, and the sureties on his official bond. Any clerk of the court who shall

allow any administrator, executor, or trustee to make a final settlement of his estate without having paid the inheritance tax due by law, and exhibiting his receipt from the commissioner of revenue therefor, shall be liable upon his official bond for the amount of such taxes. (1933, c. 445, s. 25.)

§ 7880(28). Uniform valuation.—(a) If the value of any estate taxed under this schedule shall have been assessed and fixed by the federal government for the purpose of determining the federal taxes due thereon prior to the time the report from the executor or administrator is made to the commissioner of revenue under the provisions of this act, the amount or value of such estate so fixed, assessed, and determined by the federal government shall be stated in such report. If the assessment of the estate by the federal government shall be made after the filing of the report by the executor or administrator with the commissioner of revenue, as provided in this act, the said executor or administrator shall, within thirty days after receipt of notice of the final determination by the federal government of the value or amount of said estate as assessed and determined for the purpose of fixing federal taxes thereon, make report of the amount so fixed and assessed by the federal government, under oath or affirmation, to the commissioner of revenue. If the amount of said estate as assessed and fixed by the federal government shall be in excess of that theretofore fixed or assessed under this schedule for the purpose of determining the amount of taxes due the state from said estate, then the commissioner of revenue shall reassess said estate and fix the value thereof at the amount fixed, assessed, and determined by the federal government, unless the said executor or administrator shall, within thirty days after notice to him from the commissioner of revenue, show cause why the valuation and assessment of said estate as theretofore made should not be changed or increased. If the valuation placed upon said estate by the federal government shall be less than that theretofore fixed or assessed under this act, the executor or administrator may, within thirty days after filing his return of the amount so fixed or assessed by the federal government, file with the commissioner of revenue a petition to have the value of said estate reassessed and the same reduced to the amount as fixed or assessed by the federal government. In either event the commissioner of revenue shall proceed to determine, from such evidence as may be brought to his attention or which he shall otherwise acquire, the correct value of the said estate, and if valuation is changed, he shall reassess the taxes due by said estate under this act and notify the executor or administrator of such fact. In the event the valuation on said estate shall be decreased, and if there shall have been an overpayment of the tax, the said commissioner shall, within sixty days after the final determination of the value of said estate and the assessment of the correct amount of tax against the same, refund the amount of such excess tax theretofore paid.

(b) If the executor or administrator shall fail to file with the commissioner of revenue the return under oath or affirmation, stating the amount of value at which the estate was assessed by the federal government as provided for in this section, the commissioner of revenue shall assess and collect from the executor or administrator a penalty equal to twenty-five per cent of the amount of any additional tax which may be found to be due by such estate upon reassessment and reappraisal thereof, which penalty shall under no condition be less than twenty-five dollars ($25.00) or more than five hundred dollars ($500.00), and which cannot be remitted by the commissioner of revenue except for good cause shown. The commissioner of revenue is authorized and directed to confer quarterly with the department of internal revenue of the United States government to ascertain the value of estates in North Carolina which have been assessed for taxation by the federal government, and he shall co-operate with the said department of internal revenue, furnishing to said department such information concerning estates in North Carolina as said department may request. (1933, c. 445, s. 26.)

§ 7880(29). Executor defined. — Wherever the word "executor" appears in this act, it shall include executors, administrators, collectors, committees, trustees, and all fiduciaries. (1933, c. 445, s. 27.)

§ 7880(29)a. Additional remedies for enforcement of tax.—In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Commissioner of Revenue in any court of competent jurisdiction in this state, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until the said taxes have been fully paid. (1933, c. 445, s. 28.)

Art. 2. Schedule B. License Taxes

§ 7880(30). Taxes under this article.—Taxes in this article or schedule shall be imposed as a state license tax for the privilege of carrying on the business, exercising the privilege, or doing the act named, and nothing in this act shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this article or schedule.

(a) If the business made taxable or the privilege to be exercised under this article or schedule is carried on at two or more separate places, a separate state license for each place or location of such business shall be required.

(b) Every state license issued under this ar-

ticle or schedule shall be for twelve months, shall expire on the thirty-first day of May of each year, and shall be for the full amount of the tax prescribed: Provided, that where the licensee begins such business or exercises such privilege after the first day of January and prior to the thirty-first day of May of each year, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirty-first day of May, next following. Every county, city and town license issued under this article or schedule shall be for twelve months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current fiscal year of such municipality, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(c) The state license thus obtained shall be and constitute a personal privilege to conduct the business named in the state license, shall not be transferable to any other person, firm or corporation, and shall be construed to limit the person, firm, or corporation named in the license to conducting the business and exercising the privilege named in the state license to the county and/or city and location specified in the state license, unless otherwise provided in this article or schedule: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location, for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.

(d) Whenever, in any section of this article or schedule, the tax is graduated with reference to the population of the city or town in which the business is to be conducted or the privilege exercised, the minimum tax provided in such section shall be applied to the same business or privilege when conducted or exercised outside of the municipality, unless such business is conducted or privilege exercised within one mile of the corporate limits of such municipality, in which event the same tax shall be imposed and collected as if the business conducted or the privilege exercised were inside of the corporate limits of such municipality.

(e) All state taxes imposed by this article shall be paid to the commissioner of revenue, or to one of his deputies; shall be due and payable on or before the first day of June of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent state license and privilege taxes: Provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this article or schedule after the thirty-first day of May and prior to the thirty-first day of the following May of any year, then such person, firm, or corporation shall apply for and obtain a state license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such state license shall be and constitute a delinquent payment of the state license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.

(f) The taxes imposed and the rates specified in this article or schedule shall apply to the subjects taxed on and after the first day of June, one thousand nine hundred thirty-three, and prior to said date the taxes imposed and the rates specified in the revenue act of one thousand nine hundred thirty-one shall apply.

(g) It shall be the duty of a grantee, transferee, or purchaser of any business or property subject to the state license taxes imposed in this article to make diligent inquiry as to whether the state license tax has been paid, but when such business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the state license taxes imposed under this article, such property, while in the possession of such innocent purchaser, shall not be subject to any lien for such State license taxes.

(h) All county or municipal taxes levied by the board of county commissioners of any county, or by the board of aldermen or other governing body of any municipality within this state, under the authority conferred in this act, shall be collected by the sheriff or tax collector of such county and by the tax collector of such city, and the county or municipal license shall be issued by such officer.

(i) Any person, firm, or corporation who shall willfully make any false statement in an application for a license under any section of this article or schedule shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, which fine shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax. (1933, c. 445, s. 100.)

§ 7880(31). Amusement parks.—Every person, firm, or corporation engaged in the business of operating a park, open to the public as a place of amusement, and in which there may be either a bowling alley, trained animal show, penny or nickel machine for exhibiting pictures, moving picture show, theatrical performance, or similar entertainment, shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such amusement park, and shall pay for such license the following tax:

State license for two months.....$200.00
State license for four months.....$400.00
State license for eight months.....$600.00
State license for twelve months.....$800.00

This section shall not apply to bathing beaches which are not operated for more than four months each year.

(a) The licensee shall have the privilege of doing any or all the things set out in this section; but the operation of a carnival, circus, or a show of any kind that moves from place to place shall not be allowed under the state license provided for in this section.

(b) Counties shall not levy a license tax on the business taxed under this section. (1933, c. 445, s. 102.)

§ 7880(32). Amusements—traveling theatrical companies, etc.—Every person, firm or corporation engaged in the business of a traveling theatrical, traveling moving picture, and/or traveling vaudeville company, giving exhibitions or performances in any hall, tent, or other place not licensed under sections 7880(31) and 7880(33), whether on account of municipal ownership or otherwise, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and pay for such license a tax of twenty-five dollars ($25.00) for each day or part of a day's exhibits or performances: Provided, that

(a) Artists exhibiting paintings or statuary work of their own hands shall only pay two dollars ($2.00) for such state license.

(b) Such places of amusement as do not charge more than a total of fifty (50) cents for admission at the door, including a reserved seat, and shall perform or exhibit continuously in any given place as much as one week, shall be required to pay for such state license twenty-five dollars ($25.00) for the first day and a total of twenty-five dollars ($25.00) for the next succeeding five days, or any part thereof, and thirty dollars ($30.00) per week or any part thereof thereafter.

(c) The owner of the hall, tent, or other place where such amusements are exhibited or performances held shall be liable for the tax.

(d) In lieu of the state license tax, hereinbefore provided for in this section, such amusement companies, consisting of not more than ten performers, may apply for an annual state-wide license, and the same may be issued by the commissioner of revenue for the sum of three hundred dollars ($300.00), shall be valid in any county of this state, and shall be in full payment of all state license taxes imposed in this section.

(e) Any traveling organization which exhibits animals or conducts sideshows in connection with its exhibitions or performances shall not be taxed under this section, but shall be taxed as herein otherwise provided.

(f) The owner, manager, or proprietor of any such amusements described in this section shall apply in advance to the commissioner of revenue for a state license for each county in which a performance is to be given.

That upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in article V, schedule E, of this act upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervisions as may be necessary to effectuate the purposes of this act.

(g) Counties, cities and towns may levy a license tax not in excess of the license tax levied by the state. (1933, c. 445, s. 103.)

§ 7880(33). Amusements—manufacturing, selling, leasing and/or distributing moving picture films.—Every person, firm, or corporation engaged in the business of manufacturing, selling, or leasing, furnishing, and/or distributing films to be used in moving pictures within this state shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of twelve hundred and fifty dollars ($1,250): Provided, that every state right distributor, not engaged in the production of motion pictures, but solely engaged in buying state distribution rights for a maximum number of ten states, shall pay one-half of the license provided in this section.

Any person, firm, or corporation engaged under contract or for compensation in the business of checking the attendance at any moving picture or show for the purpose of ascertaining attendance or amount of admission receipts at any theatre or theatres shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax of twelve hundred and fifty dollars ($1,250.00).

Counties, cities, and towns shall not levy a license tax on the business taxed under this section. (1933, c. 445, s. 104.)

§ 7880(34). Amusements—moving pictures or vaudeville shows—admissions. — Every person, firm, or corporation engaged in the business of operating a moving picture show or place where vaudeville exhibitions or performances are given or operating a theatre or opera house where public exhibitions or performances are given for compensation, shall apply for and obtain in advance from the commissioner of revenue a state license for the privilege of engaging in such business and shall pay for such state license for each room, hall or tent used the following base tax:

In cities or towns of less than 1,500 population	$ 25.00
In cities or towns of 1,500 and less than 3,000 population	62.50
In cities or towns of 3,000 and less than 5,000 population	125.00
In cities or towns of 5,000 and less than 10,000 population	175.00
In cities or towns of 10,000 and less than 15,000 population	275.00
In cities or towns of 15,000 and less than 25,000 population	375.00
In cities or towns of 25,000 population or over	425.00

In addition to the base tax levied in the above schedule of this section, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of tax

upon all such gross receipts levied in article V, schedule E, of this act upon retail sales of merchandise. Reports shall be made to the commissioner of revenue in such form as he may prescribe within the first ten days of each month, covering all such gross receipts for the previous month, and the additional tax herein levied shall be paid monthly at the time such reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax: Provided, if the tax upon admissions herein levied is not added to the admission price as a separate charge to any exhibition of motion pictures, shown under percentage royalty contracts, the gross receipts with reference to such royalty contracts shall be deemed to be the gross receipts from admissions after the percentage tax upon gross receipts shall have been paid or deducted.

(a) Upon any and all other forms of entertainment and amusement not otherwise taxed or specifically exempted in this act, including athletic contests of all kinds, high school and elementary school contests, for which an admission is charged in excess of twenty-five cents (25c), including football, baseball, basketball, wrestling and boxing contests, an annual license tax of $5.00 shall be paid for each location where such charges are made, and an additional charge upon the gross receipts at the rate of tax levied in article V, schedule E, of this act upon retail sales of merchandise. The additional tax upon gross receipts to be levied and collected as provided in this section for motion picture shows, or in accordance with such regulations of payment as may be made by the commissioner of revenue. The tax levied in this subsection shall apply to all privately-owned toll bridges, including all charges made for all vehicles, freight and passenger, and the minimum charge of twenty-five cents for admission shall not apply to bridge tolls.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half the base tax levied in this section. (1933, c. 445, s. 105, c. 503.)

§ 7880(35). Amusements—circuses, menageries, wild west, dog and/or pony shows, etc.—Every person, firm, or corporation engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other show, exhibition or performance similar thereto, or not taxed in other sections of this article, shall apply for and obtain a state license from the commissioner of revenue for the privilege of engaging in such business, and pay for such license the following tax for each day or part of a day:

(a) Such shows and/or exhibitions traveling on railroads and requiring transportation of:

Not more than two cars	$ 30.00
Three to five cars, inclusive	45.00
Six to ten cars, inclusive	90.00
Eleven to twenty cars, inclusive	125.00
Twenty-one to thirty cars, inclusive	175.00
Thirty-one to fifty cars, inclusive	250.00
Over fifty cars	300.00

(b) Such shows and/or exhibitions traveling by automobiles, trucks, or other vehicles, other than railroad cars, and requiring transportation by:

Not over two vehicles	$12.50
Three to five vehicles	17.50
Six to ten vehicles	25.00
Eleven to twenty vehicles	30.00
Twenty to thirty vehicles	40.00
Thirty to fifty vehicles	55.00
Over fifty vehicles, per vehicle in excess thereof	5.00

It is the intent of this subsection that every vehicle used in transporting circus property or personnel, whether owned by the circus or by others, shall be counted in computing the tax.

(c) Each sideshow, curiosity show, or other similar show, exhibiting on the same or contiguous lots with a circus, the tax shall be fifteen dollars ($15.00) per day or part of a day.

(d) Every person, firm, or corporation by whom any show or exhibition taxed under this section is owned or controlled shall file with the commissioner of revenue, not less than five days before entering this state for the purpose of such exhibitions or performances therein, a statement, under oath, setting out in detail such information as may be required by the commissioner of revenue, covering the places in the state where exhibitions or performances are to be given, the character of the exhibition, the mode of travel, the number of cars or other conveyances used in transferring such shows, and such other and further information as may be required. Upon receipt of such statement, the commissioner of revenue shall fix and determine the amount of state license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the commissioner of revenue, with full and particular instructions as to the state license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the commissioner of revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the commissioner of revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the commissioner of revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.

(e) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the commissioner of revenue; and if the statement required in this section has not been filed as provided for herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy com-

missioner, the commissioner of revenue shall cause his division deputy to attend at one or more points in the state where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of state license tax with which such person, firm, or corporation is taxable, and to collect such tax or give proper instructions for the collection of such tax.

(f) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city, or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a state license of one thousand dollars ($1,000.00) for each exhibition or performance, in addition to the license tax first levied in this section, to be assessed and collected by the commissioner of revenue or his duly authorized deputy.

(g) The provisions of this section, or any other section of this act, shall not be construed to allow, without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the state license tax imposed in this section.

(h) Every such person, firm, or corporation who shall give any of such exhibitions or performances mentioned in this section within this state, before the statement provided for has been filed with the commissioner of revenue, or before the state license tax has been paid, or which shall, after the filing of such statement, give any such exhibition or performance taxable at a higher rate than the exhibition or performance authorized by the commissioner of revenue upon the statement filed, shall pay a state license tax of fifty per cent greater than the tax hereinbefore prescribed, to be assessed and collected either by the commissioner of revenue or by his division deputy.

That upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Article V, Schedule E, of this act upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purposes of this act.

(i) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one-half of the license tax levied by the state, but shall not levy a parade tax. (1933, c. 445, s. 106.)

§ 7880(36). Amusements—carnival companies, etc.—Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, moving pictures and vaudeville shows, museums and menageries, merry-go-rounds, ferris wheels, riding devices, and other like amusements and enterprises, conducted for profit, under the same general management; or an aggregate of shows, amusements, eating places, riding devices, or any of them operating together on the same lot or contiguous lots or streets, traveling from place to place, whether owned and actually operated by separate persons, firms, or corporations or not, filling week-stand engagements, or giving week-stand exhibitions, under canvas or not, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business or amusements, and shall pay for such license for each week, or part of a week, the following tax:

Consisting of not more than two distinct attractions, per week or part thereof....$200.00
Consisting of more than two and not more than five distinct attractions, per week or part thereof..... 300.00
Consisting of more than five distinct attractions, per week or part thereof..... 400.00

Provided, that when a person, firm, or corporation exhibits only riding devices which are not a part of, nor used in connection with, any carnival company the tax shall be ten dollars ($10.00) per week for each such riding device, and no additional tax shall be levied by counties, cities and towns under this proviso.

(a) This section shall not repeal any local act prohibiting any of the shows, exhibitions, or performances mentioned in this section, or to limit the authority of the board of county commissioners of any county, or the board of aldermen or other governing body of any city or town, in prohibiting such shows, exhibitions, or performances.

If the commissioner of revenue shall issue a state license for any such show, exhibition, or performance in any county or municipality having a local statute prohibiting the same, then the said state license shall not authorize such show, exhibition, or performance to be held in such county or municipality, but the commissioner of revenue shall refund, upon proper application, the tax paid for such state license.

(b) No person, firm, or corporation, nor any aggregation of same, giving such shows, exhibitions, or performances, shall be relieved from the payment of the tax levied in this or pursuant to this section or any part thereof, for the benefit of the state, by reason of the donation or appropriation of the whole or any part of the proceeds arising from such shows, exhibitions, or performances, to any religious, charitable, educational, or other cause whatsoever. It being the

intent and purpose of this section that every person, firm, or corporation, or aggregation of same, who is engaged in the giving of such shows, exhibitions, performances, or amusements, whether the whole or a part of the proceeds are for charitable, benevolent, educational, or other purposes whatsoever, shall pay the state license taxes provided for in this section.

That upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Article V, Schedule E, of this act upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purposes of this act.

(c) Counties may levy and collect the same license tax as the state, and cities and towns may levy a license tax not in excess of the aggregate amount of license tax levied by state and county. (1933, c. 445, s. 107.)

§ 7880(37). Amusements—certain exhibitions, performances, and entertainments exempt from license tax.—All exhibitions, performances, and entertainments, except as in this article expressly mentioned as not exempt, produced by local talent exclusively and for the benefit of religious, charitable, benevolent, or educational purposes, and where no compensation is paid to such local talent, shall be exempt from the state license tax. (1933, c. 445, s. 108.)

§ 7880(38). Attorneys at law and other professions.—Every practicing attorney at law, practicing physician, veterinary surgeon, osteopath, chiropractor, chiropodist, dentist, oculist, optician, optometrist, and person practicing any professional art of healing for a fee or reward, civil engineer, electrical engineer, mining engineer, mechanical engineer, architect and landscape architect, certified public accountant, public accountant other than certified public accountant, photographer, canvasser for any photographer, agent of a photographer in transmitting pictures or photographs to be copied, enlarged or colored (including all persons enumerated in this section employed by the state, county, municipality, a corporation, firm, or individual), and every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in the business of selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate; or who is engaged in the business of leasing or offering to lease, renting or offering to rent, or of collecting any rents as agent for another for compensation; or who is engaged in the business of soliciting and/or negotiating loans on real estate as agent for another for a commission, brokerage and/or other compensation, shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business or profession, or the doing of the act named, and shall pay for such license twenty-five dollars ($25.00).

Every licensed mortician or embalmer shall in like manner apply for and obtain from the commissioner of revenue state-wide license for practicing his profession, whether for himself or in the employ of another, of ten dollars ($10.00).

(a) Only one-half of the tax levied in this section shall be collected from those persons whose receipts from the business or professions for the preceding year did not exceed one thousand dollars ($1,000.00).

(b) Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section and execution has been issued for the same by the commissioner of revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next term of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person twenty days before the next term of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commissions having authority of law in this state with respect to the granting or continuing of license to practice any such profession.

(c) Counties, cities, or towns shall not levy any license tax on the business or professions taxed under this section; and the state-wide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this state, except the same shall not apply to photographers, canvassers of any photographers, agents of a photographer in transmitting pictures or photographs to be copied, enlarged or colored, as set out in lines 9, 10 and 11 of said section, and counties, cities or towns may levy a tax not in excess of that levied by the state. (1933, c. 445, s. 109.)

§ 7880(39). Detectives.—Every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in business as a detective, or what is ordinarily known as "secret service work," or who is engaged in the business of soliciting such business, shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business, and shall pay for such license a tax of twenty-five dollars ($25.00): Provided, any such person regularly employed by United States government, any state or political sub-division of any state shall not be required to pay license herein provided for. (1933, c. 445, s. 110.)

§ 7880(41). Real estate auction sales.—(a) Every person, firm, or corporation engaged in the business of conducting auction sales of real estate for a profit or compensation shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license a tax of fifty dollars ($50.00).

(b) In addition to the annual state license tax of fifty dollars ($50.00) levied in this section, such person, firm, or corporation shall pay to the commissioner of revenue one dollar ($1.00) for each one thousand dollars ($1,000.00) or fraction thereof of total gross sales made in any one day. The payment of said additional tax to be made to the commissioner of revenue on or before thirty (30) days succeeding the said sale or sales; and such payment shall be accompanied by a verified statement of each day's sales made subsequent to the previous report.

(c) This section shall not apply to sales for foreclosure of liens or sales made by order of court.

(d) Any such person, firm, or corporation failing, refusing, or neglecting to transmit such verified statement of sales on or before the date as provided for in subsection (a) of this section, and to pay the tax therein levied, shall be guilty of a misdemeanor, and in addition to double the tax due, shall be fined not less than one hundred dollars ($100.00) and/or imprisoned in the discretion of the court.

(e) Counties, cities, and towns in which the auction sale is held may levy a license tax on the business taxed under this section not in excess of that levied by the state in subsection (a) of this section. (1933, c. 445, s. 111.)

§ 7880(42). Coal and coke dealers.—(a) Every person, firm, or corporation, either as agent or principal, engaged in and conducting the business of selling coal or coke in carload lots, or in greater quantities, shall be deemed a wholesale dealer, and shall apply for and procure from the revenue commissioner a state license, and pay for such license the sum of seventy-five dollars ($75.00): Provided, that if such wholesale dealer shall also sell coal or coke in less than carload lots, he shall not be subject to the retailer's license tax provided in this section.

(b) Every person, firm, or corporation engaged in and conducting the business of selling coal or coke at retail shall apply for and procure from the commissioner of revenue a state license and shall pay for such license a tax for each city or town in which such coal or coke is sold or delivered, as follows:

In cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 population and less than 25,000 population	50.00
In cities or towns of 25,000 population and over	75.00

(c) No county shall levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 112, c. 509.)

§ 7880(43). Collecting agencies.—Every person, firm, or corporation engaged in the business of collecting for a profit, claims, accounts, bills, notes, or other money obligations for others, and of rendering an account for same, shall be deemed a collection agency, and shall apply for and receive from the commissioner of revenue a state license for the privilege of engaging in such business, and pay for such license a tax of fifty dollars ($50.00).

(a) This section shall not apply to a regularly licensed practicing attorney at law.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 113.)

§ 7880(44). Undertakers, embalmers, and retail dealers in coffins.—Every person, firm, or corporation engaged in the business of burying and/or embalming the dead, or in the retail of coffins, shall apply for and procure from the revenue commissioner a state license for transacting such business within this state, and shall pay for such license the following tax:

In cities or towns of less than 500 population	$ 10.00
In cities or towns of 500 and less than 5,000 population	25.00
In cities or towns of 5,000 and less than 10,000 population	40.00
In cities or towns of 10,000 and less than 15,000 population	50.00
In cities or towns of 15,000 and less than 25,000 population	75.00
In cities or towns of 25,000 population or over	100.00

(a) This section shall not apply to a cabinetmaker (who is not an undertaker) who makes coffins to order.

No county shall levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 114.)

§ 7880(45). Dealers in horses and mules.—(a) Any person, firm, or corporation engaged in the business of buying and selling horses and/or mules, and who continuously for the last three years listed a poll or property for taxation in this state, shall apply for and procure from the commissioner of revenue a state license for conducting such business, and pay for such license a tax of twelve dollars and fifty cents ($12.50), which amount of tax, however, shall only be for the privilege of buying and/or selling one carload, and for each additional carload purchased, an additional tax of five dollars ($5.00) per car shall be paid semi-annually to the commissioner of revenue.

(b) Every person, firm, or corporation engaged in the business of buying and selling horses and/or mules, who or which has not continuously for the last three years listed a poll or property for taxation in this state, shall apply for and procure from the commissioner of revenue a state license for conducting such business, and pay for such license a tax of fifty dollars ($50.00), which

amount of tax, however, shall only be for the privilege of buying and/or selling one carload, and for each additional carload purchased an additional tax of ten dollars ($10.00) per car shall be paid semi-annually to the commissioner of revenue.

(c) For the purpose of computing this tax, twenty-five horses and/or mules shall be considered a carload, and for cars containing more than this number the tax shall be twenty cents per head for such horses and/or mules purchased under subsection (a) of this section, and forty cents per head for such horses and/or mules purchased under subsection (b) of this section.

(d) The tax imposed in this section shall apply to all purchases by such dealers, whether shipped into this state by railroad or brought in otherwise.

(e) Every person, firm, or corporation engaged in the business described in this section shall keep a full, true, and accurate record of all sales, invoices, and freight bills covering such purchases and sales of all horses and/or mules, until such sales, invoices, and freight bills have been checked by a deputy commissioner of revenue.

(f) A separate license shall be required for each county and for each place in each county where a separate place of business is maintained: Provided, however, any such person, firm, or corporation engaging in such business described in this section in more than one place or county in this state may, upon the payment of one hundred and twenty-five dollars ($125.00) to the commissioner of revenue, procure a state-wide license, good in any county of the state, and shall also pay the tax herein provided for each carload.

(g) This section shall not apply to persons dealing solely and exclusively in horses and/or mules of their own raising, if such horses and/or mules were raised in this state.

(h) Any person, firm, or corporation required to procure from the commissioner of revenue a license under this section, who shall sell or offer for sale, by principal or agent, any horse and/or mule without having obtained such license, or shall fail, neglect, or refuse to pay the taxes specified in this section when due and payable, shall, in addition to other penalties imposed by this act, be deemed guilty of a misdemeanor, and upon conviction shall be fined one hundred dollars ($100.00) and/or imprisoned not less than thirty days in the discretion of the court.

(i) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 115.)

§ 7880(46). Phrenologists. — Any person engaged in the practice of phrenology for compensation shall procure from the commissioner of revenue a state license for engaging in such practice, and shall pay for same a tax of one hundred dollars ($100.00) for each county in which such person does business.

Counties, cities, and towns may levy any license tax on the business taxed in this section. (1933, c. 445, s. 116.)

§ 7880(47). Bicycle dealers.—Any person, firm, or corporation engaged in the business of buying and/or selling bicycles, supplies and accessories shall apply for and procure a state license from the commissioner of revenue for the privilege of transacting such business, and shall pay a tax for such license as follows:

In cities or towns of less than 10,000 population	$10.00
In cities or towns of 10,000 and less than 20,000 population	20.00
In cities or towns of 20,000 population or more	25.00

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 117.)

§ 7880(48). Pawnbrokers.—Every person, firm, or corporation engaged in and conducting the business of lending or advancing money or other things of value for a profit, and taking as a pledge for such loan specific articles of personal property, to be forfeited if payment is not made within a definite time, shall be deemed a pawnbroker, and shall pay for the privilege of transacting such business an annual license as follows:

In cities or towns of less than 10,000 population	$200.00
In cities or towns of 10,000 and less than 15,000 population	250.00
In cities or towns of 15,000 and less than 20,000 population	300.00
In cities or towns of 20,000 and less than 25,000 population	350.00
In cities or towns of 25,000 population or more	400.00

(b) Before such pawnbroker shall receive any article or thing of value from any person or persons, on which a loan or advance is made, he shall issue a duplicate ticket, one to be delivered to the owner of said personal property and the other to be attached to the article, and said ticket shall have an identifying number on the one side together with the date at the expiration of which the pledger forfeits his right to redeem, and on the other a full and complete copy of this subsection; but such pawnbroker may, after the pledger has forfeited his right to redeem the specific property pledged, sell the same at public auction, deducting from the proceeds of sale the money or fair value of the thing advanced, the interest accrued, and the cost of making sale, and shall pay the surplus remaining to the pledger.

(c) Any person, firm, or corporation transacting the business of pawnbroker without a license as provided in this section, or violating any of the provisions of this section, shall be guilty of a misdemeanor and fined not less than fifty dollars ($50.00), nor more than five hundred dollars ($500.00).

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 118.)

§ 7880(49). Cash registers, adding machines, typewriters, refrigerating machines, washing machines, etc.—Every person, firm, or corporation engaged in the business of selling and/or delivering, and/or renting, either as agent or principal, cash registers, typewriters, adding or bookkeeping machines, billing machines, check protectors or protectographs, kelvinators, frigidaires, or

other refrigerating machines, lighting systems, washing machines, mechanically or electrically operated burglar alarms, or automatic sprinklers, addressograph machines, multigraph and other dulpicating machines, vacuum cleaners, mechanically or electrically operated oil burners and coal stokers, card punching, assorting and tabulating machinery, shall apply for and procure from the commissioner of revenue a state license for the transaction of such business in this state, and shall pay for such license a tax of fifty dollars ($50.00) as a state-wide license for selling and/or renting any or all of the articles enumerated in this section, and an additional tax upon gross sales or rental charges of all such articles enumerated in this section, at the rate of tax levied in Article V, Schedule E, of this act, upon the retail sales of merchandise. Reports shall be made to the commissioner of revenue within the first ten days of each month, covering all such sales made within the previous month, and the additional gross sales tax herein levied shall be paid monthly at the time such reports are made. The percentage tax on sales of articles mentioned in this section shall not apply to sales to dealers for resale. The term "automatic sprinkler" as used herein shall not be construed to include those handling only parts for automatic sprinklers and who have paid a license tax under another section of this act: Provided, that any person, firm, or corporation dealing in second-hand machines, as enumerated in this section, exclusively, shall pay a tax for such business of $25.00, plus the tax on sales levied in Article V of this act.

(a) No additional license shall be required of any agent or sub-distributor of a dealer or distributor who has paid the license tax herein imposed, and who also pays the additional tax on gross sales levied in Article V of this act.

(b) If such distributor, whether located within or without the state, fails, neglects or refuses to apply for and procure the state-wide license herein provided for, then and in that event the subdealer, sub-distributor, or any agent selling any of the articles enumerated in this section, or instructing in the use of, or servicing or repairing any of the above mentioned articles, shall pay the license and gross receipts tax provided for in this section.

(c) Counties, cities and towns shall not levy a license tax on the business taxed in this section. (1933, c. 445, s. 119.)

§ 7880(50). Sewing machines. — (a) Every person, firm, or corporation engaged in the business of selling sewing machines within this state shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business and shall pay for such license a tax of one hundred dollars ($100.00) per annum for each such make of machines sold or offered for sale.

(b) In addition to the annual license tax imposed in subsection (a) of this section, such person, firm, or corporation engaged in the business taxed under this section shall pay a tax at the rate of tax levied in Article V, Schedule E, of this act, on retail sales of merchandise on the total receipts during the preceding year from the sale, lease, or exchange of sewing machines and/or accessories within the state, which said tax shall be paid to the commissioner of revenue at the time of, or just prior to, securing the annual license tax provided for in subsection (a) of this section.

(c) At the time of making application for the state-wide annual license provided for in subsection (a) of this section, the applicant shall submit to the commissioner of revenue a statement under oath, showing gross receipts of the applicant from the sale, lease, or exchange of sewing machines and/or accessories for the year next preceding the first day of June in which such application is made. The commissioner of revenue may require an itemized statement and the production of the books and papers of such applicant, and make such investigation as he may deem proper, and after making such investigation and ascertaining the gross receipts from such sales, leases, and exchanges, shall collect the tax upon the gross receipts so found.

(d) Any person, firm, or corporation obtaining a license under the foregoing sections may employ agents and secure a duplicate copy of such license for each such agent by paying a tax of ten dollars ($10.00) to the commissioner of revenue. Each such duplicate license so issued shall contain the name of the agent to whom it is issued, shall not be transferable, and shall license the licensee to sell or offer for sale only the sewing machine sold by the holder of the original license.

(e) Any merchant or dealer who shall purchase sewing machines from a manufacturer or a dealer who has paid the license and gross sales taxes provided for in this section may sell such sewing machines without paying a gross sales tax or the annual state-wide license tax provided for in sections (a) and (b), but shall procure the duplicate license provided for in subsection (d) of this section: Provided, that the tax imposed by this subsection shall be the only tax required to be paid by dealers in second-hand sewing machines exclusively.

(f) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties imposed in this act, pay an additional tax of double the state-wide annual license, the gross sales and the duplicate tax imposed in this section.

(g) No county shall levy a license tax on the business taxed under this section, except that the county may levy a license tax not in excess of five dollars ($5.00) on each agent in a county who holds a duplicate license provided for in this section.

Cities and towns shall not levy a license tax on the business taxed under this section. (1933, c. 445, s. 120.)

§ 7880(51). Peddlers.—(a) Any person, firm, or corporation who or which shall carry from place to place any goods, wares or merchandise, and offer to sell or barter the same, or actually sells or barters the same, shall be deemed a peddler, and shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

Peddler, on foot, for each county	$10.00
Peddler, with horse or other animal, and with or without vehicle, each county, for each vehicle	15.00

Peddler, with vehicle propelled by motor or other mechanical power, for each county, for each vehicle 25.00

In addition to the tax imposed in this section, every person, firm, or corporation licensed under this section shall pay a tax upon the gross sales of each such person, firm, or corporation at the rate of tax and in the manner provided in Article V of this act upon the retail sale of merchandise. No license issued under this section shall be renewed until complete report and settlement of the gross receipts tax in addition to annual license tax. Any person, firm, or corporation employing the service of another as a peddler, whether on a salary or commission basis, shall be liable for the payment of taxes levied in this section. Persons exempted from the license tax levied in this section under subsection (g) shall not be exempted from but shall in like manner be liable for the percentage of tax levied in Article V of this act, and license of any such person shall not be renewed by the board of commissioners of any county unless and until such person presents to the board of county commissioners a receipt from the commissioner of revenue showing payment of such percentage tax.

(c) Any person, firm, or corporation who or which sells or offers to sell from a cart, wagon, truck, automobile, or other vehicle operated over and upon the streets and/or highways within this state any fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section and shall pay the annual license tax levied in subsection (a) of this act with reference to the character of vehicle employed and in addition thereto a tax upon gross retail sales levied in Article V of this act. Any person, firm, or corporation who or which sells or offers for sale from any railway car fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section, and shall pay an annual tax of twenty-five dollars ($25.00) in addition to percentage tax upon gross retail sales levied in Article V of this act. Nothing in this section shall apply to the sale of all farm products raised on the premises owned or occupied by the person, firm, or corporation, his or its bona fide agent or employee selling same.

(d) Every itinerant salesman or merchant who shall expose for sale, either on the street or in a house rented temporarily for that purpose, any goods, wares, or merchandise, bankrupt stock, or fire stock, not being a regular merchant in such county, shall apply for in advance and procure a state license from the commissioner of revenue for the privilege of transacting such business, and shall pay for such license a tax of one hundred dollars ($100.00) in each county in which he shall conduct or carry on such business.

(f) The provisions of this section shall not apply to any person, firm, or corporation who sells or offers for sale books, periodicals, printed music, ice, coal, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, or articles of their own individual manufacture, but shall apply to medicines, drugs, or articles assembled.

(g) The board of county commissioners of any county in this state, upon proper application, may exempt from the annual license tax levied in this section Confederate soldiers, disabled veterans of the Spanish American War, disabled soldiers of the World War, who have been bona fide residents of this state for twelve or more months continuously, and the blind who have been bona fide residents of this state for twelve or more months continuously, widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to peddle within the limits of such county without payment of any license tax to the state.

(h) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the annual license levied by the state. But the board of county commissioners of any county may levy a license tax on the business taxed in this section not in excess of that levied by the state for each unincorporated town or village in the county with a population of one thousand or more within a radius of one mile in which such business is engaged in.

No county, city, or town shall levy any license tax under this section upon the persons so exempted in this section, nor upon drummers selling by wholesale: Provided, this section shall not be construed as repealing any public-local law relating to Mecklenburg County. (1933, c. 445, s. 121.)

§ 7880(52). Peddlers of fruits and vegetables. The tax imposed by this section (as it appeared in the Act of 1931, c. 427, § 121½) is clearly unconstitutional in that it discriminates against and burdens interstate commerce, and equity has jurisdiction to enjoin its enforcement on the ground of avoiding a multiplicity of suits. Gramling v. Maxwell, 52 F. (2d) 256, 258.

§ 7880(53). Contractors and construction companies.—(a) Every person, firm, or corporation who, for a fixed price, commission, fee, or wage, offers or bids to construct within the state of North Carolina any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of ten thousand dollars ($10,000), shall apply for and obtain from the commissioner of revenue an annual state-wide license and shall pay for such license a tax of one hundred dollars ($100.00) at the time of or prior to offering or submitting any bid on any of the above enumerated projects.

(b) In addition to the tax levied in subsection (a) of this section, every person, firm, or corporation who, for a fixed price, commission, fee, or wage, undertakes or executes a contract for the construction, or who superintends the construction of any of the above enumerated projects, shall before or at the time of entering into such projects and/or before undertaking the construction or superintending of such contract, apply for and procure from the commissioner of revenue a state-wide license, and shall pay for such license the following tax:

When the total contract price or estimated cost of such project is over:

$ 5,000	and not more than	$ 10,000....	$ 50.00
10,000	and not more than	50,000....	100.00
50,000	and not more than	100,000....	250.00
100,000	and not more than	250,000....	350.00

250,000	and not more than	500,000....	600.00
500,000	and not more than	750,000....	800.00
750,000	and not more than	1,000,000....	1,000.00
1,000,000	.....		1,250.00

(c) The application for license under subsection (b) of this section shall be made to the commissioner of revenue and shall be accompanied by the affidavit of the applicant, stating the contract price, if known, and if the contract price is not known, his estimate of the entire cost of the said improvement or structure, and if the applicant proposes to construct only a part of said improvement or structure, the contract price, if known, or his estimated cost of the part of the project he proposes to superintend or construct.

In the event the construction of any of the above mentioned improvements or structures shall be divided and let under two or more contracts to the same person, firm, or corporation, the several contracts shall be considered as one contract for the purpose of this act, and the commissioner of revenue shall collect from such person, firm, or corporation the license tax herein imposed as if only one contract had been entered into for the entire improvement or structure.

(d) In the event any person, firm, or corporation has procured a license in one of the lower classes provided for in subsection (b) of this section, and constructs or undertakes to construct or to superintend any of the above mentioned improvements or structures or parts thereof, the completed cost of which is greater than that covered by the license already secured application shall be made to the commissioner of revenue accompanied by the license certificate held by the applicant, which shall be surrendered to the commissioner of revenue, and upon paying the difference between the cost of the license surrendered and the price of the license applied for, the commissioner of revenue shall issue to the applicant the annual state-wide license applied for, showing thereon that it was issued on the surrender of the former license, and payment of the additional tax.

(e) No employee or sub-contractor of any person, firm, or corporation, who or which has paid the tax herein provided for, shall be required to pay the license tax provided for in this section while so employed by such person, firm, or corporation.

(f) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax as a fee for a builder's permit or otherwise not in excess of ten dollars ($10.00) when the license provided for under this section has been paid: Provided, that this subsection shall not be construed to prevent the collection of building, electrical, and plumbing inspection charges by municipalities to cover the actual cost of said inspections.

(g) The tax under this section shall not apply to the business taxed in section 155 of this act. (1933, c. 445, s. 122.)

§ 7880(54). Mercantile agencies.—Every person, firm, or corporation engaged in the regular business of reporting the financial standing of persons, firms, or corporations for compensation shall be deemed a mercantile agency, and shall apply for and procure from the commissioner of revenue a state-wide license for the privilege of transacting such business within this state, and shall pay for such license a tax of five hundred dollars ($500.00), the said tax to be paid by the principal office in the state, and if no such principal office in this state, then by the agent of such mercantile agency operating in this state: Provided, the taxes for the mercantile agency doing special service for not more than one industry shall be $250.00.

(a) Any person representing any mercantile agency which has failed to pay the license tax provided for in this section shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(b) Counties, cities, or towns shall not levy any license tax under this section. (1933, c. 445, s. 123.)

§ 7880(55). Gypsies and fortune tellers.—(a) Every company of gypsies or strolling bands of persons, living in wagons, tents, or otherwise, who or any of whom trade horses, mules, or other things of value, or receive reward for telling or pretending to tell fortunes, shall apply for in advance and procure from the commissioner of revenue a state license for the privilege of transacting such things, and shall pay for such license a tax of five hundred dollars ($500.00) in each county in which they offer to trade horses, mules, or other things of value, or to practice the telling of fortunes or any of their crafts. The amount of such license tax shall be recoverable out of any property belonging to any member of such company.

(b) Any person or persons, other than those mentioned in subsection (a) of this section, receiving rewards for pretending to tell and/or telling fortunes, practicing the art of palmistry, clairvoyance and other crafts of a similar kind, shall apply for in advance and procure from the commissioner of revenue a state license for the privilege of practicing such arts or crafts, and shall pay for such license a tax of two hundred dollars ($200.00) for each county in which they offer to practice their profession or craft.

(c) Any county, city, or town may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 124.)

§ 7880(56). Lightning rod agents.—(a) No manufacturer or dealer, whether person, firm, or corporation, shall sell, or offer for sale in this state any brand of lightning rod, and no agent of such manufacturer or dealer shall sell, or offer for sale, or erect any brand of lightning rod until such brand has been submitted to and approved by the insurance commissioner and a license granted for its sale in this state. The fee for such license, including seal, shall be fifty dollars.

(b) Upon written notice from any manufacturer or dealer licensed under the preceding subsection of the appointment of a suitable person to act as his agent in this state, and upon filing an application for license upon the prescribed form, the insurance commissioner may, if he is satisfied as to the reputation and moral character of such applicant, issue him a license as general agent of such manufacturer or dealer. Said license shall set forth the brand of lightning rod licensed to be sold, and the fee for such license, including seal, shall be fifty dollars.

(c) Such general agent may appoint local agents to represent him in any county in the state by paying to the insurance commissioner a fee of ten dollars ($10.00) for each such county. Upon filing application for license of such local agent on a prescribed form and paying a fee of three dollars ($3.00) for each county in which said applicant is to operate, the insurance commissioner may, if he is satisfied that such applicant is of good repute and moral character, and is a suitable person to act in such capacity, issue him a license to sell and erect any brand of lightning rod approved for sale by the agent in such county applied for.

(d) Each general agent shall submit to the insurance commissioner, semi-annually, on January thirty-first and July thirty-first, upon prescribed forms, a sworn statement of gross receipts from the sale of lightning rods in this state during the preceding six months, and pay a tax thereon of eighty (80) cents on each one hundred dollars ($100.00), such returns to be accompanied by an itemized list showing each sale, the county in which sold, and the agent making the sale.

(e) No county, city, or town shall levy a license or privilege tax exceeding twenty dollars ($20.00) on any dealer having a general office or selling from a receiving point.

(f) Licenses issued under this section are not transferable, are valid for only one person, and revocable by the insurance commissioner for good cause after a hearing.

(g) Every agent licensed under this section shall, upon demand, exhibit his license to any officer of the law or citizen, and any person, firm, or corporation acting without a license or selling or offering for sale any brand of lightning rod not approved by the insurance commissioner, or otherwise violating any of the provisions of this act, shall be punished by a fine of not more than two hundred dollars ($200.00) and/or six months imprisonment for each offense. (1933, c. 445, s. 125.)

§ 7880(57). Hotels.—Every person, firm, or corporation engaged in the operation of any hotel or boarding house in this state shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

(a) For hotels or boarding houses operating on the American plan for rooms in which rates per person per day are:

	Per Room
Less than two dollars	$ .60
Two dollars and less than three dollars	.90
Three dollars and less than four dollars and fifty cents	1.80
Four dollars and fifty cents and less than six dollars	4.20
Six dollars and less than seven dollars and fifty cents	5.40
Seven dollars and fifty cents and less than fifteen dollars	6.00
Over fifteen dollars	7.20

(b) For hotels or rooming houses operating on the European plan for rooms in which the rates per person per day are:

	Per Room
Less than two dollars	$1.25
Two dollars and less than three dollars	3.00
Three dollars and less than four dollars and fifty cents	4.50
Four dollars and fifty cents and less than six dollars	5.50
Six dollars and less than seven dollars and fifty cents	6.50
Seven dollars and fifty cents and less than ten dollars	7.50
Over ten dollars	8.50

(c) The office, dining-room, one parlor, kitchen and two other rooms shall not be counted when calculating the number of rooms in the hotel or boarding house.

(d) Only one-half of the tax levied in this section shall be levied or collected from resort hotels and boarding houses which are open for only six months or less in the year: Provided, that the minimum tax under any schedule in this section shall be $5.00.

(e) The tax provided for in this section shall apply whether the charges are made at daily, weekly, or monthly rates, but shall not apply to boarding houses charging less than twelve dollars per week.

(f) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the amount levied by the state. (1933, c. 445, s. 126.)

§ 7880(57½). Tourist homes.—Every person, firm, or corporation engaging in the business of operating a tourist home, tourist camp, or boarding house advertising for transient patronage, with or without dining-room service, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business and shall pay the following tax:

Homes or camps having five rooms or less	$10.00
Homes or camps having more than five rooms, $2.00 per room.	

For the purpose of this section the sitting-room, dining-room and kitchen and rooms occupied by the owner or lessee of the premises, or members of his family, for his or their personal or private use shall not be counted in determining the number of rooms for the basis of tax.

The taxes levied in this section shall also apply to boarding houses, whether advertising for transient patronage or not, having fifteen or more boarders.

The provisions of sub-section (d) of section 7880(57) shall apply to the taxes levied in this section, upon tourist homes or camps operated seasonably for less than six months of each year.

Counties shall not levy license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the amount levied by the state. (1933, c. 445, s. 126½.)

§ 7880(58). Restaurants.—Every person, firm, or corporation engaged in the business of operating a restaurant, cafe, cafeteria, hotel with dining service on the European plan, drug store, or other place where prepared food is sold, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business. The tax for such license shall be based on the number of persons provided for with

chairs, stools or benches, and shall be $1.00 per person, with a minimum tax of $5.00.

(a) All other stands or places where prepared food is sold as a business, and drug stores, service stations, and other stands or places where prepared sandwiches only are served shall pay a tax of $7.50.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 127.)

§ 7880(59). Cotton compresses.—Every person, firm, or corporation engaged in the business of compressing cotton shall pay an annual license tax, of three hundred dollars ($300.00) on each and every compress.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 128.)

§ 7880(60). Billiard and pool tables, and bowling alleys.—Every person, firm, or corporation who shall rent, maintain, own a building wherein there is a table or tables at which billiards or pool is played, whether operated by slot or otherwise, shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such billiard or pool tables and shall pay for such license a tax for each table, as follows:

Tables measuring not more than 2 feet wide and 4 feet long	$ 5.00
Tables measuring not more than 2½ feet wide and 5 feet long	10.00
Tables measuring not more than 3 feet wide and 6 feet long	15.00
Tables measuring not more than 3½ feet wide and 8 feet long	20.00
Tables measuring more than 3½ feet wide and 8 feet long	25.00

Every person, firm, or corporation who shall rent, maintain, own a building wherein there is a bowling alley or alleys of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such bowling alley or alleys and shall pay for such license a tax of $25.00 for each alley kept or operated.

(a) This section shall not apply to fraternal organizations having a national charter, American Legion Posts, Young Men's Christian Associations, and Young Women's Christian Associations.

(b) The commissioner of revenue shall not issue a license under this section to any person, firm, or corporation to maintain a billiard or pool table or bowling alley outside of the corporate limits of incorporated cities or towns, except with the approval of the board of county commissioners of the county for which the application is made, and all applications for such licenses are hereby required to be filed with such board of county commissioners at least seven days before being acted upon, and notice thereof published in some newspaper published in the county once a week for two weeks, or if no newspaper is published in such county, then posted at the courthouse door and three other public and conspicuous places in the community where the license is to be exercised for two weeks prior to the action of the board of county commissioners thereon.

(c) If the commissioner of revenue shall have issued any such state license to any person, firm, or corporation to operate any billiard or pool tables, bowling alley or alleys in any city or town, the board of aldermen or other governing body of such city or town shall have the right at any time, and notwithstanding the issuance of such state license, to prohibit any billiard or pool tables, bowling alleys, or alleys of like kind within its limits, unless otherwise provided in its charter; and in the event any city or town shall exercise the right to prohibit the keeping and operation of such billiard or pool tables, bowling alley or alleys of like kind, the commissioner of revenue shall refund the proportion of the tax thereof during the time which the right is not allowed to be exercised bears to the time for which the tax is paid.

(d) Counties may levy a license tax on the business taxed under this section upon such billiard or pool tables, bowling alleys as are located outside of incorporated cities or towns, and cities and towns may levy a license tax upon such as are within the city limits, but in neither case shall the license tax so levied be in excess of the tax levied by the state. (1933, c. 445, s. 129.)

§ 7880(61). Slot machines and slot locks.—Every person, firm, or corporation owning, operating or maintaining any place of business, or other place, wherein, or in connection with which is operated or located any slot machine in which is kept any article to be purchased by depositing any coin or thing of value and for which may be had any article of merchandise, or any machine wherein may be seen any picture or heard any music by depositing therein any coin or thing of value, or any slot weighing machine, or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, or any machine for the playing of games or amusement operated by slot wherein is deposited any coin or thing of value, except those enumerated in section 7880(60) shall apply for and procure from the commissioner of revenue a state-wide license for the privilege of operating each and every such machine, and shall pay for such license the following tax:

Any such machine except as hereinafter provided, that requires a deposit of less than five cents	$ 5.00
Five cents and less than ten cents	10.00
Ten cents and not more than twenty cents	20.00
More than twenty cents	30.00

Provided, that weighing machines requiring a deposit of one cent shall require payment of a tax of only $2.50: Provided, further, that any such machine mentioned in this section giving or equipped to give trade checks, tokens, or similar articles or devices, whether redeemable or having any value or not, or whether given in addition to merchandise or not, shall require payment as in the above schedule except the minimum tax on any such machine shall be $10.00. Provided further, that the tax on checker board devices operated by slot machines and requiring deposits of not more than five cents shall be $5.00.

(a) In making application for license under this section, the applicant shall specify the serial

number of the machine for which license is desired. The license shall carry the serial number to correspond with that on the application, and no such license shall be transferable to any other machine. It shall be the duty of the person in whose place of business the machine is operated or located to see that the proper state license is attached to the bottom of the machine before its operation shall commence. Failure to do so shall make such person liable for the additional tax imposed in section 7880(107).

(b) This section shall not apply to any automatic locker used as a depository for parcels, clothing, or luggage, nor to machines owned and operated by any retail merchant in his own place of business for delivering merchandise of the market value of the coin deposited, unless trade checks or tokens, whether or not redeemable or of any value, are given in addition to merchandise, in which event the tax herein provided shall apply; nor shall it apply to slot machines from which drinking cups are delivered at not more than one cent per cup, or to penny food vending machines.

(c) Upon application being made for a license to operate any machine or apparatus under this section, the commissioner of revenue is hereby authorized to presume that the operation of such machine or apparatus is lawful, and when a state license has been issued for the operation thereof, the sum paid for such state license shall not be refunded, notwithstanding that the operation of such machine or apparatus shall afterwards be prohibited.

(d) If any person, firm, or corporation shall fail, neglect or refuse to comply with the terms and provisions of this section, and shall fail to attach the proper state license to any machine or apparatus as herein provided, the commissioner of revenue, or his agents or deputies, shall forthwith seize and remove, or order removed, such machine or machines, and shall hold the same until the provisions of this section have been complied with.

(e) Nothing in this section shall be construed to relieve the owner of any such machine or apparatus of liability for the tax.

(f) Counties may levy a license tax on the business taxed in this section upon slot machines, and cities or towns may levy a tax on such machines within their limits, but in neither case shall the tax so levied exceed the tax levied by the state. (1933, c. 445, s. 130.)

§ 7880(62). Bagatelle tables, merry-go-rounds, etc.—(a) Every person, firm, or corporation that is engaged in the operation of a bagatelle table, merry-go-round or other riding devices, hobby horse, switch-back railway, shooting gallery, swimming pool, skating rink, other amusement devices of a like kind, or a place for other games or play with or without name (unless used solely and exclusively for private amusement or exercise), at a permanent location, shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such objects of amusement, and shall pay for each such subject enumerated the following tax:

In cities or towns of less than 10,000 population	$10.00
In cities or towns of 10,000 population and over	25.00

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 131.)

§ 7880(63). Security dealers.—(a) Every person, firm, or corporation who or which is engaged in the business of dealing in securities as defined in "An act to provide laws governing the sale of stocks, bonds, and other securities in the state of North Carolina," etc., or who or which maintains a place for or engages in the business of buying and/or selling shares of stock in any corporation, bonds, or any other securities on commission or brokerage, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	$ 25.00
In cities or towns of 5,000 and less than 10,000 population	50.00
In cities or towns of 10,000 and less than 15,000 population	100.00
In cities or towns of 15,000 population and less than 25,000	200.00
In cities or towns of 25,000 population and above	300.00

(b) Every dealer, as defined herein, who shall maintain in the state of North Carolina more than one office for dealing in securities, as hereinbefore defined, shall apply for and procure from the commissioner of revenue a license for the privilege of transacting such business at each such office, and shall pay for such license the same tax as hereinbefore fixed.

(c) Every foreign dealer, as dealer is hereinbefore defined, who shall maintain an office in this state, or have a salesman in this state, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business and shall pay for such license the tax hereinbefore imposed.

(d) If such person, firm, or corporation described in subsection (a) of this section maintains and/or operates a leased or private wire and/or ticker service in connection with such business the annual license tax shall be as follows:

In cities and towns of less than 10,000 population	$ 150.00
In cities and towns of 10,000 and less than 15,000 population	250.00
In cities and towns of 15,000 and less than 20,000 population	500.00
In cities and towns of 20,000 to 25,000 population	750.00
In cities and towns of 25,000 or more	1,000.00

(e) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy license tax not in excess of fifty dollars ($50.00). (1933, c. 445, s. 132.)

§ 7880(64). Cotton buyers and sellers on commission.—(1) Every person, firm, or corporation who or which engages in the business of buying and/or selling on commission any cotton, grain, provisions, or other commodities, either for actual, spot, or instant delivery, shall apply for and pro-

cure from the commissioner of revenue a state license for the privilege of transacting such business in this state, and shall pay for such license a tax of fifty dollars ($50.00).

(2) Every person, firm, or corporation who or which engages in the business of buying or selling any cotton, grain, provisions, or other commodities, either for actual, spot, instant, or future delivery, and also maintains and/or operates a private or leased wire and/or ticker service in connection with such business, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business in this state and shall pay for such license the following tax:

In cities and towns of less than 10,000 population	$100.00
In cities and towns of 10,000 and less than 15,000 population	200.00
In cities and owns of 15,000 and less than 25,000 population	400.00
In cities and towns of 25,000 population or more	600.00

Persons, firms, and corporations who pay the tax imposed in subsection (d) of section 7880(63) shall not be required to pay the tax imposed in this subsection.

(3) Every person, firm, or corporation, domestic or foreign, who or which is engaged in the business of selling any cotton, either for actual, spot, instant, or future delivery, in excess of five thousand bales per annum, shall be deemed to be a cotton merchant, shall apply for and obtain from the commissioner of revenue a state-wide license for each office or agency maintained in this state for the sale of cotton and shall pay for each such license the following tax:

In cities and towns of less than 10,000 population	$ 50.00
In cities and towns of 10,000 and less than 15,000 population	100.00
In cities and towns of 15,000 and less than 25,000 population	200.00
In cities and towns of 25,000 population and over	300.00

(4) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars ($50.00). (1933, c. 445, s. 133.)

§ 7880(65). Manufacturers, producers, bottlers, and distributers of soft drinks.—(a) Every person, firm, corporation, or association manufacturing, producing, bottling and/or distributing in bottles or other closed containers soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices or imitations thereof, carbonated, or malted beverages and like preparations, commonly known as soft drinks, shall apply for and obtain from the commissioner of revenue a state license for the privilege of doing business in the state and shall pay for such license the following base tax for each place of business:

Low-Pressure Equipment

Where the machine or the equipment unit used in the manufacture of the above named beverage is a:

36 spouts, or greater capacity, low-pressure filler	$600.00
32 and less than 36 spouts, low-pressure filler	500.00
24 and less than 32 spouts, low-pressure filler	450.00
18 and less than 24 spouts, low-pressure filler	350.00
12 and less than 18 spouts, low-pressure filler	250.00

High-Pressure Equipment

Where the machine or the equipment unit used in the manufacture of the above named beverages is a Royal (8-head), Shields (6-head), Adriance (6-head), or other high-pressure equipment having manufacturer's rating capacity of over sixty bottles per minute, six hundred dollars ($600.00).

Royal (4-head), Adriance (2-head), Shields (2-head), full equipment having manufacturer's rating capacity of over fifty and less than sixty bottles per minute, five hundred dollars ($500.00).

Royal (4-head), Adriance (2-head), Shields (2-head) (full automatic), or other high-pressure equipment having manufacturer's rating capacity of more than forty and less than fifty bottles per minute, four hundred and fifty dollars ($450.00).

Dixie (automatic), Shields (2-head hand feed), Adriance (1-head), Calleson (1-head), Senior (high-pressure), Junior (high-pressure), or Burns or other high-pressure equipment having manufacturer's rating capacity of more than twenty-four bottles and less than forty bottles per minute, one hundred and fifty dollars ($150.00).

Single-head Shields, Modern Bond (power), Baltimore (semi-automatic), and all other machines or equipment having manufacturer's rating capacity of less than twenty-four bottles per minute and all foot-power bottling machines one hundred dollars ($100.00).

Provided, that any bottling machine or equipment unit not herein specifically mentioned shall bear the same tax as a bottling machine or equipment unit of the nearest rated capacity as herein enumerated: Provided, further, that where any person, firm, corporation, or association has within his or its bottling plant or place of manufacture more than one bottling machine or equipment unit, then such person, firm, corporation, or association shall pay the tax as herein specified upon every such bottling machine or equipment unit, whether in actual operation or not.

(b) Every person, firm, corporation, or association distributing, selling at wholesale or jobbing bottled beverages as enumerated in subsection (a) of this section shall pay an annual license tax for the privilege of doing business in this state, as follows:

In cities or towns of 30,000 inhabitants or more	$100.00
In cities or towns of 20,000 inhabitants and less than 30,000 inhabitants	90.00
In cities or towns of 10,000 inhabitants and less than 20,000 inhabitants	80.00
In cities or towns of 5,000 inhabitants and less than 10,000 inhabitants	70.00
In cities or towns of 2,500 inhabitants and less than 5,000 inhabitants	60.00
In rural districts and towns of less than 2,500 inhabitants	50.00

Provided, that where the tax levied under subsection (a) of this section has been paid on any

of the articles, machines, or equipment units enumerated therein, the tax levied under this subsection shall not apply.

The tax levied in this subsection shall not include the right to sell products authorized to be sold under Senate Bill No. 367, enacted at the present session of the general assembly.

(c) Every distributing warehouse selling or supplying to retail stores cereal or carbonated beverages manufactured or bottled within the state but outside of the county in which such cereal or carbonated beverages are manufactured or bottled shall pay one-half of the annual license tax for the privilege of doing business in this state provided for in subsection (b) of this section.

(d) Every distributing warehouse selling or supplying to retail stores cereal or carbonated beverages on which the tax has not been paid under the provisions of subsection (a) of this section shall pay the annual license tax for the privilege of doing business in the state provided in subsection (b) of this section.

(e) Each truck, automobile, or other vehicle coming into this state from another state, and selling and/or delivering carbonated beverages on which the tax has not been paid under the provisions of subsection (a) of this section shall pay an annual license tax, for the privilege of doing business in this state, in the sum of one hundred dollars ($100.00) per truck, automobile, or vehicle. The license secured from the state under this section shall be posted in the cab of the truck, automobile, or vehicle.

(f) No county shall levy a tax on any business taxed under the provisions of this section, nor shall any city or town in which any person, firm, corporation, or association taxed hereunder has its principal place of business levy and collect more than one-fourth of the state tax levied under this section; nor shall any tax be levied or collected by any county, city or town on account of the delivery of the products, beverages, or articles enumerated in subsection (a) or (b) or (c) or (d) of this section when a tax has been paid under any of those sub-sections. (1933, c. 445, s. 134.)

§ 7880(66). Packing houses.—Every person, firm, or corporation engaged in or operating a meat packing house in this state, and every wholesale dealer in meat packing house products, who owns, leases, or rents and operates a cold storage room or warehouse in connection with such wholesale business, shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business in this state, and shall pay for such license the sum of twenty-five dollars ($25.00) for each county in which is located such a packing house or a cold storage room or warehouse, and for each such packing house or cold storage room or warehouse and an additional tax of one-fourth of one per cent of the gross sales of any or all of the packing house products sold from such cold storage room or warehouse by such packing house or wholesale dealer. Reports shall be made to the commissioner of revenue, in such form as he may prescribe, within the first ten days of each month, covering all such gross sales for the previous month, and the additional tax herein levied shall be paid monthly at the time such reports are made.

Every person, firm, or corporation maintaining a cold storage room or warehouse and distributing such products to other stores owned in whole or in part by the distributor for sale at retail shall be deemed a wholesale dealer or distributor in the meaning of this act.

Counties shall not levy any tax on business taxed under this section. (1933, c. 445, s. 135.)

§ 7880(67). Newspaper contests.—Every person, firm, or corporation that conducts contests and offers a prize, prizes, or other compensation to obtain subscriptions to newspapers, magazines, or other periodicals in this state shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such contests, and shall pay for such license the following tax for each such contest:

Monthly, weekly, semi-weekly newspaper, magazine, or other periodical	$ 50.00
Daily newspaper or other daily periodical	200.00

Counties, cities or towns shall not levy any license tax under this section. (1933, c. 445, s. 136.)

§ 7880(68). Persons, firms, or corporations selling certain oils.—(a) Every person, firm, or corporation engaged in the business of selling illuminating or lubricating oil or greases, or benzine, naphtha, gasoline, or other products of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for the same a tax of two dollars and fifty cents ($2.50).

(b) In addition to the tax herein levied under subsection (a) of this section, such person, firm, or corporation shall pay to the commissioner of revenue, on or before the first day of July of each year an annual additional license tax equal to five per cent of the total gross sales for the preceding year or part of the year that the business is so conducted or the privilege so exercised, when the total gross sales of such commodities exceed five thousand dollars ($5,000.00), or pro rata for a part of the year.

(c) The amount of such total gross sales shall be returned to the commissioner of revenue on or before the date specified in subsection (b) of this section by such person, firm, or corporation, verified by the oath of the person making the return, upon such forms and in such detail as may be required by the commissioner of revenue.

(d) Counties shall not levy any license tax on the business taxed under this section; but cities or towns in which there is located an agency, station, or warehouse for the distribution or sale of such commodities enumerated in this section may levy the following license tax:

In incorporated towns and cities of less than 10,000 population	$25.00
In cities and towns of 10,000 population and over	50.00

(e) Any person, firm, or corporation subject to this license tax, and doing business in this state without having paid such license tax, shall be fined one thousand dollars ($1,000.00) and in addition thereto double the tax imposed by this section.

(f) No license or privilege tax, other than the license tax permitted in this section to cities or towns, shall be levied or collected for the privilege of engaging in or doing the business named in this

section from any person, firm, or corporation paying the inspection fees and charges provided for under article fourteen of chapter eighty-four of the consolidated statutes of one thousand nine hundred and nineteen and the amendments thereto, except license taxes levied in section 7880(84). (1933, c. 445, s. 137.)

§ 7880(69). Building and loan associations.—Every building and loan association, domestic or foreign, operating on a mutual or coöperative basis for the purpose of making loans to its members only and of enabling its members to acquire real estate, make improvements thereon, and remove encumbrances therefrom by the payment of money in periodical installments of principal sums and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, shall pay to the insurance commissioner on or before the first day of March of each year the following annual license tax for the privilege of doing business in the state.

(a) A tax of thirteen (13) cents on each one hundred dollars ($100.00) of actual book value of shares of stock issued and outstanding on the thirty-first day of December of the preceding year as shown by reports of such association to the insurance commissioner and approved by such insurance commissioner. The tax levied herein shall be in addition to the license fee required under section 5186, consolidated statutes, and expenses and cost of examination required under section 5190, consolidated statutes. (1933, c. 445, s. 138.)

§ 7880(70). Pressing clubs, dry cleaning plants, and hat blockers.—Every person, firm, or corporation engaged in the business of pressing and/or dry cleaning any articles of clothing, reshaping, cleaning, and/or reblocking any hats shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business and pay for the same the following tax:

In cities or towns of less than 10,000 population—	
Where not more than three persons are employed	$12.50
Where more than three persons are employed	25.00
In cities and towns of 10,000 population and over—	
Where not more than three persons are employed	25.00
Where more than three persons are employed	50.00

Every person, firm, or corporation soliciting pressing and/or cleaning work in any city or town to be done outside of the city wherein said pressing and/or cleaning business is established shall procure from the commissioner of revenue a state license for the privilege of soliciting in said city or town. The soliciting of business for or by any person, firm, or corporation engaged in the pressing and/or cleaning work shall and the same is hereby construed to be engaging in said business, and the person, firm, or corporation soliciting in said city or town shall procure from the revenue commissioner a state license for the privilege of soliciting in said city and town, said tax to be in a sum equal to the amount paid by such establishments actually engaged in such business in said city or town.

(a) This section shall not apply to any bona fide student of any college or university in this state operating such pressing or dry cleaning business at such college or university during the school term of such college or university.

(b) Counties, cities, and towns, respectively, may levy a license tax not in excess of that levied by the state: Provided, that persons soliciting business for services to be performed outside the county a tax may be levied by such county, city or town not in excess of $50.00.

In addition to the annual tax levied in this section, it is hereby required with respect to every such concern herein referred to that with each delivery of articles of clothing or other articles herein referred to and cleaned or otherwise processed as herein referred to there shall be issued a charge ticket, to each of which tickets there shall be affixed a service stamp tax of one cent on all packages on which the charge is one dollar or less, and for packages of more than one dollar, one cent for each dollar or fraction thereof, the amount of such tax to be added to such charge ticket and to be paid for by the customer. The stamps for such purpose are to be made available by the commissioner of revenue and by him sold to pressing and/or cleaning concerns at par and for cash only, as the same may be needed by the pressing and/or cleaning concerns of the state in order to meet the requirements of this act. It shall be unlawful for any person, firm, or corporation engaged in such business to make any delivery except in compliance with this section, and the violation of any of the provisions hereof is hereby declared to be a misdemeanor. (1933, c. 445, s. 139.)

§ 7880(71). Barber shops. — Every person, firm, or corporation engaged in the business of conducting a barber shop, beauty shop or parlor, or other shop of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

For each barber chair maintained in a barber shop	$2.50
For each barber, manicurist, cosmetologist, beautician, or operator in beauty parlor, or other shop of like kind in any office, hotel, or other place	5.00

Counties shall not levy a license tax under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 140.)

§ 7880(72). Shoeshine parlors.—Every person, firm, or corporation who or which maintains or operates a place of business wherein is operated a shoeshine parlor, stand, or chair or other device shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

Where the number of chairs or operators are not more than two	$ 5.00
Where the number of chairs or operators are more than two and less than six	10.00

Where the number of chairs or operators are six and less than ten 20.00
Where the number of chairs or operators are ten or more 30.00

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 141.)

§ 7880(73). Tobacco warehouses.—Every person, firm, or corporation engaged in the business of operating a warehouse for the sale of leaf tobacco upon commission shall, on or before the first day of June of each year, apply for and obtain from the commissioner of revenue a state license for the privilege of operating such warehouse for the next ensuing year, and shall pay for such license the following tax:

For a warehouse in which was sold during the preceding year ending the first day of June—

Less than 1,000,000 pounds.....$ 50.00
1,000,000 pounds and less than 2,000,000.... 75.00
2,000,000 pounds and less than 3,000,000.... 175.00
3,000,000 pounds and less than 4,000,000.... 250.00
4,000,000 pounds and less than 5,000,000.... 400.00
5,000,000 pounds and less than 6,000,000.... 500.00
For all in excess of 6,000,000 pounds $500.00 and six cents per thousand pounds.

(a) If a new warehouse not in operation the previous year, the person, firm, or corporation operating such warehouse may procure a license by payment of the minimum tax provided in the foregoing schedule, and at the close of the season for sales of tobacco in such warehouse shall furnish the commissioner of revenue a statement of the number of pounds of tobacco sold in such warehouse for the current year and shall pay an additional license tax for the current year based on such total volume of sales in accordance with the schedule in this section.

If an old warehouse with new or changed ownership or management, the tax shall be paid according to the schedule in this section based on the sales during the preceding year, just as if the old ownership or management had continued its operation.

(b) The commissioner of agriculture shall certify to the commissioner of revenue, on or before the first day of June of each year, the name of each person, firm or corporation operating a tobacco warehouse in each county in the state, together with the number of pounds of leaf tobacco sold by such person, firm, or corporation in each warehouse for the preceding year, ending on the first day of June of the current year.

(c) The commissioner of agriculture shall report to the solicitor of any judicial district in which a tobacco warehouse is located which the owner or operator thereof shall have failed to make a report of the leaf tobacco sold in such warehouse during the preceding year, ending the first day of June of the current year, and such solicitor shall prosecute any such person, firm, or corporation under the provisions of this section.

(d) The tax levied in this section shall be based on official reports of each tobacco warehouse to the state department of agriculture showing amount of sales for each warehouse for the previous year.

(e) The commissioner of revenue or his deputies shall have the right, and are hereby authorized, to examine the books and records of any person, firm, or corporation operating such warehouse, for the purpose of verifying the reports made and of ascertaining the number of pounds of leaf tobacco sold during the preceding year or other years in such warehouse.

(f) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties provided for in this act, be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars ($500.00) and/or imprisoned in the discretion of the court.

(g) No county shall levy any license tax on the business taxed under this section. Cities and towns may levy a tax not in excess of fifty dollars ($50.00) for each warehouse. (1933, c. 445, s. 142.)

§ 7880(75). Newsdealers on trains. — Every person, firm, or corporation engaged in the business of selling books, magazines, papers, fruits, confections, or other articles of merchandise on railroad trains or other common carriers in this state shall apply for and obtain a state license from the commissioner of revenue for the privilege of conducting such business, and shall pay for such license the following tax:

Where such person, firm, or corporation operates on railroads or other common carriers on—

Less than 300 miles.....$ 250.00
Three hundred and less than 500 miles.... 500.00
Five hundred miles or more..... 1,000.00

This section shall not apply to any railroad company engaged in selling such articles to passengers on its trains and paying the tax upon the retail sales of merchandise levied in Article V, Schedule E, of this act.

Counties, cities, and towns shall not levy any license tax on the business taxed under this section. (1933, c. 445, s. 143.)

§ 7880(76). Soda fountains, soft drink stands. —Every person, firm, or corporation engaged in the business of operating a soda fountain or soft drink stand shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

(a) On soda fountains—

On each carbonated draft arm of each soda fountain a tax of $10.00.

On each stand at which soft drinks are sold, the same not being strictly a soda fountain, and on each place of business where bottled carbonated drinks are sold at retail, the license tax shall be five dollars ($5.00).

In addition to the license tax levied in this section, the tax shall be paid upon the gross sales at the rate of tax levied in Article V, Schedule E, of this act upon the retail sales of merchandise.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the tax levied by the state. (1933, c. 445, s. 144.)

§ 7880(77). Dealers in pistols, etc.—Every person, firm, or corporation who is engaged in the business of keeping in stock, selling, and/or

offering for sale any of the articles or commodities enumerated in this section shall apply for and obtain a state license from the commissioner of revenue for the privilege of conducting such business, and shall pay for such license the following tax:

For pistols ..... $ 50.00
For bowie knives, dirks, daggers, slingshots, leaded canes, iron or metallic knuckles, or articles of like kind..... 200.00
For blank-cartridge pistols..... 200.00

(a) If such person, firm, or corporation deal only in metallic cartridges, the tax shall be ten dollars ($10.00).

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 145.)

§ 7880(78). Dealers in cap pistols, fireworks, etc.—Every person, firm, or corporation engaged in the business of selling, or offering for sale, cap pistols, fire-crackers, fireworks, or other articles of like kind, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for the same a tax of one hundred dollars ($100.00).

Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of twice that levied by the state. (1933, c. 445, s. 146.)

§ 7880(79). Pianos, organs, victrolas, records, radios, accessories.—Every person, firm, or corporation engaged in the business of selling, offering or ordering for sale any of the articles hereinafter enumerated in this section shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

For pianos and/or organs, graphophones, victrolas, or other instruments using discs or cylinder records, and/or the sale of records for either or all of these instruments, radios or radio accessories, an annual license tax of ten dollars ($10.00), and in addition thereto, a tax upon the gross retail sales of any or all of such articles at the rate of tax levied in Article V, Schedule E, of this act upon the gross retail sales to be reported and paid in the amount provided in Article V of this act upon the retail sales of merchandise.

(e) Any person, firm, or corporation applying for and obtaining a license under this section may employ traveling representatives or agents, but such traveling agent or representative shall obtain from the commissioner of revenue a duplicate license of such person, firm, or corporation who or which he represents, and pay for the same a tax of ten dollars ($10.00).

Each duplicate copy so issued is to contain the name of the agent to whom it is issued, the instrument to be sold, and the same shall not be transferable.

Representatives or agents holding such duplicate copy of such license are licensed thereby to sell or offer for sale only the instrument and/or article authorized to be sold by the person, firm, or corporation holding the original license, and such license shall be good and valid in any county in the state.

(f) Every person, firm, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and shall pay a penalty of two hundred and fifty dollars ($250.00), and in addition thereto double the state license tax levied in this section for the then current year.

(g) Counties shall not levy any license tax on the business taxed under this section, except that the county in which the agent or representative holding a duplicate copy of the license aforesaid [resides] may impose a license tax not in excess of five dollars ($5.00). Cities or towns may levy a license tax on the business taxed under this section not in excess of one-half of that levied by the state. (1933, c. 445, s. 147.)

§ 7880(80). Installment paper dealers.—(a) Every person, firm, or corporation, foreign or domestic, engaged in the business of dealing in, buying, and/or discounting installment paper, notes, bonds, contracts, evidences of debt and/or other securities, where a lien is reserved or taken upon personal property located in this state to secure the payment of such obligations, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business or for the purchasing of such obligations in this state, and shall pay for such license an annual tax of one hundred dollars ($100.00).

(b) In addition to the tax levied in sub-section (a) of this section, such person, firm, or corporation shall submit to the revenue commissioner quarterly on the first day of January, April, July, and October of each year, upon forms prescribed by the said commissioner, a full, accurate, and complete statement, verified by the officer, agent, or person making such statement, of the total face value of the installment paper, notes, bonds, contracts, evidences of debt, and/or other securities described in this section dealt in, bought and/or discounted within the preceding three months and, at the same time, shall pay a tax of one-fourth of one per cent of the face value of such obligations dealt in, bought and/or discounted for such period.

(c) If any person, firm, or corporation, foreign or domestic, shall deal in, buy and/or discount any such paper, notes, bonds, contracts, evidences of debt and/or other securities described in this section without applying for and obtaining a license for the privilege of engaging in such business or dealing in such obligations, or shall fail, refuse, or neglect to pay the taxes levied in this section, such obligations shall not be recoverable or the collection thereof enforceable at law or by suit in equity in any of the courts of this state until and when the license taxes prescribed in this section have been paid, together with any and all penalties prescribed in this act for the nonpayment of taxes.

(d) This section shall not apply to corporations organized under the state or national banking laws.

(e) Counties, cities, and towns shall not levy any license tax on the business taxed under this section. (1933, c. 445, s. 148.)

§ 7880(81). Tobacco and cigarette retailers and jobbers.—Every person, firm, or corporation engaged in the business of retailing and/or jobbing cigarettes, cigars, chewing tobacco, smoking to-

bacco, snuff, or any other tobacco products shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax:

Outside of incorporated cities or towns and cities or towns of less than 1,000 population	$ 5.00
Cities or towns of 1,000 population and over	10.00

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 149.)

§ 7880(82). Laundries.—Every person, firm, or corporation engaged in the business of operating a laundry, including wet or damp wash laundries, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	$ 12.50
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 15,000 population	37.50
In cities or towns of 15,000 and less than 20,000 population	50.00
In cities or towns of 20,000 and less than 25,000 population	60.00
In cities or towns of 25,000 and less than 30,000 population	72.50
In cities or towns of 30,000 and less than 35,000 population	85.00
In cities or towns of 35,000 and less than 40,000 population	100.00
In cities or towns of 40,000 and less than 45,000 population	112.50
In cities or towns of 45,000 population and above	125.00

Provided, however, that any laundry or other concern herein referred to where the work is performed exclusively by hand or home-size machines only, and where not more than four persons are employed including the owners, the license tax shall be one-third of the amount stipulated in the foregoing schedule.

Every person, firm, or corporation soliciting laundry work, or supplying or renting clean linen or towels, in any city or town, to be done outside of the city wherein said laundry or linen supply or towel supply business is established, shall procure from the commissioner of revenue a state license for the privilege of soliciting in said city or town.

The soliciting of business for or by any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels shall and the same is hereby construed to be engaging in said business, and the person, firm, or corporation soliciting in said city or town shall procure from the revenue commissioner a state license for the privilege of soliciting in said city or town, said tax to be in a sum equal to the amount paid by such establishments actually engaged in such business in said city or town.

Counties, cities and towns, respectively, may levy a license tax not in excess of that levied by the state: Provided, that persons soliciting business for services to be performed outside the county a tax may be levied by such county, city, or town not in excess of $50.00 upon such persons.

In addition to the annual tax levied in this section, it is hereby required with respect to every laundry, including wet or damp wash laundries, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels, that with each delivery of laundry for which there is a charge made there shall be issued a charge ticket, to each of which tickets there shall be affixed a service stamp tax of one cent on all packages on which the charge is one dollar or less, and for packages of more than one dollar one cent for each dollar or fraction thereof, the amount of such tax to be added to such charge ticket and to be paid for by the customer. The stamps for such purpose are to be made available by the commissioner of revenue and by him sold to said laundries at par and for cash only, as the same may be needed by the laundries of the state in order to meet the requirements of this act. It shall be unlawful for any person, firm, or corporation engaged in such business to make any delivery except in compliance with this section, and the violation of any of the provisions hereof is hereby declared to be a misdemeanor. (1933, c. 445, s. 150.)

§ 7880(83). Outdoor advertising.—(a) Every person, firm, or corporation who or which is engaged in the business of outdoor advertising by placing, erecting, or maintaining one or more outdoor advertising signs or structures of any nature by means of sign boards, poster boards, or printed bulletins, or other printed or painted matter, or any other outdoor advertising devices, erected upon the grounds, walls, or roofs of buildings, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for said license as follows:

For posting or erecting 50 or more signs or panels	$100.00
For posting or erecting 20 to 50 signs or panels	50.00
For posting or erecting less than 20 signs or panels, one dollar for each sign or panel.	

And in addition thereto the following license tax for each city, town, or other place in which such signboards, poster boards, painted bulletins, and other painted or printed matter or other outdoor advertising devices are maintained in cities and towns of:

Less than 500 population	$ 5.00
500 to 999 population	7.50
1,000 to 1,999 population	10.00
2,000 to 2,999 population	15.00
3,000 to 3,999 population	20.00
4,000 to 4,999 population	25.00
5,000 to 9,999 population	40,00
10,000 to 14,999 population	50.00
15,000 to 19,999 population	75.00
20,000 to 24,999 population	100.00
25,000 to 34,999 population	125.00
35,000 population and over	150.00
In each county outside of cities and towns..	25.00

Every person, firm, or corporation who or which places, erects, or maintains one or more outdoor advertising signs, structures, boards, bulletins, or devices as specified in this section shall be deemed to be engaged in the business of outdoor advertising, but when the applicant intends to advertise his own business exclusively by the erection or placement of such out-door advertising signs, structures, boards, bulletins, or devices as specified in this section, he may be licensed to do so upon the payment annually of one dollar ($1.00) for each sign up to five hundred (500) in number and for five hundred (500) or more, the sum of five hundred ($500.00) dollars for the privilege in lieu of all other taxation as provided in this section, except such further taxation as may be imposed upon him by cities or towns, acting under the power to levy not in excess of one-half of that specified in paragraph two of sub-section (a) of this section.

(b) Every person, firm, or corporation shall show in its application for the state license herein provided for the name of each incorporated city or town within which, and the county within which, it is maintaining or proposes to maintain said signboards, poster boards, painted bulletins or other painted or printed signs or other outdoor advertising devices within the state of North Carolina.

(c) It shall be unlawful for any person engaged in business of outdoor advertising to in any manner paint, print, place, post, tack, or affix or cause to be painted, printed, placed, posted, tacked, or affixed any sign or other printed or painted advertisement on or to any stone, tree, fence, stump, pole, building, or other object which is upon the property of another without first obtaining the written consent of such owner thereof, and any person, firm, or corporation who in any manner paints, prints, places, posts, tacks, or affixes or causes to be painted, printed, posted, placed, tacked, or affixed such advertisement on the property of another except as herein provided shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars ($50.00) or imprisonment of thirty days: Provided, that the provisions of this section shall not apply to legal notices.

(d) It shall be unlawful for any person, firm, or corporation to paint, print, place, post, tack, or affix any advertising matter within the limits of the right of way of public highways of the state without permission of the state highway commission, or upon the streets of the incorporated towns of the state without permission of the governing authority, and if and when signs of any nature are placed without permission within the highways of the state or within the streets of incorporated towns it shall be the duty of the highway commission or other administrative body or other governing authorities of the cities and towns of said state, to remove said advertising matter therefrom.

(e) Every person, firm, or corporation owning or maintaining signboards, poster boards, printed bulletins, or other outdoor advertisements of any nature within this state shall have imprinted on the same the name of such person, firm, or corporation in sufficient size to be plainly visible and permanently affixed thereto.

(f) A license shall not be granted any person, firm, or corporation having his or its principal place of business outside the state for the display of any advertising of any nature whatsoever, designed or intended for the display of advertising matter, until such person, firm, or corporation shall have furnished and filed with the commissioner of revenue a surety bond to the state, approved by him, in such sum as he may fix, not exceeding five thousand dollars ($5,000), conditioned that such licensee shall fulfill all requirements of law, and lawful regulations and orders of said commissioner of revenue, relative to the display of advertisements. Such surety bond shall remain in full force and effect as long as any obligations of such licensee to the state shall remain unsatisfied.

(g) No advertising or other signs specified in this act shall be erected on the highway right of way so as to obstruct the vision or otherwise to increase the hazard, and all signs upon the highways shall be placed in a manner to be approved by the said highway commission.

(h) Any person, firm, or corporation who or which shall fail, refuse, or neglect to comply with the terms and provisions of this section, and who shall fail to pay the tax herein provided for within thirty days after the same shall become due, the commissioner of revenue or his agents or deputies shall forthwith seize and remove, or order removed, the structures erected by such delinquent person, firm, or corporation, and shall sell the same either at public or private sale, and apply the proceeds thereof to the payment of the delinquent taxes and the penalty due and unpaid.

(i) The said highway commission or other governing body having jurisdiction over the roads and highways of the state, and the governing authorities of cities and towns, and its agents and employees, and the board of county commissioners of the various counties in said state, shall remove or cause to be removed any advertisement, sign, or other matter displayed contrary to the provisions of this section.

(j) Every person, firm, or corporation who violates any of the provisions of this section shall be guilty of a misdemeanor, and in addition to the license tax and penalties provided for herein shall be fined not more than one hundred dollars ($100.00) for each sign so displayed, or imprisoned, in the discretion of the court.

(k) Counties shall not levy any license tax under this section, but cities and towns may levy license tax not in excess of one-half of that levied by the state under paragraph 2 of section (a).

(l) Every person, firm, or corporation applying for a license as required in subsection (a) hereof shall state in his application the number of advertisements, advertising spaces or devices he proposes to erect and/or maintain. Upon issuing license to any applicant the commissioner of revenue shall issue a metal tag for each of the advertisements, advertising spaces or devices mentioned in the application, to be valid for one year from its issuance and showing on its face the date of its expiration. Such metal tag shall be attached by the advertiser in such way as to be plainly visible to the front of each advertisement, advertising space or device erected, maintained or used by him.

(m) Any advertisement, advertising space or

device not bearing such a tag or bearing a tag which shows that it has expired, or otherwise erected or maintained contrary to the provisions of this section, shall be deemed a public nuisance and shall be summarily removed or destroyed by the state highway department.

(n) The following signs and announcements are exempted from the provisions of this section: signs upon property advertising the business conducted thereon; notice or advertisements erected by public authority or required by law in any legal proceedings; any signs containing sixty (60) square feet or less bearing an announcement of any town or city advertising itself, provided the same is maintained at public expense. (1933, c. 445, s. 151.)

§ 7880(83½). Loan agencies or brokers.—Every person, firm or corporation engaged in the regular business of making loans or lending money, and accepting liens on, or contracts of assignment of, salaries or wages, or any part thereof, or other security or evidences of debt for repayment of such loans in installment payments or otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of $500.00.

(a) Nothing in this section shall be construed to apply to banks, industrial banks, trust companies, building and loan associations, nor installment paper dealers defined and taxed under other sections of this act, nor shall it apply to business of negotiating loans on real estate as described in section 7880(38), nor to pawnbrokers lending or advancing money on specific articles of personal property. It shall apply to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of such loan and interest an assignment of wages, or an assignment of wages with power of attorney to collect same, or other order or chattel mortgage or bill of sale upon household or kitchen furniture.

(b) At the time of making any such loan, the person, or officer of the firm or corporation making same, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, and the time in which said amount is to be paid, and the rate of interest and discount agreed upon.

(c) Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a misdemeanor and in addition to double the tax due shall be fined not less than $250.00 and/or imprisoned in the discretion of the court. No such loan shall be collectible at law in the courts of this state in any case where the person making such loan has failed to pay the tax levied herein, and/or otherwise complied with the provisions of this section.

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of $100.00. (1933, c. 445, s. 152.)

§ 7880(84). Automobile and motorcycle dealers and service stations.—

1. Automotive Service Stations.—Every person, firm, or corporation engaged in the business of servicing, storing, painting, or upholstering of motor vehicles, trailers, or semi-trailers, or engaged in the business of retail selling and/or delivering of any tires, tools, batteries, electrical equipment, automotive accessories, including radios designed for exclusive use in automobiles, or supplies, motor fuels and/or lubricants, or any of such commodities, in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	30.00
In cities or towns of 20,000 and less than 30,000 population	40.00
In cities or towns of 30,000 or more	50.00

(a) In rural sections where a service station is operated the tax for such license shall be five dollars ($5.00) per pump.

(b) The tax levied in this section shall in no case be less than five dollars ($5.00) per pump.

(c) No additional license tax under this subsection shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this subsection.

(d) The tax imposed in section 7880(52) shall not apply to the sale of gasoline to dealers for resale.

(e) Counties, cities, and towns may levy a license tax on each place of business located therein under this subsection not in excess of one-fourth of that levied by the state.

2. Motorcycle Dealers.—Every person, firm, or corporation, foreign or domestic, engaged in the business of buying, selling, distributing, and/or exchanging motorcycles or motorcycle supplies or any of such commodities in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	25.00

In cities or towns of 20,000 and less than 30,000 population 30.00
In cities or towns of 30,000 population or more 40.00

(a) A motorcycle dealer paying the license tax under this subsection may buy, sell and/or deal in bicycles and bicycle supplies without the payment of an additional license tax.

(b) No additional license tax shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this subsection.

(c) No motorcycle dealer shall be issued dealer's tags until the license tax levied under this subsection has been paid.

(d) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one-fourth of that levied by the state, with the exception that the minimum tax may be as much as ten dollars ($10.00).

3. Automotive Equipment and Supply Dealers at Wholesale.—Every person, firm, or corporation engaged in the business of buying, selling, distributing, exchanging, and/or delivering automotive accessories, including radios designed for exclusive use in automobiles, parts, tires, tools, batteries, and/or other automotive equipment or supplies or any of such commodities at wholesale shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 2,500 population .....$ 25.00
In cities or towns of 2,500 and less than 5,000 population 30.00
In cities or towns of 5,000 and less than 10,000 population 50.00
In cities or towns of 10,000 and less than 20,000 population 75.00
In cities or towns of 20,000 and less than 30,000 population 100.00
In cities or towns of 30,000 population or more 125.00

Provided, any person, firm, or corporation engaged in the business enumerated in this section and having no located place of business, but selling to retail dealers by use of some form of vehicle, shall obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each vehicle used in carrying on such business fifty dollars ($50.00).

(a) For the purpose of this section the word "wholesale" shall apply to manufacturers, jobbers, and such others who sell to retail dealers, except manufacturers of batteries.

(b) No additional license tax under this subsection shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this subsection.

(c) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one-half of that levied by the state, with the exception that the minimum tax may be as much as ten dollars ($10.00).

4. Motor Vehicle Dealers.—Every person, firm, or corporation engaged in the business of buying, selling, distributing, servicing, storing and/or exchanging motor vehicles, trailers, semi-trailers, tires, tools, batteries, electrical equipment, lubricants, and/or automotive equipment, including radios designed for exclusive use in automobiles, and supplies in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 1,000 population.....$ 25.00
In cities or towns of 1,000 and less than 2,500 population 50.00
In cities or towns of 2,500 and less than 5,000 population 75.00
In cities or towns of 5,000 and less than 10,000 population 110.00
In cities or towns of 10,000 and less than 20,000 population 140.00
In cities or towns of 20,000 and less than 30,000 population 175.00
In cities or towns of 30,000 or more..... 200.00

Provided, that persons, firms, or corporations dealing in second-hand or used motor vehicles exclusively shall be liable for only one-half the tax as set out in the foregoing schedule.

(a) Any person, firm, or corporation who or which deals exclusively in motor fuels and lubricants, and has paid the license tax levied under subsection (1) of this section, shall not be subject to any license tax under subsections (2), (3), and (4) of this section.

(b) No additional license tax under this subsection shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this subsection.

(c) No dealer shall be issued dealer's tags until the license tax levied under this subsection has been paid.

(d) Premises on which used cars are stored or sold when owned or operated by a licensed new-car dealer under the same name shall not be deemed as a separate place of business when conducted within the corporate limits of any city or town in which such new-car business is conducted.

(e) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one-fourth of that levied by the state, with the exception that the minimum tax may be as much as twenty dollars ($20.00). (1933, c. 445, s. 153.)

§ 7880(85). Emigrant and employment agents.—(a) Every person, firm, or corporation, either as agent or principal, engaged in soliciting, hiring, and/or contracting with laborers, male or female, in this state for employment out of the state shall apply for and obtain from the commissioner of revenue a state license for each county for the privilege of engaging in such business, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in which such business is carried on.

(b) Every person, firm, or corporation who or which engages in the business of securing em-

ployment for a person or persons and charging therefor a fee, commission, or other compensation shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state and shall pay for such license the following annual tax for each location in which such business is carried on:

In unincorporated communities and in cities and towns of less than 2,500 population	$100.00
In cities or towns of 2,500 and less than 5,000 population	200.00
In cities or towns of 5,000 and less than 10,000 population	300.00
In cities or towns of 10,000 or more population	500.00

Provided, that this section shall not apply to any employment agency operated by the federal government, the state, any county or municipality, or whose sole business is procuring employees for work in the production and harvesting of farm crops within the state.

(c) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor and fined, in addition to other penalties, not less than one thousand dollars ($1,000.00) and/or imprisoned in the discretion of the court.

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 154.)

§ 7880(86). Plumbers, heating contractors, and electricians.—Every person, firm, or corporation engaged in the business of a plumber, installing plumbing fixtures, piping or equipment, steam or gas fitter, or installing hot-air heating systems, or installing electrical equipment or offering to perform such services, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business and shall pay for such license the following tax based on population:

Municipalities of less than two thousand population	$10.00
Municipalities of more than two thousand and less than five thousand population	15.00
Municipalities of more than five thousand and less than ten thousand population	20.00
Municipalities of more than ten thousand and less than twenty thousand population	25.00
Municipalities of more than twenty thousand and less than thirty thousand population	30.00
Municipalities of more than thirty thousand and less than forty thousand population	35.00
Municipalities of more than forty thousand and less than fifty thousand population	40.00
Municipalities of more than fifty thousand population	50.00

Provided, that when a licensed plumber employs only one additional person the tax shall be one-half.

Provided, that any person, firm, or corporation engaged exclusively in the business enumerated in and licensed under this section shall not be liable for the tax provided in section 7880(53). All plumbing inspectors in cities or towns shall make a monthly report to the commissioner of revenue of all installation or repair permits issued for plumbing or heating.

(a) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 155.)

§ 7880(87). Trading stamps.—Every person, firm, or corporation engaged in the business of issuing, selling, and/or delivering trading stamps, checks, receipts, certificates, tokens, or other similar devices to persons, firms, or corporations engaged in trade or business, with the understanding or agreement, expressed or implied, that the same shall be presented or given by the latter to their patrons as a discount, bonus, premium, or as an inducement to secure trade or patronage, and that the person, firm, or corporation selling and/or delivering the same will give to the persons presenting or promising the same, money or other thing of value, or any commission or preference in any way on account of the possession or presentation thereof, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license a tax of two hundred dollars ($200.00).

(a) This section shall not be construed to apply to a manufacturer or to a merchant who sells the goods, wares, or merchandise of such manufacturer, offering to present to the purchaser or customer a gift of certain value as an inducement to purchase such goods, wares, or merchandise.

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1933, c. 445, s. 156.)

§ 7880(88). Process tax.—(a) In every indictment or criminal proceeding finally disposed of in the superior court, the party convicted or adjudged to pay the cost shall pay a tax of two dollars ($2.00). Provided, that this tax shall not be levied in cases where the county is required to pay the cost.

(b) At the time of suing out the summons in a civil action in the superior court or other court of record, or the docketing of an appeal from a lower court in the superior court, the plaintiff or the appellant shall pay a tax of two dollars: Provided, that this tax shall not be demanded of any plaintiff or appellant who has been duly authorized to sue or appeal in forma pauperis; but when, in cases brought or in appeals in forma pauperis the costs are taxed against the defendants, the tax shall be included in the bill of costs: Provided, that this tax shall not be levied in cases where the county is required to pay the cost, and in tax foreclosure suits.

(c) No county, city, or town, or other municipal corporation shall be required to pay said tax upon the institution of any action brought by it, but whenever such plaintiff shall recover in such action, the said tax shall be included in the bill of costs, and collected from the defendant.

(d) In any case where the party has paid the aforesaid cost in a civil action and shall recover in the final decision of the case, then such cost so paid by him shall be retaxed against the losing party adjudged to pay the cost, plus five per cent which the clerk of the superior court may retain for his services, and this shall be received by him whether he is serving on a salary or a fee basis,

and if on a salary basis, shall be in addition to such salary.

(e) This section shall not apply to cases in the jurisdiction of magistrates' courts, whether civil or criminal, except upon appeals to the superior court from the judgment of such magistrate; and shall not apply for the docketing in the superior court of a transcript of a judgment rendered in any other court, whether of record or not.

(f) The tax provided for in this section shall be levied and assessed by the clerk of the superior or other court in all cases described herein; and on the first Monday in January, April, July, and October of each and every year he shall make to the commissioner of revenue a sworn statement and report in detail, showing the number of the case on the docket, the name of the plaintiff or appellant in civil action or the defendant in criminal action, and accompany such report and statement with the amount of such taxes collected or [that] should have been collected by him in the preceding three months. (1933, c. 445, s. 157.)

§ 7880(89). Morris plan or industrial banks.—Every person, firm, or corporation engaged in the business of operating a Morris Plan or industrial bank in this state shall apply for and obtain a state license from the commissioner of revenue for the privilege of engaging in such business, and shall pay for such license the following tax:

When the total resources as of December thirty-first of the previous calendar year are—

Less than $250,000	$ 75.00
$ 250,000 and less than $ 500,000	150.00
500,000 and less than 1,000,000	225.00
1,000,000 and less than 2,000,000	300.00
2,000,000 and less than 5,000,000	450.00
5,000,000 and over	600.00

(a) Any such bank that shall begin business during the current tax year applicable to this article, the tax shall be calculated on the total resources at the beginning of business.

(b) Every person, firm, or corporation engaged in the business of soliciting loans or deposits for a Morris Plan or other industrial bank not licensed as such by the state for the county in which such person, firm, or corporation solicits business, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license a tax of fifty dollars ($50.00) per annum, in each county in which business is solicited.

(c) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half (½) of that levied by the state. (1933, c. 445, s. 158.)

§ 7880(90). Marriage license.—There shall be levied on all marriage licenses a state license tax of three dollars on each such license, which shall be assessed and collected by the register of deeds of the county in which the license is issued.

The register of deeds of each county shall submit to the commissioner of revenue, on the first Monday in January, April, July, and October of each year, a sworn statement or report in detail, showing the names of the persons to whom such license has been issued during the preceding three months, and accompany such sworn report or statement with the amount of such state taxes collected by him or that should have been collected by him in the preceding three months.

The counties may levy one dollar ($1.00) upon such marriage license, to be assessed and collected by the register of deeds and accounted for to the county treasurer at the same time and in the same manner as he accounts to the commissioner of revenue for the state tax. (1933, c. 445, s. 159.)

§ 7880(91). Marble yards.—Every person, firm, or corporation engaged in the business of manufacturing, erecting, jobbing, selling, or offering for sale monuments, marble tablets, gravestones or articles of like kind, or, if a non-resident, selling and erecting monuments, marble tablets, or gravestones, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license the following tax:

In unincorporated communities and cities or towns of less than 2,000 population	$15.00
In cities or towns of 2,000 and less than 5,000 population	25.00
In cities or towns of 5,000 and less than 10,000 population	30.00
In cities or towns of 10,000 and less than 15,000 population	40.00
In cities or towns of 15,000 and less than 20,000 population	50.00
In cities or towns of 20,000 and less than 25,000 population	60.00
In cities or towns of 25,000 population or over	70.00

In addition to the license tax levied in this section an additional tax shall be paid by the person, firm, or corporation engaged in the business taxed under this section of ten dollars ($10.00) for each traveling salesman employed.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns in which the principal office or plant of any such business is located may levy a license tax not in excess of that levied by the state. (1933, c. 445, s. 160.)

§ 7880(92). Manufacturers of ice cream.—(a) Every person, firm, or corporation engaged in the business of manufacturing or distributing ice cream at wholesale shall apply for and obtain from the commissioner of revenue a state license for each factory or place where manufactured and/or stored for distribution, and shall pay an annual state license tax of fifty dollars ($50.00) and an additional tax of one-half cent for each gallon manufactured, sold, and/or distributed. Reports shall be made to the commissioner of revenue in such form as he may prescribe within the first ten days of each month covering all such gross sales for the previous month, and the additional tax herein levied shall be paid monthly at the time such reports are made.

(b) For the purpose of this section the words ice cream shall apply to ice cream, frozen custards, sherbets, water ices and/or similar frozen products.

(c) Every retail dealer selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in subsection (a) of this section shall pay an annual

license tax for the privilege of doing business in this state of ten dollars ($10.00).

(d) Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-fourth of the above. (1933, c. 445, s. 161.)

§ 7880(93). Branch or chain stores.—Every person, firm, or corporation engaged in the business of operating or maintaining in this state, under the same general management, supervision, or ownership, two or more stores or mercantile establishments where goods, wares, and/or merchandise is sold or offered for sale at wholesale or retail shall be deemed a branch or chain store operator, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license a tax according to the following schedule:

On each and every such store operated in this state in excess of one:

For not more than four additional stores, for each store	$ 50.00
For five additional stores and not more than eight, for each additional store	60.00
For nine additional stores and not more than twelve, for each additional store	70.00
For thirteen additional stores and not more than sixteen, for each additional store	80.00
For seventeen additional stores and not more than twenty, for each additional store	90.00
For twenty-one additional stores and not more than thirty, for each additional store	100.00
For thirty-one additional stores and not more than fifty, for each additional store	125.00
For fifty-one additional stores and over, for each additional store	150.00

The term chain store as used in this section shall include stores operated under separate charters of incorporation, if there is common ownership of a majority of stock in such separately incorporated companies and/or if there is similarity of name of such separately incorporated companies, and/or if such separately incorporated companies have the benefit in whole or in part of group purchase of merchandise or of common management.

(a) This section shall not apply to the business taxed under section 7880(84).

(b) Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars ($50.00) for each chain store located in such city or town. For the purpose of ascertaining the particular unit in each chain of stores not subject to taxation by the state under this section, and therefore not liable for city license tax, the particular store in which the principal office of the chain in this state is located shall be designated as the unit in the chain not subject to this tax.

This section shall not include the operation of a single department in a department store, where the business is conducted in the general name of the department store and not in the name of the single department. (1933, c. 445, s. 162, c. 543.)

§ 7880(94). Patent rights and formulas.—Every person, firm, or corporation engaged in the business of selling or offering for sale any patent right or formula shall apply in advance and obtain from the commissioner of revenue a separate state license for each and every county in this state where such patent right or formula is to be sold or offered for sale, and shall pay for each such separate license a tax of ten dollars ($10.00).

Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the taxes levied by the state. (1933, c. 445, s. 163.)

§ 7880(97). Tax on seals affixed by officers.—Whenever the seal of the state, of the state treasurer, the secretary of state, or of any other public officer required by law to keep a seal (not including clerks of courts, notaries public, and other county officers) shall be affixed to any paper, the tax, to be paid by the party applying for same, shall be as follows:

For the great seal of the state, on any commission	$2.50
For the great seal of the state on warrants of extradition for fugitives from justice from other states, the same fee and seal tax shall be collected from the state making the requisition which is charged in this state for like service	
For the seal of the state department, to be collected by the secretary of state	1.00
For the seal of the state treasurer, to be collected by him	1.00

For a scroll, when used in the absence of a seal, the tax shall be on the scroll, and the same as for the seal.

(a) All officers shall keep a true, full, and accurate account of the number of times any of such seals or scrolls are used, and shall deliver to the governor of the state a sworn statement thereof.

(b) All seals affixed for the use of any county of the state, used on the commissions of officers of the national guard, and any other public officer not having a salary, under the pension law, or under any process of court, shall be exempt from taxation, or to any commission issued by the governor to any person in the employ of the state, or to be employed by the state. (1933, c. 445, s. 166.)

Administrative Provisions

§ 7880(98). Unlawful to engage in any taxable business without license.—When a license tax is required by law, and whenever the general assembly shall levy a license tax on any business, trade, employment, or profession, or for doing any act, it shall be unlawful for any person, firm, or corporation without a license to engage in such business, trade, employment, profession, or do the act; and when such tax is imposed it shall be lawful to grant a license for the business, trade, employment, or for doing the act; and no person, firm, or corporation shall be allowed the privilege of exercising any business, trade, employment, profession, or the doing of any act taxed in this schedule throughout the state under one license, except under a state-wide license. (1933, c. 445, s. 181.)

§ 7880(99). Manner of obtaining license from the commissioner of revenue.—(a) Every person,

firm, or corporation desiring to obtain a state license for the privilege of engaging in any business, trade, employment, profession, or for the doing of any act for which a state license is required shall, unless otherwise provided by law, make application therefor in writing to the commissioner of revenue, in which shall be stated the county, city, or town and the definite place therein where the business, trade, employment, or profession is to be exercised; the name and resident address of the applicant, whether the applicant is an individual, firm, or corporation; the nature of the business, trade, employment, or profession; number of years applicant has prosecuted such business, trade, employment, or profession in this state, and such other information as may be required by the commissioner of revenue. The application shall be accompanied by the license tax prescribed in this article.

(b) Upon receipt of the application for a state license with the tax prescribed by this article, the commissioner of revenue, if satisfied of its correctness, shall issue a state license to the applicant to engage in the business, trade, employment, or profession in the name of and at the place set out in the application. No license issued by the commissioner of revenue shall be valid or have any legal effect unless and until the tax prescribed by law has been paid, and the fact of such shall appear on the face of the license. (1933, c. 445, s. 182.)

§ 7880(100). Persons, firms, and corporations engaged in more than one business to pay tax on each.—Where any person, firm, or corporation is engaged in more than one business, trade, employment, or profession which is made under the provisions of this article subject to state license taxes, such persons, firms, or corporations shall pay the license tax prescribed in this article for each separate business, trade, employment, or profession. (1933, c. 445, s. 183.)

§ 7880(101). Effect of change in name of firm.—No change in the name of the firm nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered as commencing business; but if any one or more of the partners remain in the firm, the business shall be regarded as continuing. (1933, c. 445, s. 184.)

§ 7880(102). License may be changed when place of business changed.—When a person, firm, or corporation has obtained a state license to engage in any business, trade, employment, or profession at any definite location in a county, and desires to remove to another location in the same county, the commissioner of revenue may, upon proper application, grant such person, firm, or corporation permission to make such move, and may endorse upon the state license his approval of change in location. (1933, c. 445, s. 185.)

§ 7880(103). Property used in a licensed business not exempt from taxation.—A state license, issued under any of the provisions of this article, shall not be construed to exempt from other forms of taxation the property employed in such licensed business, trade, employment, or profession. (1933, c. 445, s. 186.)

§ 7880(104). Engaging in business without a license.—(a) All state license taxes under this article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of June each year, or at the date of engaging in such business, trade, employment, and/or profession, or doing the act.

(b) If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, but the fine shall not be less than twenty per cent of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum of the amount of the state license tax which was due and payable on the first day of June of the current year, in addition to the state license tax imposed by this article, for each and every thirty days that such state license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the commissioner of revenue and paid with the state license tax, and shall become a part of the state license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.

The provisions of this section shall apply to taxes levied by the counties of the state under authority of this act in the same manner and to the same extent as they apply to taxes levied by the state.

(c) If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or do any act requiring a state license under this article without such state license, he or it shall be guilty of a misdemeanor, and shall be fined and/or imprisoned in the discretion of the court; and if such failure, neglect, or refusal to apply for and obtain such state license be continued, such person, firm, or corporation shall pay an additional tax of ten per centum of the amount of such state license tax which was due and payable at the commencement of the business, trade, employment, or profession, or doing of the act, in addition to the state license tax imposed by this article, for each and every thirty (30) days that such state license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the commissioner of revenue and paid with the state license tax, and shall become a part of the state license tax.

(d) If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the commissioner of revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of

other taxes; and if sufficient property is not found, the said sheriff shall swear out a warrant before some justice of the peace or recorder in the county for the violation of the provisions of this act and as provided in this act. (1933, c. 445, s. 187.)

§ 7880(105). Each day's continuance in business without a state license a separate offense.—Each and every day that any person, firm, or corporation shall continue to exercise or engage in any business, trade, employment, or profession, or do any act in violation of the provisions of this article, shall be and constitute a distinct and a separate offense. (1933, c. 445, s. 188.)

§ 7880(106). Duties of commissioner of revenue.—(a) Except where otherwise provided, the commissioner of revenue shall be the duly authorized agent of this state for the issuing of all state licenses and the collection of all license taxes under this article, and it shall be his duty and the duty of his deputies to make diligent inquiry to ascertain whether all persons, firms, or corporations in the various counties of the state who are taxable under the provisions of this article have applied for the state license and paid the tax thereon levied.

(b) The commissioner of revenue shall continually keep in his possession a sufficient supply of blank state license certificates, with corresponding sheets and duplicate consecutively numbered; shall stamp across each state license certificate that is to be good and valid in each and every county of the state the words "state-wide license," and shall stamp or imprint on each and every license certificate the words, "issued by the commissioner of revenue."

(c) Neither the commissioner of revenue nor any of his deputies shall issue any duplicate license unless expressly authorized to do so by a provision of this article or schedule, and unless the original license is lost or has become so mutilated as to be illegible, and in such cases the commissioner of revenue is authorized to issue a duplicate certificate for which the tax is paid, and shall stamp upon its face "duplicate." (1933, c. 445, s. 189.)

§ 7880(107). License to be procured before beginning business.—(a) Every person, firm, or corporation engaging in any business, trade, and/or profession, or doing any act for which a state license is required and a tax is to be paid under the provisions of this article or schedule, shall, annually in advance, on or before the first day of June of each year, or before engaging in such business, trade, and/or profession, or doing the act, apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, trade, and/or profession, or doing such act, and shall pay the tax levied therefor.

(b) Licenses shall be kept posted where business is carried on. No person, firm, or corporation shall engage in any business, trade, and/or profession, or do the act for which a state license is required in this article or schedule without having such state license posted conspicuously at the place where such business, trade, and/or profession is carried on; and if the business, trade, and/or profession is such that such license cannot be so posted, then the itinerant licensee shall have such license required by this article or schedule in his actual possession at the time of carrying on such business, trade, and/or profession, or doing the act named in this article or schedule, or a duplicate thereof.

(c) Any person, firm, or corporation failing, neglecting, or refusing to have the state license required under this article or schedule posted conspicuously at the place of business for which the license was obtained, or to have the same or a duplicate thereof in actual possession if an itinerant, shall pay an additional tax of twenty-five dollars ($25.00) for each and every separate offense, and each day's failure, neglect, or refusal shall constitute a separate offense. (1933, c. 445, s. 190.)

§ 7880(108). Sheriff and city clerk to report.—The sheriff of each county and the clerk of the board of aldermen of each city or town in the state shall, on or before the fifteenth day of June of each year, make a report to the commissioner of revenue, containing the names and the business, trade, and/or profession of every person, firm, or corporation in his county or city who or which is required to apply for and obtain a state license under the provisions of this article or schedule, and upon such forms as shall be provided and in such detail as may be required by the commissioner of revenue. (1933, c. 445, s. 191.)

Art. 3. Schedule C. Franchise Tax

§ 7880(109). Defining taxes in this article.—The taxes levied and assessed in this article or schedule shall be listed and paid as specifically herein provided, and shall be for the privilege of engaging in or carrying on the business or doing the act named; and if a corporation, shall be a tax for the continuance of its corporate rights and privileges granted under its charter, if incorporated in this state, or by reason of any act of domestication, if incorporated in another state, and shall be subject to other regulations mentioned in this act. (1933, c. 445, s. 201.)

§ 7880(110). Franchise or privilege tax on railroads.—Every person, firm, or corporation, domestic or foreign, owning and/or operating a railroad in this state, shall, in addition to all other taxes levied and assessed in the state, pay to the commissioner of revenue a franchise, license, or privilege tax for the privilege of engaging in such railroad business within the state of North Carolina, as follows:

(a) Such person, firm, or corporation shall furnish to the commissioner of revenue a copy of the report and statement required to be made to the state board of assessment in the machinery act and such other and further information as the commissioner of revenue may require; and upon such report and statement the commissioner of revenue shall ascertain the value upon which the tax to be paid by such person, firm, or corporation as a license or privilege tax shall be calculated.

(b) The value upon which such calculations shall be made by the commissioner of revenue, and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the state of North Carolina shall be the value of the total property, tangible and in-

tangible, in this state, for each such railroad company as assessed for ad valorem taxation for the year in which such report is made.

(c) The franchise or privilege tax which every such railroad company shall pay for the privilege of carrying on or engaging in intrastate commerce within this state shall be ninety one-hundreths of one per cent of the value ascertained as above by the commissioner of revenue, and tax shall be due and payable on or before the first day of October of each year, or within thirty days after notice of statement of such tax.

(d) If any such person, firm, or corporation shall fail, neglect, or refuse to make and deliver the report and statement provided for in this section, the commissioner of revenue shall estimate, from the reports and records on file in the department of the state board of assessment, the value upon which the amount of tax due by such company under this section shall be computed, shall levy and assess the franchise or privilege tax upon such estimate, and shall collect the same, together with such penalties herein imposed for failure to make the report and statement.

(e) It is the intention of this section to levy upon railroad companies a license, franchise, or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within this state, and not a part of interstate commerce; that the tax provided for in this section is not intended to be a tax for the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this state.

(f) No county, city, or town shall levy a license, franchise, or privilege tax on the business taxed under this section. (1933, c. 445, s. 202.)

§ 7880(111). Franchise or privilege tax, electric light, power, street railway, gas, water, sewerage, and other similar public-service companies not otherwise taxed.—(1) Every person, firm or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or gas, owning and/or operating a water or public sewerage system, or owning and/or operating a street railway, including automobile busses, for the transportation of freight or passengers for hire shall annually, on or before the first day of August, make and deliver to the commissioner of revenue, upon such forms and blanks as required by him, a report and statement, verified by the oath of the officer or agent making such report and statement, containing the following information as of the first day of July of the current calendar year:

(a) The total gross earnings for the year ending the thirtieth day of June of the next preceding fiscal year from such business within and without this state.

(b) The total gross earnings for the same period from such business within this state.

(c) The total gross earnings from the commodities described in this section sold to any other person, firm, or corporation engaged in selling such commodities to the public, and actually sold by such vendee, to the public, together with the name of such vendee, with the amount sold and the price paid by each.

(d) The total amount and price paid for such commodities purchased from another public-service company doing business in this state, and the name or names of the vendor.

(e) The exemption in subsection 1 of this section of municipal corporations from the tax levied in this section shall not apply to the sale of electric current by any municipality for resale, or to the distribution of electric current by any such municipality within the boundaries of another municipality.

(2) From the total gross earnings within this state there shall be deducted the gross earnings reported in sub-section (1) (c) of this section: Provided, that this deduction shall not be allowed where the sale of such commodities were made to any person, firm, or corporation or municipality which is exempted by law from the payment of the tax herein imposed upon such commodities when sold or used by it.

(3) Such person, firm, or corporation shall pay an annual franchise or privilege tax of six per cent of the total gross earnings derived from such business within this state, after the deductions allowed as herein provided for, which said tax shall be for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report herein provided for. Provided, the tax upon privately owned water companies shall be four (4) per cent of the total gross earnings derived from such business within this state.

(4) The report herein required of gross sales within and without the state, to be made in each year on the first day of August, shall include the total gross earnings for the previous year ending June thirtieth of all properties owned and operated by the reporting company on the first day of August in each year, whether operated by it for the previous annual period, or whether intermediately acquired by purchase or lease, it being the intent and purpose of this section to measure the amount of privilege or franchise tax in each year with reference to the gross earnings of the property operated for the previous year and to fix liability for the payment of the tax on the owner, operator or lessor on the first day of August in each year.

(5) Companies taxed under this section shall not be required to pay the franchise tax imposed by section 7880(118) or 7880(119), and no county shall impose a franchise or privilege tax upon the business taxed under this section, and no city or town shall impose a greater privilege or license tax upon such companies than that which is now imposed by any such city or town. (1933, c. 445, s. 203.)

§ 7880(112). Franchise or privilege tax on Pullman, sleeping, chair, and dining cars.—Every person, firm, or corporation, domestic or foreign, engaged in the business of operating any Pullman, sleeping, chair, dining, or other similar cars where an extra charge is made for the use or occupancy of same shall annually, on or before the first day of August, make and deliver to the commissioner of revenue, upon such forms, blanks, and in such manner as may be required by him, a full, accu-

rate, and true report and statement, verified by the oath of the officer or agent making such report, of the total gross earnings of such person, firm, or corporation from such business wholly within this state during the year ending the thirtieth day of June of the current year.

(1) Such person, firm, or corporation shall pay an annual privilege, license, or franchise tax of ten (10) per cent of the total gross earnings derived from such business wholly within this state; which said tax shall be paid for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report and statements herein provided for.

(2) No county, city, or town shall impose any franchise or privilege tax on the business taxed under this section. (1933, c. 445, s. 204.)

§ 7880(113). Franchise or privilege tax on express companies.—Every person, firm, or corporation, domestic or foreign, engaged in this state in the business of an express company as defined in this act, shall, in addition to a copy of the report required in the machinery act, annually, on or before the first day of August, make and deliver to the commissioner of revenue a report and statement, verified by the oath of the officer or agent making such report or statement, containing the following information as of the first day of July of the current year:

(a) The average amount of invested capital employed within and without the state in such business during the year ending the thirtieth day of June of the current year.

(b) The total net income earned on such invested capital from such business during the year ending the thirtieth day of June of the current year.

(c) The total number of miles of railroad lines or other common carriers over which such express companies operate in this state during the year ending the thirtieth day of June of the current year.

(1) Every such person, firm, or corporation, domestic or foreign, engaged in such express business within this state shall pay to the commissioner of revenue, at the time of filing the report required in this section, the following annual franchise or privilege tax for the privilege of engaging in such express business within this state:

Where the net income on the average capital invested during the year ending the thirtieth day of June of the current year is six per cent or less, eighteen dollars ($18.00) per mile of railroad lines.

More than six per cent and less than eight per cent, twenty-one dollars ($21.00) per mile of railroad lines.

Eight per cent and over, twenty-five dollars ($25.00) per mile of railroad lines operated over.

(2) Every such person, firm, or corporation, domestic or foreign, who or which engages in such business without having had previous earnings upon which to levy the franchise or privilege tax, shall report to the commissioner at the time of beginning business in this state and pay for such privilege of engaging in business in this state a tax of seven dollars and fifty cents ($7.50) per mile of the railroad lines operated over or proposed to operate over.

(3) Counties shall not levy a franchise, privilege, or license tax on the business taxed under this section, and municipalities may levy an annual franchise, privilege, or license tax on such express companies for the privilege of doing business within the municipal limits as follows:

Municipalities of less than 500 population	$ 5.00
Municipalities of 500 and less than 1,000 population	10.00
Municipalities of 1,000 and less than 5,000 population	20.00
Municipalities of 5,000 and less than 10,000 population	30.00
Municipalities of 10,000 and less than 20,000 population	50.00
Municipalities of 20,000 and over	75.00

(1933, c. 445, s. 205.)

§ 7880(114). Franchise or privilege tax—telegraph companies.—Every person, firm, or corporation, domestic or foreign, engaged in operating the apparatus necessary to communication by telegraph between points within this state shall annually, on or before the first day of August, furnish the commissioner of revenue a copy of the report and statement required to be filed with the state board of assessment in the machinery act; and at the same time such report and statement is filed with the commissioner of revenue shall pay to him for the privilege of engaging in such business within the state an annual franchise or privilege tax of seven dollars ($7.00) per mile of line of poles or conduits owned and/or operated by such persons, firms, or corporations in this state.

(a) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce or upon any business transacted by the federal government.

(b) Counties shall not levy a franchise, privilege, or license tax on the business taxable under this section, and municipalities may levy the following license tax:

Less than 5,000 population	$10.00
5,000 and less than 10,000 population	15.00
10,000 and less than 20,000 population	20.00
20,000 population and over	50.00

(1933, c. 445, s. 206.)

§ 7880(115). Franchise or privilege tax—telephone companies.—Every person, firm, or corporation, domestic or foreign, owning and/or operating a telephone business for the transmission of messages and/or conversations to, from, through, in, or across this state, shall, within thirty days after the first day of January, April, July, and October of each year, make a quarterly return, verified by the oath of the officer or agent making such return, to the commissioner of revenue, showing the total amount of gross earnings of such telephone company for the three months ending the last day of the month immediately preceding such return, and pay the license or privilege tax herein imposed at the time of making such return.

(a) An annual franchise or privilege tax of six per cent (6%), payable quarterly, on the gross earnings of such telephone company, is herein imposed for the privilege of engaging in such business within this state. Such gross earnings shall include all rentals, other similar charges, and all tolls received from business which both origi-

nates and terminates in the state of North Carolina, whether such business in the course of transmission goes outside of this state or not, in the proportion that the pole mileage of such company in the state bears to the pole mileage in another state through which the message is transmitted, deducting the tolls received from official business of the United States: Provided, that such telephone companies whose records show their gross earnings within this state upon a basis other than the pole mileage proportion may, with the approval of the commissioner of revenue, make return of their gross earnings upon such other basis: Provided further, where any city or town in this state has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such telephone company, and is now collecting and receiving therefor a revenue or tax not exceeding one per cent of such revenues, the amount so paid by such operating company, upon being certified by the treasurer of such municipality to the commissioner of revenue, shall be from time to time credited by the department of revenue to such telephone company upon the tax imposed by the state under this section of this act.

(b) Any such person, firm, or corporation, domestic or foreign, who or which fails, neglects, or refuses to make the return, and/or pay the tax at the time provided for in this section shall pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall not be less than two dollars ($2.00) in any case, and shall be added to the tax, together with the interest accrued, and shall become an integral part of the tax.

(c) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce.

(d) Counties, cities, and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section. (1933, c. 445, s. 207.)

§ 7880(116). Franchise or privilege tax—insurance companies.—Every person, firm, or corporation, domestic or foreign, which contracts on his, their, or its account to issue any policies for or agreements for life, fire, marine, surety, guaranty, fidelity, employers' liability, liability, credit, health, accident, livestock, plate glass, tornado, automobile, automatic sprinkler, burglary, steam boiler, and all other forms of insurance shall apply for and obtain from the insurance commissioner a state license for the privilege of engaging in such business within this state, and shall pay for such state license the following tax:

(1) The annual license or privilege tax, due and payable on or before the first day of April of each year, shall be for each such license issued to:

An insurance rate-making company or association	$350.00
A life insurance company or association	250.00
A fire insurance company or association of companies operating a separate or distinct plant of agencies	200.00
An accident or health insurance company or association	200.00
A marine insurance company or association	200.00
A fidelity or surety company or association	200.00
A plate glass insurance company or association	200.00
A boiler insurance company or association	200.00
A foreign mutual insurance company or association	200.00
A domestic farmers' mutual insurance company or association	10.00
A fraternal order	25.00
A bond, investment, dividend, guaranty, registry, title guaranty, credit, fidelity, liability, or debenture company or association	200.00
All other insurance companies or associations except domestic mutual burial associations	200.00

(a) When the paid-in capital stock and/or surplus of a life insurance company does not exceed one hundred thousand dollars ($100,000.00) the license tax levied in sub-section (1) shall be one-half the amount named.

(2) Any foreign mutual fire insurance company or association which insures only factories or mills or property connected with such factories or mills may be licensed to transact such business in this state by filing with the insurance commissioner a satisfactory statement of its financial condition and such other information as he may require: a copy of its charter; a certificate of compliance with the laws of its home state, and the appointment of the insurance commissioner of this state as its attorney or agent to accept service. For such license it shall pay to the insurance commissioner, on or before the first day of April of each year, or before the beginning of business in this state, an annual department license fee of twenty-five dollars ($25.00) and an annual fee of twenty dollars ($20.00) for filing its annual statement.

(3) Every such person, firm, or corporation, domestic or foreign, engaged in the business hereinbefore described in this section, shall by its general agent, president, or secretary, within the first thirty days of January and July of each year, file with the insurance commissioner of this state a full, accurate, and correct report and statement, verified by the oath of such general agent or president, secretary, or some officer at the home or head office of the company or association in this country, of the total gross premium receipts derived from such insurance business from the residents of this state, or on property located therein, during the preceding six months of the previous calendar year, and at the time of making such report and statement shall, except as hereinafter provided, pay to the insurance commissioner, in addition to other license taxes imposed in this section, a license or privilege tax for the privilege of engaging in such business in this state, a license tax of two and one-half per cent (2½%) upon the amount of such gross premium receipts, with no deduction for dividends, whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any deduction except for return premiums or return assessments. The rate of tax on pre-

miums for liability under the workmen's compensation act for all insurance companies collecting such premiums shall be four per cent (4%) on all premiums collected in this state on such liability insurance, and a corresponding rate of tax shall be collected from self-insurers: Provided, if any general agent shall file with the insurance commissioner a sworn statement showing that one-fifth of the entire assets of his company are invested and are maintained in any of the following securities or property, to-wit: bonds of this state or any county, city, town, or school district of this state, or in loans to citizens or corporations or organizations of this state, then such tax shall be three-fourths per centum of such gross premium receipts: Provided, that the provisions herein as to tax and premium receipts shall not apply to domestic farmers' mutual fire insurance companies, nor to fraternal orders or societies that do not operate for a profit and do not issue policies on any persons except its members.

(4) Every special or district agent, manager or organizer, general agent, local canvassing agent, resident or non-resident adjuster, or non-resident broker, representing any company referred to in this section, shall on or before the first day of April of each year, apply for and obtain from the insurance commissioner a license for the privilege of engaging in such business in this state, and shall pay for such license for each company represented the following annual tax:

Special or district agent, manager, or organizer (including seal)	$ 5.00
General agent	6.00
Local or canvassing agent (including seal)	2.50
Resident fire insurance adjuster	2.00
Non-resident fire insurance adjuster	5.00
Non-resident broker	10.00

But any such company having assets invested and maintained in this state as provided in subsection three of this section shall pay the following license fees for

Special agent (including seal)	$2.50
Local canvassing agent (including seal)	1.00

Any person not licensed as an insurance agent on April first, one thousand nine hundred and thirty-three, and applying for license thereafter shall pay an examination fee of ten dollars ($10.00), to be paid to the insurance commissioner as other license fees and taxes. Provided, agents for domestic fire insurance companies operating in not more than two counties shall not be required to take an examination and pay the examination fee.

In the event a license issued under this subsection is lost or destroyed, the insurance commissioner, for a fee of fifty cents (50c.), may certify to its issuance, giving number, date and form, which may be used by the original party named thereon in lieu of the said original license. There shall be no charge for the seal affixed to such certificate of said license.

(5) Any person, firm, or corporation, domestic or foreign, exchanging reciprocal or inter-insurance contracts as provided herein, shall pay through their attorneys an annual license fee, due and payable on the first day of April of each year, of two hundred dollars ($200.00) and two and one-half per cent (2½%) of the gross premium deposits, and also all other regular fees prescribed by law, to be reported, assessed, and paid as other gross premium taxes provided for in this section: Provided, the tax on workmen's compensation insurance premiums shall be the same as that fixed in subsection three (3) of this act.

(6) Companies paying the tax levied in this section shall not be liable for franchise tax on their capital stock, and no county, city or town shall be allowed to impose any additional tax, license or fee, other than ad valorem taxes, upon any insurance company or association paying the tax levied in this section. The license fees and taxes imposed in this section shall be paid to the insurance commissioner. Subsidiary corporations of parent companies domesticated and operating in this state and paying the tax levied in this section, if all of the capital stock of such subsidiary companies (except directors' qualifying shares) is owned by the parent company, and if the business of such subsidiary company is limited to the liquidation or salvaging of liability or loss of parent company in connection with loans made or guaranteed or used as collateral for bonds guaranteed by the parent company, shall be included within the exemption herein provided, if said parent companies shall pay franchise tax upon the book value of the capital stock of said subsidiary corporation equal to $1.50 per thousand dollars of said book value. (1933, c. 445, s. 208.)

§ 7880(118). Franchise tax—domestic corporations.—Every domestic corporation, except as otherwise provided in this article or schedule, doing business for a profit and organized under the laws of this state as of April 1, shall annually, on or before the first day of July, make and deliver to the commissioner of revenue, in such form as he may prescribe, a full, accurate, and complete report and statement, verified by the oath of the president, vice-president, secretary or general manager, containing the following facts and information as shown by the books and records of the corporation as of the close of its last calendar or fiscal year:

(1) Report to contain:

(a) Name of corporation.

(b) Location of its principal office.

(c) Name of the president, secretary, treasurer, and members of the board of directors, with postoffice address of each, and, if requested by the commissioner of revenue, the name and postoffice address of each stockholder, with the number of shares owned by each.

(d) Date of the annual election of officers.

(e) The amount of authorized capital stock, the number of shares and the par value of each share.

(f) The amount of capital stock prescribed, the amount issued and outstanding, the amount paid up, and the amount of surplus and undivided profits.

(g) The number of shares of capital stock as to classes, issued and outstanding, and the par value of each share, and if no par value, then the book value.

(h) The nature and kind of business in which engaged, and its place or places of business.

(i) A comparative balance sheet, as at the beginning and close of the last calendar or fiscal year.

(j) Such other and further information as may be required by the commissioner of revenue.

(2) Upon the filing of the report and statement provided for in this section the commissioner of revenue shall on or before the first day of August of each year, or as soon thereafter as practicable, determine the amount of the issued and outstanding capital stock, surplus, and the undivided profits as shown by the report of each such domestic corporation, which in no case shall be less than the assessed value of all the property of such domestic corporation in this state for the year in which report and statement is made: Provided, that if the capital used or invested in the business or enterprise of said corporation includes borrowed capital in excess of the capital stock, surplus and undivided profits of such corporation, such excess of borrowed capital shall be added to the capital stock, surplus and undivided profits as a part thereof as the basis for computing the franchise tax under this section and determining the extent of the use of its franchise in this state. Provided further, that in determining borrowed capital excess the average borrowed capital and capital stock, surplus and undivided profits shall be used. After ascertaining and determining the amount of the capital stock, surplus, and undivided profits, as herein provided, the commissioner of revenue shall levy and assess a franchise tax for the privilege of carrying on, doing business, and/or the continuance of its charter within the state, on each and every such corporation at the rate of one dollar and fifty cents ($1.50) for each one thousand dollars ($1,000.00) of the determined amount of its capital stock, surplus, and undivided profits; and such tax shall not be less than ten dollars ($10.00) in any case, and shall be paid to the commissioner of revenue on or before the first day of October of each year, or within thirty days after notice of statement of such tax.

(3) Counties, cities, and towns shall not levy a franchise tax on the corporations taxed under this section. (1933, c. 445, s. 210.)

§ 7880(119). Franchise tax—foreign corporations.—Every foreign corporation doing business in this state and owning or using any part or all of its capital or plant in this state as of April 1, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall annually, on or before the first day of July, make and deliver to the commissioner of revenue, in such form as he may prescribe, a full, accurate, and complete report and statement, verified by the oath of the president, vice-president, secretary, treasurer, superintendent, or managing agent in this state, containing the following facts and information as shown by the books and records of the corporation as of the close of its last calendar or fiscal year:

(1) Report to contain:

(a) Name of the corporation and under the laws of what state or county organized.

(b) Location of principal office.

(c) Names of the president, secretary, treasurer, and members of the board of directors, with the postoffice address of each.

(d) Date of the annual election of officers.

(e) Amount of authorized capital stock, number of shares in which divided, and the par value of each share.

(f) The amount of capital stock subscribed, the amount issued and outstanding, the amount paid up, and the amount of surplus and undivided profits.

(g) Number of shares of capital stock, as to classes, issued and outstanding, the par value of each share, and if no par value, then the book value.

(h) The nature and kind of business in which the company is engaged and its place or places of business, both within and without the state.

(i) The name and location of its office or offices in this state, and the names and addresses of the officers or agents of the corporation in charge of its business in this state.

(j) The value of all the real estate and tangible personal property, owned and used by the corporation within and without the state, and where located; and the value of all such property, owned and used by the corporation within the state, and where located.

(k) The gross earnings of the corporation within and without the state for the last fiscal year ended prior to the first day of April of the then current year.

(l) The gross earnings of the corporation within the state for the last fiscal year ended prior to the first day of April of the then current year.

(m) If the principal business of a company in this state is manufacturing or any form of collecting, assembling, or processing goods and materials within this state, the report shall show the cost of manufacturing, collecting, assembling, or processing within this state during the previous calendar year and the total cost of manufacturing, collecting, assembling, or processing within and without the state during the previous calendar year, the cost of manufacturing within and without the state to be determined in accordance with the rules set out in section 7880(128).

(n) If the principal business of a company in this state is the sale, distributing, dealing in, or use of tangible personal property within this state, the report shall show the total sales made through or by offices, agencies, or branches located in North Carolina during the previous calendar year and the total sales of such corporation during the previous calendar year.

(o) If a company deriving profits principally from the holding or sale of intangible property, such proportion as its gross receipts in this state during the income year is to its gross receipts for such year within and without the state.

(p) Comparative balance sheet as at the beginning and close of the last calendar or fiscal year.

(q) Such other and further information as may be required by the commissioner of revenue.

(2) Franchise tax assessed.

Upon the filing of the report and statement required in this section the commissioner of revenue, from the facts so reported and any other facts within his knowledge, shall, on or before the first day of August of each year or as soon thereafter as practicable, fix and determine the amount of the issued and outstanding capital stock, surplus and undivided profits of each such foreign corporation, as shown by the books of such cor-

poration, less the book value of good will, including brands, except such brands as have been purchased by the corporation: Provided, that if the capital used or invested in the business or enterprise of said corporation includes borrowed capital in excess of the capital stock, surplus and undivided profits of such corporation, such excess of borrowed capital shall be added to the capital stock, surplus and undivided profits as a part thereof as the basis for computing the franchise tax under this section and determining the extent of the use of its franchise in this state: Provided further, that in determining borrowed capital excess the average borrowed capital and capital stock, surplus and undivided profits shall be used.

After so ascertaining and so determining the amount of the capital stock, surplus, and undivided profits, as prescribed in this section, the commissioner of revenue shall allocate to the business of each such foreign corporation doing business in this state a proportion of the total capital stock, surplus and undivided profits of each such foreign corporation in accordance with the general rules set out in section 7880(128) as the basis for allocating the proportion of the total net income of each such foreign corporation taxable as income earned in this state. The proportion of the total capital, surplus and undivided profits of each such foreign corporation allocated in accordance with the general rules of allocation set out in section 7880(128) shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such foreign corporation used in connection with its business in this state and liable for an annual franchise tax under this section. After determining the amount of the capital, surplus and undivided profits of each such foreign corporation allocated for franchise tax under this section, the commissioner of revenue shall annually levy and assess, for the privilege of exercising its franchise, doing business and continuing business within this state, a franchise tax at the rate of one dollar and fifty cents ($1.50) for each one thousand dollars ($1,000.00) of the amount of capital stock, surplus and undivided profits so allocated to the business of each such foreign corporation in this state. The proportion of capital stock, surplus and undivided profits allocated for franchise taxation under this section shall in no case be less than the total assessed value of real and personal property in this state of each such foreign corporation. The tax imposed in this section shall in no case be less than ten dollars ($10.00), and shall be paid to the commissioner of revenue on or before the first day of October of each year, or within thirty days after notice of statement of such tax.

(3) Counties, cities, and towns shall not levy a franchise tax on the corporation taxed under this section. (1933, c. 445, s. 211.)

§ 7880(120). Notice of franchise tax assessed.—After fixing and determining the amount of the issued and outstanding capital stock, surplus, and undivided profits of a domestic corporation, and the proportion of the issued and outstanding capital stock, surplus, and undivided profits of a foreign corporation, as prescribed in sections 7880(118) and 7880(119), the commissioner of revenue shall notify such corporation of the amount fixed and determined by him as a basis for the franchise tax, which such corporation may, at any time within ten days after such notice, apply to the commissioner of revenue for a review and reassessment who shall hear such evidence as may be offered and make such findings as the case may demand. (1933, c. 445, s. 212.)

§ 7880(121). Corporations not mentioned.—None of the provisions in sections 7880(118) and 7880(119) shall apply to fraternal, benevolent, and educational associations not operating for a profit; nor to banking and insurance companies. The provisions of sections 7880(118) and 7880(119) shall apply to railroads, electric light, power, street railway, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus and truck corporations to the extent, and only to the extent, that the franchise tax levied in sections 7880(118) and 7880(119) exceed the franchise taxes levied in other sections of this act. (1933, c. 445, s. 213.)

§ 7880(122). Penalty for nonpayment. — Any person, firm, or corporation, domestic or foreign, failing to pay the license, privilege, or franchise tax levied and assessed under this article or schedule when due and payable shall, in addition to all other penalties prescribed in this act, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall not be less than two dollars ($2.00) in any case, and shall be added to the tax, together with the interest accrued, and shall become an integral part of the tax: Provided, that if notice of the amount of the tax has not been mailed by the commissioner of revenue on or before the fifteenth day of September, then such penalty shall not attach until thirty days from the date of such notice. (1933, c. 445, s. 214.)

§ 7880(123). Franchise or privilege taxes; when payable.—(a) Every corporation, domestic or foreign, from which a report is required by law to be made to the commissioner of revenue, shall, unless otherwise provided, pay to said commissioner annually the franchise tax imposed by 7880(118) and 7880(119).

(b) It shall be the duty of the commissioner of revenue to mail every such corporation a statement of the amount of such taxes, which statement shall contain a copy of so much of this and other sections of this act as relates to penalties for failure to pay said taxes.

(c) It shall be the duty of the treasurer or other officer having charge of any such corporation, domestic or foreign, upon which a tax is imposed, to transmit the amount of the tax to the commissioner of revenue on or before the first day of October of each year, or if the notice of the amount of such taxes has not been mailed as required in subsection (b) of this section on or before the fifteenth day of September, then within thirty days from the date of such notice.

(d) If the said tax is not paid by the first day of January next following, the commissioner of revenue shall thereupon certify the same, with the additional tax and interest provided in section 7880(122) added, to the sheriff or tax collector of

the county in which such delinquent corporation has its principal office, and charge such sheriff or tax collector with the amounts so certified. Such certificate by the commissioner of revenue to the sheriff or tax collector in any county shall have the same force and effect as a judgment and execution against the real and personal property of such corporation as is provided for in the machinery act for the collection of other taxes; and such sheriff or tax collector shall at once proceed to collect the tax, taxes, penalties, interest and costs by levy, advertisement and sale, in the same manner as provided by law for the collection of other taxes, and shall be allowed the same fees for collecting, levying, advertising and selling as provided by law for the collection of other taxes. Where such sheriff or tax collector, after due diligence, is unable to collect the tax, taxes, penalties, interest and costs, he shall return the same promptly to the commissioner of revenue uncollected. The provisions of this section shall apply to any taxes payable to the commissioner of revenue that are due and unpaid.

(e) Individual stockholders in any corporation, joint stock association, limited partnership, or company paying a tax on its entire capital stock shall not be required to list or pay ad valorem tax on the shares of stock owned by them.

(f) Corporations in the state legally holding shares of stock in other corporations, upon which the tax has been paid to this state by the corporation issuing the same, shall not be required to list or pay an ad valorem tax on said shares of stock.

(g) No individual stockholder of shares of stock in any foreign corporation who has complied with section 7880(129) by paying a tax of six per cent on the income received from such shares of stock shall be required to list or pay any ad valorem tax on any share of its capital stock in this state, and the situs of such shares of stock in foreign corporations owned by residents of this state who have complied with section 7880(129) for the purposes of this act hereby declared to be at the place where such corporation undertakes and carries on its principal business. The situs of shares of stock in any foreign corporation owned by residents of this state who fail to comply with the provisions of section 7880(129), is hereby declared to be the place of residence of such shareholders resident in this state. If any such resident shareholders of stock in foreign corporations shall fail or refuse to comply with the provisions of section 7880(129), it shall be the duty of the commissioner of revenue to certify to the board of commissioners of the county or of the county and city where such shareholder resides, the amount and value of such shares of stock, the company or companies in which such shares of stock are held, and upon such certification it shall be the duty of the board of commissioners of such county, or of such county and city, to enter the value of such shares of stock on the tax books of the county, or of the county and city, and to compute against the value of such shares of stock the rates of taxation levied by such county or county and city, and the taxes so computed shall become a lien upon any property owned by such shareholder and subject to all the legal remedies provided for collection of other property taxes. (1933, c. 445, s. 215.)

§ 7880(123½). Additional taxes.—If the commissioner of revenue discovers from the examination of the return, or otherwise, that franchise or privilege tax of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within three years after the time when the return was due, give notice, in writing, to the taxpayer of such deficiency. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after giving notice of such proposed assessment he shall apply for such hearing in writing, explaining in detail his objections to same. If no request for such hearing is made such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision by registered mail, and such amount shall be due within ten days after notice is given. The provisions of this act with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent return. (1933, c. 445, s. 216.)

Art. 4. Schedule D. Income Tax.

Short Title and Definition.

§ 7880(124). Short title.—This act shall be known and may be cited as the income tax act of one thousand nine hundred and thirty-three. (1933, c. 445, s. 300.)

§ 7880(125). Purpose.—The general purpose of this act is to impose a tax for the use of the state government, upon the net income for the calendar year one thousand nine hundred and thirty-three in excess of exemptions herein set out, collectible in the year one thousand nine hundred and thirty-four and annually thereafter:

(a) Of every resident of the state.

(b) Of every domestic corporation.

(c) Of every foreign corporation and of every non-resident individual having a business or agency in this state, in proportion to the net income of such business or agency.

(d) The tax imposed upon the net income of corporations in this schedule is in addition to the tax imposed under Schedule C of this act. (1933, c. 445, s. 301.)

§ 7880(126). Definitions.—For the purpose of this act, and unless otherwise required by the context:

1. The word "taxpayer" includes any individual, corporation, or fiduciary subject to the tax imposed by this act.

2. The word "individual" means a natural person.

3. The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporation, acting in any fiduciary capacity for any person, estate, or trust.

4. The word "person" includes individuals, fiduciaries, partnerships.

5. The word "corporations" includes joint stock companies or associations and insurance companies.

6. The words "domestic corporation" mean any corporation organized under the laws of this state.

7. The words "foreign corporation" mean any corporation other than a domestic corporation.

8. The words "tax year" mean the calendar year in which the tax is payable.

9. The words "income year" mean the calendar year or the fiscal year upon the basis of which the net income is computed under this act; if no fiscal year has been established, they mean the calendar year.

10. The words "fiscal year" mean an income year, ending on the last day of any month other than December.

11. The word "paid," for the purposes of the deductions under this act, means "paid or accrued" or "paid or incurred," and the words "paid or accrued," "paid or incurred," and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The word "received," for the purpose of the computation of the net income under this act, means "received or accrued," and words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

12. The word "resident" applies only to individuals, and includes, for the purpose of determining liability to the tax imposed by this act, with reference to the income of any income year, any individual who shall be a resident of the state on the first day of the tax year.

13. The words "foreign country" mean any jurisdiction other than the one embraced within the United States. The words "United States," when used in a geographical sense, include the states and Territories of Alaska and Hawaii, the District of Columbia, and the possessions of the United States. (1933, c. 445, s. 302.)

Imposition of Tax

§ 7880(127). Individuals.—A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to the net income of the tax payer as herein defined, and upon income earned within the state of every non-resident having a business or agency in this state, computed at the following rates, after deducting the exemptions provided in this act:

On the excess over the amount legally exempted, up to two thousand dollars, three per cent.

On the excess above two thousand dollars, and up to four thousand dollars, four per cent.

On the excess above four thousand dollars, and up to six thousand dollars, five per cent.

On the excess over six thousand dollars, six per cent. (1933, c. 445, s. 310.)

§ 7880(128). Corporations.

I. Domestic corporations.—Every corporation organized under the laws of this state shall pay annually an income tax equivalent to six per cent on the entire net income, as herein defined, received by such corporation during the income year.

II. Foreign corporations.—Every foreign corporation doing business in this state shall pay annually an income tax equivalent to six per cent of a proportion of its entire net income, to be determined according to the following rules:

(1) If the principal business of a company in this state is manufacturing, or if it is any form of collecting, assembling, or processing goods and materials within this state, the entire net income of such corporation shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the fair cash value of its real estate and tangible personal property in this state on the date of the close of the fiscal year of such corporation in the income year to the fair cash value of its entire real estate and tangible personal propery then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of the manufacturing, collecting, assembling, or processing within this state during the income year to the total cost of manufacturing, collecting, assembling, or processing within and without the state. The term "cost of manufacturing, collecting, assembling, or processing within and without this state" as used herein shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis, this term shall be generally interpreted to include as elements of cost within and without this state the following:

(c) The total cost of all goods, materials and supplies used in manufacturing, assembling, or processing, regardless of where purchased.

(d) The total wages and salaries paid or incurred during the income year in such manufacturing, assembling, or processing activities.

(e) The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling, or processing activities.

(f) The term "fair cash value" as used herein shall be taken to mean cost less reserve for depreciation on the date of the close of the fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(g) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(h) The word "manufacturing" shall be taken to mean mining and all processes of fabricating or of curing raw materials.

(2) If the principal business of a company in this state is selling, distributing, dealing in or use of tangible personal property within this state, the entire net income of such company shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the fair cash value of its real estate and tangible personal property in this state on the date of the close of the fiscal year of such company in the income year to the fair cash value of its entire real estate and tangible personal

property then owned by it, with no deduction on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, or branches located in North Carolina during the income year to the total sales made everywhere during said income year.

(c) The word "sales" as used in this section shall be taken to mean sale or rental of real estate and sale or rental of tangible properties.

(d) The term "fair cash value" as used herein shall be taken to mean costs less reserve for depreciation on the date of the close of the fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(e) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(f) Foreign insurance companies doing business in this state and returning premium receipts to the insurance commissioner, and paying the tax upon such premium receipts as provided in section 7880(116), shall be exempt from this tax.

(3) If a company deriving profits principally from sources other than holding or sale of tangible property, such proportion as its gross receipts in this state during the income year is to its gross receipts for such year within and without the state.

(a) The words "gross receipts" as used in this section shall be taken to mean and include the entire receipts for business done by such company. (1933, c. 445, s. 311.)

For case construing the early income tax laws, see Hans Rees' Sons v. North Carolina, 283 U. S. 123, 51 S. Ct. 385.

Where the commissioner of revenue has assessed an income tax against a foreign corporation operating a manufacturing plant in this State in accordance with the provisions of this section, without regard to its intangible property, the commissioner's assessment will be upheld by the courts upon appeal where the corporation has failed to show that such method of allocation is unconstitutional in its application to the corporation. State v. Kent-Coffey Mfg. Co., 204 N. C. 365, 168 S. E. 397.

§ 7880(129). Income from stock in foreign corporations.—Income from stock in foreign corporations, either in cash or stock dividends, received by individuals, fiduciaries, partnerships, or corporations, resident in this state, or by a non-resident fiduciary if held for a resident of this state, as a condition of exemption of such shares of stock from ad valorem taxation, conditionally provided in section 7880(123) (g), shall be subject to a tax of six per cent, without exemption or deduction for any cause, except as provided in this section, and upon failure to report such income and pay the tax herein imposed the holder of such shares of stock shall be liable for the ad valorem tax on such stock at the place of residence of the owner. Every individual, fiduciary, partnership, or corporation owning such shares of stock, and receiving dividends from same, shall report such income to the commissioner of revenue, at the times required by this act for reporting other income, and in a separate schedule on the income tax blanks to be provided by the commissioner of revenue for that purpose, and shall pay the tax herein imposed at the same time and in the same way as tax upon other income is payable. With respect to foreign corporations domesticated in North Carolina, and paying a tax in this state on a proportionate part of their total income, the holder of shares of stock in such corporations shall be entitled to deduct from the total dividends received an amount equalling the percentage of the corporation's income on which it paid an income tax to the state of North Carolina for the year in which said dividends are received by the taxpayer. (1933, c. 445, s. 311½.)

§ 7880(130). Railroads and public-service corporations.—The basis of ascertaining the net income of every corporation engaged in the business of operating a steam or electric railroad, express service, telephone or telegraph business, or other form of public service, when such company is required by the interstate commerce commission to keep records according to its standard classification of accounting, shall be the "net revenue from operations" of such corporation as shown by their records, kept in accordance with that standard classification of accounts, when their business is wholly within this state, and when their business is in part within and in part without the state, their net income within this state shall be ascertained by taking their gross "operating revenues" within this state, including in their gross "operating revenues" within this state the equal mileage proportion within this state of their interstate business, and deducting from their gross "operating revenue" the proportionate average of "operating expenses" or "operating ratio" for their whole business, as shown by the interstate commerce commission standard classification of accounts:

Provided, that if the standard classification of operating expenses prescribed by the interstate commission for railroad differs from the standard classification of operating expenses prescribed by the interstate commerce commission for other public-service corporations, such other public-service corporations shall be entitled to the same operating expenses as prescribed for railroads. From the net operating income thus ascertained shall be deducted "uncollectible revenue" and taxes paid in this state for the income year other than income taxes, and the balance shall be deemed to be their net income taxable under this act. That in determining the taxable income of a corporation engaged in the business of operating a railroad under this section, in the case of a railroad located entirely within this state, the net operating income shall be increased or decreased to the extent of any credit or debit balance received or paid, as the case may be, on account of car or locomotive hire; and when any railroad is located partly within and partly without this state, then said net operating income shall be increased or decreased to the extent of an equal mileage proportion within this state of any credit or debit balance received or paid, as the case may be, on account of car or locomotive hire.

For the purposes of this section the words "interstate business" shall mean, as to transportation companies, operating revenue earned within the state by reason of the interstate transportation of persons or property into, out of, or through this

state, and as to transmission companies the interstate transmission of messages into, out of, or through this state.

The words "equal mileage proportion within this state" shall mean the proportion of revenue received by the company operating in this state from interstate business as defined in the preceding paragraph, which the distance of movement over lines in this state bears to the total distance of movement over lines of the company receiving such revenue. If the commissioner of revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by state lines as to each transaction involving interstate revenue, the commissioner of revenue may adopt such regulations; based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this state.

The words "proportionate average of 'operating expenses' or 'operating ratio'" shall mean the proportion of gross revenue of a company, on its whole business absorbed in operating expenses, as defined in the interstate commerce commission classification of accounts.

In determining the taxable income of a railroad company operating two or more lines of railroad not physically connected, and when one of such railroad lines is located wholly within this state, the actual earnings and expenses of such line in this state, in so far as they may be severable shall be used in determining net income taxable in this state.

All other public-service corporations shall file under section 7880(128). (1933, c. 445, s. 312.)

§ 7880(131). Taxable year. — The tax imposed by this article shall be levied, collected, and paid in the year one thousand nine hundred and thirty-four and with respect to the net income received during the calendar year of one thousand nine hundred and thirty-three, and annually thereafter. (1933, c. 445, s. 313.)

§ 7880(132). Conditional and other exemptions. —The following organizations shall be exempt from taxation under this act:

1. Fraternal beneficiary societies, orders or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents.

2. Building and loan associations and coöperative banks without capital stock, organized and operated for mutual purposes and without profit.

3. Cemetery corporations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

4. Business leagues, chambers of commerce, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

5. Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

6. Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

7. Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or coöperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting expenses.

8. Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them. (1933, c. 445, s. 314.)

§ 7880(133). Fiduciaries.—The tax imposed by this act shall be imposed upon resident fiduciaries and upon non-resident fiduciaries having in charge funds or property for the benefit of a resident of this state, which tax shall be levied, collected, and paid annually, with respect to:

(a) That part of the net income of estates or trusts which has not become distributable during the income year.

(b) The net income received during the income year by deceased individuals who, at the time of death, were residents and who have died during the tax year or the income year without having made a return.

(c) The entire net income of resident, insolvent, or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of such net income.

(d) The tax imposed upon a fiduciary by this act shall be a charge against the estate or trust. (1933, c. 445, s. 315.)

§ 7880(134). Net income defined. — The words "net income" mean the gross income of a taxpayer, less the deductions allowed by this act. (1933, c. 445, s. 316.)

§ 7880(135). Gross income defined. — 1. The words "gross income" mean the income of a taxpayer derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities, or the transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items shall be included in the gross income of the income year in which received by the taxpayer, unless, under the methods of accounting permitted under this act, any such amounts are to be properly accounted for as of a different period. The term "gross income" as used in this act shall include the salaries of all constitutional state officials taking office after the date of the enactment of this act, by election, reëlection or appointment, and all acts fixing the compensation of such con-

stitutional state officials are hereby amended accordingly.

2. The words "gross income" do not include the following items, which shall be exempt from taxation under this act, but shall be reported in such form and manner as may be prescribed by the commissioner of revenue:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to beneficiaries or to the estate of the insured.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contracts or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Interest upon the obligations of the United States or its possessions, or of the State of North Carolina, or of a political subdivision thereof.

(e) Salaries, wages, or other compensation received from the United States by officials or employes thereof, including persons in the military or naval forces of the United States.

(f) Any amounts received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(g) In case of domestic insurance companies or associations paying a tax on their gross premium receipts, in addition to the above, (a) the net addition required by law to be made within the taxable year to reserve funds, including the actual deposit of sums with the commissioner of insurance or the treasurer of the state, pursuant to the law, as additions to guarantee or reserve funds for benefit of policyholders, and (b) the sums paid within the taxable year on policy and annuity contracts to policyholders. (1933, c. 445, s. 317.)

§ 7880(136). Basis of return of net income.—1. The net income of a taxpayer shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if in any case such method does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly reflect the income, but shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this act. Taxpayers whose accounting period of twelve months ends as of the last day of some month other than December, and the books of such taxpayer are kept accordingly, may, with the approval of the commissioner of revenue and subject to such rules and regulations as he may establish, return their net income under this act on the basis of such fiscal year in lieu of that of the calendar year.

2. A taxpayer may, with the approval of the commissioner of revenue, and under such regulations as he may prescribe, change the income year from fiscal year to calendar year or otherwise, in which case his net income shall be computed upon the basis of such new income year: Provided, that such approval must be obtained from the commissioner at least thirty days prior to the end of such income year.

3. An individual carrying on business in partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income his distributive share of the net income of the partnership for each income year, whether distributed or not.

4. Every individual taxable under this act who is a beneficiary of an estate or trust shall include in his gross income the distributive share of the net income of the estate or trust received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, the deed, or other instrument creating the estate, trust, or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary, in the case of income accumulated for future distribution), ratably in proportion to their respective interest. (1933, c. 445, s. 318.)

§ 7880(137). Determination of gain or loss. — For the purpose of ascertaining the gain or loss from the sale or other disposition of property, real, personal, or mixed, the basis shall be, in the case of property acquired before January first, one thousand nine hundred and twenty-one, the fair market price of the value of such property as of that date, and in all other cases the cost thereof: Provided, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this act, such inventory value shall be taken in lieu of costs or market value. The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly. (1933, c. 445, s. 319.)

§ 7880(138). Exchanges of property.—1. When property is exchanged for other property of like kind, the property received in exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

2. In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.

3. When, in connection with the reorganization, merger, or consolidation of a corporation, a taxpayer receives in place of stock or securities owned by him, new stock or securities, the basis of computing the gain or loss, if any, shall be, in case the stock or securities owned were acquired before January first, one thousand nine hundred and twenty-one, the fair market price or value thereof as of that date, and in all other cases the cost thereof. (1933, c. 445, s. 320.)

§ 7880(139). Inventory.—Whenever, in the opinion of the commissioner of revenue, it is necessary, in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner of revenue may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income. (1933, c. 445, s. 321.)

§ 7880(140). Deductions.—In computing net incomes there shall be allowed as deductions the following items: Provided, that taxpayers receiving income not taxed under this act shall be allowed to deduct only that proportion of the deductions as the taxable income relates to the total income from all sources:

1. All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including:

(a) As to individuals, reasonable wages of employees for services rendered in producing such income.

(b) As to partnerships, reasonable wages of employees and a reasonable allowance for co-partners or members of a firm, for services actually rendered in producing such income, the amount of such salary allowance to be included in the personal return of the co-partner receiving same.

(c) As to corporations, wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such income.

2. Rentals or other payments required to be made as a condition of the continued use or possession for the purpose of the trade of property to which the taxpayer has not taken or is not taking title, or in which he has no equity.

3. Unearned discount and all interest paid during the income year on indebtedness, except interest on obligations contracted for the purchase of nontaxable securities: Provided, that deduction for interest by corporations other than banks and installment paper dealers engaged in the business of dealing in, buying and/or discounting installment paper, notes, bonds, contracts, evidences of debt and/or other securities, where a lien is reserved or taken upon personal property located in this state to secure payment of such obligations, shall not exceed six per cent (6%) of the sum equal to the average of the outstanding capital stock and earned or paid-in surplus of the corporation during the income year. Dividends on preferred stock shall not be deducted as interest.

4. Taxes paid or accrued during the income year, except federal and state income taxes, taxes levied under section 7880(129), inheritance and estate taxes. and taxes assessed for local benefit of a kind tending to increase the value of the property assessed. No deduction shall be allowed under this section for gasoline tax, automobile license or registration fee by individuals not engaged in trade or business.

5. Dividends from stock in any corporation the income of which shall have been assessed, and the tax on such income paid by the corporation under the provisions of this act: Provided, that when only part of the income of any corporation shall have been assessed under this act, only a corresponding part of the dividends received therefrom shall be deducted.

6. Losses actually sustained during the income year of property used in trade or business or of property not connected with trade or business, if arising from fire, storm, shipwreck, or other casualties or theft and if not compensated for by insurance or otherwise. No deduction shall be allowed under this subsection for losses arising from personal loans or endorsement or other transactions of a personal nature not entered into for profit. A taxpayer shall be allowed to deduct losses in connection with the sale of securities only to the extent of the security gains during the income year, unless such losses resulted from the sale of stocks or bonds held by the taxpayer for a period of not less than two years prior to the sale of such stocks or bonds.

7. Debts ascertained to be worthless and actually charged off within the income year, if the amount has previously been included in gross income in a return under this act.

8. A reasonable allowance for the depreciation and obsolescence of property used in the trade or business; and in the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion: Provided, that in computing deductions allowed under this section the basis shall be as follows:

(1) Property acquired prior to January first, one thousand nine hundred and twenty-one:

(a) With respect to property acquired on or before January first, one thousand nine hundred and sixteen; depreciated cost at January first, one thousand nine hundred and sixteen, as adjusted by the United States internal revenue department as that date, shall be the maximum value, subject to depreciation under this act, from and after January first, one thousand nine hundred and twenty-one.

(b) With respect to property acquired subsequent to January first, one thousand nine hundred and sixteen, and prior to January first, one thousand nine hundred and twenty-one, the original cost, plus additions and improvements, shall be the maximum value, subject to depreciation under this act, from and after January first, one thousand nine hundred and twenty-one.

(2) Property acquired subsequent to January first, one thousand nine hundred and twenty-one:

(a) With respect to property acquired subsequent to January first, one thousand nine hundred and twenty-one, basis shall be cost, plus additions and improvements.

In the case of mines, oil and gas wells, and other natural deposits, the cost of development not otherwise deducted will be allowed as depletion, and in the case of leases, the deductions allowed may be equitably apportioned between the lessor and the lessee.

9. Contributions or gifts made by individuals within the income year to corporations or associations operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's net income, as computed without the benefit of this subdivision.

10. Resident individuals and domestic corporations having an established business in another state, or investment in property in another state, may deduct the net income from such business or investment if such business or investment is in a state that levies a tax upon such net income. The deduction herein authorized shall in no case operate to reduce the taxable income in this state below the income actually earned in this state or property allocable as income earned in this state. Nor shall the deduction in any way relate to in-

come received by individuals or domestic corporations from personal services or income from mortgages, stocks, bonds, securities and deposits.

11. In the case of a non-resident individual, the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations prescribed by the commissioner of revenue. (1933, c. 445, s. 322.)

§ 7880(141). Items not deductible.—In computing net income no deduction shall in any case be allowed in respect of:

(a) Personal, living, or family expenses.

(b) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.

(c) Any amount expended in restoring property for which an allowance is or has been made.

(d) Premiums paid on any life insurance policy.

(e) Contributions or gifts made by corporations. (1933, c. 445, s. 323.)

§ 7880(142). Exemptions.—1. There shall be deducted from the net income the following exemptions:

(a) In the case of a single individual, a personal exemption of one thousand dollars.

(b) In the case of a married man with a wife living with him, two thousand dollars or in the case of a person who is the head of a household and maintains the same and therein supports one or more dependent relatives, two thousand dollars.

(c) In the case of a widow or widower having minor child or children, natural or adopted, two thousand dollars.

(d) Two hundred dollars ($200.00) for each individual (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(e) In the case of a fiduciary, if taxable under clause (a) of paragraph one of section 7880(133) a personal exemption of one thousand dollars; if taxable under clause (b) of said paragraph, an exemption of one thousand dollars: Provided, that the surviving husband or wife shall be entitled to exemption as provided in paragraph three of this section; if taxable under clause (c) of said paragraph, the same exemptions to which the beneficiary would be entitled.

(f) A married woman having a separate and independent income, one thousand dollars ($1,000.00).

2. The exemptions allowed by this section shall not be allowed with respect to a resident of this state having income from a business or agency in another state, or with respect to a non-resident having a business or agency in this state unless the entire income of such resident or non-resident individual is shown in the return of such resident or non-resident; and if the entire income is so shown, the exemption shall be prorated in the proportion of the income in this state to the total income.

3. The status on the last day of the income year shall determine the right to the exemptions provided in this section: Provided, that a taxpayer shall be entitled to such exemption for husband and wife or dependents who have died during the income year. (1933, c. 445, s. 324.)

§ 7880(143). Credit for taxes in case of taxpayers other than residents of the state. — Whenever a taxpayer other than a resident of the state has become liable to income tax to the state or country where he resides upon his net income for the taxable year, derived from sources within this state and subject to taxation under this article, the commissioner of revenue shall credit the amount of income tax payable by him under this article with such proportion of the tax so payable by him to the state or country where he resides as his income subject to taxation under this article bears to his entire income upon which the tax so payable to such other state or country was imposed: Provided, that such credit shall be allowed only if the laws of said state or country (1) grant a substantially similar credit to residents of this state subject to income tax under such laws, or (2) impose a tax upon the personal incomes of its residents derived from sources in this state and exempt from taxation the personal incomes of residents of this state. No credit shall be allowed against the amount of the tax on any income taxable under this article which is exempt from taxation under the laws of such other state or country. (1933, c. 445, s. 325.)

§ 7880(144). Returns.—1. Every resident or non-resident having a net income during the income year taxable in this state of one thousand dollars $1,000.00) and over, if single, or if married and not living with husband or wife, or having a net income for the income year of two thousand dollars ($2,000.00) or over, if married and living with husband or wife, and every corporation doing business in the state shall make a return under oath, stating specifically the items of gross income and the deductions allowed by this act, and such other facts as the commissioner of revenue may require for the purpose of making any computation required by this act. When the commissioner of revenue has reason to believe any person or corporation is liable for tax under this act, he may require any such person or corporation to make a return.

2. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

3. The return by a corporation shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer.

4. The return of an individual who, while living, received income in excess of the exemption during the income year, and who has died before making the return, shall be made in his name and behalf by the administrator or executor of the estate, and that the tax shall be levied upon and collected from his estate. Before a corporation shall be dissolved and its assets distributed it shall make a return for and settlement of tax for any income earned in the income year up to its period of dissolution.

5. Where the commissioner of revenue has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to

distort his true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price-fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the state, and in determining the same the commissioner of revenue shall have regard to the fair profit which would normally arise from the conduct of the trade or business.

6. When any corporation liable to taxation under this act conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the commissioner of revenue may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits, which but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this act, from dealing in such products, goods or commodities. (1933, c. 445, s. 326.)

§ 7880(145). Fiduciary returns.—1. Every fiduciary subject to taxation under the provisions of this act, as provided in section 7880(133) hereof, shall make a return under oath for the individual, estate, or trust for whom or for which he acts, if the net income thereof amounts to one thousand dollars or over.

2. The return made by a fiduciary shall state specifically the items of gross income and the deductions and exemptions allowed by this act, and such other facts as the commissioner of revenue may prescribe. Under such regulations as the commissioner may prescribe, a return may be made by one or two or more joint fiduciaries.

3. Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to individuals. (1933, c. 445, s. 327.)

§ 7880(146). Information at the source.—1. Every individual, partnership, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political sub-division of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and incomes amounting to one thousand dollars or over, paid or payable during any year to any taxpayer, shall make complete return thereof to the commissioner of revenue under such regulations and in such form and manner and to such extent as may be prescribed by him.

2. Every partnership having a place of business in the state shall make a return, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by one of the partners.

3. Every fiduciary shall make, under oath, a return for the individual, estate, or trust for whom or for which he acts if the net income thereof, distributed or distributable to beneficiaries during the year, is one thousand dollars or over, in which case the fiduciary shall set forth in such return the items of the gross income, the deductions allowed by this act, and the net income, the names and addresses of the beneficiaries, the amounts distributed or distributable to each, and the amount, if any, lawfully retained by him for future distribution. Such return may be made by one or two or more joint fiduciaries.

4. Every corporation doing business or having a place of business in this state shall file with the commissioner of revenue on such form and in such manner as he may prescribe the names and addresses of all taxpayers, residents of North Carolina, to whom dividends have been paid and the amount of such dividends during the income year. (1933, c. 445, s. 328.)

§ 7880(147). Time and place of filing returns.—Returns shall be in such form as the commissioner of revenue may from time to time prescribe, and shall be filed with the commissioner at his main office, or at any branch office which he may establish, on or before the fifteenth day of March in each year, and for all taxpayers using a fiscal year, within seventy-five days after expiration of the fiscal year. In case of sickness, absence, or other disability, or whenever in his judgment good cause exists, the commissioner may allow further time for filing returns. There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return, to the effect that the statements contained therein are true. The commissioner shall cause to be prepared blank forms for the said returns, and shall cause them to be distributed throughout the state, and to be furnished upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required. (1933, c. 445, s. 329.)

§ 7880(148). Blank forms to be kept on file with the register of deeds and deputy commissioners.—For convenience of all parties liable for making a return of income, and who may not receive blank forms by mail for this purpose, the commissioner

of revenue shall keep on deposit with the register of deeds or county auditor or deputy commissioner of revenue in each county a supply of blank forms for distribution. (1933, c. 445, s. 330.)

§ 7880(149). Failure to file returns; supplementary returns.—If the commissioner of revenue shall be of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return or supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this act. If from a supplementary return or otherwise the commissioner finds that any items of income, taxable under this act, have been omitted from the original return, or any items returned as taxable that are not taxable, or any item of taxable income overstated, he may require the items so omitted to be disclosed to him under oath of the taxpayer, and to be added to or deducted from the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this act. The commissioner may proceed under the provisions of section 7880(152), whether or not he requires a return or a supplementary return under this section. (1933, c. 445, s. 331.)

Collection and Enforcement of Tax

§ 7880(150). Time and place of payment of tax.—(1) The full amount of the tax payable, as the same shall appear from the face of the return, shall be paid to the commissioner of revenue at the office where the return is filed at the time fixed by law for filing the return. If the amount of the tax exceeds one hundred dollars ($100.00), payment may be made in two installments: One-half on the date the return is filed, one-half on or before September fifteenth following, with interest on the deferred payment at the rate of six per cent per annum.

(2) If the time for filing the return be extended, interest at the rate of six per cent per annum, from the time when the return was originally required to be filed to the time of payment, shall be added and paid.

(3) The tax may be paid with uncertified check, during such time and under such regulations as the commissioner of revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered. (1933, c. 445, s. 332.)

§ 7880(151). Examination of returns. — 1. As soon as practicable after the return is filed the commissioner of revenue shall examine and compute the tax, and the amount so computed by the commissioner shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the excess shall be paid to the commissioner within thirty days after notice of the amount shall be mailed by the commissioner, and any overpayment of tax shall be returned within thirty days after it is ascertained.

2. If the return is made in good faith and the understatement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such understatement, but interest shall be added to the amount of the deficiency at the rate of six per cent per annum until paid.

3. If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the deficiency five per cent thereof, and in addition, interest at the rate of six per cent per annum until paid.

4. If the understatement is found by the commissioner of revenue to be false or fraudulent, with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and six per centum per annum upon the amount of tax so found. The provisions of this act with respect to revision and appeal shall apply to a tax thus assessed.

5. The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment. (1933, c. 445, s. 333.)

§ 7880(152). Correction and changes. — If the amount of the net income for any year of any taxpayer under this article, as returned to the United States treasury department, is changed and corrected by the commissioner of internal revenue or other officer of the United States of competent authority, such taxpayer, within thirty days after receipt of internal revenue agent's report or supplemental report reflecting the corrected net income shall make return under oath or affirmation to the commissioner of revenue of such corrected net income. The commissioner shall thereupon proceed to determine, from such evidence as he may have brought to his attention or shall otherwise acquire, the correct net income of such taxpayer for the fiscal or calendar year, and if there shall be any additional tax due from such taxpayer the same shall be assessed and collected; and if there shall have been an overpayment of the tax the said commissioner shall, within thirty days after the final determination of the net income of such taxpayer, refund the amount of such excess. (1933, c. 445, s. 334.)

§ 7880(153). Additional taxes.—If the commissioner of revenue discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within three years after the time when the return was due, give notice in writing to the taxpayer of such deficiency. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after giving notice of such proposed assessment he shall apply for such hearing in writing, explaining in detail his objections to same. If no request for such hearing is so made, such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision by registered mail and such amount shall be due within ten days after notice is given. The

provisions of this act with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or an additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. (1933, c. 445, s. 335.)

§ 7880(154). Penalties. — 1. If any taxpayer, without intent to evade any tax imposed by this act, shall fail to file a return of income and pay the tax, if one is due, at the time required by or under the provisions of this act, but shall voluntarily file a correct return of income and pay the tax due within sixty days thereafter, there shall be added to the tax an additional amount equal to five per cent thereof, but such additional amount shall in no case be less than one dollar and interest at the rate of one-half of one per centum per month or fraction thereof from the time said return was required by law to be filed, until paid.

2. If any taxpayer fails voluntarily to file a return of income or pay the tax, if one is due, within sixty days of the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to twenty-five per cent thereof and interest at the rate of one-half of one per cent per month or fraction thereof, from the time such return was required to be filed, until paid, but the additional tax shall not be less than five dollars ($5.00).

3. If any taxpayer fails to file a return within sixty days of the time prescribed by this act, any judge of the superior court, upon petition of the commissioner of revenue or of any ten taxable residents of the state, shall issue a writ of mandamus requiring such person to file a return. The order of notice upon the petition shall be returnable not later than ten days after the filing of the petition. The petition shall be heard and determined on the return day or such day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. All writs and processes may be issued from the clerk's office in any county, and, except as aforesaid, shall be returnable as the court shall order.

4. The failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the office of the commissioner of revenue in Raleigh. The certificate of the commissioner of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

5. If any taxpayer who has failed to file a return or has filed an incorrect or insufficient return, and has been notified by the commissioner of revenue of his delinquency, refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the commissioner shall determine the income of such taxpayer, according to his best information and belief, and assess the same at not more than double the amount so determined. The commissioner may, in his discretion, allow further time for the filing of a return in such case. (1933, c. 445, s. 336.)

Revision and Appeal

§ 7880(155). Revision by commissioner of revenue.—A taxpayer may apply to the commissioner of revenue for revision of the tax assessed against him at any time within three years from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The commissioner shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. (1933, c. 445, s. 340.)

Art. 5. Schedule E. Emergency Revenue

§ 7880(156) a. Short title. — This act shall be known and may be cited as the emergency revenue act of one thousand nine hundred and thirty-three. (1933, c. 445, s. 400.)

§ 7880(156) b. Purpose. — The taxes levied in this article are additional and extraordinary taxes to meet a supreme emergency in shrinkage of the ordinary revenues of the state and as a further relief from property taxes to provide another form of revenue for the support of the public schools of the state in substitution for the taxes levied on property for this purpose. They are levied for the biennium of fiscal years beginning July 1, 1933, and ending June 30, 1935.

Additional taxes levied in this article upon wholesale distributors and upon the sale to persons in this state of merchandise that is manufactured, ground, blended, mixed, or fabricated by the vend- or are at low rates moderated upon the understanding that such taxes will have to be absorbed as an expense of operation, or by corresponding reduction in property taxes.

The tax upon the retail sale of merchandise to persons in this state is levied as a license or privilege tax for engaging or continuing in the business of merchandising as defined in this act, but merchants may add to the price of merchandise the amount of the tax on the sale thereof, and when so added shall constitute a part of such price, shall be a debt from purchaser to merchant until paid, and shall be recoverable at law in the same manner as other debts. It is the purpose and intent of this act that the tax levied hereunder shall be added to the sales price of merchandise and thereby be passed on to the consumer instead of being absorbed by the merchant.

Any retail merchant who shall by any character of public advertisement offer to absorb the tax levied in this article upon the retail sale of merchandise, or in any manner, directly or indirectly, advertise that the tax herein imposed is not considered as an element in the price to the consumer, shall be guilty of a misdemeanor. The provisions of this section are deemed necessary to prevent fraud and unfair trade practices, but it is the intent of the general assembly that if one or both of such provisions be held unconstitutional and void, that such invalid provision or provisions be considered separable and that the balance of this act be given effect.

Agreements between competing merchants, or adoption of appropriate rules and regulations by associations of merchants, to provide uniform methods of adding the average equivalent of the tax to the sales price of merchandise, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of the anti-trust laws of this state. It shall be the duty of all public officials of the state, and specifically of the commissioner of revenue, to co-operate with the merchants of the state in formulating rules, regulations and practices to effectuate the purpose of this act as herein declared. (1933, c. 445, s. 401.)

§ 7880(156) c. Contingency.—If the government of the United States shall, at any time during the biennium for which taxes are levied in this article, enact any form of sales or production tax distributable in whole or in part to the several states, the governor and council of state shall estimate the proportion of such tax distribution to this state, and shall by proclamation of the governor abate a uniform percentage of all the taxes levied in this article equal in estimated revenue yield to the estimated proportion of yield of such federal tax, and from and after the effective date of such proclamation the commissioner of revenue shall enforce and collect only the remaining percentage of taxes levied in this article. (1933, c. 445, s. 402.)

§ 7880(156) d. To insure and make certain a balanced budget.—The taxes levied in this act have been carefully estimated to yield a total sum of revenue for the next biennium equal to the total sum of appropriations estimated by the committee on appropriations to be necessary for the same period. Recognizing the value, under existing conditions particularly, of a fiscal policy that will carry its complete guarantee of a budget that will be balanced in actual fact during the next biennium, the responsibility is hereby vested in the budget bureau of estimating revenue yields and operating expenses at each quarterly period during the next biennium, in the light of experience and conditions, including the interest on all outstanding obligations of the state, and the payment of all maturing obligations, and if it shall at any time appear that the total of such expenses of the state are exceeding the revenue yields of all taxes levied by the state, including collectible taxes maturing and uncollected within a given period, it shall in that event be the duty of the governor as director of the budget, with the advice of the budget commission:

(a) To reduce by equal and pro rata percentage the compensation of every officer, agent, and employee of the state in such proportion as will maintain an even balance as between total revenue and total expenses, not inconsistent with the provisions and powers contained in the executive budget act, Chapter 100 of the Public Laws of 1929; or

(b) If in the opinion of the director of the budget the responsibility herein vested should require a reduction of compensation in a sum and percentage that in his opinion would be injurious to the public welfare, that he exercise the constitutional prerogative of the governor, with the advice of the council of state, to convene an extra session of the general assembly.

In consideration of the reduction of compensation of employees of state departments 38 per cent, of employees of educational, charitable, and correctional institutions, 32 per cent; school superintendents, 35 per cent, and school teachers, 30 per cent of the 1929 basis, in the appropriation bill enacted at this session of the General Assembly, and of the provisions of this act for further reductions if revenues are inadequate, it is further provided that if the revenues of the state, estimated in the manner herein provided, shall at any time during the next biennium be in excess of appropriations on the reduced basis, the director of the budget may in like manner increase the compensation of all employees of the state, giving consideration to the equities with respect to each group or class of employees, but the total compensation after such increases shall in no event exceed eighty per cent of the 1929 basis of compensation. (1933, c. 445, s. 403.)

Consumers' Tax

§ 7880(156) e. Definitions.—For the purposes of this article—

1. The word "person" shall mean any person, firm, partnership, association, or corporation.

2. The word "commissioner" shall mean the commissioner of revenue of the state of North Carolina.

3. The word "merchant" shall include any individual, firm, or corporation, domestic or foreign, subject to the tax imposed by this article.

4. The words "wholesale merchant" shall mean every merchant who engages in the business of buying any articles of commerce and selling same to merchants for resale. The sale of any article of merchandise by any "wholesale merchant" to anyone other than a merchant for resale shall be taxable at the rate of tax provided in this article upon the retail sale of merchandise. In the interpretation of this act the sale of any articles of commerce by any wholesale merchant to any one not taxable under this act as a retail merchant, except as otherwise provided in this act, shall be taxable by the wholesale merchant at the rate of tax provided in this article upon the retail sales of merchandise.

5. Any person, firm, or corporation engaged in the business of selling mill machinery, mill machinery parts and accessories, or selling machinery and machinery parts and accessories for manufacturing industries and plants, and the sale of cotton and tobacco by others than producers to others for processing or manufacture, shall be considered a "wholesale merchant" for the purposes of this act to the extent of such sale of machinery parts and accessories and cotton and tobacco to manufacturers.

6. The words "retail merchants" shall mean every merchant who engages in the business of buying any articles of commerce and selling same at retail.

7. The word "retail" shall mean the sale of any articles of commerce in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

8. The word "sale" shall mean any transfer of the ownership or title of tangible personal prop-

erty to the consumer for use and not for purposes of resale, for a monetary consideration. Transactions whereby the title is ultimately to pass, and whether such transactions are called leases, conditional sales, or by any other name, and although possession is retained for security, shall be sales.

9. It is not the purpose of this section to impose a tax upon the business of producing, manufacturing, mixing, blending, or processing any articles of commerce, or upon the sale of such articles of commerce by anyone who engages in the business of producing, manufacturing, mixing, blending, or processing, but shall apply to anyone engaged in either of those businesses if and to the extent that articles of commerce are bought and sold in connection with such business in substantially the same form in which they are bought.

10. The words "gross sales" shall mean the sum total of all sales for a given month, quarter, or tax year, reckoned at the price at which such sales were made, whether for cash or on time, and if on time, the price charged on the books for such sales, without allowance for cash discount, and shall be reported as sales with reference to the time of delivery to the purchaser, except as this provision is modified by section 7880(156) i. Accounts found to be worthless and actually charged off for income tax purposes may at corresponding periods be deducted from gross sales, insofar as they represent taxable sales made after July 1, 1933, and to be added to gross sales if afterwards collected.

11. When in the sale of a new article a second-hand or used article is taken in part payment, the sale of the new article shall be reported at the full gross sales price. The resale of second-hand or used articles, taken in part payment in the sale of new articles, or the resale of articles repossessed by the vendor, may be excluded from gross sales taxable under this act if separate record is kept of all such transactions in such manner as may be prescribed or approved by the commissioner of revenue.

12. The maximum tax that shall be imposed upon any single article of merchandise shall be ten dollars ($10.00), and as an additional means of enforcement of the payment of the tax herein levied the department of revenue shall not issue a license plate for any new motor vehicle until the tax levied for the sale of same under this act has been paid. (1933, c. 445, s. 404.)

§ 7880(156) f. Exemptions.—The taxes imposed in this article shall not apply to the sale of gasoline on which a sales tax is collected under another statute, or to the sale of commercial fertilizer on which an inspection tax is paid, nor to the sale of public school books, on the adopted list, and the selling price of which is fixed by law. The taxes imposed in this article shall not apply to the sales of products of farms, forests, or mines when such sales are made by the persons or members of their immediate families or by employees forming a part of the organization of persons who produce such products in the original state or condition of preparation for sale, but shall apply to the resale of such products. The exemption in this section shall not extend to manufacturers or producers who become merchants in the ordinary meaning of that term, and who maintain, separate from the place of production stores for the retail sale of merchandise, nor to the sale of their own products through such retail stores, nor shall it extend to the sale of their products through merchants acting as agents for the manufacturer, nor to the sale of products by peddlers.

No tax shall be imposed under this article upon the sale of any merchandise to the federal government or any of its agencies, or to the state of North Carolina or any of its sub-divisions, including sales of merchandise to agencies of federal, state or local governments for distribution in public welfare and relief work.

Conditional exemptions:

In addition to the exemptions set out in this section there shall also be an exemption of sales by retail merchants, upon conditions hereinafter set out, of the following articles:

Flour, meal, meat, lard, milk, molasses, salt, sugar and coffee.

It is the intention that this exemption shall apply to these primary and essential articles of food as the words used are commonly understood.

Flour means wheat flour and does not include cereal products other than flour.

Meal means corn meal and not grits, flakes or other cereal products.

Meat includes fresh or cured meats of animals or fish other than shell fish but does not include any specialized products in cans, jars, boxes or cartons for the retail trade.

Lard is intended to include articles commonly understood by the use of this term, both from animal fat and vegetable substitutes, but does not include oleomargarine, butter, oils or other like products.

Molasses includes the product commonly understood by that name, and does not include cane, sugar, maple or other syrups.

Milk includes sweet and buttermilk, but does not include canned milk, evaporated milk or other milk products.

Sugar includes plain and granulated sugar as commonly understood and no other sugar products.

Coffee means plain, roasted or ground coffee as commonly understood, but not coffee substitutes.

The exemption of the articles of food herein enumerated is upon condition that the retail merchant shall keep accurate and separate records of invoices and sales of the exempted articles in such form and detail as may be prescribed by the department of revenue, and in any event in such manner that accurate reports may be separately made covering the sale of such conditionally exempted articles, and in such form as may be accurately and conveniently checked by the representatives of the department of revenue.

Unless records are kept in such manner as will accurately disclose separate accounting of sales of taxable and non-taxable merchandise the conditional exemptions herein made shall not be allowed, and it shall be the duty of the commissioner to assess a tax upon the total gross sales, and if records are not kept showing total gross sales it shall be the duty of the commissioner or agents to assess a tax upon an estimation of sales upon the best information obtainable. (1933, c. 445, s. 405.)

Imposition of Tax

§ 7880(156) g. Must obtain license.—If any person after the 30th day of June, 1933, shall engage

or continue in any business for which a privilege tax is imposed by this article, such person shall apply for and obtain from the commissioner, upon the payment of the sum of one dollar ($1.00), a license to engage in and to conduct such business for the current tax year, upon the condition that such person shall pay the tax accruing to the state of North Carolina under the provisions of this article; and he shall thereby be duly licensed to engage in and conduct such business. Said license shall be renewed annually and shall expire on the 30th day of June next succeeding the date of its issue. Additional tax shall be levied as follows:

Wholesale merchants.—Upon every wholesale merchant as defined in this article a tax of one twenty-fifth of one per cent (1/25%) of gross sales of every such person, and the minimum tax for each six months' period shall be twelve dollars and fifty cents ($12.50).

Retail merchants.—Upon every retail merchant as defined in this article a tax of three per cent (3%) of total gross sales by every such person. (1933, c. 445, s. 406.)

§ 7880(156) h. Taxes payable.—The taxes levied in the preceding section, except the annual tax of one dollar ($1.00), shall be due and payable in monthly installments on or before the fifteenth day of the month next succeeding the month in which the tax accrues. The taxpayer shall on or before the fifteenth day of the month make out a return showing the amount of the tax for which he is liable for the preceding month, and shall mail the same, together with a remittance for the amount of the tax, to the commissioner. Such monthly return shall be signed by the taxpayer or a duly authorized agent of the taxpayer, but need not be verified by oath. (1933, c. 445, s. 407.)

§ 7880(156) i. Credit sales.—Any person taxable under this act having cash and credit sales may report such cash and credit sales separately, and upon making application therefor may obtain from the commissioner an extension of time for the payment of taxes due on such credit sales. Such extension shall be granted under such rules and regulations as the commissioner may prescribe. When such extension is granted, the taxpayer shall thereafter include in each monthly report all collections made during the month next preceding and shall pay taxes due thereon at the time of filing such report, but in no event shall the gross proceeds of credit sales be included in determining the measure of the tax to be paid until collection of such credit sales shall have been made. (1933, c. 445, s. 408.)

§ 7880(156) j. Quarterly returns.—When the total tax for which any person is liable under this act does not exceed ten dollars ($10.00) for any month, a quarterly return in lieu of the monthly return may be made on or before the fifteenth day of the month next succeeding the end of the quarter for which the tax is due. (1933, c. 445, s. 409.)

§ 7880(156) k. Annual returns.—When the total tax for which any person is liable under this act does not exceed the sum of ten dollars ($10.00) in any quarter year, such person shall not be required to make either monthly or quarterly return, but an annual return, and remittance shall be required under rules and regulations to be prescribed by the commissioner, such annual return and remittance to be made on or before the thirtieth day of the month next succeeding the end of the tax year for which the tax is due. (1933, c. 445, s. 410.)

§ 7880(156) l. Forms for making returns.—The monthly, quarterly, and annual returns required under this act shall be made upon forms to be prescribed by the commissioner. (1933, c. 445, s. 411.)

§ 7880(156) m. Extension of time for making.—The commissioner for good cause may extend the time for making any return required under the provisions of this act, and may grant such additional time within which to make such return as the commissioner may deem proper, but the time for filing any such return shall not be extended beyond the fifteenth day of the month next succeeding the regular due date of such return. (1933, c. 445, s. 412.)

§ 7880(156) n. Annual returns. — On or before thirty days after the end of the tax year each person liable for the payment of the privilege tax under this article shall make a return showing gross proceeds of sales or gross income of business and compute the amount of tax chargeable against such person in accordance with the provisions of this act, and deduct the amount of monthly or quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form required by this act covering residue of the tax chargeable against such person to the commissioner; such return shall be verified by the oath of the taxpayer if made by an individual, or by the oath of the president, vice-president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, firm, association, trust, estate, or any other group or combination acting as a unit, any individual delegated by such firm, partnership, association, trust, estate, or any other group or combination acting as a unit shall make the oath on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to make the oath, the same may be made by any duly authorized agent. The commissioner for good cause shown may extend the time for making the annual return on the application of any taxpayer and may grant such reasonable additional time within which to make the same as may be deemed advisable. (1933, c. 445, s. 413.)

§ 7880(156) o. Commissioner to correct error.—As soon as practicable after the return is filed the commissioner shall examine it; if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be credited against the subsequent payment; and if the payment already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of this act.

If the amount already paid is less than the amount which should have been paid, the difference to the extent not covered by any credits under this act, together with interest thereon at the rate of one-half of one per centum per month from

the time the tax was due, shall be paid upon notice and demand by the commissioner.

If any part of the deficiency is due to negligence or intentional disregard to authorized rules and regulations, with knowledge thereof, but without intent to defraud, there shall be added as damages ten per centum of the total amount of the deficiency in the tax, and interest in such a case shall be collected at the rate of one per centum per month of the amount of such deficiency in the tax from the time it was due, which interest and damages shall become due and payable upon notice and demand by the commissioner.

If any part of the deficiency is due to fraud with intent to evade the tax, then there shall be added as damages not more than one hundred per centum of the total amount of the deficiency in the tax, and in such case the whole amount of tax unpaid, including charges so added, shall become due and payable upon notice and demand by the commissioner, and an additional one per centum per month on the tax shall be added from the date such tax was due until paid. (1933, c. 445, s. 414.)

§ 7880(156) p. Taxpayer must keep records; failure to make returns; duty and power of commissioner.—It shall be the duty of every person engaging or continuing in this state, in any business for which a privilege tax is imposed by this act to keep and preserve suitable records of the gross income, gross receipts and/or gross receipts of sales of such business, and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this act. And it shall be the duty of every such person to keep and preserve, for a period of two years, all invoices of goods and merchandise purchased for resale, and all such books, invoices, and other records shall be open for examination at any time by the commissioner or his duly authorized agent.

If no return is made by any taxpayer required to make returns as provided herein, the commissioner shall give written notice by registered mail to such taxpayer to make such returns within thirty days from the date of such notice, and if such taxpayer shall fail or refuse to make such returns as he may be required to make in such notice, then such returns shall be made by the commissioner from the best information available, and such returns shall be prima facie correct for the purposes of this act, and the amount of tax shown due thereby shall be a lien against all the property of the taxpayer until discharged by payment, and if payment be not made within thirty days after demand therefor by the commissioner, there shall be added not more than one hundred per centum as damages, together with interest at the rate of one per centum per month on the tax from the time such tax was due. If such tax be paid within thirty days after notice by the commissioner, then there shall be added ten per centum as damages, and interest at the rate of one per centum from the time such tax was due until paid. (1933, c. 445, s. 415.)

§ 7880(156) q. Tax shall be lien.—The tax imposed by this act shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under sections 7880(156) h, 7880(156) j, and 7880(156) k within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the commissioner showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. (1933, c. 445, s. 416.)

§ 7880(156) r. Aggrieved person may file petition.—If any person having made the return and paid the tax as provided by this act feels aggrieved by the assessment made upon him for any year by the commissioner, he may apply to the commissioner by petition, in writing, within thirty days after the notice is mailed to him, for a hearing and a correction of the amount of the tax so assessed upon him by the commissioner, in which petition he shall set forth the reasons why such hearings should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the commissioner shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the commissioner may make such order in the matter as may appear to him just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with interest, in any proper action or suit against the commissioner, and the superior court of the county in which the taxpayer resides or is located shall have original jurisdiction of any action to recover any tax improperly collected. In any suit to recover taxes paid or to collect taxes the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

Either party to such suit shall have the right to appeal to the supreme court of North Carolina as now provided by law. In the event a final judgment is rendered in favor of the taxpayer in a suit to recover illegal taxes, then it shall be the duty of the state auditor, upon receipt of a certified copy of such final judgment, to issue a warrant directed to the state treasurer in favor of such taxpayer to pay such judgment, interest, and costs. It shall be the duty of the state treasurer to honor such warrant and pay such judgment out of any funds in the state treasury.

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this act, or to restrain the enforcement of this act. (1933, c. 445, s. 417.)

§ 7880(156) s. Warrant for collection of tax; tax shall constitute debt due state.—If any tax imposed or any portion of such tax be not paid within sixty days after the same becomes due, the com-

missioner shall proceed to enforce the payment of such tax in the manner provided by section 473 of this act. (1933, c. 445, s. 418.)

§ 7880(156) t. Annual return, when to be made.—The assessment of taxes herein made and the returns required therefor shall be for the year ending on the 31st day of December, and shall be first made for the last half of the calendar year 1933: Provided, however, that if the taxpayer in transacting his business keeps the books reflecting the same on a basis other than such fiscal year, he may, with the assent of the commissioner, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping the books of his business. (1933, c. 445, s. 419.)

§ 7880(156) u. Additional tax; remittances made to commissioner; records. — The tax imposed by this act shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this act otherwise specifically provided. But no county, municipality, or district shall be authorized to levy any tax by virtue of the provisions of this article.

All remittances of taxes imposed by this act shall be made to the commissioner by bank draft, check, cashier's check, money order, or money, who shall issue his receipts therefor to the taxpayers, when requested, and shall deposit daily all moneys received to the credit of the state treasurer as required by law for other taxes: Provided, no payment other than cash shall be final discharge of liability for the tax herein assessed and levied unless and until it has been paid in cash to the commissioner.

The commissioner shall keep full and accurate records of all moneys received by him, and how disbursed; and shall preserve all returns filed with him under this article for a period of three years. (1933, c. 445, s. 420.)

§ 7880(156) v. Letters in report not to be divulged.—Unless in accordance with the judicial order or as herein provided, the state department of revenue, its agents, clerks or stenographers, shall not divulge the gross income, gross proceeds of sales, or the amount of tax paid by any person as shown by the reports filed under the provisions of this act, except to members and employees of the state department of revenue, and the income tax department thereof, for the purpose of checking, comparing, and correcting returns, or to the governor, or to the attorney general, or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of this act.

(a) The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a notice from the commissioner to the effect that the tax levied under this act against any such corporation has been paid, if any such corporation is a taxpayer under the law, or until he shall be notified by the commissioner that the applicant is not subject to pay a tax hereunder. (1933, c. 445, s. 421.)

§ 7880(156) w. Unlawful to refuse to make returns; penalty.—It shall be unlawful for any person to fail or refuse to make the return provided to be made in this act, or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this act; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this act; or for the president, vice-president, secretary, or treasurer of any company to make or permit to be made for any company or association any false return, or any false statement in any return required by this act, with the intent to evade the payment of any tax hereunder; or for any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the commissioner, or his duly appointed agent, as required by this act; or to fail or refuse to permit the inspection or appraisal of any property by the commissioner or his duly appointed agent, or to refuse to offer testimony or produce any record as required in this act. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars ($500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment, at the discretion of the court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law. Any company for which a false return, or a return containing a false statement as aforesaid shall be made, shall be guilty of a misdemeanor, and may be punished by a fine of not more than one thousand dollars ($1000.00). (1933, c. 445, s. 422.)

§ 7880(156) x. Commissioner to make regulations.—The commissioner shall from time to time promulgate such rules and regulations not inconsistent with this act for making returns and for the ascertainment, assessment, and collection of the tax imposed hereunder as he may deem necessary to enforce its provisions, and upon request shall furnish any taxpayer with a copy of such rules and regulations. (1933, c. 445, s. 423.)

§ 7880(156) y. Commissioner or agent may examine books, etc.—The commissioner, or his authorized agents, may examine any books, papers, record, or other data bearing upon the correctness of any return, or for the purpose of making a return where none has been made, as required by this article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness shall fail to obey any summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper, or other data when required to do so, such failure or refusal shall be reported to the attorney general or the district solicitor, who shall thereupon institute proceedings in the superior court of the county where such witness resides to compel

obedience to any summons of the commissioner, or his authorized agent. Officers who serve summonses or subpœnas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts; to be paid from the proper appropriation for the administration of this act. (1933, c. 445, s. 424.)

§ 7880(156) z. Excess payment; refund.—If upon examination of any monthly or quarterly return made under this act it appears that an amount of tax has been paid in excess of that properly due, then the amount in excess shall be credited against any tax or installment thereof then due from the taxpayer, under any other subsequent monthly or quarterly return, and any balance of such excess at the end of the year and upon the filing of its annual return shall be immediately refunded to the taxpayer by certificate of overpayment issued by the commissioner to the state auditor, which shall be investigated and approved by the attorney general, and the auditor shall issue his warrant on the treasurer, which warrant shall be payable out of any funds appropriated for that purpose. (1933, c. 445, s. 425.)

§ 7880(156) aa. Prior rights or actions not affected by this act.—Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due, under the Revenue Act of 1931, prior to the date on which this act becomes effective, whether such assessments, appeal, suit, claim or action shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the sections of the Revenue Act of 1931 amended or repealed by this act are expressly continued in full force, effect, and operation for the purpose of the assessment and collection of any taxes due under any such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures, or claims for a failure to comply therewith. (1933, c. 445, s. 426.)

§ 7880(156) bb. Appropriation of 2% of collections for administration of act.—For the efficient administration of this article an appropriation is hereby made for the use of the department of revenue in addition to the appropriation in the appropriation of a sum equal to two per cent (2%) of the total revenue collections under this article to be expended under allotments made by the budget bureau of such part or the whole of such appropriation as may be found necessary for the administration of this article. The budget bureau may estimate the yield of revenue under this article and make advance apportionment based upon such estimate, and to provide for the necessary expense of providing materials, supplies, and other expenses needful to be incurred prior to the beginning of the next fiscal year, July 1, 1933, the budget bureau may make such advance allotment from such estimate of revenue yield as it may find proper for the convenient and efficient administration of this article. (1933, c. 445, s. 427.)

§ 7880(156) cc. To prevent unfair trade practices, commissioner of revenue may require tax passed on to consumer.—In order that fair trade practices may be encouraged and any deleterious effect of the retail sales tax levy may be minimized, the commissioner of revenue is empowered and directed to devise, promulgate and enforce regulations under which retail merchants shall collect from the consumers, by rule uniform as to classes of business, the sales tax levied upon their business by the retail sales tax article: Provided, that the commissioner of revenue shall have the power to change the regulations and methods under which the merchants shall collect the tax from the consumers, from time to time, as experience may prove expedient and advisable. Methods for the passing on by merchants to their customers the retail sales tax on sales to said customers may include plans which require both more and less than three (3%) per cent of the sale price, the purpose being to enable the merchants to collect approximately the amount of three (3%) per cent on their total sales volume. Such regulations as herein authorized shall be promulgated by the commissioner of revenue to become effective after reasonable notice to the retail merchants and when so promulgated they shall have the full force and effect of law. Any merchant who violates such rules and regulations shall be guilty of a misdemeanor and upon conviction shall be fined not less than five ($5.00) dollars nor more than five hundred ($500.00) dollars or be imprisoned for not more than six months, or be both fined and imprisoned in the discretion of the court; provided, however, that every such violation shall be a separate offense hereunder. It shall be the duty of the solicitors of the several judicial districts of the state to prosecute violations of this act.

The provisions of this section shall not affect in any manner the character or validity of the sales tax levy as a merchants license tax, and they may not be pleaded or considered in the event any provision of the general revenue act is attacked as unconstitutional. (1933, c. 522.)

Art. 6. General Administration—Penalties

§ 7880(157). Failure of a person, public utility and/or public-service corporation to file report. — If any person, firm, or corporation required to file a report under any of the provisions of Schedule B and C of this act fails, refuses, or neglects to make such report as required herein within the time limited in said schedules for making such report, he or it shall pay a penalty of ten dollars ($10.00) for each day's omission. (1933, c. 445, s. 450.)

§ 7880(158). Charter cancelled for failure to report.—If a corporation required by the provisions of this act to file any report or return or to pay any tax or fee, either as a public utility (not an agency of interstate commerce) or a corporation organized under the laws of state, or as a foreign corporation doing business in this state for profit, or owning and using a part of or all its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return, or for paying such tax or fee, the commissioner of revenue shall certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of

any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by him. (1933, c. 445, s. 451.)

§ 7880(159). Penalty for exercising corporate functions after cancellation of charter.—Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are cancelled, as provided in any section of this act, shall pay a penalty of not less than one hundred dollars nor more than one thousand, to be recovered in an action to be brought by the commissioner of revenue in the superior court of Wake county. (1933, c. 445, s. 452.)

§ 7880(160). Corporate rights restored. — Any corporation whose articles of incorporation or certificate of authority to do business in this state have been cancelled by the secretary of state, as provided in section four hundred and one of this act, or similar provisions of prior revenue acts, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the commissioner of revenue that it has complied with all the requirements of this act and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of ten dollars, shall be entitled to again exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by him under the provisions of section four hundred and one of this act or similar provisions of prior revenue acts, and shall issue his certificate entitling such corporation to exercise its rights, privileges, and franchises. (1933, c. 445, s. 453.)

§ 7880(161). Officers, agents, and employees; misdemeanor failing to comply with tax law.—If any officer, agent and/or employee of any person, firm, or corporation subject to the provisions of this act shall willfully fail, refuse, or neglect to make out, file, and/or deliver any reports or blanks, as required by such law, or to answer any questions therein propounded, or to knowingly and willfully give a false answer to any such question wherein the fact inquired of is within his knowledge, or upon proper demand to exhibit to such commissioner of revenue or any person duly authorized by such commissioner any book, paper, account, record, memorandum of such person, firm, or corporation in his possession and/or under his control, he shall be guilty of a misdemeanor and fined not less than one hundred dollars ($100.00) nor more than one thousand ($1,000.00) for each offense. (1933, c. 445, s. 454.)

§ 7880(162). Aiding and/or abetting officers, agents, or employees in violation of this act a misdemeanor.—If any person, firm, or corporation shall aid, abet, direct, cause or procure any of his or its officers, agents, or employees to violate any of the provisions of this act he or it shall be guilty of a misdemeanor, and fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense. (1933, c. 445, s. 455.)

§ 7880(163). Each day's failure a separate offense.—Every day during which any person, firm, or corporation subject to the provisions of this act, or any officer, agent, or employee thereof, shall willfully fail, refuse, or neglect to observe and comply with any order, direction, or mandate of the commissioner of revenue, or to perform any duty enjoined by this act, shall constitute a separate and distinct offense. (1933, c. 445, s. 456.)

§ 7880(164). Penalty for bad checks.—When any taxpayer shall tender any uncertified check for payment of the tax due by him and such check shall have been returned to the office of the commissioner of revenue unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, then and in that event an additional tax shall be imposed equal to ten per cent of the tax due; and in no case shall the increase of said tax because of such failure be less than one dollar nor exceeding two hundred dollars ($200.00), and the said additional tax shall not be waived or diminished by the commissioner of revenue. This section shall also apply to all taxes levied or assessed by the state. (1933, c. 445, s. 457.)

§ 7880(165). Discretion of commissioner over penalties. — The commissioner of revenue shall have power, upon making a record of his reasons therefor, to reduce or waive any penalties provided for in this act, except the penalty provided in section 7880(164) relating to unpaid checks. (1933, c. 445, s. 458.)

§ 7880(166). Tax a debt. — Every tax imposed by this act, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a debt from the person, firm, or corporation liable to pay the same to the state of North Carolina. (1933, c. 445, s. 470.)

§ 7880(167). Action for recovery of taxes.—Action may be brought at any time by the attorney general of the state, at the instance of the commissioner of revenue, in the name of the state, to recover the amount of any taxes, penalties, and interest due under this act. (1933, c. 445, s. 471.)

§ 7880(168). Tax upon settlement of fiduciary's account.—1. No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the commissioner of revenue and the receipt for the amount of tax herein certified shall be conclusive as to the payment of the tax, to the extent of said certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commissioner of revenue, with the approval of the attorney general, may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the

provisions of this act, and the payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. (1933, c. 445, s. 472.)

§ 7880(169). Warrant for the collection of taxes. —If any tax imposed by this act or any other tax levied by the state and payable to the commissioner of revenue, or any portion of such tax, or penalties duly assessed for the nonpayment thereof, shall not be paid within thirty days after the same becomes due and has been assessed, the commissioner of revenue shall certify the same in duplicate and forward one copy thereof to the clerk of the superior court of the county in which the delinquent taxpayer resides or has property, and additional copies for each county in which the commissioner of revenue has reason to believe the delinquent taxpayer has property located, which copy so forwarded to the clerk of the superior court shall be immediately docketed by said clerk and indexed on the cross-index of judgments, and from the date of such docketing shall constitute a lien upon any real property which the delinquent taxpayer may own in said county, with the same force and effect as a judgment rendered by the superior court. The duplicate of said certificate shall be forwarded by the commissioner of revenue to the sheriff or sheriffs of such county or counties, and in the hands of such sheriff shall have all the force and effect of an execution issued to him by the clerk of the superior court upon the judgment of the superior court duly docketed in said county. The said certificate shall state a return day of not less than thirty nor more than sixty days, and the sheriff receiving the same shall thereupon proceed with the collection of the sum therein set out in all respects and with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of the superior court, and shall be entitled to the same fees for his services in executing the order as is allowed by law upon executions. The sheriff shall make his return in duplicate, filing one copy with the clerk of the superior court in said county and the other copy he shall forward to the commissioner of revenue, together with the money collected thereon, less his lawful expenses and fees.

The provisions of this section are intended to be cumulative and not in substitution for any other remedies now or hereafter provided by law for the collection of taxes. All of the rights and remedies provided for taxpayers in section 7780(194) for the recovery of any tax improperly collected are hereby expressly reserved to such taxpayers, but the provisions therein provided for shall not hinder or delay the execution of the process in this section. (1933, c. 445, s. 473.)

§ 7880(170). Taxes recoverable by action.—Upon the failure of any corporation to pay the taxes, fees, and penalties prescribed by schedules B and C of this act, the commissioner of revenue may certify same to the sheriff of the county in which such company may own property, for collection as provided in this act; and if collection is not made, such taxes or fees and penalties thereon may be recovered in an action in the name of the state, which may be brought in the superior court of Wake county, or in any county in which such corporation is doing business, or in any county in which such corporation owns property. The attorney general, on request of the commissioner of revenue, shall institute such action in the superior court of Wake county, or of any such county as the commissioner of revenue may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered stands charged on the delinquent duplicate of the commissioner of revenue, and that the same has been unpaid for the period of thirty days after having been placed thereon. (1933, c. 445, s. 474.)

§ 7880(171). Additional remedies.—In addition to all other remedies for the collection of any taxes or fees due under the provisions of this act, the attorney general shall, upon request of the commissioner of revenue, whenever any taxes, fees or penalties due under this act from any public utility (not an agency of interstate commerce, or corporation shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility (not an agency of interstate commerce) has failed or neglected for ninety days to make or file any report or return required by this act, or to pay any penalty for failure to make or file such report or return, apply to the superior court of Wake county, or of any county in the state in which such public utility (not an agency of interstate commerce) or corporation is located or has an office or place of business, for an injunction to restrain such public utility (not an agency of interstate commerce) or corporation from the transaction of any business within the state until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the cost of such application, which shall be fixed by the court. Such petition shall be in the name of the state; and if it is made to appear to the court, upon hearing, that such public utility (not an agency of interstate commerce) or corporation has failed or neglected, for ninety days, to pay such taxes, fees, or penalties thereon, or to make and file such reports, or to pay such penalties, for failure to make or file such reports or returns, such court shall grant and issue such injunction. (1933, c. 445, s. 475.)

§ 7880(172). Failure of sheriff to execute order. —If any sheriff of this state shall willfully fail, refuse, or neglect to execute any order directed to him by the commissioner of revenue and within the time provided in this act, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer. (1933, c. 445, s. 476.)

§ 7880(173). Actions, when tried. — All actions or processes brought in any of the superior courts of this state, under provisions of this act, shall have precedence over any other civil causes pending in such courts, and the courts shall always be deemed open for trial of any such action or proceeding brought therein. (1933, c. 445, s. 477.)

General Provisions

§ 7880(173) a. Definitions. — The definitions contained in section 7971(2) shall be incorporated as definitions applicable to this act. (1933, c. 507, s. 2.)

§ 7880(174). Taxes payable in national currency; for what period, and when a lien. — The taxes herein designated and levied shall be payable in the existing national currency. State, county, and municipal taxes levied for any and all purposes pursuant to this act shall be for the fiscal year in which they become due, except as otherwise provided, and the lien of such taxes shall attach to all real estate of the taxpayer within the state, which shall attach annually on the date that such taxes are due and payable, and shall continue until such taxes, with any interest, penalty, and costs which shall accrue thereon, shall be paid. (1933, c. 445, s. 490.)

Fiscal Year and Tax Year.—Welding this and § 1334(53) together by established rules of correct interpretation, the fiscal year and the tax year are coterminous and coincident, and the liability of the landowner for taxes for any year arises and begins on 1 July, of that year. State v. Champion Fibre Co., 204 N. C. 295, 297, 168 S. E. 207.

§ 7880(175). Municipalities not to levy income and inheritance tax.—No city, town, township, or county shall levy any tax on income or inheritance. (1933, c. 445, s. 491.)

§ 7880(176). State taxes.—The taxes levied in this act are for the expenses of the state government, the appropriations to its educational, charitable, and penal institutions, pensions for confederate soldiers and widows, the interest on the debt of the state, for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the state treasurer.

The taxes levied under authority of section 492 of chapter 427 of the Public Laws of 1931, and remaining unpaid, shall be collected in the same manner as other county taxes and accounted for in the same manner as other taxes under the daily deposit act. The county treasurer or other officer receiving such taxes in each county shall remit to the treasurer of the state on the first and fifteenth days of each month all taxes collected up to the time of such remittance under the levy therein provided for, and such remittance to the state treasurer shall also include the proportion of all poll taxes collected required by the constitution of the state to be used for educational purposes.

The tax levy therein provided for shall be subject to the same discounts and penalties as provided by law for other county taxes and there shall be allowed the same percentage for collecting such taxes as for other county taxes. The obligation to the state under the levy therein provided for shall run against all taxes that become delinquent; and with respect to any property that may be sold for taxes, any public officer receiving such delinquent taxes when and if such property may be redeemed or such tax obligations in any manner satisfied, shall remit such proportionate part of such tax levy to the state treasurer within fifteen days after receipt of same. At the end of each fiscal year the county accountant shall furnish the state treasurer a statement of the total amount of taxes levied in accordance with the provisions of this section that are uncollected at the end of the fiscal year. (1933, c. 445, s. 492.)

§ 7880(177). Tax exemption repealed.—Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations, other than the bonds of this state and of the United States Government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property held for the benefit of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculations, or rent, shall be exempt, other than bonds of this state and of the United States Government, unless said rent or the interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions. (1933, c. 445, s. 493.)

§ 7880(177) a. Free privilege licenses for blind people.—Any blind person of the age of twenty-one years or more, desiring to operate a legitimate business of any kind to provide a livelihood for himself and dependents, if any, may apply to the welfare officer of the county in which he resides for free privilege license.

No one shall be eligible to the benefits provided for in this section who is not a blind person (the term "blind person" shall for the purposes of this act be construed to mean one who has suffered the total loss of his eyesight, or whose eyesight is so impaired as to unfit the person applying for the benefits under this act to engage in any labor, profession, or ordinary work in competition with his fellowmen with any degree of success, and/or any person suffering with impaired visions likely to produce total blindness), or who has an income of any kind amounting to twelve hundred ($1200.00) dollars, or more net per annum, or whose husband or wife has an income of any kind amounting to twelve hundred ($1200.00) dollars or more net per annum.

It shall be the duty of the county commissioners upon receipt of application from anyone applying for the benefits under this section, to make a thorough investigation to determine whether or not the applicant is entitled to the privilege license as provided for in this section. When the commissioners are satisfied that the applicant is capable of operating the business for which said privilege license is asked and that he is a deserving person, the commissioners shall then present to the state license department a letter requesting necessary privilege license to operate the aforesaid business, and the state license department shall issue free of charge the license requested. The commissioners shall present to the county license department a letter requesting county privilege license necessary to operate the aforesaid business, and the county license department

shall likewise issue free of charge the privilege license requested. The county commissioners shall also present, when necessary, to the municipal license department a letter requesting city privilege license necessary to operate aforesaid business, and the municipal license department shall issue free of charge privilege license requested. (1933, c. 53.)

§ 7880(178). Law applicable to foreign corporations.—All foreign corporations, and the officers and agents thereof, doing business in this state, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. (1933, c. 445, s. 494.)

§ 7880(179). Information must be furnished. — Each company, firm, corporation, person, association, co-partnership, or public utility shall furnish the commissioner of revenue, in the form of returns prescribed by him, all information required by law and all other facts and information, in addition to the facts and information in this act specifically required to be given, which the commissioner of revenue may require to enable him to carry into effect the provisions of the laws which the said commissioner is required to administer, and shall make specific answers to all questions submitted by the commissioner of revenue. (1933, c. 445, s. 495.)

§ 7880(180). Returns required.—Any company, firm, corporation, person, association, co-partnership, or public utility receiving from the commissioner of revenue any blanks, requiring information, shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure.

The answers to such questions shall be verified under oath by such persons, or by the president, secretary, superintendent, general manager, principal accounting officer, partner or agent, and returned to the commissioner of revenue at his office within the period fixed by the commissioner of revenue. (1933, c. 445, s. 496.)

§ 7880(181). Personal liability of officers, trustees, or receivers.—Any officer, trustee, or receiver of any corporation required to file report with the commissioner of revenue, having in his custody funds of the corporation, who allows said funds to be paid out or distributed to the stockholders of said corporation without having satisfied the state board of assessment or commissioner of revenue for any state taxes which are due or have accrued, shall be personally responsible for the payment of said tax, and in addition thereto shall be subject to a penalty of not more than the amount of the tax, nor less than twenty-five per cent of such tax found to be due or accrued. (1933, c. 445, s. 497.)

§ 7880(182). Blanks furnished by commissioner of revenue. — The commissioner of revenue shall cause to be prepared suitable blanks for carrying out the purpose of the laws which he is required to administer, and, on application, furnish such blanks to each company, firm, corporation, person, association, co-partnership, or public utility subject thereto. (1933, c. 445, s. 498.)

§ 7880(183). Commissioner of revenue to keep records.—The commissioner of revenue shall keep books of account and records of collections of taxes as may be prescribed by the director of the budget; shall keep an assessment roll for the taxes levied, assessed, and collected under this act, showing in same the name of each taxpayer, the amount of tax assessed against each, when assessed, the increase or decrease in such assessment; the penalties imposed and collected, and the total tax paid; and shall make monthly reports to the director of the budget and to the auditor and/or state treasurer of all collections of taxes on such forms as prescribed by the director of the budget. (1933, c. 445, s. 499.)

§ 7880(184). Publication of statistics. — The commissioner of revenue shall prepare and publish annually statistics reasonably available, with respect to the operation of this act, including amounts collected, classifications of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable. (1933, c. 445, s. 500.)

§ 7880(184) a. Report on system of other states. —The commissioner of revenue shall biennially make report to the general assembly, the said report to contain all available data that may be assembled by his department with respect to the tax laws and systems of this and other states, and making such recommendations as may be useful in improving the tax laws and system of this state. (1933, c. 88, s. 2.)

§ 7880(185). Powers of commissioner of revenue.—The commissioner of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due by any taxpayer under this act, shall have power to examine or cause to be examined, by any agent or representative designated by him for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons. (1933, c. 445, s. 501.)

§ 7880(186). Secrecy required of officials—penalty for violation.—(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of revenue, any deputy, agent, clerk, other officer, employee, or former officer or employee, to divulge and make known in any manner the amount of income, income tax, or other taxes, or any particulars set forth or disclosed in any report or return required under this act.

(b) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification or particular reports or returns, and the items thereof; the inspection of such reports or returns by the governor, attorney general, or their duly authorized

representative; or the inspection by a legal representative of the state of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this act.

(c) Reports and returns shall be preserved for three years, and thereafter until the commissioner of revenue shall order the same to be destroyed.

(d) Any person, officer, agent, clerk, employee or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor, and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00), and/or imprisoned, in the discretion of the court; and if such offending person be an officer or employee of the state, he shall be dismissed from such office or employment, and shall not hold any public office or employment in this state for a period of five years thereafter.

(e) Notwithstanding the provisions of this section, the commissioner of revenue may permit the commissioner of internal revenue of the United States, or the revenue officer of any state imposing any of the taxes imposed in this act, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish such officer or his authorized agent an abstract of the report or return of any taxpayer; or supply such officer with information concerning any item contained in any report or return, or disclosed by the report of any investigation of such report or return of any taxpayer. Such permission, however, shall be granted or such information furnished to such officer, or his duly authorized representative, only if the statutes of the United States or of such other state grants substantially similar privilege to the commissioner of revenue of this state or his duly authorized representative. (1933, c. 445, s. 502.)

§ 7880(187). Deputies and clerks. — The commissioner of revenue may appoint such deputies, clerks, and assistants under his direction as may be necessary to administer the laws relating to the assessment and collection of all taxes provided for in this act; may remove and discharge same at his discretion, and shall fix their compensation within the rules and regulations prescribed by law. (1933, c. 445, s. 503.)

§ 7880(188). Commissioner and deputies to administer oaths.—The commissioner of revenue and such deputies as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this act or under the rules and regulations of the commissioner of revenue, and shall have access to the books and records of any person, firm, corporation, county, or municipality in this state. (1933, c. 445, s. 504.)

§ 7880(189). Rules and regulations.—The commissioner of revenue may, from time to time, make, prescribe, and publish such rules and regulations, not inconsistent with this act, as may be needful to enforce its provisions. (1933, c. 445, s. 505.)

§ 7880(190). Time for filing reports extended. —The commissioner of revenue, when he deems the same necessary or advisable, may extend to any person, firm, or corporation or public utility a further specified time within which to file any report required by law to be filed with the commissioner of revenue, in which event the attaching or taking effect of any penalty for failure to file such report or to pay any tax or fee shall be extended or postponed accordingly. (1933, c. 445, s. 506.)

§ 7880(191). Construction of the act; population.—It shall be the duty of the commissioner of revenue to construe all sections of this act imposing either licenses, inheritance, income, or other taxes. Such decisions by the commissioner of revenue shall be prima facie correct, and a protection to the officers and taxpayers affected thereby. Where the license tax is graduated in this act according to the population, the population shall be the number of inhabitants as determined by the last census of the United States government: Provided, that if any city or town in this state has extended its limits since the last census period, and thereafter has taken a census of its population in these increased limits by an official enumeration either through the aid of the United States government or otherwise, the population thus ascertained shall be that upon which the license tax is to be graduated. (1933, c. 445, s. 507.)

§ 7880(192). When increases operative.—In all instances in which the taxes are increased or decreased under Schedules B and C of this act, and which shall become due between the ratification of this act and the first day of June, one thousand nine hundred and thirty-three, such increase or decrease shall become operative only from and after the thirty-first day of May, one thousand nine hundred and thirty-three. (1933, c. 445, s. 508.)

§ 7880(193). Authority for imposition of tax.— This act, after its ratification, shall constitute authority for the imposition of taxes upon the subjects herein revised, and all laws in conflict with it are hereby repealed, but such repeal shall not affect taxes listed or which ought or should have been listed, or which may have been due, or penalties or fines incurred from failure to make the proper reports, or to pay the taxes at the proper time under any of the schedules of existing law, but such taxes and penalties may be collected, and criminal offenses prosecuted, under such law existing at the time of the ratification of this act, notwithstanding this repeal. (1933, c. 445, s. 509.)

§ 7880(194). Taxes to be paid. — No court of this state shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this act. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and notify such officer in writing that he pays same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the commissioner of revenue of the state, if a state tax, or

if a county, city, or town tax, from the treasurer thereof, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such official for the amount so demanded; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state. (1933, c. 445, s. 510.)

Suit in Equity.—The remedy provided by this section cannot, in case of a class suit instituted in behalf of a large number of taxpayers, be deemed an adequate remedy as compared with the suit in equity which eliminates so much useless and cumbersome litigation. Gramling v. Maxwell, 52 F. (2d) 256, 261.

§ 7880(195). Unconstitutionality or invalidity.—If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof. (1933, c. 445, s. 511.)

Art. 7. Liability for Failure to Levy Taxes

§ 7880(196). Repeal of laws imposing liability upon governing bodies of local units.—All laws and clauses of laws, statutes and parts of statutes, imposing civil or criminal liability upon the governing bodies of local units, or the members of such governing bodies, for failure to levy or to vote for the levy of any particular tax or rate of tax for any particular purpose, are hereby repealed, and said governing bodies and any and all members thereof are hereby freed and released from any civil or criminal liability heretofore imposed by any law or statute for failure to levy or to vote for the levy of any particular tax or tax rate for any particular purpose. (1933, c. 418, s. 1.)

SUBCHAPTER II. ASSESSMENT AND LISTING OF TAXES.

Art. 1. Machinery Act of 1933 in General

§ 7971(1) Official title.—This act may be cited as the machinery act of one thousand nine hundred thirty-three. (1933, c. 204, s. 1.)

§ 7971(2). Definitions.—When used in this act or the revenue act:

(1) The term "person" means an individual, trust, or estate, a partnership or company.

(2) The term "corporation" includes associations, joint stock companies, insurance companies, and limited partnerships where shares of stock are issued.

(3) The term "domestic" when applied to corporations or partnerships means created or organized in the state of North Carolina.

(4) The term "foreign" when applied to a corporation or partnership means a corporation or partnership not domestic.

(5) The term "commissioner" means the commissioner of revenue.

(6) The term "deputy" means an authorized representative of the commissioner of revenue or other commissioner.

(7) The term "taxpayer" means any person, firm or corporation subject to a tax or duty imposed by the revenue or machinery act.

(8) The term "state license" means a license issued by the commissioner of revenue, usable, good and valid in the county or counties named in the license.

(9) The term "state-wide license" means a license issued by the commissioner of revenue, usable, good and valid in each and every county in this state.

(10) The term "intangible property" means patents, copyrights, secret processes and formulæ, good will, trade-marks, trade-brands, franchises, stocks, bonds, notes, evidences of debt, bills and accounts receivable, and other like property.

(11) The term "tangible property" means all property other than intangible.

(12) The term "public utility" as used in this act means and includes each person, firm, company, corporation, and association, their lessees, trustees, or receivers, elected or appointed by any authority whatsoever, and herein referred to as express company, telephone company, telegraph company, Pullman car company, freight-line company, equipment company, electric power company, gas company, railroad company, union depot company, water transportation company, street railway company, railroad company, and other companies exercising the right of eminent domain, and such term "public utility" shall include any plant or property owned and/or operated by any such persons, firms, corporations, companies, or associations.

(13) The term "express company" means a public utility company engaged in the business of conveying to, from, or through this state, or part thereof, money, packages, gold, silver, plate, or other articles and commodities by express, not including the ordinary freight lines of transportation of merchandise and property in this state.

(14) The term "telephone company" means a public utility company engaged in the business of transmitting to, from, through, or in this state, or part thereof, telephone messages or conversations.

(15) The term "telegraph company" means a public utility company engaged in the business of transmitting to, from, through, or in this state, or a part thereof, telegraphic messages.

(16) The term "Pullman car company" means a public utility company engaged in the business of operating cars for the transportation, accommodation, comfort, convenience, or safety of passengers, on or over any railroad line or lines or other common carrier lines, in whole or in part within this state, such line or lines not being owned, leased, and/or operated by such railroad company, whether such cars be termed sleeping, Pullman, palace, parlor, observation, chair, dining, or buffet cars, or by any other name.

(17) The term "freight-line company" means a public utility company engaged in the business of operating cars for the transportation of freight or commodities, whether such freight and/or commodities is owned by such company or any other person or company over any railroad or other common carrier line or lines in whole or in part within this state, such line or lines not being owned, leased, and/or operated by such railroad company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, refrigerator, fruit, meat, oil, or by any other name.

(18) The term "equipment company" means a public utility company engaged in the business of furnishing and/or leasing cars, of whatsoever kind or description, to be used in the operation of any railroad or other common carrier line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such railroad company.

(19) The term "electric power company" means a public utility company engaging in the business of supplying electricity for light, heat, and/or power purposes to consumers within this state.

(20) The term "gas company" means a public utility company engaged in the business of supplying gas for light, heat, and/or power purposes to consumers within this state.

(21) The term "waterworks company" means a public utility company engaged in the business of supplying water through pipes or tubing and/or similar manner to consumers within this state.

(22) The term "union depot company" means a public utility company engaged in the business of operating a union depot or station for railroads or other common carrier purposes.

(23) The term "water transportation company" means a public utility company engaged in the transportation of passengers and/or property by boat or other water craft, over any waterway, whether natural or artificial, from one point within this state to another point within this state, or between points within this state and points without this state.

(24) The term "street railway company" means a public utility company engaged in the business of operating a street suburban or interurban railway, either wholly or partially within this state, whether cars are propelled by steam, cable, electricity, or other motive power.

(25) The term "railroad company" means a public utility company engaged in the business of operating a railroad, either wholly or partially within this state, or rights of way acquired or leased and held exclusively by such company or otherwise.

(26) The term "gross receipts" or "gross earnings" mean and include the entire receipts for business done by any person, firm, or corporation, domestic or foreign, from the operation of business or incidental thereto, or in connection therewith. The gross receipts or gross earnings for business done by a corporation, engaged in the operation of a public utility, shall mean and include the entire receipts for business done by such corporation, whether from the operation of the public utility itself or from any other business done whatsoever.

(27) The terms "bank," "banker," "broker," "stock jobber," mean and include any person, firm, or corporation who or which has money employed in the business of dealing in coin, notes, bills of exchange, or in any business of dealing, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, acceptances, promissory notes, bonds, warrants, or other written obligations, or stocks of any kind or description whatsoever, or receiving money on deposits.

(28) The terms "collector" or "collectors" mean and include county, township, city, town, tax collectors and sheriffs.

(29) The term "list takers and/or assessors" means and includes either list takers, assessors, or assistants.

(30) The terms "real property," "real estate," "land," "tract," or "lot" mean and include not only the land itself, but also all buildings, structures, improvements, and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto, except where the same may be otherwise denominated by this or the revenue act.

(31) The terms "shares of stock" or "shares of capital stock" mean and include the shares into which the capital or capital stock of any incorporated company or association may be divided.

(32) The terms "tax" or "taxes" mean and include any taxes, special assessments, costs, penalties, and/or interest imposed upon property, or other subjects of taxation. (1933, c. 204, s. 2; c. 507.)

Art. 2. State Board of Assessment

§ 7971(3). Creation; personnel. — The governor, or some person designated by him, the commissioner of revenue, the chairman of the corporation commission, the attorney general, and the director of local government shall be and are hereby created the state board of assessment, with all the powers and duties prescribed in the act. The commissioner of revenue shall be the chairman of the said board, and shall, in addition to presiding at the meetings of the board, exercise the functions, duties, and powers of the board when not in session. The board may employ an executive secretary, whose entire time may be given to the work of the said board, and is authorized to employ such clerical assistance as may be needed for the performance of its duties. (1933, c. 204, s. 200.)

§ 7971(4). Oath. — The members of the said board shall take and subscribe to the constitutional oath of office and file the same with the secretary of state. (1933, c. 204, s. 201.)

§ 7971(5). Duties of state board of assessment. —The state board of assessment shall exercise general and specific supervision of the systems of valuation and taxation throughout the state, including counties and municipalities, and in addition they shall be and constitute a state board of equalization and review of valuation and taxation in this state. It shall be the duty of said board:

(1) To confer with and advise boards of county commissioners, tax supervisors, assessing officers, list takers, and all others engaged in the valuation and assessment of property, in the prepara-

tion and keeping of suitable records, and in the levying and collection of taxes and revenues, as to their duties under this act or any other act passed for the purpose of valuation of property, assessing, levying, and/or the collection of revenue for counties, municipalities, and other subdivisions of the state, to insure that proper proceedings shall be brought to enforce such revenue acts and for the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals failing, refusing, or neglecting to comply with this act; and to call upon the attorney general or any prosecuting attorney in the state to assist in the execution of the powers herein conferred.

(2) To prepare a pamphlet or booklet for the instruction of the boards of county commissioners, tax supervisors, assessing officers, list takers, and all others engaged in the valuation of property, preparing and keeping records, and in the levying and collecting of taxes and revenue, and have the same ready for distribution at least thirty (30) days prior to the date fixed for listing taxes. The said pamphlet or booklet shall, in as plain terms as possible, explain the proper meaning of the revenue laws and the machinery act of this state, shall call particular attention to any points in the law and/or in the administration of the laws which may be or which have been overlooked or neglected, shall advise as to the practical working of the revenue laws and machinery act, and shall explain and interpret any points that seem to be intricate and upon which county or state officials may differ.

(3) To hear and to adjudicate appeals from boards of county commissioners and county boards of equalization and review as to property liable for taxation that has not been assessed or of property that has been fraudulently or improperly assessed through error or otherwise, to investigate the same, and if error, inequality, and/or fraud is found to exist, to take such proceedings and to make such orders as to correct the same. In case it shall be made to appear to the state board of assessment that any tax list or assessment roll in any county in this state is grossly irregular, or any property is unlawfully or unequally assessed as between individuals, between sections of a county or between counties, the said board shall correct such irregularities, inequalities, and lack of uniformity, and shall equalize and make uniform the valuation thereof upon complaint by the board of county commissioners or upon its own initiation under rules and regulations prescribed by it, not inconsistent with this act: Provided, that no appeals shall be considered or fixed values changed, unless notice of same is filed within sixty (60) days after the final values are fixed and determined by the board of county commissioners or the board of equalization and review.

(4) To require from the register of deeds, auditor, county accountant, tax clerk, clerk of the court, and/or other officer of each county, and the mayor, clerk, and/or other officer of each municipality, on forms prepared and prescribed by the said board, such annual and other reports as shall enable said board to ascertain the assessed valuation of all property listed for taxation in this state under this or any other act, the rate and amount of taxes assessed and collected, the amount returned delinquent, tax sales, certificates of purchase at such tax sales held by the state, county, or municipality, and such other information as the board may require, to the end that it may have full, complete and accurate statistical information as to the practical operation of the tax and revenue laws of the state.

(5) To require the secretary of state, and it shall be his duty, to furnish monthly to the said board a list of all domestic corporations incorporated, charters amended, or dissolved, all foreign corporations domesticated, charters amended, dissolved, or domestication withdrawn during the preceding month, in such details as may be prescribed by said board.

(6) To make diligent investigation and inquiry concerning the revenue laws and systems of taxation of other states so far as the same are made known by published reports and statistics, and can be ascertained by correspondence with officers thereof.

(7) To report to the general assembly at each regular session, or at such other times as it may direct, the total amount of revenue or taxes collected in this state for state, county, and municipal purposes, classified as to state, county, township, and municipality, with the sources thereof; to report to the general assembly the proceedings of the board and such other information and recommendations concerning the public revenues as required by the general assembly or that may be of public interest; to cause two thousand (2,000) copies of said report to be printed on or before the first day of January in the year of the regular session of the general assembly, and place at the disposal of the state librarian one hundred (100) copies of said report for distribution and exchange; and to forward a copy of said report to each member of the general assembly as soon as printed.

(8) To discharge such other duties as may be prescribed by law, and take such action, do such things, and prescribe such rules and regulations as may be needful and proper to enforce the provisions of this and the revenue act.

(9) To prepare for the legislative committee of succeeding general assemblies such suggestions of revision of the revenue laws, including the machinery act, as it may find by experience, investigation, and study to be expedient and wise. (1933, c. 204, s. 202.)

§ 7971(6). Annual report to governor. — The state board of assessment shall annually, on or before the first day of January of each year, make a report to the governor of the proceedings of the said board the preceding year, with its recommendations in relation to all matters of taxation and revenue. (1933, c. 204, s. 203.)

§ 7971(7). Board to prescribe forms, books, and records, require abstracts to be filed, and to make rules and regulations.—The state board of assessment is authorized and empowered to prescribe the forms, books, and records that shall be used in the valuation of property and in the levying

and collection of taxes, and how the same shall be kept; to require the county tax supervisors, clerk of board of county commissioners, or auditor of each county to file with it, when called for, complete abstracts of all real and personal property in the county, itemized by townships and as equalized by the county board of equalization and review; and to make such other rules and regulations, not included in this or the revenue act, as the said board may deem needful to effectually promote the purposes for which the board is constituted and the systems of taxation provided for in this and the revenue act. (1933, c. 204, s. 204.)

§ 7971(8). Sessions of board, where to be held.—The regular sessions of the state board of assessment shall be held in the city of Raleigh at the office of the chairman, and other sessions may be called at any place in the state to be decided by the board. (1933, c. 204, s. 205.)

§ 7971(9). Board has access to public books and records and empowered to subpoena witnesses — The state board of assessment, the members thereof, and/or any duly authorized deputy shall have access to all books, papers, documents, statements, records, and accounts on file or of record in any department of state, county, or municipality, and is authorized and empowered to subpoena witnesses upon a subpoena signed by the chairman of the board, directed to such witnesses, and to be served by any officer authorized to serve subpoenas; to compel the attendance of witnesses by attachment to be issued by any superior court upon proper showing that such witness or witnesses have been duly subpoenaed and have refused to obey such subpoena or subpoenas; and to examine witnesses under oath to be administered by any member of the board. (1933, c. 204, s. 206.)

§ 7971(10). Board to have access to books and records of persons, firms, and corporations.—The state board of assessment, the members thereof, or any duly authorized deputy are authorized and empowered to examine all books, papers, records, and/or accounts of persons, firms, and corporations, domestic or foreign, owning property liable to assessment for taxation, general or specific, under the laws of this state. (1933, c. 204, s. 207.)

§ 7971(11). Board to direct members to hear complaints.—The state board of assessment is authorized and empowered to direct any member or members of the board to hear complaints, to make examinations and investigations, and to report his or their findings of fact and conclusions to the board. (1933, 204, s. 208.)

§ 7971(12). Board to keep records.—The state board of assessment shall keep full, correct, and accurate record of its official proceedings, and certified copies of its records, attested with its official seal, shall be received in evidence in all courts of the state with like effect as certified copies of other public records. (1933, c. 204, s. 209.)

Art. 3. Property Subject to Taxation

§ 7971(13). General provisions.—All property, real and personal, within the jurisdiction of the state, not especially exempted, shall be subject to taxation. (1933, c. 204, s. 300.)

§ 7971(14). Real property defined.—For the purposes of taxation, real property shall include all lands within the state and all buildings and fixtures thereon and appurtenances thereto. (1933, c. 204, s. 301.)

§ 7971(15). Real property—where and to whom assessed.—(1) Real property shall be assessed in the township or place where situated, to the owner, if known; if the owner be not known and there be an occupant, then to such occupant, and either or both shall be liable for taxes assessed on such property; and if there be no owner or occupant known, then as unknown.

(2) A trustee, guardian, executor, administrator, assignee, or agent having control or possession of real property may be considered as the owner.

(3) The real property which belongs to a person deceased, not being in control of an executor or administrator, may be assessed to his heirs or devisees jointly without naming them until they shall have given notice of the respective names to the supervisor of taxation or chairman of the board of county commissioners and of the division of the estate, and undivided interests in real property owned by tenants in common, not being co-partners, may be assessed to the owners if so requested and in the discretion of the supervisors of taxation.

(4) Lease property in which the lessee has a capital investment, by using improvements or structures erected, may be listed separately by lessor or lessee with reference to the degree of ownership of each party, in accordance with contractual relation between parties, be listed as a whole by either of them. (1933, c. 204, s. 302.)

§ 7971(16). Corporate real property.—The real property of a corporation or association shall be assessed to the name of the corporation or association, the same as to an individual, if known, in the township or place where situated, or may be assessed to the occupant or to an authorized agent if so requested of the supervisor of taxation. (1933, c. 204, s. 303.)

§ 7971(17). Real property exemptions.—The following real property, and no other, shall be exempted from taxation:

(1) Real property directly or indirectly owned by the United States or this state, however held, and real property lawfully owned and held by counties, cities, townships, or school districts, used wholly and exclusively for public or school purposes.

(2) Real property, tombs, vaults, and mausoleums, set apart for burial purposes, except such as are owned and held for purposes of sale or rental.

(3) Buildings, with the land upon which they are situated, lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body together with the additional adjacent land reasonably necessary for the convenient use of any such building; and also buildings and lands lawfully owned and held by churches or religious bodies if the income from the said property is used exclu-

sively for religious, charitable, or benevolent purposes.

(4) Buildings, with the land actually occupied, wholly devoted to educational purposes, belonging to, actually and exclusively occupied and used for public libraries, incorporated colleges, academies, industrial schools, seminaries, or any other incorporated institutions of learning, together with such additional adjacent land owned by such libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, and also the buildings thereon used as residences by the officers or instructors of such educational institutions.

(4-A) Property belonging to or held for the benefit of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, where the rent, interest or income from such investment shall be used exclusively for religious, charitable, educational or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable or benevolent institutions.

(5) Real property belonging to, actually and exclusively occupied by Young Men's Christian Associations and other similar religious associations, orphanages, or other similar homes, hospitals and nunneries, not conducted for profit, but entirely and completely as charitable.

(5-A) Private hospitals shall not be exempt from property taxes and other taxes lawfully imposed, but in consideration of the large amount of charity work done by them, the boards of commissioners of the several counties are authorized and directed to accept, as valid claims against the county, the bills of such hospitals for attention and services voluntarily rendered to afflicted or injured residents of the county who are indigent and likely to become public charges, when such bills are duly itemized and sworn to and are approved by the county physician or health officer as necessary or proper; and the same shall be allowed as payments on and credits against all taxes which may be or become due by such hospital on properties strictly used for hospital purposes, but to that extent only will the county be liable for such hospital bills: Provided, that the board of aldermen or other governing boards of cities and towns may allow similar bills against the municipal taxes for attention and services voluntarily rendered by such hospitals to paupers or other indigent persons resident in any such city or town: Provided, further, that the governing boards of cities and towns shall require a sworn statement to the effect that such bills have not and will not be presented to any board of county commissioners as a debt against that county, or as a credit on taxes due that county.

(6) Buildings, with the land actually occupied, belonging to the American Legion or Post of the American Legion or any benevolent, patriotic, historical, or charitable association used exclusively for lodge purposes by said societies or associations, together with such additional adjacent land as may be necessary for the convenient use of the buildings thereon; and also the profits arising from rents, leases, etc., for rooms in said buildings, whether occupied for meeting places or not, when such rents, proceeds, and profits are used wholly and exclusively for charitable and benevolent purposes.

(7) The real property of Indians who are not citizens, except lands held by them by purchase. (1933, c. 204, s. 304.)

For amendment of this section applicable in Nash county and the city of Rocky Mount, see Public Laws 1933, c. 371.

§ 7971(18). Personal property included. — Personal property shall include:

(1) All money.

(2) All annuities and royalties.

(3) All goods, chattels, merchandise, commodities, and effects within the state.

(4) All ships, boats, vessels, automobiles, flying machines, and their appliances belonging to citizens of this state, whether at home or abroad.

(5) All goods, chattels, merchandise, commodities, and effects situated within this state belonging to citizens of this state, except that personal property, actually and permanently invested in business in another state shall not be included.

(6) All notes, bonds, accounts receivable, money on deposit, postal savings, securities and other credits of every kind belonging to citizens of this state over and above the amounts respectively owed by them, whether such indebtedness is due them from individuals or from corporations public or private, and whether such debtors reside within or without the state.

(7) All buildings and improvements situated upon leased lands, except where the value of the land is also assessed to the lessee or the owner of such buildings and improvements, unless otherwise assessed.

(8) All tombs, vaults, and mausoleums, built within any burial grounds and held for rent or hire or for sale in whole or in part.

(9) All produce, seeds, grain, forage and feed on hand, stored in warehouses, in mills, or in transit, owned within this state.

(10) All other personal property not herein enumerated, and not expressly exempted by law. (1933, c. 204, s. 305.)

§ 7971(19). Personal property exempted.—The following personal property, and no other, shall be exempted from taxation:

(1) Bonds of this state, of the United States, federal farm loan bonds, joint stock land bank bonds, and bonds of political sub-divisions of this state, hereafter issued.

(2) Personal property, directly or indirectly owned by this state and by the United States, and that lawfully owned and held by the counties, cities, towns, and school districts of the state, used wholly and exclusively for county, city, town, or public school purposes.

(3) The furniture and furnishings of buildings lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any church or religious body, and private libraries of such ministers and the teachers of the public schools of this state.

(4) The furniture, furnishings, books and instruments contained in buildings wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other incorporated institutions.

(5) The endowment and invested funds of churches and other religious associations, public

libraries, incorporated colleges, academies, industrial schools, and seminaries, when the income or interest from said funds shall be used exclusively for religious, charitable, educational, or benevolent purposes.

(6) Personal property, including endowment funds, belonging to Young Men's Christian Associations and other similar religious associations, orphan and other similar homes, reformatories, hospitals, and nunneries which are not conducted for profit and entirely and completely used for charitable and benevolent purposes.

(7) The furniture, furnishings, and other personal property belonging to any American Legion or Post of American Legion, patriotic, historical, or any benevolent or charitable association, and used wholly for lodge purposes and meeting rooms by said association, when such personal property is used for charitable or benevolent purposes.

(8) Wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments and provisions, not exceeding the total value of three hundred dollars ($300) and all growing crops.

(9) Shares of stock owned by individual stockholders in any domestic corporation, joint stock association, limited partnership, or company paying a tax on its capital stock or a franchise tax shall not be required to be listed or to pay an ad valorem tax; nor shares of stock owned and legally held on and continuously held for at least ninety days just prior to the first day of April of the tax year by a corporation in other corporations paying a tax on its capital stock shall not be required to be listed, or to pay an ad valorem tax. Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock in this state, providing the owner of such shares of stock has complied with the provisions of section 7880(129), and the situs of such shares of stock in foreign corporations, owned by residents of this state, for the purposes of this act, is hereby declared to be at the place where said corporation undertakes and carries on its principal business. (1933, c. 204, s. 306.)

Art. 4. Quadrennial Assessments.

§ 7971(20). All property to be listed with reference to ownership on April first of each year. — All property of every kind and nature, real and personal, shall be listed for taxation with reference to its ownership and value as of the first day of April of each year, except that for the purpose of providing sufficient time for a thorough re-assessment of real property in the year one thousand nine hundred thirty-three and quadrennially thereafter, real property shall be valued by the assessors with reference to its value as of the first day of April and shall be listed in the name of the owner as of the first day of April. The following machinery is provided for valuing real property of every kind and nature and for listing and valuing real and personal property in each year of the quadrennial assessment:

(1) The board of county commissioners of each county shall, on the first Monday in April, one thousand nine hundred thirty-three, meet and determine whether or not the real estate of the respective counties shall be revalued by horizontal increases or reductions, or by the appointment of assessors and appraisers as hereinafter set out, and in the event it is decided to revalue other than by horizontal reduction, or increase, then the board of county commissioners may, and every fourth year thereafter, appoint a county supervisor of taxation, who shall be a freeholder in the county, an experienced and practical business man with the knowledge of the valuation of real and personal property in the county, and who shall be a bona fide resident in the county for at least twelve months. He shall receive such compensation for his services as the board of county commissioners shall designate, not to exceed four dollars per day for such time as he may be actually and necessarily engaged in the performance of his duties in his office, and necessary travelling expenses for each day's service and shall serve for such time as the board of county commissioners in their discretion shall designate: Provided, in the event of the office becoming vacant the board of commissioners shall appoint another person to act and perform the duties of the county assessor for the remainder of the term. That the board of commissioners of the following counties shall cause the land of their county to be revalued by horizontal reduction of not less than thirty-three and one-third per cent (33-1/3%) of the present assessed valuation: Mecklenburg and Tyrrell counties. And the following counties shall cause their land to be revalued by the appointment of assessors and appraisers as herein set out: Alamance, Buncombe, Rockingham, Lenoir, Macon, Vance and Pender counties.

(2) In counties in which there is an auditor, tax clerk, county accountant, all-time chairman of the board of county commissioners or other similar officer, either may be designated by the board of county commissioners as the supervisor of taxation for the county: Provided, that when the duties of the office of county supervisor of taxation are performed by any auditor, tax clerk, county accountant, all-time chairman of board of county commissioners or other similar officer who is receiving a regular salary, the board of county commissioners may in their discretion allow such additional compensation and expense allowance as they may designate.

(3) The county supervisor of taxation shall have general supervision of the listing and assessment of all real and personal property for taxation in the county, shall visit the list takers and assessors in each township while they are engaged in listing and assessing property for taxation, and shall advise and confer with such list takers and assessors to the end that all property subject to taxation shall be listed and that the assessed valuation of all property in the several townships shall be fair and uniform. (1933, c. 204, s. 400, cc. 242, 272, 285, 372.)

For an act approving and validating listing in April 1933, see Public Laws 1933, c. 255.

§ 7971(21). Appointment of list takers and assessors.

(1) Supervisors to Appoint List Takers and Assessors.—The county supervisor of taxation shall appoint, on or before the second Monday in April, three discreet freeholders in each township,

each of whom shall have been a resident freeholder in his township for not less than twelve months, and who shall be known and designated as the township board of list takers and assessors. They shall serve for such time and shall receive such compensation for their services while actually employed as the board of county commissioners shall designate, not more than three dollars per day

(2) Board of County Commissioners May Appoint List Takers and Assessors.—Instead of the appointment of three freeholders in each township, as provided in this section, the board of county commissioners may, in their discretion, appoint for any township wherein is situated an incorporated city or town, one resident freeholder for each ward or district in such cities or towns. Such persons so appointed shall have been resident freeholders for not less than twelve months prior to their appointment.

(3) List Takers and Assessors to List and Value Property.—The list takers and assessors of each township, ward or district, under the supervision of the county supervisor of taxation, shall list and assess all real and personal property in their respective townships, wards or districts; shall ascertain the true value in money of all personal property and every tract, lot or parcel of land or other real estate with all improvements thereon; shall have authority to personally visit, inspect and view any property, real or personal, which is to be assessed and shall make diligent inquiry as to its value; shall have authority to subpoena and examine under oath witnesses who may have knowledge of the real or personal property that has or should be listed and assessed and who may have knowledge of the actual cash value of such property; shall value all property, real and personal, at its true value in money as defined in this act; and shall make a detailed statement of each piece and kind of real and personal property, together with its true value in money and return the same to the county supervisor of taxation upon blanks furnished for that purpose. It shall be the duty of all tax listers and/or tax assessors in the several counties, cities, and towns of the state, when listing or assessing real estate for taxes, to ascertain from the owner of the real estate being so listed and assessed, or someone who has an interest therein, whether the same is encumbered, and if so, to whom, and the post office address of such landowner and lienholder. Each tract of land shall be listed separately, and this separate abstract or list shall show the acreage, at least two adjoining landowners for each tract, or such other description as shall be sufficient to locate and identify said land by parol testimony. Town lots and other small lots shall be listed in the same way, except the acreage need not be given, but the number of said lot on any town map or plat, or the street number, shall be given. The county supervisor of taxation or other person charged with supervision of the listing and assessment of property for the county, city, or town shall inspect the tax abstracts as returned by the list taker or assessor, and if the above requirements have not been complied with, shall refuse approval of the bill or account of such list taker or assessor for payment for his services until the record with respect to such listing and assessment of property as herein required shall have been complied with. (1933, c. 204, s. 401.)

§ 7971(22). First meeting of county supervisors of taxation and list takers and assessors.—The county supervisor of taxation, the list takers and assessors of each township, ward or district shall meet in the courthouse in each county on the third Monday in April upon the call of the county supervisor of taxation for the general consideration of methods for securing a complete list of all real and personal property in the county and for valuing and assessing the same in a uniform manner in the several townships. They shall begin on the third Monday in April to make a memorandum list of each tract or parcel of real property in the township with the name of the owner and description or location of the property, and after inspection and inquiry shall find the fair market value of same, such value to be used as the value of the property when listed, after giving effect to any change of ownership or the erection or construction of structures exceeding one hundred dollars ($100.00) in value. They shall begin on the first Monday in May to list real and personal property, and shall complete the same as early as practicable, or within such time as may be prescribed by the board of county commissioners, but not later than the first Monday in July. (1933, c. 204, s. 402.)

§ 7971(23). Oath of county supervisor, list taker and assessor.—(1) Before entering upon their respective duties, the county supervisor of taxation or members of the board of supervisors of taxation, the list takers and assessors shall take and subscribe to an oath as follows;

I, ..., County Supervisor of Taxation for ..... township, do solemnly swear (or affirm) that I will faithfully discharge the duties devolving upon me as County Supervisor of Taxation according to the laws in force governing such office, so help me, God.

.....
Signature.

(2) Upon making the complete returns for any township, ward or district the list takers or assessors for each township, ward or district shall annex to such returns the following affidavit:

I (or we) ....., the assessor (or assessors) for ..... township, make oath that the foregoing list of returns contain to the best of my (or our) knowledge and belief all the real and personal property required by law to be assessed for taxation in said township, and that I (or we) have assessed such personal property and each tract, lot or parcel of real estate at its true value in money and to the best of my (or our) ability have done equal justice to the public and to the taxpayers concerned.

.....
Signature.

(1933, c. 204, s. 403.)

§ 7971(24). County commissioners may employ experts.—The board of county commissioners in each county, at the request of the county supervisor of taxation, may in their discretion employ one or more persons having expert knowledge of the value of specific kinds or classes of property within the county, such as mines, factories, mills and other similar property to aid and assist the

county supervisor of taxation, the list takers and assessors in the respective townships, wards or districts, or to advise with, aid and assist the board of equalization and review in arriving at the true value in money of the property in the county. Such expert, or experts, so employed by the board of county commissioners shall receive for their services such compensation as the board of county commissioners shall designate. (1933, c. 204, s. 404.)

§ 7971(25). Methods of determining values.—All real and personal property shall be valued by the assessors of each township, ward or district under the supervision of the county supervisor of taxation. In determining the value of real property the assessors shall consider as to each tract, lot or parcel of land, its advantages as to location, quality of soil, quantity of timber, water power, water privileges, mineral, quarries and other valuable deposits known to be available therein, the fertility and adaptability for agriculture or commercial uses; and shall consider the past income derived therefrom, its probable future income, the present assessed value and any other facts which may affect the value of such real property. In order to arrive at the true value in money of personal property or of each tract, lot or parcel of real estate, the county supervisor and the assessors may examine the owner and may subpoena other persons to be examined under oath. (1933, c. 204, s. 405.)

§ 7971(26). County supervisors and assessors to jointly review the valuations and assessments and make tentative scroll.—(a) As soon as practicable, after the list takers and assessors have completed the listing and assessment and made return for each township as by this act required and before the meeting of the county board of equalization and review, the county supervisor of taxation shall convene all of the list takers and assessors and they shall jointly review the valuations and assessments in the several townships, wards and districts to the end that it may be ascertained whether the several assessors have applied the same methods of valuing property, real and personal, in the several townships, wards and districts, and whether the valuations and assessments in the several townships, wards and districts have been assessed at their true value in money and are uniform; and to correct any errors that have been committed, clerical or otherwise, and to equalize the assessments in the townships, wards and districts.

(b) For the purpose of this section, the list takers and assessors of the several townships, wards and districts of each county shall prepare a tentative scroll, roll or list by races, showing in alphabetical order the names of the taxpayers who have listed property for taxation in their respective townships, the items of each class of property listed and the valuation as fixed by the assessors for the current year and the items and valuation of same for the preceding year. All columns should be added, the totals entered for the township and the average value of each class of property shall be computed by dividing the total number of items in each class into the total valuation of the respective items.

(c) At the joint meeting of review of the county supervisor of taxation, the list takers and assessors as provided for in this section, such adjustments and corrections of the valuation of the several items of property listed and assessed shall be made as may be necessary to equalize the valuation of items of the same class in all of the townships, wards and districts of the county. If any such adjustments or corrections are made at such joint meeting of review, the adjusted or corrected values shall be extended to and entered in a column on the tentative scroll, roll or list provided for that purpose. The county supervisor of taxation shall preserve such tentative scroll, roll or list of each township, ward or district and shall present the same to the county board of equalization and review at their next meeting and for their inspection and consideration. (1933, c. 204, s. 406.)

§ 7971(27) Appropriate county officer to prepare final scroll.—After the county board of equalization and review shall have completed their duties as prescribed in this act and shall have adjourned and not later than the fourth Monday in July, the county accountant, auditor or tax clerk shall prepare a final and complete scroll, roll or list for each of the several townships, wards and districts in the county and for each race thereof, showing the names in alphabetical order of the several owners of real and personal property and the valuation of same as fixed and declared by the county board of equalization and review. Such scroll, roll or list, together with the same tentative scroll, roll or list, shall be filed as the fixed, determined and permanent roll for the quadrennial period either with the board of county commissioners, the county auditor, tax clerk, accountant, or other similar officers. (1933, c. 204, s. 407.)

§ 7971(28). Further powers and duties of supervisor of taxation and other officers. — The powers and duties of the state board of assessment, board of county commissioners, supervisor of taxation, list takers and assessors, auditor, clerk of the board of county commissioners, register of deeds, and all other officers named in this article for listing, valuing and assessing of real and personal property, filing returns and making reports, or fixed with any duty whatsoever under the provisions of this article shall exercise the powers conferred and perform all the duties prescribed in article five except wherein the specific duties prescribed in this article are in conflict with the duties prescribed and the powers conferred in article five, and said article five is hereby referred to for other and further duties of the officers named in this section. (1933, c. 204, s. 408.)

Art. 5. Annual Assessments

§ 7971(29). Machinery for annual assessments.—For the annual listing and assessing of property in years other than the quadrennial assessment years, property shall be listed for taxation with reference to ownership and value as of the first day of April, as provided in section 7971(20). The following machinery is provided for listing property for taxation in such years:

(1) The board of county commissioners of each county on the first Monday in March of each year other than the year for the quadrennial assessment of real and personal property shall appoint a resident freeholder as county supervisor of taxation. In counties which have an auditor, county account-

ant, tax clerk, all-time chairman of the board of county commissioners or other like officers, such officer may be the county supervisor of taxation.

(2) The county supervisor of taxation shall have general supervision of:

(a) The listing and assessing of all personal property for taxation.

(b) The listing of all real property that was listed and assessed at the last quadrennial assessment.

(c) The listing and assessing of all real property that was not assessed at the last quadrennial assessment.

(d) The listing and assessing of all real property to the extent of the value of improvements added in excess of one hundred ($100.00) dollars since the last assessment.

(e) The listing and assessing of all real property to the extent of the value of any building or other appurtenance in excess of one hundred ($100.00) dollars which has been removed or destroyed since the last assessment.

(f) The listing and assessing of all real property to the extent that some extraordinary circumstances have occurred since the last quadrennial assessment to increase or decrease the value of such real property, such circumstances being those of unusual occurrence in trade or business.

(g) The listing and assessing of all real property which has been sub-divided into lots, streets laid out and map recorded, or which has been sub-divided into lots on any street or streets already laid out and determined, since the last quadrennial assessment; and the said lots sold or offered for sale.

(3) County Supervisors to Appoint List Takers and Assessors.—The county supervisor of taxation upon approval of the board of county commissioners shall appoint a competent assistant for each township in the county, and in townships where are situated cities and towns of an unusually large amount of property, more than one assistant may be appointed. The county supervisor of taxation and the assistants shall be and constitute the county board of list takers and assessors. (1933, c. 204, s. 500.)

§ 7971((30). Oath of supervisor and assistant.—(1) Before entering upon the duties of their office, the county supervisor and the assistants herein provided for shall take and subscribe to the following oath before the chairman of the board of county commissioners or some other officer qualified to administer oaths and shall file the same with the clerk of the board of county commissioners:

Oath of County Supervisor

I, ..., County Supervisor of Taxation for ..... County in the State of North Carolina, for the year ....., do solemnly swear (or affirm) that I will discharge the duties of my office as County Supervisor, according to the laws in force that govern that office, so help me, God.

.....
Signature.

Oath of Assistant

I, ..., Assistant Supervisor of Taxation for ..... Township, County of ....., State of North Carolina, for the year ....., do solemnly swear (or affirm) that I will discharge the duties of my office as Assistant Supervisor of Taxation, according to the laws in force that govern said office, so help me, God.

.....
Signature.

(2) Assistant Supervisor to Make Scroll, List or Roll.—An assistant supervisor, upon making his complete returns of his listing and assessments, embracing the list or scroll of the taxable property in his township, to the county supervisor of taxation, shall annex the following affidavit, subscribed and sworn to before the clerk of the superior court or some other officer qualified to administer oaths:

I, ..., the Assistant Supervisor for ..... Township, County of ....., State of North Carolina, for the year ....., make oath that the foregoing list contains, to the best of my knowledge and belief, all the real and personal property required by law to be listed and/or assessed in said township and that I have listed and/or assessed every tract, or parcel of land, or other real estate, required to be assessed, and all personal property at its true value in money, and have endeavored to do equal justice to the public and to the taxpayers concerned.

.....
Signature.

(1933, c. 204, s. 501.)

§ 7971(31). Compensation of county supervisors of taxation and assistants.—The county supervisors of taxation and each assistant shall receive such compensation for their services as the board of county commissioners shall designate, not more than three dollars per day, and necessary traveling expenses for each day of service; shall serve for such time as the board of county commissioners in their discretion may designate; shall make out their accounts in detail, giving the date of each day's service, which account shall be verified and audited by the county accountant and approved by the board of county commissioners. (1933, c. 204, s. 502.)

§ 7971(32). Meeting of county supervisors and assistants.—The county supervisor of taxation and assistants shall meet in the courthouse of the county on the third Monday in March for general consideration of methods for securing a complete list of all real estate and personal property in the county, and for valuing in a uniform manner in the several townships, the different classes of personal property, shall begin the listing and assessing on the first Monday in April of each year and shall complete the same on or before the first Monday in May next following, but the board of county commissioners may extend the time to the first Monday of June next following or so much of said extension as such board of county commissioners may deem necessary; and after the listing and assessing has been completed, shall perform the duties imposed in sections 7971(26)-7971(27). (1933, c. 204, s. 503.)

§ 7971(33). Township assistants to advertise.—Each township list taker, assessor and/or assistant to the county supervisor shall advertise in five or more public places within the township, not later than the twentieth day of March, notifying

all persons owning property subject to taxation within the county to return to him all the real and personal property which such persons own on the first day of April, that said return must be made during the month of April or within the time designated by the board of county commissioners under the penalties imposed by law and that he will be present to receive the tax lists at the times and places named in the advertisement. (1933, c. 204, s. 504.)

§ 7971(34). Board of aldermen or other governing bodies of cities and towns lying in two or more counties may appoint municipal tax assessors.—For the purpose of municipal taxation all real and personal property subject to taxation to be levied by the several boards of Aldermen, boards of commissioners or other governing bodies of cities or towns, lying and being in two or more counties, shall be listed and assessed by the supervisor of taxation, list takers, and assessors appointed, and the valuation of such real and personal property shall be equalized by the board of equalization and review, constituted as hereinafter set out and in the following manner:

(1) The board of aldermen, the board of commissioners or other governing bodies of each and every such city or town shall at the first regular meeting of such board or other governing bodies in the month of April in the year one thousand nine hundred and thirty-three and every fourth year thereafter appoint a supervisor of taxation and two discreet freeholders, each of whom shall have been a resident freeholder in such city or town for a period of not less than twelve months, who shall constitute the board of list takers and assessors for said city or town; and such city supervisor of taxation, list takers and assessors shall in like manner and during the same period of time as in this act provided for listing and assessing real and personal property by county supervisors of taxation, township list takers and assessors, for all purposes of municipal taxation by said city or town, list and assess, at its true value in money, all the real and personal property in such city or town without reference to the valuation placed thereon by the county supervisor of taxation and township assessors or by the county board of equalization and review; and such board of aldermen, board of commissioners or other governing body, board of list takers and/or tax assessors and board of equalization and review of such cities and towns, in listing, assessing and equalizing the real and personal property in such cities or towns for the purposes of municipal taxation as aforesaid, shall exercise any powers conferred and perform every duty imposed upon boards of county commissioners, county supervisors of taxation, township list takers and assessors in the listing and assessing of property for the purposes of state and county taxation.

(2) The board of aldermen, board of commissioners, or other governing body of each and every such city, together with the city supervisor of taxation as chairman, shall constitute the board of equalization and review for such city or town and shall, in like manner and during the same period of time as in this act provided for the equalization of the valuation placed upon real and personal property by county supervisors, township list takers and assessors, equalize the valuation placed upon the real and personal property in such city or town by such municipal supervisors and tax assessors; and such board of equalization and review, in the equalization of the valuation of such real and personal property as aforesaid, shall exercise every power conferred and perform every duty imposed by this act upon county boards of equalization and review in the equalization of the valuation placed upon property by the county supervisors of taxation, the county list takers and assessors for the purposes of state and county taxation.

(3) The board of aldermen, the board of commissioners or other governing body of each and every such city or town shall, at the first regular meeting of such board or governing body held in March of each year other than the year of the quadrennial assessment, appoint one discreet freeholder as supervisor of taxation and in their discretion one or more assistants, each of whom shall have been a resident of such city or town for not less than twelve months and who shall be known as the tax assessor or tax assessors; who shall list and assess all the real and personal property in such city or town for the purposes of municipal taxation by said city or town in like manner and during the same period of time as in this act provided for the listing and assessing of property by the county supervisor, list takers and assessors for state and county purposes; and who shall list the land in such city or town at the valuation assessed in the last quadrennial assessment, except—

(a) Where improvements have been made in excess of one hundred dollars ($100) upon the real property since the last assessment and in that event the assessor shall find the actual value in money of such improvements and add to the value of the property as appraised at the last assessment.

(b) Where a building, timber or some other appurtenance of value in excess of one hundred dollars ($100) has been removed or destroyed since the last assessment, then the tax assessors shall find the value of such buildings or appurtenances so removed or destroyed since the last assessment and shall deduct such value from the appraised value of the real estate in the last assessment.

(c) Where some extraordinary circumstances have occurred to increase or reduce the actual value of the property since the last assessment, such circumstances as are of unusual occurrence in trade or business.

(d) Where real property has been sub-divided into lots, streets laid out and map registered, or where land has been sub-divided into lots on any street or streets already laid out and determined, since the last quadrennial assessment, and the said lots have been sold or offered for sale with reference to said street, streets and/or map registered, then and in the case that assessors shall re-value and re-appraise the said real property and find and determine the value in money of each lot thereof; shall list and assess all personal property in such city or town, and shall, on the listing and assessing such real and personal property for the purpose of municipal taxation as aforesaid, possess and exercise all the duties imposed in this act upon county supervisors, list takers and assessors in listing and assessing property for taxation.

(4) The intent and purpose of this section is to provide such cities and towns as lie in two or more

counties only with the machinery necessary for listing and assessing taxes for municipal purposes. The powers to be exercised by and the duties imposed on such boards of aldermen, boards of commissioners or other governing bodies, boards of equalization and review, city supervisor of taxation, list takers and assessors, city clerk and taxpayers shall be the same and they shall be subjected to the same penalties as provided in this act for all boards of county commissioners, county auditors, registers of deeds, clerks of boards of county commissioners, county supervisors, list takers and assessors. The county commissioners in their discretion may adopt the tax lists, scroll or assessment roll of such city or town as are fixed and determined by the board of equalization and review of such cities or towns, and when so adopted shall be considered to all intent and purpose the correct and valid list and the fixed and determined assessment roll for the purpose of county taxation. All petitions by taxpayers for increase or decrease in the valuation of property within such city or town fixed and determined by the board of equalization and review of such city or town shall be made to the board of aldermen, the board of commissioners or other governing body of such city or town; and all appeals to the state board of assessment on account of the valuation of such property shall be from the city board of equalization and review in such manner and within such times as are provided in this act for petitions to and appeals from the county board of equalization and review.

(5) That all expenses incident to the listing and assessing of the property for the purposes of municipal taxation as aforesaid shall be borne by the city or town for whose benefit the same is undertaken: Provided, that where the county or counties in which such city or town lies shall adopt the list and the fixed determined assessment of the city board of equalization and review, the county board of commissioners may reimburse the governing body in such amounts as in their discretion may be proper. (1933, c. 204, s. 505.)

§ 7971(35). Township assistant to make tax list. —(1) Each township assistant to the county supervisor shall obtain from every person owning property subject to taxation in his township a full, complete and detailed statement of each and every piece and kind of property, real and personal, which said person or persons shall own on the first day of April together with the true value in money of all such property as belongs to such person or persons, or shall be under his control as agent, guardian, administrator, executor, trustee or otherwise which should be listed for taxation; shall ascertain by visitation, investigation or otherwise, property not listed, the actual cash value in money of each piece or class of property in his township and list such property at its actual value for taxation; and is hereby authorized and empowered to administer oaths in all cases necessary to obtain any information concerning taxable real or personal property.

(2) After any tax list or abstract has been delivered to an assessor, to the supervisor of taxation, or to the board of county commissioners, and such assessor, supervisor of taxation or board of county commissioners shall have reason to believe or sufficient evidence upon which to form a belief that the person, firm or corporation making such list or abstract, in person or by agent, has other personal property, tangible or intangible, money, solvent credits, or other thing liable for taxation, they or either of them shall take such action as may be needful to get such property on the tax list. (1933, c. 204, s. 506.)

§ 7971(36). How to list property. — (1) Every person owning property, real or personal, is required to list and shall make out, sign and deliver to the assistant supervisor, list taker or assessor, a statement, verified by his oath, of all the real and personal property, money, credits, investments in bonds, annuities or other things of value, and the value of all improvements on or changes in real property since same was assessed at the last quadrennial assessment, which was in the possession or control of such person or persons on the first day of April either as owner or holder thereof or as parent, guardian, trustee, executor, administrator, agent, factor, or in any other capacity. It shall be the duty of all tax listers and/or tax assessors in the several counties, cities and towns of the state, when listing or assessing real estate for taxes, to ascertain the owner of the real estate being listed and assessed, or someone who has an interest therein whether the same is encumbered, and if so, to whom, and the postoffice address of such landowner and lienholder. Each tract of land shall be listed separately, and this separate abstract or list shall show the acreage, at least two adjoining landowners for each tract, or such other description as shall be sufficient to locate and identify said land by parol testimony. Town lots and other small lots shall be listed in the same way, except the acreage need not be given, but the number of said lot on any town map or plat or the street number of said lot shall be given. The county supervisor of taxation or other person charged with supervision of the listing and assessment of property for the county, city, or town shall inspect the tax abstracts as returned by the list taker or assessor, and if the above requirements have not been complied with, shall refuse approval of the bill for his services until the record with respect to such listing and assessment of property as herein required shall have been complied with.

That it shall be the duty of the list taker or assessor to carry forward on the tax list of any persons the real estate owned by them at the same assessed value as said property was valued at in the last quadrennial assessment of taxes, unless the value thereof has been changed by the board of county commissioners as provided by law, and the real property thus brought forward by the tax lister or assessor at the said assessed value shall be a legal and valid listing of the same as if listed by the owner, or owner's agent, or by the chairman of the board of county commissioners.

The board of county commissioners in any county may require the register of deeds, when any transfer of title is made, except mortgages and deeds of trust, or like liens recorded in his office, to certify the same to the auditor or county accountant, or supervisor of taxation, and the record of such transfer shall be entered upon the tax list of the county to the end that the property so transferred may be listed in the name of the party to whom

said property is transferred. The register of deeds shall include in his notice to the auditor, county accountant, or supervisor of taxation the name of the person conveying said property, the person to whom it is conveyed, the township in which it is situated, a short description of said property, and whether it is conveyed in whole or in part: Provided, however, that said register of deeds shall be allowed, when on fees, the sum of ten cents per entry for such transfer to be paid by the county, and if on salary, such an allowance as may be made by the governing body.

(2) When personal property has been conveyed in trust and the trustee resides without the state, but the trustor resides within the state, then in that case such property shall be listed and assessed for taxation in this state by said trustor where the property is situated.

(3) Where a guardian, executor or executrix, administrator or administratrix lives in a city or incorporated town, all personal property in the hands of such fiduciary shall be listed and assessed for taxation where the ward or wards resided on the first day of April and where deceased persons resided on the day of their death, however, if such wards of such deceased persons are non-residents of the state on the first day of April, then such fiduciary shall list the property where he or she resides on the first day of April.

(4) Whenever personal property is held in trust for another by any person, firm or corporation in this state either as guardian, trustee or otherwise and the ward or cestui que trust is a resident of this state, then the same shall be listed for taxation in the township and county where the ward or cestui que trust lived on the first day of April, and if the ward or cestui que trust lived on the first day of April in a county in this state, other than the county of the guardian, trustee or other person so holding said property, then the property so held in trust may be listed for taxation by forwarding a list thereof, during the month of April, verified by oath, to the county supervisor of taxation in the county wherein the ward or cestui que trust lived on the first day of April, and such supervisor of taxation shall enter the same on the tax list of the township in which the ward or cestui que trust lived. (1933, c. 204, s. 507.)

Where land, listed in the name of one person, belonging to another, has been sold for unpaid taxes and it is discovered, before the deed has been accepted, that the real owner has not listed it as required by this section, the deed is insufficient to pass title, for the methods provided by this and § 7971(50) must be followed. Wake County v. Faison, 204 N. C. 55, 167 S. E. 391.

§ 7971(37). Who may list through agents. — Females or non-residents of the township where the property is situated, and persons physically unable to attend and file a list of their property, may appoint agents for the purpose of listing their property. Such agent shall be required to qualify by stating under oath that he knows the extent and has knowledge of the true valuation of the property to be listed. The property of corporations shall be listed by the president, cashier, treasurer, or any other person appointed for that purpose. (1933, c. 204, s. 508.)

§ 7971(38). Private banks, bankers, brokers or security brokers.—Every bank (not incorporated), banker, broker or security broker, at the time fixed by this act for listing and assessing all real and personal property, shall make out and furnish the list takers and assessors a sworn statement showing:

(1) The amount of property on hand and in transit.

(2) The amount of funds owned in the hands of other banks, bankers, or brokers.

(3) The amount of checks or other cash items, the amount of which was not included in either of the preceding items.

(4) The amount of bills receivable, discounted or purchased, bonds and other credits due or to become due, including interest receivable and accrued, but not due, and interest due and unpaid.

(5) All other property appertaining to said business, other than real estate, which real estate shall be listed under this act.

(6) The amount of deposit made by them with any other person, firm or corporation.

(7) The amount of all accounts payable, other than current deposit accounts.

(8) The aggregate amount of the first, second and third items in said statement shall be listed the same as other similar personal property is listed under this chapter. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the fourth item of said statement, and the remainder, if any, shall be listed as a credit. (1933, c. 204, s. 509.)

§ 7971(39). Persons, firms, banks, and corporations dealing in securities on commission taxed as a private banker.—No person, bank or corporation without a license authorized by law shall act as a stock broker or private banker. Any person, bank or corporation that deals in foreign or domestic exchange certificates of debt, shares in any corporation or charter companies, bank or other notes for the purpose of selling the same or any other thing for commission or other compensation or who negotiates loans upon real estate securities, shall be deemed a security broker. Any person, bank or corporation engaged in the business of negotiating loans on any class of security or in discounting, buying or selling negotiable or other papers or credits, whether in an office for the purpose or elsewhere, shall be deemed to be a private banker. Any person, firm or corporation violating this section shall pay a fine of not less than one hundred, nor more than five hundred dollars for each offense. (1933, c. 204, s. 510.)

§ 7971(40). List takers and assessors furnish list of exempt property.—Each list taker and assessor when making the assessment roll and scroll for his township shall enter on the blanks so furnished in regular order, the name of the owner, a clear description of all real and personal property exempt from taxation, together with statement of its value, for what purpose used, and the rent, if any, obtained therefrom. The list of such exempt property, when completed, shall be delivered by the county supervisor of taxation to the register of deeds of the county, on or before the first day of October, and the register of Deeds, on or before the first day of November, shall make duplicates thereof and transmit such duplicates to the state board of assessment and shall file the original list of exempt property in his office. (1933, c. 204, s. 511.)

§ 7971(41). Listing in years other than quadrennial.—Except in the year of the quadrennial assessment the township list takers and assessors shall list the real property in their respective townships at the valuation of the last quadrennial assessment; shall correct the valuation of any tract, lot or parcel of land on which any structure or other thing of value over one hundred dollars has been erected or upon which any structure or other thing of value over one hundred dollars has been destroyed since the last quadrennial assessment; and shall assess for taxation all real estate which, since the last quadrennial assessment, has been discovered, increased or reduced in value by reason of the occurrence of extraordinary circumstances or subdivided into lots and such lots or any part of same sold or offered for sale. (1933, c. 204, s. 512.)

§ 7971(42). List takers and assessors administer oath.—(a) It shall be the duty of the list takers and assessors of the several townships in each county of the state, before receiving the returns of any taxpayer, to actually administer the oath required by law, the oath read by the taxpayer in the presence and in the hearing of the list taker and assessor or by the list taker and assessor in the hearing and presence of the taxpayer, and the failure of any list taker or assessor to administer said oath except in cases where by law said oath may be made before some other person, such list taker and assessor shall be guilty of a misdemeanor.

(b) The list taker, assessor and/or assistant may, in his discretion, accept the return of any taxpayer by mail, if duly verified before a notary public or other officer authorized to administer oaths and in the form of the oath prescribed in this act, and if the list taker and/or assessor is satisfied that a full, accurate and complete list of all taxable property of the taxpayer has been returned at a fair cash value. (1933, c. 204, s. 513.)

§ 7971(43). Oath of taxpayer.—The list taker and assessor shall require the owner, agent, guardian, personal representative, or other person having control of and listing property to make and subscribe to the following oath, which shall be attached to each and every schedule:

I do solemnly swear (or affirm) that the above and foregoing list contains all the property, is a full time and complete list of all and each kind of property owned by me or under my control as agent, guardian, personal representative, or otherwise, and that I have not neglected to list for taxation for the year all of each and every kind of property of which I am the owner or of which I have control as agent, guardian, personal representative, or otherwise in the county of ....., state of North Carolina, and that I have not in any way connived at the violation or evasion of requirements of law in relation to the assessment of property, so help me, God. (1933, c. 204, s. 514.)

§ 7971(44). Where to list real estate, mineral and quarry lands.—All real property subject to taxation shall be listed in the township in which said property was situated on the first day of April. When the fee of the soil of any tract, lot or parcel of land is vested in any person, firm or corporation and the right to any improvements, leasehold estate, minerals, quarry or timber therein is vested in another person, firm or corporation, the said tract, lot or parcel of land may be listed and valued to separate ownership, in separate entries, specifying the interest listed, and may be taxed to the parties owning the different interests respectively. In listing improvements, leasehold estate, mineral, quarry or timber interests, the owner thereof shall describe the same in his list, together with the separate value of each separate tract, lot or parcel of land in or on which the same shall be situated or located and the list taker shall be particular to enter the same on the tax list according to the returns. An owner of separate timber interests shall list the same, whether the timber shall be attached to or detached from the soil. (1933, c. 204, s. 515.)

§ 7971(45). Where polls and personal property shall be listed.—All taxable polls and all personal property shall be listed in the township in which the taxpayer resided on the first day of April subject to the following exception:

(1) All goods and chattels situated in a township, town, or city other than that in which the owner resides shall be listed where situated and not elsewhere, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such goods and chattels; and farm products owned by the producers shall be listed where produced and all manufactured goods, consigned or stored out of the state shall be listed where the owner resides.

(2) The residence of a person who has two or more places in which he occasionally dwells shall be that in which he resided for the longest period of time during the year preceding the first day of April.

(3) The place where the principal office is situated in this state shall be deemed the residence of the corporation, but if there is no principal office in the state, then the personal property of the corporation shall be listed, assessed and taxed at any place in the state where the corporation transacts business.

(4) For the purpose of listing and assessing property, a co-partnership shall be treated as an individual and the property, real and personal, shall be listed in the name of the firm. A co-partnership shall be deemed to be located in the township, town or city in which its business is principally carried on. Each partnership shall be held liable for the whole tax. (1933, c. 204, s. 516.)

§ 7971(46). What tax list shall contain.—The tax list shall state the name, address and age of taxpayer and a full and complete itemized list of all the property, real and personal, of the taxpayer as of the first day of April as follows:

(1) The amount of real estate owned or under control in the township, together with the number of acres cleared for cultivation, waste land, woods and timber, quarry lands and lands susceptible of development for water power. The real property shall be described by name, if it has one, or in such way as to be identified and each separate tract, lot or parcel of real estate, shall be separately listed, described and valued and

whether located inside or outside of incorporated cities or towns.

(2) Manufacturing property outside or inside of incorporated cities or towns.

(3) The number of acres of mineral, timber and quarry and lands susceptible of development.

(4) Number of town lots, the dimensions and locations of each.

(5) The number and value of horses.

(6) The number and value of mules.

(7) The number and value of jacks and jennets.

(8) The number and value of cattle.

(9) The number and value of hogs.

(10) The number and value of sheep.

(11) The number and value of goats and other livestock.

(12) The number and value of poultry.

(13) The number and value of dogs.

(14) The value of farming utensils, farming machinery, and all kinds of carriages, carts, wagons, buggies or other vehicles and harness.

(15) The value of warehouses, their office furnishings and fixtures.

(16) The value of tools and mechanics.

(17) The value of household and kitchen furnishings, musical instruments, firearms, provisions of all kinds, and other products on hand.

(18) The value of libraries and other scientific implements.

(19) The amount of money on hand.

(20) The amount and value of all cotton, tobacco and other farm products of every kind owned by the original producers or held by the original producer in any public warehouse and represented by warehouse receipts, or held by original producer for any cooperative marketing or cotton growers' association, together with a statement of the amount of any advance against said cotton, tobacco, or other products, and fertilizer and fertilizer materials.

(21) All solvent credits with accrued interest thereon, whether money on deposit, postal savings, mortgages, bonds, notes, bills of exchange, certified checks, accounts receivable or in whatever other form of credit, and whether owing by any state, or government, county, city, town, township, person, persons, company, firm, or corporation within or without the state.

(22) All automobiles, tractors, trailers, bicycles, trucks, flying machines and pleasure boats of any and all kinds.

(23) The number and value of all seines, nets, fishing tackle, boats, barges, schooners, vessels and all other floating property.

(24) All other personal property whatsoever, including all cotton in seed or lint, tobacco, either in leaf or manufactured, rosin, tar, plated and silverware, watches and jewelry, goods, wares and merchandise of all kinds and descriptions whether possessed by the taxpayers or any child.

(25) It is the purpose of this section to require, and it shall be the duty of each and every taxpayer to furnish, a complete and itemized list of the solvent credits, property or things of value owned or possessed by him or in his control.

(26) Billboards, signboards and other property used in outdoor advertising.

(27) Any and all persons, firms or corporations liable for Schedule "B" taxes. (1933, c. 204, s. 517.)

§ 7971(47). Deduction of bona fide indebtedness. —(1) All bona fide indebtedness owing by any taxpayer as principal debtor may be deducted by the list taker or assessor from the aggregate amount of the taxpayer's credits shown in items twenty and twenty-one of section 7971(46): Provided, that the credits enumerated in item twenty of this section shall be available only for tax deduction of indebtedness by the original producer of the articles named, and in the case of fertilizer or fertilizer material such only are held by the farmer to be used during the current year.

(2) The board of county commissioners and/or county supervisor of taxation shall have the power to summons any taxpayer or other person at some place designated by them in the county to answer relative to the amount of solvent credits owned by him, the persons owing the same as well as the nature of any indebtedness which has been deducted from solvent credits and the name of the persons to whom indebtedness is due.

(3) If any person, firm or corporation, with a view to evading the payment of taxes shall fail or refuse to list with the list takers or assessors any bonds, notes, accounts receivable and/or any other solvent credits subject to taxation under this act, the same shall not be recoverable at law or by suit in equity in any court in this state until they have been listed for taxation, and the tax and the penalty prescribed by law for the non-listing and non-payment of taxes have been completely paid. (1933, c. 204, s. 518.)

§ 7971(48). Warehouses and coöperative associations to furnish lists of property stored, etc.— (1) Every warehouse company or corporation and every marketing association receiving for storage cotton, tobacco or other products produced in this state and issuing warehouse receipts for same shall, on the first day of April each year, furnish to the county supervisor of taxation of the county in which the owner of said cotton, tobacco or other products resides a full and complete list of the persons in said county who have deposited cotton, tobacco or other products in said warehouse or cooperative associations, giving amount of said cotton, tobacco or other products and the amount of money advanced against same.

(2) Such warehouse or cooperative association shall, on demand of the board of county commissioners, auditor or supervisor of taxation of any county, furnish to the demandant a complete list of the persons residing in said county who have or had cotton, tobacco or other products stored in such warehouse on the first day of April and the amount advanced against the same.

(3) Every person, firm or corporation operating a warehouse and every cooperative association shall not be liable to taxation on the cotton, tobacco or other products so listed as provided for in this section, but if such person, firm, corporation or association shall neglect or refuse to furnish the list required in this section by the fifteenth day of April of each year, it shall be liable to the county for the payment of tax upon the full value of the cotton, tobacco or other products stored in such warehouses or with such associa-

tion on the first day of April; and if such person, firm, corporation or association shall fail or refuse to furnish within ten days after such demand by the board of county commissioners or auditor of the county the list required in this section, such person, firm, corporation or association shall be liable, in addition to the payment of the tax aforesaid, to a penalty payable to such county in the sum of two hundred and fifty dollars to be recovered by said county in a civil action to be instituted in the superior court of such county, and both tax and penalty may be sued for in the same action.

(4) The commissioner of revenue shall upon request of any county send to the supervisor of taxation a list of automobiles and trucks in such county as appears from the record for the current year and shall charge the county thirty cents per hundred names for same, said amount to be paid to the commissioner of revenue and to be used by him as compensation for the preparation of said list. (1933, c. 204, s. 519.)

§ 7971(49). Forms for listing and assessing property.—(a) The state board of assessment shall design forms and tax books to be used in listing and assessing property for taxation by the county supervisors, list takers and assessors, which forms shall contain such classification of real and personal property, as in the judgment of the state board of assessment may be necessary to a full disclosure of the property owned by each taxpayer; shall transmit said forms to the division of purchase and contract which shall ascertain from boards of county commissioners of the several counties the number of forms desired by each county and cause same to be printed and transmitted to the board of county commissioners of each county upon their order by the first day of March in each year, and the clerk of the board of county commissioners shall deliver to the county supervisor of taxation the necessary number of forms and books for their respective use. The division of purchase and contract shall furnish the board of county commissioners of the several counties with an invoice covering the actual cost of the said forms and county tax books furnished the county; and the board of county commissioners of each county so furnished shall audit such bill and shall cause the payment of same to be made to the division of purchase and contract within forty days of the receipt of the account for such forms and for such county tax books.

(b) The forms designed by the state board of assessment shall be the standard forms for use in all counties of the state, and no variation from the said forms so prescribed shall be used in any county, unless submitted to and approved by the state board of assessment. (1933, c. 204, s. 520.)

§ 7971(50). Board of county commissioners to list property escaping taxation in previous years.—(1) The chairman of the board of county commissioners and the county supervisor of taxation shall examine the tax lists and assessment roll for each township for the current year and the preceding year and shall enter in said lists and on said assessment roll or scroll a description of all property not listed, the name of the owner or occupant thereof, and the value of the same.

(2) It shall be the duty of the members of the board of county commissioners, the county supervisor of taxation, the list takers, and assessors of each township to be constantly looking out for property which has not been listed for taxation and when so discovered to have such property placed on the tax list and assessment roll.

(3) After the discovery and listing of such unlisted property, the clerk of the board of county commissioners shall mail a notice to the owner at his last known address or, if unknown, to the occupant of such unlisted property, that such property has been discovered and listed for taxation and that the board of county commissioners will proceed to assess the same at its next regular meeting. The board of county commissioners, at its next regular meeting after such notice to the owner or occupant of such unlisted property, shall proceed to assess same for taxation.

(4) The board of county commissioners, after such unlisted property has been assessed for taxation for the several years not exceeding five that such unlisted property has escaped taxation, shall add to the taxes of the current year in which such property is discovered the simple taxes of each and every preceding year that it has escaped taxation, not exceeding five, with ten per cent per annum in addition, but no addition shall be less than two dollars ($2.00).

(5) Whenever the board of county commissioners shall find any person in possession of any personal property, money or choses in action, which shall not have been listed for taxation on the preceding first day of April, it shall be presumed that the person in possession thereof was the owner and in possession of same on the first day of each April for five preceding years, and they shall cause the same to be placed upon the list and assess the taxes and penalties thereof as herein provided in this act. The board of county commissioners or the governing body of any municipal corporation is hereby authorized and empowered to settle and adjust all claims for taxation arising under this section or any other section authorizing them to place on the tax list any property omitted therefrom.

(6) The provisions of this section shall extend and apply to all cities, towns and like municipal corporations having powers under their charters to tax the property aforesaid, and the powers conferred and the duties imposed upon the board of county commissioners shall be exercised and performed by the board of commissioners or the board of aldermen or other governing body, as the case may be, of the city, town or municipal corporation.

(7) The board of county commissioners, whether separately or in connection with any municipality in the same county, may employ a competent man to make diligent search and to discover and to report to the board of county commissioners or to the county supervisor of taxation any unlisted property within the county, to the end that the same may be listed and property assessed for taxation as provided in this section: Provided, that the cost of listing such unlisted property shall not exceed ten per cent of the revenue so derived in the current year in which discovered; and further provided, that nothing in this section shall be con-

strued as authorizing or empowering the county commissioners to appoint tax collectors.

(8) Any time before or after the tax list has been turned over to the sheriff or tax collectors as provided in this act, such unlisted property so discovered shall be listed and assessed for taxation by the board of county commissioners as aforesaid; and the clerk of the board of county commissioners, county accountant, or auditor shall enter such property in the tax book, making out a tax account, placing the same in the hands of the sheriff or tax collector and charge him with such tax account. Such order shall have the force and effect of a judgment and execution against the real and personal property of the person charged with such tax as provided in this act for the regular lists.

(9) In addition to the ten per cent added to the tax as herein provided, any person, firm or corporation owning or controlling any property, real or personal, and willfully failing to list the same, within the time allowed, with the list takers or assessors, shall be guilty of a misdemeanor. The failure to so list shall be prima facie evidence that such failure was willful and the board of county commissioners shall present the names of all such persons, firms and corporations to the grand jury.

(10) That all assessments made under the provision of this section shall be subject to appeal by the party assessed to the superior court upon notice given within ten days after the assessment is made to be served upon the chairman of the board of commissioners. Upon the service of such notice the clerk to the board shall transmit to the clerk of the superior court of the county wherein the property assessed is located all notices, orders and other records, together with all the findings of the board with respect to the assessment and the clerk shall enter such appeal upon the civil issue docket of the county when a trial de novo shall be had, the hearing of which shall take priority over all other civil actions. The superior court shall, upon such appeal, have the right to modify, confirm or reject in full any such assessment as may have been made by the board of commissioners under and by virtue of the section herein above referred to and shall have the right and power to find all facts connected with such assessment or to re-refer any question of fact that may arise back to the board of commissioners for further finding and shall pass upon all matters of law relating to the legality of the assessment fixed by such board of commissioners and from such rulings upon matters of law either party shall have the right of appeal to the supreme court.

(11) That after assessment is made under provision of this section, no levies of taxes shall be collectible in cases where the taxpayer appeals to the superior court pending the appeal, provided, however, before any appeal can be perfected under the provisions of this act the taxpayers shall enter into a bond payable to the board of commissioners in an amount equal to the taxes levied plus twenty-five per cent of the amount of the levy, but in no case shall the bond be for less than $200.00 (two hundred dollars) and the said bond shall be conditioned upon the payment of all taxes levied by said board of commissioners under this section aforesaid legally determined to be due and the costs of the appeal in case the assessment or any part thereof is made effective by the court. (1933, c. 204, s. 521.)

Editor's Note.—Public Laws 1933, c. 356, provides that this section shall apply to matters relating to levy and assessment under the similar section of the 1929 Act.

Construed as Whole.—The court in Madison County v. Coxe, 204 N. C. 58, 167 S. E. 486, construing Public Laws, 1927, c. 71, § 73, (superseded by this section) declared that the section must be construed as a whole, not piecemeal.

Rebuttal of Presumption.—The presumption created by statute, that the person, who was in possession of the personal property involved in this controversy, was the owner and in possession of said property on 1 April of the five preceding years, is rebutted by the facts of this case. Coltrane v. Donnell, 203 N. C. 515, 516, 166 S. E. 397.

§ 7971(51). Poll tax levied, commissioners' power to exempt.—(1) There shall be levied by the board of county commissioners in each county a tax of two dollars ($2.00) on each taxable poll or male person between the ages of twenty-one and fifty years, and the taxes levied and collected under this section shall be for the benefit of the public school fund and the poor of the county.

(2) The board of county commissioners of every county shall have the power to exempt any person from the payment of poll taxes on account of indigency, and when any such person has been once exempted he shall not be required to renew his application unless the commissioners shall revoke the exemption. When such exemption shall have been made, the clerk of the board of county commissioners shall furnish the person with a certificate of such exemption and the person to whom it is issued shall be required to list his poll, but upon exhibition of such certificate the list takers shall annually enter in the column intended for the poll the word "exempt" and the poll shall not be charged in computing the list. (1933, c. 204, s. 522.)

§ 7971(52). County board of equalization and review.—(1) The board of county commissioners of each county shall be and is hereby constituted the board of equalization and review for its county, whose duty shall be to equalize the valuation in said county so that each tract, lot or parcel of real estate and each article of personal property shall be listed on the tax list and assessment roll uniformly and at its true value in money, and shall correct such tax list and assessment roll of each township, so that it shall conform to the provisions of this act, and the clerk of the board of equalization and review shall make and enter such adjustments and corrections on the tentative scroll presented by the county supervisor of taxation as the board may authorize.

(2) The members of the board of county commissioners, each as a member of the board of equalization and review, shall be paid by the county their usual compensation per diem and necessary traveling expenses for the number of days actually engaged in the performance of their duties as members of the board of equalization and review.

(3) The county board of equalization and review may designate the register of deeds, county auditor, county accountant or other officer having in charge the making of the county tax books as clerk of such board.

(4) The county supervisor of taxation, at least ten days prior to the meeting of the board of equalization and review, to the address appearing on the tax list and assessment roll, and in the year of the quadrennial assessment, shall mail to every person owning taxable property, listed and assessed in the county, a notice of the valuation at which such property has been assessed for taxation and the time and place of the meeting of the board of equalization and review; and in the years other than the year for the quadrennial assessment shall mail such notices only to the taxpayer whose real property has been increased, or reduced in value, as provided in this section for the increase or reduction of assessments on real estate in years other than the year of the quadrennial assessment, but the failure to mail or to receive such notices shall not affect the validity of the tax list and assessment roll. The county supervisor of taxation shall submit to the board of equalization and review the tentative scroll, roll, or list of each township, ward or district for the current year as prepared by him, his assistants and assessors shall meet with the board of equalization and review at all its meetings and shall give such information as he may have or can obtain with respect to the valuation of taxable property in the county.

(5) The said board of equalization and review shall meet on the third Monday in June of each and every year, first giving ten days' notice by publication of the time, place and purpose of the meeting, and may adjourn from day to day while engaged in the equalization and review of the property on the tax list and assessment roll, but shall complete their duties on or before the first Monday in July of each and every year.

(6) The said board shall, on request, hear any and all taxpayers who own or control taxable property assessed for taxation in the county in respect to the valuation of such property or the property of others.

(7) The said board shall examine and review the tax lists and assessment roll of each township for the current year; shall of its own motion or on sufficient cause shown by any person add to said list and assessment roll the name of any persons, the value and description of real and personal property liable to assessment in each township, omitted from such tax list and tax roll; shall correct all errors in the names of persons, in the description of the property and in the assessment and valuation of taxable property on said list or roll; shall increase or reduce the assessed valuation of such tracts, lots or parcels of real property or articles of personal property as in their opinion have been returned and assessed below or above the true value in money; shall cause to be done whatever else may be necessary to make said lists and roll or scroll comply with the provision of this act; and, after the completion of the equalizing and review of said tax lists and rolls of each township, a majority of said board shall endorse thereon and sign a statement to the effect that the same is the fixed and permanent tax list and assessment roll of said township for the current year in which it has been prepared and approved by the board of equalization and review. The omission, however, of such an endorsement shall not affect the validity of any such tax list or assessment roll.

(8) The board of equalization and review in the years other than the year of the quadrennial assessment provided for in this act shall not increase or reduce the assessed valuation of any real property, but the same shall be listed and assessed at the same valuation as listed and assessed at the last quadrennial assessment:

(a) Except where real property has been discovered and not listed or assessed at the last quadrennial assessment.

(b) Except where clerical errors have occurred in the making out and transcribing of the tax list and assessment rolls.

(c) Except where improvements and appurtenances have been added to the value of more than one hundred dollars, or where there has been removed or destroyed a thing of value since the last quadrennial assessment exceeding one hundred dollars, and in that event, the board of equalization and review shall find the value of the improvements, appurtenance or thing of value added to, removed or destroyed and shall increase or reduce the appraised value of such real property, accordingly.

(d) Except where the valuation of the real property since the last quadrennial assessment shall have been affected by some extraordinary circumstances, the facts in connection with which shall be found by such board in each case and entered upon the proceedings of said board.

(e) Except where real property has been subdivided into lots, streets laid out and map registered, or where land has been subdivided into lots on any street or streets already laid out and determined, since the last quadrennial assessment, and the said lots have been sold or offered for sale with reference to said street, streets and/or map registered, then and in that case they shall determine the value in money of each lot thereof: Provided, that where lands located outside of an incorporated municipality have been subdivided into lots, and where more than five acres of any such sub-division remain unsold by the owner of such sub-division, such unsold lands may be listed as land acreage, according to its actual market value.

(9) After the board of equalization and review shall have completed its duties and adjourned, and before the second Monday in August, the register of deeds, auditor, tax clerk or other officer performing such duties shall prepare a final and complete scroll, roll or list for each of the several townships, wards, and districts in the county and for each race thereof, showing the names, in alphabetical order, of the several owners of real and personal property and the valuation fixed and determined by the board of equalization and review. Such scroll, roll or list, together with the tentative scroll, roll or list on which the values of property were fixed and determined, shall be filed as the fixed, determined and permanent roll, either with the board of county commissioners, auditor, tax clerk, county accountant, or other similar officer. It shall be the duty of the register of deeds or other person making out the tax books to report to the commissioner of revenue a list of the persons, firms, or corporations, with

their postoffice addresses, who are liable for schedule "B" taxes. Said register of deeds or other person having possession of said tax list shall make and forward to the commissioner of revenue within thirty days after the return of said list a list of all persons, with their postoffice and business, which are liable to schedule "B" taxes, and the revenue commissioner shall pay the said officer the sum of two cents per name, and said compensation to be in addition to any compensation said officer now receives. (1933, c. 204, s. 523.)

§ 7971(53). Board of commissioners not to change valuations. — (1) The board of county commissioners shall not increase, reduce, change or modify in any manner whatsoever the valuations assessed and certified to by the board of equalization and review at their annual session for the current year and as appears on the tax list and assessment roll or scroll so certified by them, except clerical errors appearing on said lists and rolls. (1933, c. 204, s. 524.)

§ 7971(54). Appeal from board of equalization and review. — Any property owner, taxpayer or member of the board of county commissioners may except to the order of the board of equalization and review and appeal therefrom to the state board of assessment, by filing a written notice of such appeal with the board of county commissioners within thirty days after the first Monday in July of the current year or after the adjournment of the board of equalization and review. At the time of filing such notice of appeal, the appellant shall file with the board of county commissioners a statement in writing of the grounds of appeal and shall, within ten days after filing such notice of appeal with the board of county commissioners, file with the state board of assessment a notice of such appeal and attach thereto a copy of the statement of the grounds of appeal filed with the board of county commissioners. (1933, c. 204, s. 525.)

§ 7971(55). State board of assessment fix day and hear appeal.—The state board of assessment shall fix a time for the hearing of such appeal provided for in the preceding section and shall hear the same in the city of Raleigh or such other place within the state as the said board may designate; shall give notice of time and place of such hearing to the appellant, appellee and to the chairman of the board of county commissioners at least ten days prior to the said hearing; shall hear all the evidence or affidavits offered by the appellant, appellee and the board of county commissioners; shall reduce, increase or confirm the valuation fixed by the board of equalization and review and enter it accordingly and shall deliver to the clerk of the board of county commissioners a certified copy of such order, which valuation shall be entered upon the fixed and permanent assessment roll and shall constitute the valuation for taxation. (1933, c. 204, s. 526.)

§ 7971(56). County commissioners to levy tax; date of levy.—The boards of county commissioners of the several counties shall, not later than the second Monday in August, levy such rate of tax for general county purposes as may be necessary to meet the general expense of the county, not exceeding the legal limitation, and such rates for other purposes as may be authorized by law. (1933, c. 204, s. 527.)

§ 7971(57). County commissioners to cause tax duplicates to be made.—(1) The board of county commissioners shall cause the register of deeds, county accountant, county auditor, tax clerk, or other official performing such duties to make out two copies of the tax list for each township, as revised, fixed and determined by the county board of equalization and review, according to a form to be prepared and furnished to said board or approved by the state board of assessment. Such form shall show in different columns at least the following:

(a) The name of each person whose property is listed and assessed for taxation entered in alphabetical order.

(b) The amount of valuation of real property assessed for county-wide purposes.

(c) The amount of valuation of personal property assessed for county-wide purposes.

(d) The total amount of real and personal property valuation assessed for county-wide purposes.

(e) The amount of ad valorem tax due by each taxpayer for county-wide purposes.

(f) The amount of poll tax due by each taxpayer.

(g) The amount of dog tax due by each taxpayer.

(h) The amount of valuation of property assessed in any special district or sub-division of the county for taxation.

(i) The amount of tax due by each taxpayer to any special district or sub-division of the county.

(j) The total amount of tax due by the taxpayer to the county and to any special district, sub-division or sub-divisions of the county.

(2) Such official shall also fill out the receipts and stubs for all taxes charged on the tax books so made out on a form prescribed or approved by the state board of assessment and furnished by the county which form shall show at least the following:

(a) The name of the taxpayer charged with taxes.

(b) The amount of valuation of real property assessed for county-wide purposes.

(c) The amount of valuation of personal property assessed for county-wide purposes.

(d) The total amount of valuation of real and personal property assessed for county-wide purposes.

(e) The rate of tax levied for each county-wide purpose, the total rate for all county-wide purposes and the rate levied for any special district or sub-division of the county which tax is charged to the taxpayer.

(f) The amount of the valuation of property assessed in any special district or sub-division of the county.

(g) The amount of ad valorem tax due by the taxpayer for county-wide purposes.

(h) The amount of poll tax due by the taxpayer.

(i) The amount of dog tax due by the taxpayer.

(j) The amount of tax due by the taxpayer to any special districts or sub-divisions of the county.

(k) The total amount of tax due by the taxpayer to the county and to any special district, sub-division or sub-divisions of the county.

(l) Amount of discounts.

(m) Amount of penalties.

(3) One of said copies of the tax list shall remain in the office of the clerk to the board of county commissioners, the county accountant, the county auditor or tax clerk and the other shall be delivered to the sheriff or tax collector, who shall receipt for same, on the first Monday in October. The clerk to the board of county commissioners, county accountant, county auditor, tax clerk or other official performing such duties shall endorse on the copy delivered to the sheriff or tax collector an order to collect the taxes therein mentioned, and such order shall have the force and effect of a judgment and execution against the real and personal property charged in such list. In such list the clerk or other official shall note all appeals from the board of equalization and review which have been perfected by the giving of a bond. Said order shall be in the following or similar form:

NORTH CAROLINA, ... County, ... City, ...

To the sheriff or tax collector of ..... county, or ..... town, or ..... city.

You are hereby authorized, empowered, and commanded to collect the taxes from the persons and taxpayers in the amounts as herein set forth, and said taxes in the amounts set forth are declared to be a first lien on all real property of such taxpayer in ..... county, or ..... town, and this book and order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any and all real or personal property of persons and taxpayers herein named for and on account of the taxes due by and herein charged to said persons and taxpayers, and all interest and cost on account thereof.

Witness my hand and official seal, this ..... day of ....., 193.....

.....

Chairman Board of Commissioners.

Attest:

.....

Clerk of Board

(4) The board of county commissioners shall make an order for the payment to the register of deeds, auditor, tax clerk or like official, as the case may be, such sum as may be in their discretion a proper compensation for the work of computing the taxes, making out the tax list and the necessary copies thereof and the making of such abstracts and returns as may be required by the state board of assessment; but the compensation allowed for computing the taxes and making out the tax list is not to exceed ten cents for each name appearing on the tax list which shall include the original and duplicate tax list and also the receipts and stubs provided for in this section. (1933, c. 204, s. 528.)

§ 7971(58). Abstracts of property furnished state board of assessment. — The clerk of the board of county commissioners, auditor, tax clerk, county accountant, or other officer performing such duties shall, on or before the first Monday in November of the current year, return to the state board of assessment on forms prescribed by said board an abstract of the real and personal property of the county by townships, showing the number of acres of land and their value, the number of town lots and their value, the value of the several classes of livestock, the number of white and negro polls, separately, and specify every other subject of taxation and the amount of county tax payable on each subject, and the amount payable on the whole. At the same time said clerk, auditor, tax clerk, or other like officer shall return to the state board of assessment an abstract or list of the poll, county and school taxes payable in the county, setting forth separately the tax levied on each poll and on each hundred dollars value of real and personal property for each purpose, and also the gross amount of every kind levied for county purposes, and such other and further information as the state board of assessment may require. (1933, c. 204, s. 529.)

Art. 6. Taxation of Banks, Banking Associations, and Trust Companies

§ 7971(59). Banks, banking associations and trust companies.—The value of shares of stock of banks, banking associations, and trust companies shall be determined as follows:

(1) Every bank, banking association, industrial bank, savings institution, or trust company shall list its real estate and tangible personal property, except money on hand, in the county in which such real estate and tangible personal property is located, for the purpose of county and municipal taxation, and shall during the month of April of each year list with the state board of assessment, on forms provided by the said state board, in the name of and for its shareholders, all the shares of its capital stock, whether held by residents or non-residents, at its actual value on the first day of April of each year.

(2) The actual value of such shares for the purpose of this section shall be ascertained by adding together the capital stock, surplus, and undivided profits, and deducting therefrom the assessed value of such real and tangible personal property which such banking institutions shall have listed for taxation in the county or counties wherein such real and tangible personal property is located, together with an amount according to its proportion of tax value of any buildings and lands wholly or partially occupied by such banking associations, institutions, or trust companies, owned and listed for taxation by a North Carolina corporation in which such banking associations or institutions own ninety-nine per cent of the capital stock.

(3) In addition to the deductions allowed in item two of this section, there may be deducted from the items of surplus and undivided profits an amount not exceeding five per cent of the bills and notes receivable of such banking associations, institutions, or trust companies to cover bad or insolvent debts, investments in North Carolina State bonds, United States Government bonds, joint-stock land bank bonds, and Federal land

bank bonds, at the actual cost of said bonds owned on and continuously for at least ninety days prior to the first day of April of the current year. The value of such shares of capital stock of such banking associations, institutions, or trust companies shall be found by dividing the net amount ascertained above by the number of shares in the said banking associations, institutions, or trust companies.

(4) If the state board of assessment shall have reasons to believe that the actual value of such shares of stock of such banking associations, institutions, or trust companies, as listed with it, is not the true value in money, then the said board shall ascertain such true value by such an examination and investigation as seems proper, and increase or reduce the value as so listed to such an amount as it ascertains to be the true value for the purposes of this section.

(5) The value of the capital stock of all such banking associations, institutions, and trust companies as found by the state board of assessment, in the manner herein prescribed, shall be certified to the county in which such bank or institution is located: Provided, that if any such banking association, institution, or trust company shall have one or more branches, the state board of assessment shall make an allocation of the value of the capital stock so found as between the parent and branch bank or banks or trust company in proportion to the deposits of the parent and branch bank, banks, or trust company, and certify the allocated values so found to the counties in which the parent and the branch bank, banks, or trust company are located.

(6) The taxes assessed upon the shares of stock of any such banking associations, institutions, or trust companies shall be paid by the cashier, secretary, treasurer, or other officer or officers thereof, and in the same manner and at the same time as other taxes are required to be paid in such counties, and in default thereof such cashier, secretary, treasurer, or other accounting officer, as well as such banking association, institution, or trust company, shall be liable for such taxes, and in addition thereto for a sum equal to ten per cent thereof. Any taxes so paid upon any such shares may, with the interest thereon, be recovered from the owners thereof by the banking association, institution, or trust company, or officers thereof paying them, or may be deducted from the dividends accruing on such shares. The taxation of such shares of capital stock shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state, coming in competition with the business of such banking associations, institutions, or trust companies. (1933, c. 204, s. 600.)

The tax on shares of stock of a bank is payable by the bank under the provisions of this section, it being required that the cashier or other proper officer of the bank pay the tax to the municipality levying it. Rockingham v. Hood, 204 N. C. 618, 169 S. E. 191.

§ 7971(60). Building and loan associations. — The secretary of each building and loan association organized and/or doing business in this state shall list with the local assessors all the tangible real and personal property owned on the first day of April of each year, including all cash on hand or in bank on that date, which shall be assessed and taxed as like property of individuals. (1933, c. 204, s. 601.)

§ 7971(61). Foreign building and loan associations.—(1) All foreign building and loan associations, doing business in this state, shall list for taxation with the state board of assessment, through their respective agents, its stock held by citizens of this state, with the name of the county, city, or town in which the owners of said stock reside. In listing said stock for taxation, the withdrawal value as fixed by the by-laws of each such association shall be furnished to the said board, and the stock shall be valued for taxation at such withdrawal value.

(2) Any association or officer of such association doing business in the state who shall fail, refuse, or neglect to so list shares owned by citizens of this state for taxation shall be barred from doing business in this state; any local officer or other person who shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed, neglected, or refused to so list for taxation the stock held by citizens of this state shall be guilty of a misdemeanor, and fined and/or imprisoned in the discretion of the court.

(3) The value of the shares of stock so held by citizens of this state, as found by the state board of assessment, shall be certified to the register of deeds of the county in which such shareholders reside, shall be placed on the assessment roll in the name of such holders thereof, and taxed as other property is taxed. (1933, c. 204, s. 602.)

§ 7971(62). Reports from domestic corporations. —1. Except in the case of such corporations as are required to make statements in other forms, it shall be the duty of the president, chairman, secretary, or treasurer of every corporation, organized for profit, having capital stock, every joint-stock association or limited partnership, now or hereafter organized or incorporated by or under any law of this state, to make a report, verified under oath in writing, on or before the first day of May of each year, as of the first day of the preceding April, stating specifically :

(1) Total authorized capital stock.

(2) Total authorized number of shares.

(3) Number of shares of stock issued and outstanding.

(4) Par value of each share; if no par value, then actual book value.

(5) Amount paid into treasury on each share.

(6) Amount capital stock, paid in, and divided as to preferred and common.

(7) Amount of capital stock, surplus, and undivided profits.

(8) Amount of capital stock on which dividends were declared.

(9) Date and amount of each dividend during said year ending with the first day of April.

(10) Highest price of sale of stock during the year aforesaid, and the average price of shares of stock during the year ending the first day of April of the preceding year.

(11) Attached to report copy of last balance sheet.

(12) Such other and further information as may be required by the state board of assessment.

2. In such report one of the herein named officers of such corporations, partnerships, or joint-stock associations shall estimate and appraise the capital stock of such corporations, partnerships, or associations at their actual value in money on the first day of the preceding April, after deducting therefrom the assessed value of all real and personal property listed for taxation in the county or counties wherein such real and personal property is located, together with the value of shares of stock legally held and owned continuously for ninety days just prior to and on the first day of April by such corporation, partnership or joint-stock association in other corporations incorporated in this state or assessed for taxation on its capital stock in this state as indicated or measured by the amount of profit made, either declared in dividends or carried into surplus or undivided profits, and when the said capital stock of such corporation, limited partnership, or joint-stock association shall have been so truly estimated and appraised, the report thereof shall be sent to the state board of assessment on or before the first day of May of each year, with an oath attached thereto by the officer making the report, certifying that he has estimated and appraised the capital stock of the corporation, limited partnership or joint-stock association to the best of his knowledge and belief.

3. In addition to the deductions allowed in sub-section two of this section, such corporation, partnership or association may also deduct from the total amount of surplus and undivided profits investments in North Carolina state bonds, United States government bonds, federal farm loan bank bonds, and joint-stock land bank bonds, legally held and owned continuously at least ninety days just prior to and on the first day of April by such corporation, partnerships, or associations.

4. If the state board of assessment is not satisfied with the appraisement and valuation so made and returned, or the assessed value of real and personal property in the county or counties, they are hereby authorized and empowered to make a valuation thereof based upon the facts contained in the said report herein required or upon any other information within their possession, and to impose the penalty for the returning of such careless, negligent, false or fraudulent report, and shall deliver to such corporation, partnership or association, a statement of the valuation so made and the penalty so imposed. If such corporation, partnership or association is not satisfied with the valuation so made or the penalty so imposed, it shall have the right to appeal to the superior court of the county in which such corporation, partnership or association has its principal place of business in this state, but before such corporation, partnership or association shall exercise the right to appeal it shall within twenty days after notice of such valuation and of the penalty imposed file with the state board of assessment exceptions to particulars to which it objects and the grounds thereof, and said state board of assessment shall hear said exceptions, after ten days' notice of the time and place of such hearing given by said state board of assessment to such corporation, or partnership, or association; and if the state board of assessment shall overrule any or all of said exceptions, then such corporation, partnership, or association may appeal as aforesaid to the superior court and shall, within ten days after the final judgment of the state board of assessment, give notice to the said board of assessment, of such an appeal to said superior court, and the state board of assessment shall thereupon transmit to said court a record of the valuation so found and/or the penalty so imposed on such corporation, partnership, or association, with the exceptions thereto, all decisions thereon, and all papers and evidence considered in making such decision. The said cause shall be placed on the civil docket of said superior court, shall be entitled state of North Carolina on the relation of state board of assessment against such corporation, partnership, or association, shall have precedence of all other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes. Either party may appeal to the supreme court under the same rules and regulations as are prescribed by law for other appeals, except that the state, if it shall appeal, shall not be required to give bond or make any deposit to secure the cost of such appeal, and the supreme court may advance the cause on the docket so as to give the same a prompt hearing.

5. If any officer of such corporation, partnership, or association whose duty it is to make the appraisement and report to the state board of assessment as provided in this section shall fail, neglect or refuse to make such report and appraisement for the period of sixty days, the state board of assessment shall estimate the value of the capital stock of such defaulting corporation, partnership, or association and impose the penalty for such neglect or refusal, and from such valuation so found and the penalty imposed an appeal may be had to the superior court of the county in which such corporation, partnership, or association has its place of business in the state in like manner as hereinbefore prescribed in this section.

6. The state board of assessment shall, on or before the first day of August of each year, certify to the register of deeds of the county in which such corporation, limited partnership, or association has its principal office or place of business the total value of the capital stock of such corporation, limited partnership, or association as determined in this section; and such corporation, limited partnership, or association shall pay the county, township, city, or town tax upon the valuation so certified.

7. If the officers of any of such corporation, partnership, or association whose duty it is to make the report and appraisal provided in this article shall fail, neglect, or refuse to furnish the state board of assessment, on or before the first day of May of each year, the report and appraisement of the capital stock aforesaid, as required by this article, or if the report and statement is made in a careless and negligent manner, or is false and fraudulent, they shall be fined the sum of one hundred dollars, and it shall be the duty of the state board of assessment to require the board of county commissioners of each county to add five per cent to the tax of such corporation,

partnership, or association for each and every year for which said report and appraisement is delinquent, which per cent shall be levied and collected with the said tax in the usual manner of levying and collecting such taxes, and if the officers or any of them of any such corporation, partnership, or joint-stock association shall intentionally fail, neglect, or refuse to comply with this section for three successive years, he or they shall be guilty of a misdemeanor, and on conviction thereof shall pay a fine of five hundred dollars and/or imprisoned in the discretion of the court. However, for good cause the state board of assessment may reduce such penalties. (1933, c. 204, s. 603.)

Where a bank does not appeal from the amount of the assessment on its stock as certified by the State Board of Assessment, the bank may not thereafter show that the amount of the assessment was erroneous because of the insolvency of the bank at the time of the assessment. Rockingham v. Hood, 204 N. C. 618, 169 S. E. 191.

A taxpayer, who does not exhaust his administrative remedy, under this section, to secure the correct assessment of a tax, cannot be heard by a judicial tribunal to assert its invalidity. Pender County v. Garysburg Mfg. Co., 50 F. (2d) 732, 734.

§ 7971(63). State board of assessment to keep record of corporations, associations, banks; secrecy directed.—The state board of assessment shall prepare and keep a record book on which it shall enter a correct list of all the corporations, limited partnerships, joint-stock associations, banks, banking associations, industrial banks, savings institutions, and trust companies which it has assessed for taxation, and said record shall show the assessed valuation placed upon them; and the state board of assessment shall not divulge or make public any report of such corporation, partnership, or association required to be made to it by this section, except to the governor or his authorized agent, the solicitor of the state for the district in which such corporation, partnership, association, bank or banking association or trust company has its principal office, or his authorized agent, or by the board of county commissioners or their authorized agents, of such corporation, partnership, association as have their principal office in such county. (1933, c. 204, s. 604.)

Art. 7. Public Utilities

§ 7971(64). Telegraph companies. — Every joint-stock association, company, co-partnership, or corporation, whether incorporated under the laws of this state or any other state or of any foreign nation, engaged in transmitting to, from, through, in or across the state of North Carolina telegraph messages shall be deemed and held to be a telegraph company; and every such telegraph company shall annually, between the first day of May and the twentieth day of May, make out and deliver to the state board of assessment, a statement, verified by oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, co-partnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, co-partnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, co-partnership, or corporation situated outside the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina. (1933, c. 204, s. 700.)

§ 7971(65). Telephone companies.—Every telephone company doing business in this state, whether incorporated under the laws of this state or any other state, or of any foreign nation, shall annually, between the first day of May and the twentieth day of May, make out and deliver to the state board of assessment of this state a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, co-partnership, or corporation invested in the operation of such telephone business.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, co-partnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, co-partnership, or corporation, situated outside the state of North Carolina, and used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of

said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina. (1933, c. 204, s. 701.)

§ 7971(66). Express companies.—Every joint-stock association, company, co-partnership, or corporation, incorporated or acting under the laws of this state or any other state, or any foreign nation, engaged in carrying to, from, through, in, or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, freight, or other articles, under any contract, expressed or implied, with any railroad company, or the managers, lessees, agents, or receivers thereof (provided such joint-stock association, company, co-partnership, or corporation is not a railroad company), shall be deemed and held to be an express company within the meaning of this act; and every such express company shall annually, between the first day of May and the twentieth day of May, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such association, company, co-partnership, or corporation making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock or capital of said association, co-partnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share; and in case no shares of capital stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding; and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by the said association, company, co-partnership, or corporation, and subject to local taxation within the state of North Carolina, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by the association, company, co-partnership, or corporation situated outside the state of North Carolina, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines or routes over which such association, company, co-partnership, or corporation transports such merchandise, freight, or express matter; (b) the total length of such lines or routes as are outside the state of North Carolina; (c) the length of such lines or routes within each of the counties and townships within the state of North Carolina. (1933, c. 204, s. 702.)

§ 7971(67). Sleeping-car companies. — Every joint-stock association, company, co-partnership, or corporation incorporated or acting under the laws of this or any other state, or of any foreign nation, and conveying to, from, through, in or across this state, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars, or chair cars, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents, or receivers thereof, shall be deemed and held to be a sleeping-car company for the purposes of this act, and shall hereinafter be called "sleeping-car company;" and every such sleeping-car company doing business in this state, shall annually, between the first day of May and the twentieth day of May, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such sleeping-car company, invested in its sleeping-car business.

Second. The number of shares of such capital stock devoted to the sleeping-car business issued and outstanding, and the par or face value of each share.

Third. Under the laws of what state it is incorporated.

Fourth. Its principal place of business.

Fifth. The names and postoffice addresses of its president and secretary.

Sixth. The actual cash value of the shares of such capital stock devoted to its sleeping-car business on the first day of April next preceding such report.

Seventh. The real estate, structures, machinery, fixtures, and appliances owned by said sleeping-car company and subject to local taxation within this state, and the location and assessed value thereof in each county within this state where the same is assessed for local taxation.

Eighth. All mortgages upon the whole or any part of its property and the amounts thereof devoted to its sleeping-car business.

Ninth. (a) The total length of the main line of railroad over which cars are run; (b) the total length of so much of the main lines of railroad over which the said cars are run outside of the state of North Carolina; (c) the length of the lines of railroads over which said cars are run within the state of North Carolina: Provided, that where the railroads over which said cars run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but single tracks; and in case it shall be required, such statement shall show in detail the number of miles of each or any particular railroad or system within the state. When the assessment shall have been made by the state board of assessment in accordance with section 7971(72), the clerk of the board shall thereupon notify the officer attesting such report of the amount assessed against it, and such sleeping-car company shall have thirty days within which to

appear and make objection, if any it shall have, to said assessment. If no objection be made within thirty days, the commissioner of revenue shall assess the state tax against such company and send by letter to the officer attesting such report a bill for the state taxes upon said assessment, and such sleeping-car company shall have thirty days within which to pay said taxes; and the clerk of the state board of assessment shall certify to the county commissioners of the several counties through which such cars are used the value of the property of such sleeping-car company within such county in the proportion that the number of miles of railroad over which such cars are used in said county bears to the number of miles of railroad over which such cars are used within the state, together with the name and postoffice address of the officers attesting such report of such sleeping-car company, with the information that tax bills, when assessed, are to be sent him by mail; and such value, so certified, shall be assessed and taxed the same as other property within said county. And when the assessment shall have been made in such county, the sheriff or county tax collector shall send to the address given by the clerk of the state board of assessment to the county commissioners a bill for the total amount of all taxes due to such county, and such sleeping-car company shall have sixty days thereafter within which to pay said taxes; and upon failure of and refusal to do so such taxes shall be collected the same as other delinquent taxes are, together with a penalty of fifty per cent added thereto, and costs of collection. (1933, c. 204, s. 703.)

§ 7971(68). Refrigerator and freight-car companies.—Every person, firm, or corporation owning refrigerator or freight cars operated over or leased to any railroad company in this state or operating in the state shall be taxed in the same manner as hereinbefore provided for the taxation of sleeping-car companies, and the collection of the tax thereon shall be followed in assessing and collecting the tax on the refrigerator and freight cars taxed under this section: Provided, if it appears that the owner does not lease the cars to any railroad company, or make any contract to furnish it with cars, but they are furnished to be run indiscriminately over any lines on which shipper or railroad companies may desire to send them, and the owner receives compensation from each road over which the cars run, the state board of assessment shall ascertain and assess the value of the average number of cars which are in use within the state as a part of the necessary equipment of any railroad company for the year ending April first, next preceding, and the tax shall be computed upon this assessment. (1933, c. 204, s. 704.)

§ 7971(69). Street railway, waterworks, electric light and power, gas, ferry, bridge, and other public utility companies.—Every street railway company, waterworks company, electric light and power company, gas company, ferry company, bridge company, canal company, and other corporations exercising the right of eminent domain shall annually, between the first day of May and twentieth day of May, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the co-partnership or corporation, showing:

First. The total capital stock of such association, company, co-partnership, or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, co-partnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, co-partnership, or corporation situate outside of the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situate.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of lines within each of the counties and townships within the state of North Carolina. (1933, c. 204, s. 705.)

§ 7971(70). State board of assessment may require additional information.—Upon the filing of the statements required in the preceding sections the state board of assessment shall examine them and each of them; and if the board shall deem the same insufficient, or in case it shall deem that other information is requisite, it shall require such officer to make such other and further statements as said board may call for. In case of the failure or refusal of any association, company, co-partnership, or corporation to make out and deliver to the state board of assessment any statement or statements required by this act, such association, company, co-partnership, or corporation shall forfeit and pay to the state of North Carolina one hundred dollars ($100) for each additional day such report is delayed beyond the twentieth day of May, to be sued for and recovered in any proper form of action in the name of the state of North Carolina on the relation of the state board of assessment, and such penalty, when collected, shall be paid into the general fund of the state. (1933, c. 204, s. 706.)

§ 7971(71). State board of assessment shall examine statements. — The state board of assessment shall thereupon value and assess the property of each association, company, co-partnership, or corporation in the manner hereinafter set forth, after examining such statements and after

ascertaining the value of such properties therefrom and upon such other information as the board may have or obtain. For that purpose it may require the agents or officers of said association, company, co-partnership, or corporation to appear before it with such books, papers, and statements as it may require, or may require additional statements to be made, and may compel the attendance of witnesses in case the board shall deem it necessary to enable it to ascertain the true cash value of such property. (1933, c. 204, s. 707.)

§ 7971(72). Manner of assessment.—Said state board of assessment shall first ascertain the true cash value of the entire property owned by the said association, company, co-partnership, or corporation from said statement or otherwise for the purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, co-partnership, or corporation in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, co-partnership, or corporation shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock or to the value of the capital in case there should be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, co-partnership, or corporation. Such state board of assessment shall, for the purpose of ascertaining the true cash value of property within the state of North Carolina, next ascertain from such statements or otherwise the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated within the state of North Carolina, and not specifically used in the general business of such associations, companies, co-partnerships, or corporations, which assessed value for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said state board of assessment shall next ascertain and assess the true cash value of the property of the associations, companies, co-partnerships, or corporations within the state of North Carolina by taking as a guide, as far as practicable, the proportion of the whole aggregate value of said associations, companies, co-partnerships as above ascertained, after deducting the assessed value of such real estate without the state which the length of lines of said associations, companies, co-partnerships, or corporations, in the case of telegraph and telephone companies, within the state of North Carolina bears to the total length thereof, and in the case of express companies and sleeping-car companies, the proportion shall be in proportion of the whole aggregate value, after such deduction, which the length of lines or routes within the state of North Carolina bears to the whole length of lines or routes of such associations, companies, co-partnerships, or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, co-partnerships, or corporations within the state of North Carolina. From the entire value of the property within the state so ascertained there shall be deducted by the commissioners the assessed value for taxation of all real estate, structures, machinery, and appliances within the state and subject to local taxation in the counties as hereinbefore described; in sections 7971(66) to 7971(71), and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said associations: Provided, the state board of assessment shall also assess the value for taxation of all structures, machinery, appliances, pole lines, wire and conduit of telephone and telegraph companies within the state subject to local taxation, but land and buildings located thereon owned by said companies shall be assessed in like manner and by the same officials as though such property was owned by individuals in this state. (1933, c. 204, s. 708.)

§ 7971(73). Value per mile.—Said state board of assessment shall thereupon ascertain the value per mile of the property within the state by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state, by the number of miles within the state, and the result shall be deemed and held as value per mile of the property of such association, company, co-partnership, or corporation within the state of North Carolina: Provided, the value per mile of telephone companies shall be determined on a wire mileage basis. (1933, c. 204, s. 709.)

§ 7971(74). Total value for each county.—Said state board of assessment shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, co-partnership, or corporation in each county in the state, through, across, and into or over which the lines of said association, company, co-partnership, or corporation extends, multiply the value per mile, as above ascertained, by the number of miles in each of such counties as reported in said statements or as otherwise ascertained, and the result thereof shall be by the clerk of said board certified to the chairman of the board of county commissioners, respectively, of the several counties through, into, over, or across which the lines or routes of said association, company, co-partnership, or corporation extend: Provided, the total value of street railways, electric light, power and gas companies, as determined in section 7971(72) to be certified to each county, shall be the proportion of the assessed value of the physical property in each county bears to the total assessed value of the physical property in the state. All taxes due the state from any corporation taxed under the preceding sections shall be paid by the treasurer of each company direct to the commissioner of revenue. (1933, c. 204, s. 710.)

§ 7971(75). Companies failing to pay tax.—In case any such association, company, co-partnership, or corporation as named in this act shall fail or refuse to pay any taxes assessed against it in any county in this state, in addition to other

remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state of North Carolina by the solicitors of the different judicial districts of the state on the relation of the board of commissioners of the different counties of this state, and the judgment in said action shall include a penalty of fifty per cent of the amount of taxes as assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the lines or routes of any association, company, co-partnership, or corporation shall extend, or in any county where such association, company, co-partnership, or corporation shall have an office or agent for the transaction of business. In case such association, company, co-partnership, or corporation shall have refused to pay the whole of the taxes assessed against the same by the state board of assessment, or in case such association, company, co-partnership, or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, such action may include the whole or any portion of the taxes so unpaid in any county or counties; but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions to each separate county or adjoining counties, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits shall be by said board accounted for as a credit to the respective counties for or on account of which such collections were made by the said board at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the state, and upon such settlement being made, the treasurers of the several counties shall at their next settlement enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the state, and proper entries shall be made with reference thereto: Provided, that in any such action the amount of the assessments fixed by said state board of assessment and apportioned to such county shall not be controverted. (1933, c. 204, s. 711.)

§ 7971(76). State board of appraisers and assessors for public utilities.—The state board of assessment herein established is constituted a board of appraisers and assessors for railroad, canal, steamboat, hydro-electric, street railway, and all other companies exercising the right of eminent domain. (1933, c. 204, s. 712.)

§ 7971(77). Returns to state board by railroad, etc., companies.—The president, secretary, superintendent, or other principal accounting officer within this state of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this state or not, shall at such date as real estate is required to be assessed for taxation return to the said board of assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within the state, viz.: The number of miles of such railroad lines in each county in this state, and the total number of miles in the state, including the roadbed, right of way and superstructures thereon, main and sidetracks, depot buildings and depot grounds, section and tool houses and the land upon which they are situated and necessary to their use, water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad, or used in the daily operation, whether situated on the charter right of way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the state board of assessment, Pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: Provided, however, that all machines and repair shops, general office buildings, storehouses and contents thereof, located outside of the right of way, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list takers of the county where the real and personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the state board of assessment. It shall be the duty of the register of deeds, if requested so to do by the state board of assessment, to certify and send to the said board a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the board in accordance with section thirty-two, before the apportionment is made to the counties and municipalities. The register of deeds shall also certify to the board the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the performance of the duties of their offices as the said board shall require them; and the mayor of each city or town shall cause to be sent to the said board the local rate of taxation for municipal purposes. (1933, c. 204, s. 713.)

§ 7971(78). Railroads, annual schedule of rolling stock, etc., to be furnished state board.—The movable property belonging to a railroad company shall be denominated for the purpose of taxation "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this state shall, in the month of May, annually return a list of schedule to the state board of assessment which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars, and the value thereof, and a statement or schedule, as follows: (1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or, if no market value, then the actual value of shares of stock; (4) the length of line

operated in each county and total in the state; (5) the total assessed value of all tangible property in the state; (6) and, if desired, all the information heretofore required to be annually reported by section seven thousand nine hundred and sixty-four of the consolidated statutes. Such schedule shall be made in conformity to such insructions and forms as may be prescribed by the board, and with reference to amounts and value on the first day of May of the year for which the return is made. (1933, c. 204, s. 714.)

§ 7971(79). Railroads; Tangible and intangible property assessed separately.—(a) At such dates as real estate is required to be assessed for taxation, the said board of assessment shall first determine the value of the tangible property of each division or branch of such railroad or rolling stock and all the other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property and the franchise, as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof, and the state board of assessment shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amounts apportioned to his county, city or town; all taxes due the state from any railroad company shall be paid by the treasurer of each company directly to the commissioner of revenue within thirty days after notice of assessment and tax due, and upon failure to pay the commissioner of revenue as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts. (1933, c. 204, s. 715.)

§ 7971(80). Railroads; where road both within and without state.—When any railroad has part of its road in this state and part thereof in any other state, the said board shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the state board of assessment of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this state bears to the whole length of such main line of road and determine the value in this state accordingly: Provided, the board shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July the said board shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said board may, if they see fit, require all argument and communications to be presented in writing. (1933, c. 204, s. 716.)

§ 7971(81). Railroads; in case of leased roads.—If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed; and if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this state other than that which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company. (1933, c. 204, s. 717.)

§ 7971(82). Railroads; board may subpoena witnesses and compel production of records.—The state board of assessment shall have power to summon and examine witnesses and require that book and papers shall be presented to them for the purpose of obtaining such information as may be necessary to aid in determining the valuation of any railroad company. Any president, secretary, receiver or accounting officer, servant or agent of any railroad or steamboat company having any proportion of its property or roadway in this state, who shall refuse to attend before the said board when required to do so, or refuse to submit to the inspection of said board any books or papers of such railroad company in his possession, custody or control, or shall refuse to answer such questions as may be put to him by said board, or order touching the business or property, moneys and credits, and the value thereof, of said railroad company, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be confined in the jail of the county not exceeding thirty days, and shall be fined in any sum not exceeding five hundred dollars and costs, and any president, secretary, accounting officer, servant, or agent aforesaid, so refusing as aforesaid, shall be deemed guilty of contempt of such board, and may be confined, by order of said board, in the jail of the proper county until he shall comply with such order and pay the cost of his imprisonment. (1933, c. 204, s. 718.)

§ 7971(83). Taxes on railroads shall be a lien on property of the same.—The taxes upon any

and all railroads in this state, including roadbed, right-of-way, depots, sidetracks, ties and rails now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon commencing from the first day of May in each current year, against all claims or demands whatsoever of all persons or bodies corporate except the United States and this state, and the above described property or any part thereof may be taken and held for payment of all taxes assessed against said railroad company in the several counties of this state. (1933, c. 204, s. 719.)

§ 7971(84). Board of assessment to certify; when tax payable.—The state board of assessment shall, upon completion of the assessment directed in the preceding sections, certify to the register of deeds of the counties and the clerk of the board of commissioners of the municipalities through which said companies operate the apportionment of the valuations as hereinbefore determined and apportioned by the board, and the board of county commissioners shall assess against such valuation the same tax imposed for county, township, town or other tax district purposes, as that levied on all other property in such county, township, town, or other taxing districts. This tax shall be paid to the sheriff or tax collector of the county and municipality. (1933, c. 204, s. 720.)

§ 7971(86). Canal and steamboat companies.—The property of all canal and steamboat companies in this state shall be assessed for taxation as above provided for railroads. In case any officer fails to return the property provided in this section, the board shall ascertain the length of such property in this state, and shall assess the same in proportion to the length at the highest rate at which property of that kind is assessed by them. (1933, c. 204, s. 721.)

Art. 8. General Provisions

§ 7971(87). Foreign corporations not exempt.—Nothing in this act shall be construed to exempt from taxation at its actual cash value any property situated in the state belonging to any foreign corporation. (1933, c. 204, s. 800.)

§ 7971(88). Defining actual value in money.—All property, real and personal, shall, as far as practicable, be valued at its true value in money. The intent and purpose of the tax laws of the state is to have all property and subjects of taxation assessed at their true and actual value in money, in such manner as such property and subjects are usually sold, but not by forced sale thereof, and the words "market value," "true value," or "cash value," whenever used in the tax laws of this state, shall be held to mean for what the property and subjects can be transmuted into cash when sold in such manner as such property and subjects are usually sold. (1933, c. 204, s. 801.)

§ 7971(89). Clerk of cities and towns to furnish information as to valuation, taxes levied, and indebtedness.—The clerk or auditor of each city and town in this state shall annually make and transmit to the state board of assessment, on blanks furnished by the said board, a full, correct and accurate statement showing the assessed valuation of all property, tangible and intangible, within his city or town, and separately the amount of all taxes levied therein by said city or town, including school district, highway, street, sidewalk, and other similar improvement taxes for the current year, and the purpose for which the same were levied; and a complete and detailed statement of the bonded and other indebtedness of the city or town, the accrued interest on same, whether not due or due and unpaid, and the purposes for which said indebtedness was incurred. (1933, c. 204, s. 802.)

§ 7971(90). County indebtedness to be reported.—The auditor or county accountant of each county in this state shall make and deliver annually to the state board of assessment a full, correct, and accurate statement of the bonded and other indebtedness of his county, including township, school districts and special tax districts, the purposes for which same was incurred, and all accrued interest, whether not due or due and unpaid. (1933, c. 204, s. 803.)

§ 7971(91). Correction of assessment roll.—If on the assessment roll of any county there is an error either in the name of the person assessed, or any taxable property shall not have been listed, or any error that has been made in the transfer, the name may be changed, the property entered on the roll, or the error corrected by the county supervisor of taxation after the roll has been returned to the clerk of the board of county commissioners; or such name may be changed, omission supplied, entry made or error corrected by the board of county commissioners upon satisfactory evidence of such error or omission, at a regular meeting of the board, and the board, upon reasonable notice, may require the person or persons affected to show cause, on a day to be appointed, why the error shall not be corrected or omission supplied; and the board of county commissioners is empowered and authorized to correct any error arising from the fact that property appears on the assessment roll which has been conveyed to another before the listing period, or did not belong to the taxpayer on the first day of April of the current year. (1933, c. 204, s. 804.)

§ 7971(92). Discounts and penalties in payment of taxes.—All taxes assessed and/or levied by any county in this state, in accordance with the provisions of this act, shall be due and payable on the first Monday of October of the year in which so assessed and levied, and if actually paid in cash.

(1) On or before the first day of November next after due and payable, there shall be deducted a discount of one per cent.

(2) After the first day of November and on or before the first day of December next after due and payable, there shall be deducted a discount of one-half of one per cent.

(3) After the first day of December and on or before the first day of February next after due and payable, the tax shall be paid at par or face value.

(4) After the first day of February and on or

before the first day of March next after due and payable, there shall be added to the tax a penalty of one per cent.

(5) After the first day of March and on or before the first day of April next after due and payable, there shall be added to the tax a penalty of two per cent.

(6) After the first day of April and on or before the first day of May next after due and payable, there shall be added a penalty of three per cent.

(7) After the first day of May and on or before the first day of June next after due and payable, there shall be added a penalty of four per cent.

(8) Should any taxpayer desire to make a prepayment of his taxes between July first and October first of any year, he may do so by making payment to the county or city accountant, city clerk, auditor or treasurer, as the governing body may determine and shall be entitled to the following discounts: If paid on or before July first, a deduction of three per cent; if paid on or before August first, a deduction of two and one-half per cent; if paid on or before September first, a deduction of two per cent; if paid on or before October first, a deduction of one and one-half per cent. Whenever any such payments are made, the auditor or county accountant shall certify the same to the clerk to the board of county commissioners, and the same shall be credited, together with the discount, to the taxes levied to the person, firm or corporation, which credit shall include the discount upon the above basis. The board of commissioners of any county or municipality may by resolution adopted prior to the first day of October, one thousand nine hundred thirty-three, eliminate the penalties provided in this section on payment of taxes delayed beyond the first day of February, and may adopt as applicable to such county or municipality, in lieu of the discounts and penalties provided in this section, a schedule of discounts not in excess of the following:

On taxes paid on or before October first a discount of two per cent.

On taxes paid on or before November first a discount of one per cent.

On taxes paid on or before January first a discount of one-half of one per cent.

(9) The county commissioners of any county may order and direct the payment of taxes in installments of not less than twenty-five per cent of the amount due, at such time as the county commissioners may determine the final installment to be made payable not later than May first, subject to the discounts and penalties as herein provided.

Provided, nothing herein shall be construed to repeal any of the provisions of house bill one thousand and sixty-two relating to Pender county. (1933, c. 204, s. 805.)

For act extending the time of attachment of penalties in Anson county, see Public Laws 1933, c. 293. Public Laws 1933, c. 289 amends this section as to Forsyth county. Public Laws 1933, c. 247, provides that § 805, c. 428 Public Laws 1931, which was practically identical with this section, should not apply, as to paragraph (4) to (7), to Pamlico county. Although the 1931 provision is superseded by this section, it is presumed that the intent of the legislature would control and that the particular paragraphs of this section would not apply to the county mentioned.

§ 7971(93). Failure to list personal property a misdemeanor.—If any person, firm or corporation whose duty it is to list any personal property whatsoever for taxation, shall fail, refuse or neglect to list same, shall remove or conceal same, or cause same to be removed or concealed, or shall aid or abet in removing or concealing property that should be listed, such person, firm or corporation shall be guilty of a misdemeanor. (1933, c. 204, s. 806.)

§ 7971(94). Penalty for failure to make report.—Every register of deeds, auditor, county accountant, supervisor of taxation, assessor, sheriff, clerk of superior court, clerk of board of county commissioners, county commissioners, board of aldermen, or other governing body of a city or town, mayor, clerk of city or town, or any other public officer, who shall willfully fail, refuse or neglect to perform any duty required, to furnish any report to the state board of assessment as prescribed in this or the revenue act, or who shall willfully and unlawfully hinder, delay or obstruct said board in the discharge of its duties, shall for every such failure, neglect, refusal, hindrance and /or delay, in addition to the other penalties imposed in this and the revenue act, pay to the state board of assessment for the general fund of the state the sum of one hundred dollars ($100.00), such sum to be collected by said board. A delay of thirty days to make and furnish any report required or to perform a duty imposed shall be prima facie evidence that such delay was willful. (1933, c. 204, s. 807.)

§ 7971(95). Misdemeanor for refusal to allow inspection of records or to respond to subpoena.—Any person, persons, member of a firm, or any officer, director or stockholder of a corporation who shall refuse permission to inspect any books, papers, documents, statements, accounts, or records demanded by the state board of assessment, the members thereof, or any duly authorized deputy provided for in this act or the revenue act, or who shall willfully fail, refuse or neglect to appear before said board in response to its subpoena or to testify as provided for in this act and the revenue act, shall, in addition to all other penalties imposed in this or the revenue act, be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court. (1933, c. 204, s. 808.)

§ 7971(96). Unconstitutionality or invalidity.—If any clause, sentence, paragraph, sub-section, section or any part of this act shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, sub-section, section, or part thereof directly involved in such judgment. No caption of any section or sections shall in any way affect the validity of this act or any part thereof. (1933, c. 204, s. 809.)

§ 7971(97). Purpose of act.—It is the purpose of this act to provide the machinery for the listing and valuing of property, and the levy and collection of taxes, for the year one thousand nine hundred and thirty-three, and annually thereafter. (1933, c. 204, s. 810.)

SUBCHAPTER III. COLLECTION OF TAXES

Art. 10. General Provisions

§ 7977. Taxes payable in national currency.

If a sheriff accepts a note in payment for taxes for the accommodation of the taxpayer, marking the records in his office paid and detaching the original receipt from the record, and thereafter pays said taxes to the county, neither such sheriff nor the bondsman can assert or establish a lien upon the land. United States Fidelity, etc., Co. v. McGougan, 204 N. C. 13, 16, 167 S. E. 387.

§ 7979. Remedy of taxpayer for unauthorized tax.

Cross Reference.—

For a case in which injunctive relief against the collection of taxes was granted, see Barber v. Benson, 200 N. C. 683, 158 S. E. 245.

Where a town ordinance imposes a license tax upon those selling at wholesale or peddling therein, and provides that its violation be punishable as a misdemeanor, the remedy to test the validity of the ordinance is to pay the tax under protest and bring action to recover it back, in accordance with this section, and equity will not enjoin the town from executing its threat to arrest for violations of the ordinance, it not appearing that the plaintiff would be irreparably damaged by the payment of the tax, and the legal remedy to recover the tax affording adequate relief. Loose-Wiles Biscuit Co. v. Sanford, 200 N. C. 467, 157 S. E. 432.

Art. 11. Rights of Parties Adjusted

§ 7984. Taxes against infants and lunatics.

The provisions of this section in so far as they relate to minors are now ineffective. Forsyth County v. Joyce, 204 N. C. 734, 169 S. E. 655.

§ 7985. Fiduciaries to pay taxes.

Cited in Coltrane v. Donnell, 203 N. C. 515, 166 S. E. 397.

Art. 12. Tax Liens

§ 7986. No lien on personalty.

Lien Attaches at Levy.—

Tax lien attaches to personalty only from levy, and owner is not liable for taxes for years prior to his possession. Coltrane v. Donnell, 203 N. C. 515, 166 S. E. 397.

Provision as to Notice Mandatory.—The requirements of this section that the sheriff give the mortgagee due notice of a sale is mandatory and not merely directory, and where no notice of the tax sale has been given the mortgagee of a duly registered mortgage, his right to the possession of the property is superior to that of the purchaser at the tax sale, but his possession is solely for the purpose of foreclosing the mortgage by sale of the property. Northern Mach. Works v. Hubbard, 202 N. C. 723, 164 S. E. 113.

§ 7987. Lien on realty.

The tax on shares of stock of a bank is a lien upon the land. Rockingham v. Hood, 204 N. C. 618, 169 S. E. 191.

It is lawful for the taxing authorities under the provisions of this section to apportion the taxes upon application of the owners even though the application is made after the land has been sold for taxes but before foreclosure of the tax certificate, and a judgment ordering that the lot optioned be released from the tax lien upon the payment of the taxes apportioned against it together with the payment of the personal property tax assessed against the owners will be upheld, the statute applying to cases in which a subdivision of property has been made and the land assessed as an entity and it being immaterial whether the subdivision was made before or after the adoption of the amendment of 1931. Bryan v. Craven County, 204 N. C. 728, 169 S. E. 625.

Where an option on certain land is executed to the Government on 20 May of a certain year and is followed by deed delivered to the Government 29 July, the land is subject to the taxes for the year. Bryan v. Craven County, 204 N. C. 728, 169 S. E. 625.

Art. 13. Time and Manner of Collection

§ 7992. Sheriff to collect taxes due; duty to furnish certificate of taxes, etc., against land.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

§ 7994. Payment of taxes.

Cross Reference.—As to sheriff accepting note in payment and marking records paid, see § 7977 and the note thereto.

§ 7994(a). Taxes payable in installments in certain counties.—The sheriff, tax collectors, deputy tax collectors and tax collecting officers of the following counties, and the tax collectors of each and every municipality situate in said counties are hereby authorized, empowered and directed to accept partial payments on taxes of not less than twenty-five per cent of the total amount of taxes due said counties or municipalities by any taxpayer thereof: Provided, that the time for paying said installments shall not be extended beyond the time now provided by law for the advertisement and sale of property for taxes: Provided further, no installment payment or payments shall operate as a discharge of the tax lien provided by law until the amount of the taxes of the taxpayers making such installment payment or payments shall have been paid in full. This section shall apply to the following counties and municipalities located therein: Alexander, Avery, Beaufort, Bertie, Bladen, Carteret, Chowan, Columbus, Edgecombe, Duplin, Franklin, Gates, Greene, Guilford, Harnett, Henderson, Hertford, Iredell, Jackson, Johnston, Lenoir, Madison, Martin, Mitchell, Nash, Northampton, Onslow, Pamlico, Perquimans, Pitt, Randolph, Robeson, Rockingham, Surry, Stokes, Transylvania, Tyrrell, Union, Vance, Washington, Warren, Wayne, Yancey, Haywood, Rowan and Swain. (1931, c. 402; 1933, c. 198.)

Editor's Note.—Haywood, Rowan, and Swain, were added to the list of counties to which this section applies by Public Laws 1933, c. 198.

§ 8003. Property in hands of receiver.

Cross Reference.—As to tax liens continuing on the property regardless into whose hands it passes, see § 1220 and the note thereto.

§ 8005(f). Collection of arrears of tax for years 1923 to 1931 by personal representative. — All sheriffs and tax collectors who, by virtue of their office, have had the tax lists for the purpose of collecting taxes of their respective counties, towns and school districts, in their hands for the years one thousand nine hundred twenty-three, one thousand nine hundred twenty-four, one thousand nine hundred twenty-five, one thousand nine hundred twenty-six, one thousand nine hundred twenty-seven, one thousand nine hundred twenty-eight, one thousand nine hundred twenty-nine, one thousand nine hundred thirty and one thousand nine hundred thirty-one, and in case of death or default in collection, their personal representatives, bondsmen, or any agent or agents that they may designate, are authorized and empowered to collect arrears of taxes for each of the years aforesaid, under such rules and regulations as are now, or may hereafter be provided for the collection of taxes.

No executor or guardian shall be compelled to pay any tax under the provisions of this section after he shall have made final settlement: Provided, that this section shall not authorize a sale of any land for taxes which has been conveyed prior to January first, one thousand nine hundred and thirty-one, to a purchaser for value, and without actual notice of the non-payment of such taxes: Provided, further, that all lands sold for

the non-payment of taxes, under the provisions of this section, shall be sold subject to encumbrances by mortgages or deeds in trust, executed prior to January first, one thousand nine hundred and thirty-one.

Nothing herein contained shall be construed to relieve sheriffs, tax collectors, their representatives or bondsmen, from the liability imposed by the law to pay the state, county, town any other taxes at the time and place required by law.

This section shall not apply to taxes now involved in litigation.

The authority herein given shall cease and determine on the first day of January, one thousand nine hundred and thirty-five. (1933, c. 97.)

Art. 14. Tax Sales

Part 1. Sale of Personalty

§ 8006. Personalty first exhausted.

Stated in Reichland Shale Products Co. v. Southern Steel, etc., Co., 200 N. C. 226, 156 S. E. 777.

Part 2. Sale of Realty

§ 8010. When land is liable.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

§ 8012. Time and place of sale.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

§ 8012(b). Tax sales for 1931-32 on day other than law provides and certificates validated.—All sales of land for failure to pay taxes, held or conducted by any sheriff or any tax collector of any county, city, town or other municipality during the year one thousand nine hundred thirty-one and one thousand nine hundred thirty-two, on any day subsequent to or other than the first Monday in June of said year, be, and the same are hereby, approved, confirmed, validated and declared to be proper, valid and legal sales of such land and legally binding in all respects, and all certificates of sale made and issued upon and in accordance with such sales, be, and they are hereby, approved and validated to all intents and purposes, and with such full force and legal effect as if said sales had been held and conducted on said first Monday of June, one thousand nine hundred thirty-one and one thousand nine hundred thirty-two: Provided, this section shall not apply to Mecklenburg county and Durham county. (1933, c. 177, s. 1.)

§ 8014. Sale advertised.

Public Laws 1933, c. 415 omitted Edgecombe from the exemption of the Amendatory Act of 1931.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

§ 8019. Land listed in wrong name.

Sufficient Description Necessary.—Where a suit to foreclose a tax certificate is instituted against the person listing the property for taxation and the property is sufficiently described, the action is maintainable although the title to the land is in another. Forsyth County v. Joyce, 204 N. C. 734, 169 S. E. 655.,

§ 8026. Certificate to county, city, etc.; right to transfer.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

§ 8027. Certificate presumptive evidence of validity.

Stated in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

Part 3. Tax Deeds

§ 8028. Remedy of holder of certificates of sale.

Cross Reference.—As to county being required to foreclose within eighteen months when proceeding under this section, see § 8037 and the note thereto.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

Part 3A. Refund of Tax Sales Certificates

§ 8034(a). Local units directed to extend payment of taxes over period of five years and to remit penalties; time limit; payment of 1932 taxes as condition precedent. — The several counties, municipalities and other agencies of government owning taxes, or tax sales certificates for lands in their several units for the years one thousand nine hundred twenty-seven, one thousand nine hundred twenty-eight, one thousand nine hundred twenty-nine, one thousand nine hundred thirty, and one thousand nine hundred thirty-one, at the request of the owner or owners of the land, are hereby authorized, empowered and directed to enter into agreements with the owners of the lands covered by said tax sales certificates whereby said taxes, or tax sales certificates, exclusive of interest and penalties, may be paid in installments covering a period not to exceed five years and bearing interest at the rate of six per cent per annum, payable annually from and after the first day of April, 1933: Provided, that unless the said counties and the owners of lands covered by said taxes, or tax sales certificates, enter into said agreements on or before the first day of April, 1934, this section shall become inoperative and the said counties are authorized to proceed with foreclosure proceedings as hereinafter set out: Provided, that as a condition precedent to this settlement the several agencies of government are authorized and empowered in their discretion to require the payment of the 1932 taxes by resolution duly passed by the governmental agencies. (1933, c. 181, s. 1.)

For amendments applicable in Johnston County only, see Public Laws 1933, c. 459; in Scotland County, c. 218; in Columbus County, c. 486.

§ 8034(b). Note given by landowner. — When said agreement is entered into between the counties, municipalities, and other governing agencies and the owner of said land covered by said taxes, or tax sales certificates, they shall take from the owner a note in substantially the following form:

$ .....

For the taxes for the years 192.., 192.., 192.., 193 .., and 193 .., on those lands in ..... Township, ... County, North Carolina, adjoining the lands of ..... (brief description of land) ..... I or we promise to pay to the order of ..... County, the sum of ..... Dollars, with interest from April 1st, 1933, at the rate of six per cent per annum, payable annually, and payable as to principal in ..... annual payments of ..... on the ..... day of ..... in each of the years ..... respectively. Upon my failure to pay any installment of principal or interest, the whole amount shall immediately become due and payable. This note shall constitute a lien on the lands above described and said land shall

be subject to foreclosure sale at the option of said county, municipality or other government agency under the law providing for foreclosure sales under tax sales certificates upon my failure to make the payments as above set out. WITNESS my hand and seal, this the ..... day of ....., 193 ... (1933, c. 181, s. 2.)

§ 8034(c). Note constitutes superior lien; not a novation; right of foreclosure preserved; default of single installment.—The said note, when given and received as above set out, shall constitute a first lien on the lands described, superior to all other liens except current taxes, and shall be of the same dignity as those, and said notes shall be construed as a continuing lien on the land from the time the lien of the taxes first attached against said land and shall not be considered a novation, and the said county or municipality and other governing agency taking said note shall have the right of foreclosure on said land under the law governing foreclosure of sale of lands under tax sales certificates at any time after said note or any installment thereof is due and within twelve months thereafter. The said county, municipality or other governing agency shall have a right at its option to foreclose after the failure of any one of the payments as provided in said note but shall not be compelled to foreclose until the whole note is due and within twelve months thereafter. (1933, c. 181, s. 3.)

§ 8034(d). Notes are continuing lien. — All notes taken for taxes, or tax sales certificates hereunder, shall be and constitute a continuing lien from the time the taxes were originally assessed on the lands therein described, but the said notes shall not be subject to be reduced to a personal judgment. (1933, c. 181, s. 4.)

§ 8034(e). Notation to be made on record of certificates. — Upon taking notes for taxes as above described, the auditor or county accountant, or other officer having charge of tax sales certificates, shall enter a notation of the same on the record of the tax sales certificates, and shall state on said record, the amount of said note and the time the said installments thereof are payable, and the said officers shall endorse said tax sales certificates as follows: "Absorbed in a note given this day as provided by chapter one hundred and eighty-one Laws of one thousand nine hundred thirty-three," and shall be signed by the said county accountant or other officer, and the said tax sales certificate shall be kept by the county accountant or other officer until the note taken therefor is paid or foreclosure proceedings thereon are completed. (1933, c. 181, s. 5.)

§ 8034(f). Notes to be recorded in office of register of deeds.—Whenever a note is given and taken as heretofore provided, the same shall be registered in the office of the register of deeds of the county, in a book to be kept by him and marked "tax liens," said notes shall be prepared and recorded at the cost of the maker, and the fees for the same are hereby fixed as follows: For all work up to and including the drawing and execution of the note the sum of fifty cents to be paid to the county accountant or other officer doing the work. For probating the said note the clerk shall receive the sum of ten cents, and for recording and indexing same, the register of deeds shall receive the sum of fifteen cents: Provided, however, that in any county or city having such officials upon a salary basis, the above named fees shall be collected and paid into the general fund of such county or city. (1933, c. 181, s. 6.)

§ 8034(g). Tax liens for 1926 and prior years, not yet foreclosed, barred.—All tax liens held by counties, municipalities, and other governing agencies for the year one thousand nine hundred twenty-six and the years prior thereto, whether evidenced by the original tax certificates, or tax sales certificates, and upon which no foreclosure proceedings have been instituted, are hereby declared to be barred and uncollectible: Provided that no part of this section or of this part shall be construed as applying to liens for street and/or sidewalk improvements: Provided that this section shall not apply to Pamlico, Richmond and McDowell counties. (1933, c. 181, s. 7; c. 399.)

§ 8034(h). Extension of foreclosure on other taxes till October 1, 1934.—All counties, municipalities or other governing agencies holding tax sales certificates for lands for the years one thousand nine hundred twenty-seven, one thousand nine hundred twenty-eight, one thousand nine hundred twenty-nine, one thousand nine hundred thirty, and one thousand nine hundred thirty-one, whether foreclosure proceedings have been instituted or not, are hereby given until October first, one thousand nine hundred thirty-four, to institute said proceedings, with all the rights and privileges and liens which they had at any time heretofore, which rights shall be in addition to and not in abrogation of the rights heretofore granted for foreclosure in the event a note is taken as hereinbefore provided. (1933, c. 181, s. 8.)

§ 8034(i). Schedule of discounts on delinquent taxes; interest and penalties to be remitted.—The governing authorities of the counties, municipalities or other subdivisions holding any claim for delinquent taxes upon lands for any of the years 1927, 1928, 1929, 1930 and/or 1931 are hereby authorized and directed to accept from any person or persons owning any interest in or holding any lien upon lands the principal amount of the taxes, less interest and penalties, in cash, less 10% if paid before April 1, 1934, or upon the installment plan provided for in section 8034(a): Provided the maker of any installment note may anticipate the payment thereof in whole or in part by paying the same in cash less 10% discount, if paid before installment is due: Provided further that a ten per cent discount shall be allowed on all delinquent taxes paid on or before December 1, 1933; seven and one-half per cent on all delinquent taxes paid after December 1, 1933, and before January 1, 1934; five per cent on all delinquent taxes paid after January 1, 1934, and before February 1, 1934; two and one-half per cent on all delinquent taxes paid after February 1, 1934, and before March 1, 1934. Provided, however, that this section shall not apply to taxes for the year 1932-1933: Provided that nothing in this section shall be construed to eliminate any costs of advertising or costs of foreclosure, it being the purpose and intention to only eliminate interest and penalties.

The provisos except the first shall not apply to any of those counties or municipalities which have by public, private or public-local laws amended this act in its application to said counties or municipalities. (1933, c. 181, s. 9; cc. 402, 548.)

For local amendments see, as to Alamance, c. 402, Public Laws 1933; as to Pitt, c. 513; as to Dare, c. 505; as to Nash, c. 389; as to Scotland, c. 218.

§ 8034(j). Provision as to lands of minors and tenants in common.—Whenever any lands, for which the counties, municipalities, or other governing agencies own tax sales certificates, or taxes are owned by minors or by several persons as tenants in common, the note heretofore provided for may be made and executed by either one or more of the tenants in common, and in case of a minor, by his or her guardian, or receiver, and the note when so executed, whether by one tenant in common alone or by a guardian, or receiver, shall constitute a lien on the whole interest in said land, if the taxes for which the tax sales certificates are held were taxes on the whole of said property. (1933, c. 181, s. 10.)

§ 8034(k). Rights of mortgagees to take title after notice to owners.—Any person, firm or corporation, who at the time of the purchase of any lands of any county or municipality at any tax sale is the bona fide owner or holder of a first mortgage or deed of trust covering the same, or any part thereof, for the payment of money or other valuable consideration, shall upon failure of the former owner or owners to take title thereto under this part within the time specified and after giving thirty days notice by registered mail to the last known address of said owner or owners be entitled to receive a deed therefor from the county or municipality in the same manner and under the same terms as provided for said owner or owners under this part. (1933, c. 181, s. 11.)

§ 8034(l). Lands already foreclosed and purchased by local units redeemable on five-year note; note secured by deed of trust. — Any county, municipality or other governmental agency which has heretofore bought lands under foreclosure proceedings are hereby authorized and empowered to convey the said land to the former owner for the amount of taxes, costs and charges which the said county, municipality or other governmental agency has paid for said lands and for the purchase price of said lands are hereby authorized and empowered to take a note from said former owner, payable in installments not to exceed five years and bearing interest at the rate of six per cent per annum. Said notes shall be secured by a deed of trust prepared and registered at the cost of the former owner, and providing for foreclosure upon default in the payment of any payment of principal or interest, provided that the said owner or owners or other persons interested shall take advantage of this option on or before the first day of April, 1934; and provided further that the county is still the bona fide holder of said lands; and provided further that the said owner or owners shall also include in said notes all subsequent taxes due on said land and that might have become due on said land if the said county, municipality or other governmental agency had not become the purchaser thereof under foreclosure proceedings. (1933, c. 181, s. 12.)

§ 8034(m). Redemption where certificate is in hands of third person.—Where any person has purchased a tax certificate in good faith, the owner is allowed to redeem same until April 1, 1934, by reimbursing the purchaser of the full amount paid with all necessary and proper expenses incurred, together with six per cent interest thereon. (1933, c. 181, s. 13.)

§ 8034(n). Counties excepted.—None of the provisions of this part shall apply to Davidson, Forsyth, Orange, Hyde and Mecklenburg Counties: Provided, that this part shall not be mandatory in the following counties or municipalities therein, but within the discretion of the governing bodies of the said counties or municipalities therein, to-wit: Alleghany, Beauford, Cleveland, Gaston, Polk, Granville, Catawba, Lincoln, Wilkes, Guilford, Surry, Moore, Richmond, Camden, Durham, Rockingham, Burke, Caldwell, New Hanover, Halifax, Union and Hertford. (1933, c. 181, s. 14, cc. 226, 314, 329, 351, 377, 391, 424, 427, 471, 502.)

By section 2, c. 427, Public Laws of 1933 it is provided that the Tax Sales Certificates Refunding Act of 1933 shall not apply in Mecklenburg county. For amendments applicable in Chatham county only, see Public Laws 1933, c. 536; in Granville county, c. 304; in Beaufort, c. 314; and in Catawba, c. 315.

Part 4. Remedies of Purchasers at Tax Sales

§ 8036. Lien of purchaser.

Cited in Orange County v. Wilson, 202 N. C. 424, 163 S. E. 113.

§ 8037. Purchaser shall foreclose. — Every holder of a sheriff's certificate of sale or real estate for taxes shall have the right of lien against all real estate described in the certificate as in case of mortgage, and shall be subrogated to the rights of the state and of the county, or other municipal corporation, for the taxes for which such real estate was sold, and shall be entitled to a judgment for the sale of such real estate for the satisfaction of whatever sums may be due to him upon such certificate of sale and for any other amounts expended by him upon any other such certificate of sale of such real estate, or for taxes or assessments paid which were a lien upon such real estate, whether paid prior or subsequent to the acquisition of such certificate of sale. Such relief shall be afforded only in an action in the nature of an action to foreclose a mortgage, which action must be commenced as herein provided. Such action shall be governed in all respects as near as may be, by the rules governing actions to foreclose a mortgage. The person in whose name said real estate has been listed for taxation, together with the wife or husband, if married, shall be made defendants in said action and shall be served with process as in civil actions.

Notice, by posting at the courthouse door, shall be given to all other persons claiming any interest in the subject matter of the action to appear, present and defend their claims. Said notice shall describe the nature of the action and shall require such persons to set up their claims in six months from the date of the final appearance of the general advertisement of such notice as required herein or at any time before the order to make deed is made, otherwise they shall be for-

ever barred and foreclosed of any and all interest or claims in/or to the property or the proceeds received from the sale thereof. General advertisement shall be made of such notice by publication, which advertisement shall appear once a week for four successive weeks and shall contain substantially the following:

FORECLOSURE SUITS FOR TAXES

ACTIONS INSTITUTED DURING THE MONTH OF

....., 19.....

..... Advertisement.

(First, second, third, or final)

Names of Plaintiffs. Names of Defendants. Township. Year Taxes Delinquent.

The cost of the general advertisement shall be prorated and taxed against each defendant. Upon the return of the summons executed upon the taxpayer, his/her wife or husband, the court shall proceed to judgment without awaiting the six months allowed to other claimants. In case the action is prosecuted by the state, county or other municipality, no prosecuting bond shall be required to be deposited or paid any officer; costs shall be taxed against the defendant or defendants as in other cases and after and when collected shall be paid to the officers entitled to receive the same: Provided, the fees allowed any officer shall not exceed one-half such fees allowed in other civil actions. The deed which shall be made to the purchaser as hereinafter provided for, shall convey the real estate to the purchaser in fee simple free from any and all claims or interest of the taxpayer his/her wife or husband or of any other person.

In the complaint filed in such action each certificate of sale held by the plaintiff and each sum expended by him for taxes or assessments on such real estate, or claimed by him as a lien on same, shall be set out separately. The description set out in the tax sale certificate shall be sufficient to support the lien and certificate of sale and the court shall require a description which is in fact and in law sufficient description of the real estate to be set out in the published notice, if any, as above provided, and in the interlocutory judgment of sale and in the final judgment of confirmation and to the end that such description may be obtained, the resident or presiding judge may order a survey of said real estate, if in his opinion a survey is necessary.

Every county, or political subdivision of the state which is now, or may hereafter become, the holder by purchase at sheriff's sale of land for taxes of any certificate of sale, shall bring action to foreclose the same within eighteen months from the date of the certificate: Provided, however, the board of commissioners of any county or the governing body of any municipality shall employ an attorney to conduct such actions and shall fix his compensation which shall be paid out of the general fund and shall cause to be taxed in the bill of costs a fee which in no event shall exceed ten dollars ($10.00) in each suit for foreclosure for the purpose of reimbursing the general fund for the compensation of said attorney, and: Provided, further, no process tax shall be taxed for the use of the state against the defendant in any action to foreclose a certificate of sale.

The certificate of sale shall bear interest at the rate of ten per centum per annum on the entire amount of taxes and sheriff's cost, for a period of twelve months from the date of sale and thereafter shall bear interest at the rate of eight per centum per annum until paid, or until the final judgment of confirmation is rendered, but every holder of a certificate other than county, municipal corporation or other political subdivision, shall, in case said action is not instituted within eighteen months from the date of the first certificate of sale, only receive after the expiration of eighteen months on all amounts expended on, or in connection with, said purchase interest at the rate of 6 per centum per annum. In any action to foreclose the cost shall be taxed as in other civil actions and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than 5 per centum of the amount at which the land is sold and one reasonable attorney's fee for plaintiff.

All certificates of sale evidencing purchases by counties shall immediately, upon being allowed as a credit in the settlement with the sheriff of the county, be delivered to the county accountant, county auditor, or other officer, specifically designated by the board of county commissioners, or other governing board of the county, except sheriff or tax collecting officer, and it shall be the duty of the officer, or such officer designated, to collect the same. In making the collection he shall collect interest at the rate provided in this chapter, which shall not be remitted either by said officer or the governing board of the county, or other political subdivision. If, at the end of sixteen months from the date of the certificate of sale, full collection of the tax, interest and cost has not been made, such officer shall proceed to foreclose the certificate of sale under the provisions of this article, and said action shall be instituted within twenty-four months from the date of the certificate of sale. Such officer shall call upon the county attorney to conduct the action to foreclose the certificate of sale and it shall be his duty to prosecute said action as vigorously as may be necessary to obtain early final action. After the institution of the action by counties or municipalities, the taxpayer shall have no right of redemption except upon the payment of the full tax, interest and other sums, and all cost and allowances, provided that the institution of the action to foreclose, shall not affect the rate of interest to be collected and the governing board of the county, or municipality, shall have no authority to remit or reduce the interest due under the certificate of sale, or otherwise interfere with the action to foreclose. Where the certificate of sale is taken by a municipality, all the provisions of this section shall apply to the foreclosure of such certificate of sale and to its collection and the governing authorities of the municipality may place such certificates of sale in the hands of one of its officers for collection and he shall have the same authority to collect them as the officer herein provided for counties. (1927, c. 221, s. 4; 1929, c. 204, ss. 2, 4; 1929, c. 334, s. 2; 1931, c. 260, ss. 1-5; 1933, c. 532, s. 1.)

Cross Reference.—As to the constitutionality of Public Laws 1931, c. 260, § 3, if it attempts to revive a right of action, see Wilkes County v. Forester, 204 N. C. 163, 167 S. E. 691.

Editor's Note.—

Public Laws of 1933, c. 532, inserted, near the middle of the

second paragraph of this section, the words "or at any time before the order to make deed is made."

Public Laws 1933, c. 560, in repealing Public Laws 1933, c. 148, provides: In no event shall the attorney fee exceed two dollars and fifty cents in each suit for foreclosure; the total cost of the taxpayer including attorneys' fee shall not exceed six dollars, including the newspaper advertisement which shall not exceed three dollars, and the interest and penalty on tax sale certificates shall be eight per centum per annum. So far as the provisions of laws in force on January 1, 1933, relate to taxes levied in 1932 and 1933, all actions and proceedings required to be taken in the months of May, June, and July, in the years 1933 and 1934, shall be taken in the months of August, September, and October, respectively. Suits to foreclose certificates evidencing sales in 1931 and prior years for taxes or special assessments on real property may be brought at any time not later than October 1, 1934. The act also provides that nothing therein shall be construed as repealing any of the provisions of sections 2492(36), 7880-(196), 8034(a)-8034(n), any part of the Machinery Act of 1933, or any private or public-local act of 1933, relating to the levy or collection of taxes in Mecklenburg, Gaston, Ashe, Macon, Davidson, Swain, Wayne, Pitt, Guilford, Lee, Yancey, Craven, and Henderson counties. The act further provides that it shall not effect Wake county or any suit pending in Guilford county on the 8th day of April, 1931, in which the real estate affected shall not be redeemed before the final sale.

The State as a sovereign power has the right to prescribe by statute the notice to be given to those interested in lands to be foreclosed under tax sale certificates except where the manner of notice interferes with the provisions of the Federal Constitution, and a statutory provision that substitutes notice by publication to be given in the newspapers as in an action in rem does not violate the "due process' clause of the Federal Constitution, and the purchaser at the judicial foreclosure sale, when fairly made in conformity with the provisions of this and following sections acquires title free from the claims of those who may have an interest in the locus in quo who do not appear and defend their rights. Orange County v. Jenkins, 200 N. C. 202, 156 S. E. 774.

Service Is Complete upon Compliance with Section.—This section designates those upon whom original process must be served and requires nothing more than constructive service upon all other persons who claim an interest in the subject-matter; and when these provisions are complied with the service is complete. Orange County v. Wilson, 202 N. C. 424, 427, 163 S. E. 113.

This section eliminates the purchaser's right to demand a deed and provides that relief shall be afforded only in an action in the nature of a suit to foreclose a mortgage. For historical background, see Forsyth County v. Joyce, 204 N. C. 734, 738, 169 S. E. 655.

When Owner Is Minor.—Under the provisions of this section an action instituted in September, 1929, against the person in whose name the land was listed to foreclose tax certificates for the years of 1924, 1925, 1926, and 1928, in which the minor owner was made a party by summons issued in February, 1932, is not barred by the statute of limitations. Forsyth County v. Joyce, 204 N. C. 734, 169 S. E. 655.

As to actions against minors, see § 451 and notes thereto.

County Bound by Limitation. — Where a county has purchased certain land at a tax sale and elects to proceed to foreclose its tax certificate under the provisions of § 8028, the county is bound by the limitation prescribed by this section, and its action to foreclose such certificate is barred after the elapse of eighteen months from the date of the purchase of the certificates when the limitation prescribed by the statute is properly pleaded. Wilkes County v. Forester, 204 N. C. 163, 167 S. E. 691.

The lien for taxes can be enforced by the State or its political subdivisions under § 7990, and no statute of limitations applies to the sovereign in such action, but where the State or its political subdivisions elect to proceed under this section, the limitations therein prescribed apply. Reichland Shale Products Co. v. Southern Steel, etc., Co., 200 N. C. 226, 156 S. E. 777.

§ 8037(a½). Judgments pro confesso by clerk as to non-answering defendants.—In any action to foreclose the certificate of sale under the provisions of this act when it has been properly instituted and all party defendants have been properly served and the complaint is duly verified and and no answer is filed by some or all of said defendants, the clerk of the superior court in which such action is instituted may give a judgment pro confesso in which all the essential facts alleged in the complaint are recited against those defendants not answering. If none of the defendants, so properly served, file any answer, said clerk may proceed and make the orders provided for in this section without transferring the cause to the superior court in term time, and the same jurisdiction in such cases to make such orders as that conferred upon the resident judge of the superior court or the judge riding the district, is conferred upon the clerk. Where any of the parties, however, have answered and the answer creates any issue as to those parties, the subsequent proceedings shall be as provided in § 8037 as amended, except that the judgment pro confesso shall bind the parties who have not answered, and the facts so found shall be taken by the judge of the superior court as binding upon those particular defendants. But no such judgment shall be effective, or be made to become effective, until final order to make deed is made. (1929, c. 204, s. 3; 1933, c. 532, s. 2.)

Editor's Note.—Public Laws of 1933, c. 532, added the last sentence of this section as it now reads.

Part 5. Redemption from Tax Sales

§ 8038. Manner of redemption.

Editor's Note.—For an act, purporting in its caption to be applicable in Buncombe county only but general in its terms, providing for the redemption of land sold during 1928, 1929, and 1930, see Public Laws 1933, c. 280.

Error of Few Cents in Fixing Amount.—Where the owner or his agent inquires of the sheriff, or his deputy in charge, the amount to be paid for the redemption, such owner or his agent has a right to regard the amount so stated as correct, and an error of a few cents made by the sheriff in fixing the amount will not be held fatal. Thompson v. Whitehall Co., 203 N. C. 652, 166 S. E. 807.

Applicability to Minors.—The last clause of this section so far as it affects minors, is not now effective. Forsyth County v. Joyce, 204 N. C. 734, 739, 169 S. E. 655.

CHAPTER 133

WEIGHTS AND MEASURES

Art. 1A. Uniform Weights and Measures

§ 8064(v). Transfer of division of weights and measures to department of revenue. — The governor of North Carolina is hereby authorized by executive order to transfer the superintendent of weights and measures, as set up by chapter 261, Public Laws 1927, and the laws amendatory thereto, codified as section 8064(a) et seq., to the department of revenue.

In the case of the transfer of the superintendent of weights and measures as set forth in the preceding section, the governor, together with the commissioner of revenue, are hereby authorized and empowered to promulgate and enforce such rules and regulations as he or they may deem necessary or advisable to effectuate section 3846(kkk), as well as chapter 261 of the Public Laws of 1927 as amended, and all appointive and elective authority now vested in the commissioner of agriculture by chapter 261 of the Public Laws of 1927 pertaining to weights and measures, are hereby transferred to the governor of North Carolina; and the governor is specifically authorized and empowered to appoint a superintendent of weights and measures to serve at the will of the governor. (1933, c. 523, ss. 1, 2.)

§ 8064(w). Certain measures regulated.—Whenever any commodity now named in section 8060,

Consolidated Statutes, shall be quoted or sold by the bushel, the bushel shall consist of the number of pounds stated in said section; and whenever quoted or sold in subdivisions of the bushel, the number of pounds shall consist of the fractional part of the number of pounds as set forth therein for the bushel; and when sold by the barrel shall consist of the number of pounds constituting 3.281 bushels. (1933, c. 523, s. 3.)

Art. 5. Standard Weight Packages of Grits, Meal and Flour

§ 8081(a). Corn meal.

The acts of 1933, c. 82 repealed this section as to Macon county.

§ 8081(b). Hominy or grits. — It shall be unlawful for any person or persons to pack for sale, sell, or offer for sale any hominy or grits except in packages of one pound, one and one-half pounds, two pounds, three pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds, or one hundred pounds, or multiples of one hundred pounds. (1921, c. 170, s. 2; 1933, c. 162.)

Editor's Note.— Public Laws of 1933, c. 162, added "two pounds" and "twenty-five pounds" to the list of weights enumerated in this section.

CHAPTER 133A

WORKMEN'S COMPENSATION ACT

§ 8081(i). Definitions. — When used in this chapter, unless the context otherwise requires—

(a) The term "employment" includes employment by the state and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which five or more employees are regularly employed in the same business or establishment, except agriculture and domestic service and sawmills and logging operators in which less than fifteen employees are regularly employed. (1929, c. 120, s. 2; 1933, c. 448.)

Editor's Note.—Public Laws of 1933, c. 448, added, to subsection (a) of this section, the clause applicable to saw-mills and logging operators. As subsection (a) was the only part of this section affected by the amendment it is the only paragraph here set out.

A newsboy engaged in selling papers is held not to be an employee of the newspaper within the meaning of that term as used in this section, the newsboy not being on the newspaper's payroll and being without authority to solicit subscriptions and being free to select his own methods of effecting sales, although some degree of supervision was exercised by the newspaper. Creswell v. Charlotte News Pub. Co., 204 N. C. 380, 168 S. E. 408.

The secretary and treasurer of an automobile sales company who was injured while traveling to collect accounts due the company was an employee of the company within the intent and meaning of this section at the time of the injury. Hunter v. Hunter Auto Co., 204 N. C. 723, 169 S. E. 648.

As a general rule an injury suffered by an employee while going to or returning from his work does not arise out of and in the course of his employment. Bray v. Weatherly & Co., 203 N. C. 160, 165 S. E. 332.

Employee Collecting Accounts. — Where there is evidence that it was the employee's duty to collect accounts of his employer for goods sold upon the installment plan and that the employee endeavored to collect an account from a debtor and was struck by another also owing an account to the employer, the injury resulting in death, the evidence is sufficient to sustain a finding by the Industrial Commission that the injury was the result of an accident arising out of and in the course of the employment, and such a finding of fact is conclusive and binding. Winberry v. Farley Stores, 204 N. C. 79, 167 S. E. 475.

Hernia.—It is sufficient for the Commission to find the facts required under this section and award compensation if the pain immediately followed the accident although the hernia was not discovered until diagnosis by a physician some days thereafter. Ussery v. Erlanger Cotton Mills, 201 N. C. 688, 161 S. E. 307.

Review of Decision.—If there was no conflicting evidence and the Industrial Commission decided as a matter of law that there was no sufficient competent evidence that the injury to plaintiff was "by accident arising out of and in the course of employment", the question is one of law and is reviewable by the court upon appeal. Massey v. Board of Education, 204 N. C. 193, 167 S. E. 695.

§ 8081(k). Presumption that all employers and employees have come under provisions of chapter.

An allegation that the intestate had not accepted the provisions of the Workmen's Compensation Act is immaterial for the reason that this section provides in substance that every employer and employee coming within the purview of the act is presumed to have accepted the provisions thereof. Hanks v. Southern Public Utilities Co., 204 N. C. 155, 156, 167 S. E. 560.

§ 8081(r). Other rights and remedies excluded; right to sue tort feasors; minor illegally employed; subrogation; amount of compensation as evidence; compromise. — The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this act, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, as against his employer at common law, or otherwise, on account of such injury, loss of service, or death: Provided, however, that in any case where such employee, his personal representative, or other person may have a right to recover damages for such injury, loss of service, or death from any person other than the employer, compensation shall be paid in accordance with the provisions of this chapter: Provided, further, that after the industrial commission shall have issued an award, the employer may commence an action in his own name and/or in the name of the injured employee or his personal representative for damages on account of such injury or death, and any amount recovered by the employer shall be applied as follows: First to the payment of actual court costs, then to the payment of attorneys' fees when approved by the industrial commission; the remainder or so much thereof as is necessary shall be paid to the employer to reimburse him for any amount paid and/or to be paid by him under the award of the industrial commission; if there then remain any excess, the amount thereof shall be paid to the injured employee or other person entitled thereto. If, however, the employer does not commence such action within six months from the date of such injury or death, the employee, or his personal representative shall thereafter have the right to bring the action in his own name, and the employer, and any amount recovered shall be paid in the same manner as if the employer had brought the action.

The amount of compensation paid by the employer, or the amount of compensation to which the injured employee or his dependents are entitled, shall not be admissible as evidence in any action against a third party.

When any employer is insured against liability for compensation with any insurance carrier, and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer

therefor, it shall be subrogated to all rights and duties of the employer, and may enforce any such rights in the name of the injured employee or his personal representative; but nothing herein shall be construed as conferring upon the insurance carrier any other or further rights than those existing in the employer at the time of the injury to or death of the employee, anything in the policy of insurance to the contrary notwithstanding.

In all cases where an employer and employee have accepted the workmen's compensation act, any injury to a minor while employed contrary to the laws of this state shall be compensable under this chapter the same and to the same extent as if said minor were an adult. (1933, c. 449.)

Editor's Note.—Public Laws of 1933, c. 449, struck out this section as it formerly appeared and inserted the above in lieu thereof. A comparison of the old with the new is necessary to determine the changes.

In General.—This section assigns the injured person's right of action against a tort-feasor to the employer or to the employer's insurer and enables the assignee to maintain the action which the employee could have maintained had no such assignment been made. Phifer v. Berry, 202 N. C. 388, 392, 163 S. E. 119.

The remedy under the Workmen's Compensation Act is exclusive and under the express terms of this section an employer is relieved of all further liability for injury to or death of an employee, and where the administrator of a deceased employee brings action against third persons for the employee's wrongful death, the motion of the defendants that the deceased's employer be made a party as a joint tort-feasor with them should be denied. Brown v. Southern R. Co., 202 N. C. 256, 162 S. E. 613.

Manifestly the statute was designed primarily to secure prompt and reasonable compensation for an employee, and at the same time to permit an employer or his insurance carrier, who had made a settlement with the employee, to recover the amount so paid from a third party causing the injury to such employee. Moreover, the statute was not designed as a city of refuge for a negligent third party. Brown v. Southern R. Co., 204 N. C. 668, 671, 169 S. E. 419.

Setting up Employer's Negligence.—In an action begun under this section a third person tort-feasor may set up the employer's negligence in bar of recovery, since the employer will not be allowed to profit by his own wrong in causing the employee's death. Brown v. Southern R. Co., 204 N. C. 668, 169 S. E. 419.

§ 8081(u). Exceptions from provisions of chapter.—(a) This chapter shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect article seven (7) of chapter sixty-seven (67) of the code, or any section thereof, relating to liability of railroads for injuries to employees; nor, upon the trial of any action in tort for injuries not coming under the provisions of this chapter, shall any provision herein be placed in evidence or be permitted to be argued to the jury: Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to electric street railroads or employees thereof; and this chapter shall apply to electric street railroads and employees thereof, and to this extent the provisions of article seven, of chapter sixty-seven of the consolidated statutes is hereby amended: Provided further, that the proviso shall not apply to Mecklenburg county.

(b) This chapter shall not apply to casual employees, farm laborers, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than five employees in the same business within this state, unless such employees and their employers voluntarily elect, in the manner hereinafter specified, to be bound by this chapter.

(c) This chapter shall not apply to state prisoners nor to county convicts.

(d) This chapter shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer. (1929, c. 120, s. 14; 1933, c. 401.)

Editor's Note. — Public Laws of 1933, c. 401, inserted the proviso at the end of subsection (a) of this section.

Where the findings of fact of the Industrial Commission that the deceased was an employee of the defendant and that the defendant employed more than five workers, are not supported by any evidence in the hearing before it, the findings are jurisdictional, and upon appeal to the Superior Court the award should be set aside and vacated. Poole v. Sigmon, 202 N. C. 172, 162 S. E. 198.

A demurrer to an action for death of an employee, on the ground that the action is cognizable only by the Industrial Commission, is properly overruled when it does not appear on the face of the complaint that the defendant employed more than five men in this State. Hanks v. Southern Public Utilities Co., 204 N. C. 155, 167 S. E. 560.

Applied in Aycock v. Cooper, 202 N. C. 500, 163 S. E. 569.

§ 8081(ff). Right to compensation barred after one year.—(a) The right to compensation under this chapter shall be forever barred unless a claim be filed with the industrial commission within one year after the accident, and if death results from the accident, unless a claim be filed with the commission within one year thereafter.

(b) If any claim for compensation is hereafter made upon the theory that such claim or the injury upon which said claim is based is within the jurisdiction of the industrial commission under the provisions of this chapter, and if the commission, or the supreme court on appeal, shall adjudge that such claim is not within the act, the claimant, or if he dies, his personal representative shall have one year after the rendition of a final judgment in the case within which to commence an action at law. (1929, c. 120, s. 24; 1933, c. 449, s. 2.)

Editor's Note. — Public Laws of 1933, c. 449, added subsection (b) to this section.

When the employer has filed with the Commission a report of the accident and claim of the injured employee, the claim is filed with the Commission within the meaning of this section. Hardison v. Hampton, 203 N. C. 187, 188, 165 S. E. 355.

§ 8081(gg). Medical treatment and supplies.—Medical, surgical, hospital, and other treatment, including medical and surgical supplies as may reasonably be required, for a period not exceeding ten weeks from date of injury to effect a cure or give relief and for such additional time as in the judgment of the commission will tend to lessen the period of disability, and in addition thereto such original artificial members as may be reasonably necessary at the end of the healing period shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the industrial commission may order such further treatments as may in the discretion of the commission be necessary.

The commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the

commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment when ordered by the industrial commission, shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the industrial commission the circumstances justified the refusal, in which case, the industrial commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the industrial commission: Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the industrial commission. (1929, c. 120, s. 25; 1931, c. 274, s. 4; 1933, c. 506.)

Editor's Note.—

Public Laws of 1933, c. 506, inserted the proviso at the end of this section relating to the selection of a physician.

§ 8081(hh). Liability for medical treatment measured by average cost in community; malpractice of physician.

Injury or suffering sustained by an employee in consequence of the malpractice of a physician or surgeon furnished by the employer or carrier is not ground for an independent action; under this section it is a constituent element of the employee's injury for which he is entitled to compensation. In such event the employer and the carrier are primarily liable and the question of secondary liability is eliminated. Hoover v. Globe Indemnity Co., 202 N. C. 655, 657, 163 S. E. 758.

§ 8081(ss). Where injured employee dies before total compensation is paid.

An award inadvertently entered by the Industrial Commission after the death of the claimant on appeal from the award is irregular, but not void, and the proceedings do not abate, this section providing that payment of the unpaid balance should be made to his next of kin dependent upon him at the time of his death. Butts v. Montague, 204 N. C. 389, 168 S. E. 215.

§ 8081(zz) 1. Reducing to judgment outstanding liability of insurance carriers withdrawing from state.—Upon the withdrawal of any insurance carrier from doing business in the state that has any outstanding liability under the workmen's compensation act, the insurance commissioner shall immediately notify the North Carolina industrial commission, and thereupon the said North Carolina industrial commission shall issue an award against said insurance carrier and commute the installments due the injured employee, or employees, and immediately have said award docketed in the superior court of the county in which the claimant resides, and the said North Carolina industrial commission shall then cause suit to be brought on said judgment in the state of the residence of any such insurance carrier, and the proceeds from said judgment after deducting the cost, if any, of the proceeding, shall be turned over to the injured employee, or employees, taking from such employee, or employees, the proper receipt in satisfaction of his claim. (1933, c. 474.)

§ 8081(ppp). Award conclusive as to facts; or certified questions of law.

Both a proper construction of the language of this section, and well-settled principles of law lead to the conclusion that where the jurisdiction of the Industrial Commission to hear and consider a claim for compensation under the provisions of the Workmen's Compensation Act, is challenged by an employer, on the ground that he is not subject to the provisions of the act, the findings of fact made by the Commission, on which its jurisdiction is dependent, are not conclusive on the Superior Court, and that said court has both the power and the duty, on the appeal of either party to the proceeding, to consider all the evidence in the record, and find therefrom the jurisdictional facts, without regard to the finding of such facts by the Commission. Aycock v. Cooper, 202 N. C. 500, 505, 163 S. E. 569.

§ 8081(rrr). Expenses of appeals brought by insurers.

Applied in Williams v. Thompson, 203 N. C. 717, 166 S. E. 906.

CHAPTER 135

CONCERNING THE CONSOLIDATED STATUTES

§ 8106. What statutes not repealed.

A special public-local statute, providing for the drawing of grand juries, has not been repealed or modified by this section. State v. Davis, 203 N. C. 47, 52, 164 S. E. 732.

§ 8108(1). References in statutes to Michie's North Carolina Code.—All acts of the general assembly of one thousand, nine hundred thirty-three, containing references to, or amendments of, any section or sections of "the North Carolina Code," or "The North Carolina Code of one thousand nine hundred thirty-one," or "Michie's North Carolina Code," are hereby declared to be intended as references to, and amendments of, the apposite, related, or cognate section or sections of the consolidated statutes, and all such references and amendments shall be liberally construed as intending to amend or relate to said apposite, related, or cognate sections of the said consolidated statutes. (1933, c. 443.)

APPENDICES

I. Constitution of the State of North Carolina

VII. Rules of Court

VIII. Table Showing Codification of Laws

APPENDIX I

CONSTITUTION OF THE STATE OF NORTH CAROLINA

ARTICLE I

Declaration of Rights

§ 7. Exclusive emoluments, etc.

A local public law which provides that the provisions of § 2445, should be read into private construction bonds, is in contravention of this section and 31 of our State Constitution, the statute failing to operate uniformly and equally in giving special privilege to the residents of the particular county and imposing heavier burdens on certain sureties. Plott Co. v. Ferguson Co., 202 N. C. 446, 163 S. E. 688.

§ 12. Answers to criminal charges.

The word "indictment" means indictment by a grand jury as defined by the common law. State v. Mitchell, 202 N. C. 439, 443, 163 S. E. 581.

Meaning of "Except as Hereinafter Allowed."—A justice of the peace has no jurisdiction of an assault with a deadly weapon except to bind the defendant over, and by the provisions of this section, the Superior Court may proceed to trial only upon indictment duly found and returned, the words in this section "except as hereinafter allowed" referring to the latter clause of section 13 relating to trial of petty misdemeanors and not to an assault with a deadly weapon. State v. Myrick, 202 N. C. 688, 163 S. E. 803.

Applied in State v. Rawls, 203 N. C. 436, 166 S. E. 332.

§ 13. Right of jury.

The defendant is entitled as a matter of right to know whether each juror assented to the verdict, announced by the juror who undertook to answer for the jury, and to that end he had the right to insist that a specific question be addressed to and answered by each juror in open court as to whether he assented to said verdict. State v. Boger, 202 N. C. 702, 704, 163 S. E. 877.

§ 17. No person taken, etc., but by law of land.

The obligation of a contract, within the meaning of the constitutional prohibition against impairment, includes all the means and assurances available for the enforcement of the contract at the time of its execution. Bateman v. Sterrett, 201 N. C. 59, 61, 159 S. E. 14.

The statute, authorizing the State Highway Commission to enter upon and take possession of lands before bringing condemnation proceedings and before making compensation, is not an infraction of constitutional rights and does not deprive an owner of notice and opportunity to be heard. North Carolina State Highway Comm. v. Young, 200 N. C. 603, 158 S. E. 925.

Sale of Land for Taxes.—

The State may proceed directly or by authorization to others to sell lands for taxes upon proceedings to enforce a lien for the taxes thereon, and a publication of notice to all interested in the lands to appear and defend their rights is not a taking of property inhibited by this section. Orange County v. Jenkins, 200 N. C. 202, 156 S. E. 774.

§ 19. Controversies at law respecting property.

Under Workmen's Compensation Act trial by jury is not a constitutional right. Hagler v. Mecklenburg Highway Comm., 200 N. C. 733, 734, 158 S. E. 383.

§ 31. Perpetuities, etc.

Cross Reference.—

As to invalidity of a local statute providing that the provisions of C. S. § 2445 should be read into private construction bonds under this section see Art. I, § 7 and notes thereto.

§ 35. Courts shall be open.

Applied in Myers v. Barnhardt, 202 N. C. 49, 161 S. E. 715.

ARTICLE IV

Judicial Department

§ 1. Abolishes the distinctions between actions at law and suits in equity, and feigned issues.

Effect of Section.—

Under this section and Art. IV, § 20 the Superior Courts became the successors of the Courts of Equity, having their jurisdiction and exercising their equitable powers unless restrained by statute. In re Smith, 200 N. C. 272, 274, 156 S. E. 494.

Legal and equitable rights and remedies are now determined in one and the same action. Woodall v. North Carolina Joint Stock Land Bank, 201 N. C. 428, 160 S. E. 475.

§ 2. Division of judicial powers.

The Industrial Commission is primarily an administrative agency of the State in the administration of the Compensation Act and its judicial powers are but incidental thereto, and the administration of the powers conferred by the statute is not in contravention of this section and Art. IV, § 12, of the Constitution. Heavner v. Lincolnton, 202 N. C. 400, 162 S. E. 909.

§ 8. Jurisdiction of Supreme Court.

What Reviewable.—

The Supreme Court on appeal in a criminal action can review only matters of law or legal inference. State v. Brewer, 202 N. C. 187, 162 S. E. 363.

The competency, admissibility and sufficiency of the evidence in a criminal action is for the court, the weight, effect and credibility is for the jury, and on appeal the Supreme Court can review only matters of law or legal inference. State v. Harrell, 203 N. C. 210, 165 S. E. 551; Debnam v. Rouse, 201 N. C. 459, 160 S. E. 471; Carter v. Mullinax, 201 N. C. 783, 161 S. E. 486; State v. Casey, 201 N. C. 185, 159 S. E. 337; Woody Brothers Bakery v. Greensboro Life Ins. Co., 201 N. C. 816, 161 S. E. 554; State v. Whiteside, 204 N. C. 710, 169 S. E. 711.

§ 9. Claims against the State.

Only Way to Be Sued.—

The jurisdiction of the Supreme Court to hear claims against the State is confined to the powers given by this section and is not enlarged by the rules of procedure prescribed by statute, and where the complaint presents only an issue of fact the proceeding will be dismissed. Cahoon v. State, 201 N. C. 312, 160 S. E. 183.

§ 12. Jurisdiction of courts inferior to Supreme Court.

Cross References.—

As to constitutionality of Compensation Act under this section see Art. IV, § 2 and notes thereto.

The General Assembly may create inferior courts to Superior Court if provision is made for appeal to the Superior Court, subject to review by the Supreme Court upon further appeal, there being no conflict with other provisions of the Constitution. Jones v. Standard Oil Co., 202 N. C. 328, 162 S. E. 741.

§ 20. Disposition of actions at law and suits in equity, pending when this Constitution shall go into effect, etc.

As to Superior Courts becoming the successors of Courts of Equity see § 1 of this Article and notes thereto.

ARTICLE V

Revenue and Taxation

§ 1. Capitation tax; exemptions.

The amendment will invalidate taxation of the polls in a township where the electors therein voted for the levy of a poll tax of six dollars in addition to the regular poll tax of two dollars although the election was held and the tax in question was voted before the amendment of this section. Dixon v. Board of County Com'rs, 200 N. C. 215, 156 S. E. 852.

§ 3. Taxation shall be by uniform rule and ad valorem; exemptions.

This section provides that the General Assembly may tax trades and professions; and while this clause does not expressly apply the rule of uniformity to taxes imposed on trades and professions it has been judicially determined that the rule applies to these taxes as well as to taxes on property. Roach v. Durham, 204 N. C. 587, 591, 169 S. E. 149.

The tax on income, imposed by the Revenue Acts of this State, is not a tax on property, within the meaning of the requirement of this section that property shall be taxed according to its true value in money. State v. Kent-Coffey Mfg. Co., 204 N. C. 365, 371, 168 S. E. 397.

§ 5. Property exempt from taxation.

When Exemption Attaches.—The quality of exemption attaches to property, as soon as it is lawfully acquired and remains with such property so long as it is owned by the municipal corporation, without regard to the purpose for which it was acquired or was held. Andrews v. Clay County, 200 N. C. 280, 283, 156 S. E. 855.

Lands in Hands of Trustee.—Where in construing a devise of various property in a city the courts have decreed that the lands be sold within a period of five years and fifty-five per cent of the proceeds distributed among several beneficiaries of the class exempted by this section, the property itself is not held by the beneficiaries designated, but by the trustee in trust for the purpose of sale and distribution of part of the proceeds of the sale to them, and the exemption does not apply except to the proceeds of the sale when received by the beneficiaries in accordance with the decree, and the lands in the hands of the trustee are subject to taxation under Art. V, § 3. Latta v. Jenkins, 200 N. C. 255, 156 S. E. 857.

§ 6. Taxes levied for counties.

General or Special Act Suffices.—The legislative authority necessary to the validity of an assessment of taxes by a county for a special purpose in excess of the constitutional limit for general county purposes may be conferred by special or general act. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 157 S. E. 610.

County Tax for Necessary Expenses.—Within the limitations of this section the county commissioners of the respective counties may levy a tax for necessary expenses without a vote of the people or special legislative authority. Glenn v. Board of County Com'r, 201 N. C. 233, 159 S. E. 439.

ARTICLE VII

Municipal Corporations

§ 7. No debt or loan except by a majority of voters.

Bonds to Refund Bonds.—A municipal corporation does not contract a debt, within the meaning of this section, when under statutory authority it issues bonds to refund bonds which at the date of the issuance of the refunding bonds are valid and enforceable obligations of the corporation. Bolich v. Winston-Salem, 202 N. C. 786, 788, 164 S. E. 361.

Necessary Expenses. — Under this section as construed with Art. V, § 6 a municipality may issue valid bonds for its necessary expenses without the approval of its voters within the constitutional limitation in the absence of statutory authority, and with statutory authority and the approval of its voters it may issue bonds in excess of this limitation. Burleson v. Spruce Pine, 200 N. C. 30, 156 S. E. 241.

For purposes other than necessary expenses, whether special or not, taxes may not be levied by a county either within or in excess of the limitation fixed by our Constitution, Art. V, § 6, except by a vote of the people under special legislative authority. Glenn v. Board of County Com'r, 201 N. C. 233, 159 S. E. 439.

What May Be Included in Tax for Expense.—A municipal platform is not a public market and such platform erected for the purpose of obtaining revenue for the town by the imposition of a fee for the sale of cotton therefrom is not a necessary municipal expense and the town may not issue its notes for the purchase price of such platform without a vote of its electors. Walker v. Faison, 202 N. C. 694, 163 S. E. 875.

Province of Court.—It has become the accepted meaning of this section that it is the province of the courts to decide whether a particular municipal expense falls within the category of necessary expenses, leaving to the municipal authorities the power to determine whether a proposed expense within that category is necessary in a given case. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649, 653.

ARTICLE VIII

Corporations Other Than Municipal

§ 4. Legislature to provide for organizing cities, towns, etc.

Cited in Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649.

ARTICLE IX

Education

§ 2. General Assembly shall provide for schools; separation of the races.

This and the following section of the Constitution require that at least one elementary school be maintained in each district, but the constitutional mandate does not extend to high schools. Elliott v. Board of Equalization, 203 N. C. 749.

§ 7. Benefits of the University.

Applied in University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511.

ARTICLE X

Homesteads and Exemptions

§ 2. Homestead.

In view of this section the doctrine of estoppel cannot deny the bankrupt his right to a homestead in lands which were subject to his debts. In selecting the land for his homestead exemption, he is not restricted to the tract on which he lives. In re Hamrick, 56 F. (2d) 240, 241.

§ 7. Husband may insure his life for the benefit of wife and children.

This section "means, in the absence of fraud, that payment of premiums, even by an insolvent husband, shall not defeat payment at the death of the husband to the beneficiaries named in the policy." Whiting v. Squires, 6 F. (2d) 100, 101, reversing In re Pittman, 275 F. 686.

"The limit of the constitutional exemption of an insurance policy on the life of the husband against the claims of his creditors is that the wife or the wife and children take the benefits of a policy payable to her or them as beneficiaries at the death of the insured. The exemption may cover a policy payable to the wife and children with no power of the insured to change the beneficiaries, because in such a policy the wife or the wife and children have a vested interest, and the policy, if paid at all, must be paid to them at the death of the husband. But the exemption does not embrace the surrender value, the property of the husband, of a policy in which he can change the beneficiary at will." Whiting v. Squires, 6 F. (2d) 100, 101, reversing In re Pittman, 275 F. 686.

"The legislature could not by statute add to the constitutional exemption. Wharton v. Taylor, 88 N. C. 230. Therefore it could not make an exemption of the surrender value of the policy which might or might not, according to the will of the husband, fall to the wife or the wife and children as a policy of which they were beneficiaries at the death of the husband. It follows that, if the statute be construed as embracing the surrender value of a policy like these, it would be invalid as a legislative attempt to enlarge the insurance exemption to the wife and children provided by the Constitution." Whiting v. Squires, 6 F. (2d) 100, 102, reversing In re Pittman, 275 F. 686.

If § 6464 stood alone, with its language unrestrained by the constitutional provision, the argument would be strong

in favor of the view that every possible value of a policy including cash surrender value, though the husband retained the right to change the beneficiary, inures to the benefit and use of the wife or her children. This is the view taken of somewhat similar statutes where no constitutional limitation was involved. But, as this construction of the statute of North Carolina is doubtful, it should not be adopted when opposed to the provision of the Constitution, for every presumption must be indulged that the Legislature did not intend to attempt by statute to confer an exemption beyond that provided by the Constitution. Taking this view, we hold that the last sentence of the statute is but a repetition of the constitutional provision on the same subject, and is limited in its application to a policy of insurance standing in the name of the wife or her childlren as beneficiaries at the death of the husband. Whiting v. Squires, 6 F. (2d) 100, 102, reversing In re Pittman, 275 F. 686.

"The rule laid down by the Supreme Court is that under § 70a of the bankruptcy statute (Comp. St. § 9654) the cash surrender value of a policy of insurance is an asset of a bankrupt's estate, even when the policy is payable to a beneficiary other than the bankrupt, his estate, or his personal representative, if the bankrupt has reserved absolute power to change the beneficiary. Cohen v. Samuels. 245 U. S. 50, 38 S. Ct. 36, 62 L. Ed. 143; Cohn v. Malone, 248 U. S. 450, 39 S. Ct. 141, 63 L. Ed. 352. The court has further held that insurance policies embraced within the exemption laws of the state do not become assets in the hands of the trustee for the benefit of creditors. Holden v. Stratton, 198 U. S. 202, 25 S. Ct. 656, 49 L. Ed. 1018." Whiting v. Squires, 6 F. (2d) 100, reversing In re Pittman, 275 F. 686.

Cited in Russell v. Owen, 203 N. C. 262, 165 S. E. 687.

ARTICLE XII

Militia

§ 2. Organizing, etc.

Cited in Baker v. State, 200 N. C. 232, 156 S. E. 917.

ARTICLE XIII

Amendments

§ 1. Convention, how called.

General Assembly may call convention to consider proposed amendment to the U. S. Constitution either under this section or in the exercise of its plenary powers. See "Opinions of the Justices," 204 N. C., Appendix, p. IX, par. 3.

ARTICLE XIV

Miscellaneous

§ 4. Mechanic's lien.

Quoted in Boykin v. Logan, 203 N. C. 196, 165 S. E. 680.

§ 7. Holding office.

Where one holding an office as county commissioner accepts a commission from the Governor as a notary public his position as county commissioner is eo instanti vacated, and where he continues to exercise the duties of county commissioner he may be removed therefrom in an action in the nature of a quo warranto. Harris v. Watson, 201 N. C. 661, 161 S. E. 215.

PROPOSED CONSTITUTION

[**Note:** The following Constitution is to be submitted to the people for ratification at the next general election.]

PREAMBLE

We, the people of North Carolina, acknowledging our dependence upon Almighty God and our adherence to the Constitution of the United States of America, do, for the more certain assurance of the blessings of liberty, and for the better government of the State, ordain and establish this Constitution.

ARTICLE I

Declaration of Rights

That the essential principles of liberty and free government may be recognized and established, we do declare:

§ 1. The equality and rights of men.—We hold it to be self-evident that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness; and that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

§ 2. Internal government of the state.—The people of this state have the inherent, sole and exclusive right of regulating the internal government and policies thereof, and of altering their constitution and form of government whenever it may be necessary for their safety and happiness; but every such right should be exercised in pursuance of the law, and consistently with the constitution of the United States.

§ 3. Allegiance to United States.—This State shall ever remain a member of the American union; every citizen of this state owes paramount allegiance to the constitution and government of the United States; and no law of the state in contravention or subversion thereof can have any binding force.

§ 4. Exclusive emoluments.—No person is entitled to, or shall have, emoluments or privileges separate from the community, except in consideration of public services and in the performance of public duties.

§ 5. Legislative, executive and judicial powers distinct.—The legislative, executive and supreme judicial powers of the government ought to be forever separate and distinct.

§ 6. Power of suspending laws.—All power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not be exercised.

§ 7. Freedom of elections.—All elections ought to be free, and so safeguarded and protected by law as to guarantee the complete and free expression of the public will.

§ 8. Rights in criminal prosecutions.—In all criminal prosecutions every person charged has the right to be informed of the accusation against him and to confront his accusers with testimony in his own behalf; to have counsel for his defense; and not to be compelled to give evidence against himself or to pay any court costs or necessary witness fees of the defense unless found guilty.

§ 9. Charges of crime.—No person shall be put to answer any felony, but by indictment by a grand jury. For offenses less than felonies the General Assembly may provide otherwise than by indictment for the prosecution of crimes.

§ 10. Right of jury.—No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court.

The General Assembly may, however, provide other means of trial for petty misdemeanors, with the right of appeal.

§ 11. Excessive bail. — Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

§ 12. General warrants. — General warrants, whereby any officer or other person may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

§ 13. Imprisonment for debt.—There shall be no imprisonment for debt in this State, except in cases of fraud.

§ 14. Guarantee of equal protection and due process of law.—No person ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the law of the land or due process of law, nor shall private property be taken for public use without just compensation; nor shall the State deny to any person within its jurisdiction the equal protection of the laws.

§ 15. Persons restrained of liberty. — Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed; and the privileges of the writ of habeas corpus shall not be suspended.

§ 16. Controversies at law respecting property. —In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

§ 17. Distinction between actions at law and suits in equity, and feigned issues, abolished.— The distinction between actions at law and suits in equity, and the forms of all such actions and suits, shall be abolished; and there shall be in this State but one form of action for the enforcement of protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action. Feigned issues shall also be abolished, and the facts at issue tried by order of court before a jury.

§ 18. Freedom of the press.—The freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same.

§ 19. Property qualification.—Political rights and privileges are not dependent upon or modified by property; therefore no property qualification ought to affect the right to vote or hold office.

§ 20. Taxation and representation.—The people of the State ought not to be taxed or made subject to the payment of any impost or duty without the consent of themselves, or their representatives in the General Assembly, freely given.

§ 21. Militia and the right to bear arms. — A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they ought not to be maintained, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the carrying of concealed weapons, or prevent the General Assembly from enacting penal statutes prohibiting such practice.

§ 22. Right of the people to assemble.—The people have a right to assemble to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances. But secret political societies are dangerous to the liberties of a free people, and should not be tolerated.

§ 23. Religious liberty.—All men have a natural and inalienable right to worship Almighty God according to the dictates of their consciences, and no human authority should, in any case whatever, control or interfere with that right.

§ 24. Education.—The people have the right to the privilege of education, and it is the duty of the State to guard and maintain that right.

§ 25. Elections should be frequent. — For redress of grievances, and for amending and strengthening the laws, elections should be often held.

§ 26. Recurrence to fundamental principles.— A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

§ 27. Hereditary emoluments and privileges.— No hereditary emoluments, privileges or honors ought to be granted or conferred in this state.

§ 28. Perpetuities and monopolies.—Perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

§ 29. Ex post facto laws.—Retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore no ex post facto law ought to be made. No law taxing retrospectively sales, purchases, or other acts previously done, ought to be passed.

§ 30. Involuntary servitude prohibited. — Involuntary servitude, otherwise than for crime whereof the parties shall have been duly convicted, shall be and is hereby forever prohibited.

§ 31. Courts shall be open.—All courts shall be open; and every person for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

§ 32. Soldiers in time of peace.—No soldier shall, in time of peace, be quartered in any house

without the consent of the owner; nor in time of war but in a manner prescribed by law.

§ 33. Treason against the state. — Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

§ 34. Other rights of the people.—This enumeration of rights shall not be construed to limit or restrict other rights of the people not mentioned in this article.

ARTICLE II

Legislative Department

§ 1. Two branches.—The legislative authority, which shall be full and complete except as limited in this Constitution, shall be vested in two distinct branches, both dependent on the people, to-wit: A Senate and a House of Representatives. The Senate shall be composed of fifty senators and the House of Representatives shall be composed of one hundred and twenty representatives, both biennially chosen by ballot, to be elected by the people.

§ 2. Time of assembling. — The Senate and House of Representatives shall meet biennially on the first Wednesday after the first Monday in January next after their election; and, when assembled, shall be denominated the General Assembly. Neither House shall proceed upon public business unless a majority of all the members are actually present.

§ 3. Regulation for districting the State for senators.—The Senatorial Districts shall be so altered by the General Assembly, at the first session after the return of every enumeration of the Census by order of Congress, that each Senatorial District shall contain, as nearly as practicable, an equal number of inhabitants, excluding aliens, and shall remain unaltered until the return of another enumeration by order of Congress, and shall at all times consist of contiguous territory; but no county shall be entitled to more than one Senator.

§ 4. Regulation for apportionment of representatives.—The House of Representatives shall be composed of one hundred and twenty Representatives biennially chosen by ballot, to be elected by the counties respectively, according to their population; and each county shall have at least one Representative in the House of Representatives although it may not contain the requisite ratio of representation. This apportionment shall be made by the General Assembly at the respective times and periods when the Senatorial Districts are made as hereinbefore provided.

§ 5. Ratio of representation.—In making the apportionment in the House of Representatives, the ratio of representation shall be ascertained by dividing the population of the State, exclusive of that comprehended within those counties which do not severally contain the one hundred and twentieth part of the population of the State, by the number of Representatives, less the number assigned to such counties; and in ascertaining the population of the State aliens shall not be included. To each county containing the said ratio and not twice the said ratio there shall be assigned one Representative; to each county containing two but not three times the said ratio there shall be assigned two Representatives, and so on progressively, and then the remaining Representatives shall be assigned severally to the counties having the largest fractions.

§ 6. Qualifications of senators and representatives.—Each member of the Senate shall not be less than twenty-five years of age, shall have resided in the State as a citizen for two years, and shall have resided in the district for which he was chosen for one year immediately preceding his election. Each member of the House of Representatives shall be a qualified elector of the State, and shall have resided in the county for which he is chosen for one year immediately preceding his election.

§ 7. Qualification and adjournments. — Each House shall be the judge of the qualifications and election of its own members; shall sit upon its own adjournment from day to day, prepare bills to be passed into laws; and the two Houses may also jointly adjourn to any future day, or other place.

§ 8. Officers of Senate and House.—The Lieutenant-Governor shall preside in the Senate, but shall have no vote unless it may be equally divided; the Senate shall choose its other officers and also a President pro tempore, to act in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor. The House of Representatives shall choose its own Speaker and other officers.

§ 9. Vacancies.—If vacancies shall occur in the General Assembly by death, resignation, or otherwise, any such vacancy in the House of Representatives may be filled by the Board of County Commissioners of the County so deprived of representation; and if such vacancy is in the Senate, the same may be filled by the Board or Boards of Commissioners of the County or counties comprising the Senatorial District in which the vacancy shall occur, acting in joint session, if there be more than one county in the District. The General Assembly may, by general laws, provide other methods for filling such vacancies.

§ 10. Oath of members.—Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States, and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives as the case may be.

§ 11. Journals, protests, yeas and nays.—Each House shall keep a Journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly; and any member of either House may dissent from and protest against any act or resolution which he may think injurious to the

public, or to any individual, and have the reasons of his dissent entered on the Journal. Upon motion made in either House and upon affirmative vote by one-fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the Journal.

§ 12. Election of officers.—In the election of all officers whose appointment shall be conferred upon the General Assembly, or either branch thereof, by the Constitution, the vote shall be viva voce.

§ 13. Style of Acts.—The style of the acts shall be: "The General Assembly of North Carolina do enact."

§ 14. Terms of office.—The terms of office for Senators and members of the House of Representatives shall commence at the time of their election and continue for two years, or until their successors are elected.

§ 15. Election for members of the General Assembly.—The election for members of the General Assembly shall be held for the respective districts and counties at the usual voting places, or as may be prescribed by law, on Tuesday after the first Monday in November in the year 1934, and every two years thereafter. But the General Assembly may change the time of holding elections.

§ 16. Pay of members and officers of the General Assembly.—The members of the General Assembly for the term of their office shall receive for their services six hundred dollars each. The salaries of the presiding officers of each of the two Houses shall be seven hundred dollars each: Provided, that in addition to the salaries herein provided for, should an extra session of the General Assembly be called, the members shall receive eight dollars per day each, and the presiding officers of the two Houses ten dollars per day each, for every day of such extra session not exceeding twenty days; and should an extra session continue more than twenty days the members and officers shall serve thereafter without pay.

§ 17. Passage of revenue bills.—No law shall be passed to raise money on the credit of the State, or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly and passed three several readings, which readings shall have been on three different days, and agreed to by each House respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the Journal.

§ 18. General Assembly to provide for local government under general laws. — The General Assembly shall provide by general laws for the organization and government of counties, cities, towns, and other municipal corporations, but shall pass no special or local law relating thereto. Optional plans for the organization and government of counties, cities and towns may be provided by law, to be effective when submitted to the legal voters thereof and approved by a majority of those voting thereon.

§ 19. Other limitations upon power of the General Assembly to enact private or special legislation. — The General Assembly shall not pass any local, private, or special act or resolution relating to health, sanitation, or the abatement of nuisances; changing the names of cities, towns, and townships; authorizing the laying out, opening, altering, maintaining or discontinuing of highways, streets, or alleys; relating to ferries or bridges; relating to non-navigable streams; relating to cemeteries; relating to the pay of jurors; creating new townships, or changing township lines, or establishing or changing the lines of school districts; remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury; regulating labor, trade, mining, or manufacturing; extending the time for the assessment or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability; giving effect to informal wills and deeds; regulating divorce and alimony; altering the name of any person, legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of an infamous crime; nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law. The General Assembly shall have power to pass general laws regulating matters set out in this section.

§ 20. Bills to be read three times.—All bills and resolutions of a legislative nature shall be read three times in each House before they become laws, and shall be signed by the presiding officer of each House, and also by the Governor except such bills and resolutions of a legislative nature as may pass into law without his approval.

§ 21. Veto power of Governor.—Every bill and every resolution of a legislative nature which shall pass the Senate, and House of Representatives shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it; but, if not, he shall return it with his objections to the House in which it originated, which shall enter the objections at large on its Journal, and proceed to reconsider it. If, after such reconsideration, a majority of the entire membership of that House shall agree to pass the bill or resolution, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the entire membership of that House it shall become a law. If the Governor approve the general purpose of any bill or resolution, but disapprove any part or parts thereof, he may return it, with recommendation for its amendment, to the House in which it originated; whereupon the same proceeding shall be had in both Houses upon the bill or resolution and his recommendations in relation to its amendment as is hereinbefore provided in relation to a bill or resolution which he shall have returned without his approval, and with his objections thereto: Provided, that if after such reconsideration, both Houses by a vote of a majority of the members present in

each shall agree to amend the bill or resolution, in accordance with his recommendation in relation thereto, or either House by such vote shall fail or refuse so to amend it, then, and in either case it shall again be sent to him, and he may act upon it as if it were then before him for the first time. But in all the cases above set forth the vote of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill or resolution shall be entered on the Journal of each House. If any bill or resolution shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it. The Governor may approve, sign and file in the office of the Secretary of State, within ten days after the adjournment of the General Assembly, any bill or resolution passed during the last five days of the session and it shall become a law; but he shall not have power to veto a bill or resolution after adjournment if presented to him forty-eight hours before adjournment, and if not so presented he may veto such bill or resolution within ten days after adjournment and file it in the office of the Secretary of State. Any bill or resolution passed during the last five days of the session, which is neither approved nor vetoed by the Governor within ten days after adjournment as herein provided, shall become a law in like manner as if he had signed it. The Governor shall not have power to veto any bill or resolution which is to be submitted to a vote of the people for adoption.

§ 22. Appointment to office during term.—No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the State of North Carolina which shall have been created or the emoluments whereof shall have been increased during such time.

ARTICLE III

Executive Department

§ 1. Officers of the Executive Department; terms of office. — The Executive Department shall consist of a Governor, in whom shall be invested the supreme executive power of the State, a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, and an Attorney-General. They shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their terms of office shall commence on the second Monday in January next after their election, and continue until their successors are elected and qualified.

§ 2. Qualifications of Governor and Lieutenant-Governor.—No person shall be eligible as Governor or Lieutenant-Governor unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this State for two years next before the election; nor shall the person elected to either of these two offices be eligible to the same office more than four years in any term of eight years, unless the office shall have been cast upon him as Lieutenant-Governor or President of the Senate.

§ 3. Returns of election. — The returns of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State. The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law.

§ 4. Oath of office for Governor.—The Governor, before entering upon the duties of his office, shall, in the presence of the members of both branches of the General Assembly, or before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States, and of the State of North Carolina, and that he will faithfully perform the duties appertaining to the office of Governor, to which he has been elected.

§ 5. General duties of Governor.—The Governor shall take care that the laws are faithfully executed, and he shall, from time to time, give the General Assembly information of the affairs of State, and recommend to their consideration such measures as he shall deem needful and expedient. He may at any time require the opinion in writing of the officers of the executive department upon any subject relating to their respective offices. The Governor shall reside at the seat of government of this State during his term of office.

§ 6. Reprieves, commutations, paroles and pardons.—The Governor shall have power to grant reprieves, commutations, paroles and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law. He shall biennially communicate to the General Assembly each case reprieve, commutation, parole or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, parole, pardon, or reprieve, and the reasons therefor.

§ 7. Commander-in-Chief. — The Governor shall be Commander-in-Chief of the Militia of the State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws, to suppress riots or insurrection, or to repel invasion.

§ 8. Executive budget.—Within the first ten legislative days of each regular session of the General Assembly, unless such time shall be extended by the General Assembly for the session to which the report is to be submitted, the Governor shall submit to the General Assembly a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies of the State for each fiscal year of the next ensuing biennium, accompanied by appropriate bills to carry the proposals into effect. For the preparation of the budget the various departments, offices and

agencies of the State shall furnish the Governor, or Governor-elect, such information, and in such form as he may require.

§ 9. Extra sessions of the General Assembly.—The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

§ 10. Officers for whose appointment provision not otherwise made.—The Governor shall nominate and, by and with the advice and consent of a majority of the Senators-elect, appoint all officers whose offices are established by this Constitution and for whose appointment provision is not otherwise made.

§ 11. Duties of the Lieutenant-Governor.—The Lieutenant-Governor shall be President of the Senate, but shall have no vote unless the Senate be equally divided. He shall, whilst acting as President of the Senate, receive for his services the same pay which shall, for the same period, be allowed to the Speaker of the House of Representatives; and he shall receive no other compensation except when he is acting as Governor.

§ 12. Succession to office of Governor.—In case of the impeachment of the Governor, his failure to qualify, his inability to discharge the duties of his office, or in case the office of Governor shall in anywise become vacant, the powers, duties and emoluments of the office shall devolve upon the Lieutenant-Governor until the disability shall cease or a new Governor shall be elected and qualified. The powers, duties, and emoluments of the office of Governor shall devolve upon the President, pro tempore, of the Senate whenever the Lieutenant-Governor shall, for any reason, be prevented from discharging the duties of such office, and he shall continue as acting Governor until the disabilities are removed, or a new Governor or Lieutenant-Governor shall be elected and qualified. Whenever, during the recess of the General Assembly, it shall become necessary for the President, pro tempore, of the Senate to administer the government, the Secretary of State shall convene the Senate, if need be, that they may elect such President.

§ 13. Duties of other executive officers.—The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, and Attorney-General shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article.

§ 14. Council of State.—The Secretary of State, Auditor, Treasurer, and Superintendent of Public Instruction shall constitute ex officio, the Council of State, who shall advise the Governor in the execution of his office, and three of whom shall constitute a quorum; their advice and proceedings in this capacity shall be entered in a journal, to be kept for this purpose exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the General Assembly when called for by either House. The Attorney-General shall be, ex officio, the legal adviser of the Executive Department.

§ 15. Compensation of executive officers.—The officers mentioned in this article shall, at stated periods, receive for their services a compensation to be established by law, which shall neither be increased nor diminished except by tax levies common to others during the time for which they shall have been elected, and the said officers shall receive no other emolument or allowance whatever.

§ 16. Seal of State.—There shall be a seal of the State, which shall be kept by the Governor, and used by him, as occasion may require, and shall be called "The Great Seal of the State of North Carolina." All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State," and signed by the Governor, and countersigned by the Secretary of State.

ARTICLE IV

Judicial Department

§ 1. Division of judicial powers.—The judicial power of the State shall be vested in a Court for the Trial of Impeachments, a Supreme Court, Superior Courts and such other courts inferior to the Superior Courts as the General Assembly may ordain and establish.

§ 2. Court for Trial of Impeachments.—The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal from and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law. No person shall be convicted without the concurrence of two-thirds of the Senators present. When the Governor or Lieutenant-Governor is impeached, the Chief Justice shall preside.

§ 3. Supreme Court.—The Supreme Court shall consist of a Chief Justice and four Associate Justices; but the General Assembly may increase the number of Associate Justices when the work of the Court so requires. The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the division and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by three justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court in banc. All sessions of the Court shall be held in the City of Raleigh.

§ 4. Jurisdiction of Supreme Court.—The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference. And the jurisdiction of said court over "issues of fact" and "questions of fact" shall be the same exercised by it before the adoption of the Constitution of one thousand eight hundred and sixty-eight, and the court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon, but they shall be reported to the next session of the General Assembly for its action.

§ 5. Superior Courts. — The Superior Courts shall be the courts of general jurisdiction and there shall be one such court in each county of the State. They shall be, at all times, open for the transaction of business, except the trial of issues of fact requiring a jury. Terms of Superior Court for the trial of jury cases shall be held in each county at least twice in each year.

§ 6. Judicial districts for Superior Courts. — The General Assembly shall divide the State into judicial districts, for each of which one Superior Court Judge shall be chosen; but, if the business of the Superior Court in any county shall become too great for one judge to administer, the General Assembly may provide for the election of one or more additional judges for the district in which such court is situate. Every judge of the Superior Court shall reside in the district for which he is elected, but the General Assembly may provide for the election or appointment of Special Superior Court Judges not assigned to any district, who may be designated from time to time by the Chief Justice to hold court in any district or districts within the State. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court Judge to hold one or more terms of Superior Court in any district in lieu or in aid of the judge or judges assigned to that district. The General Assembly may divide the State into a number of judicial divisions. The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years; but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the Chief Justice may require any judge to hold one or more specified terms in said district, in lieu of the judge assigned to hold the courts of the said district.

§ 7. Term of office and election of judges.—Justices of the Supreme Court and Judges of the Superior Courts shall be elected by the people and shall hold office for a term of eight years and until their successors are elected and qualified; but Special Superior Court Judges not assigned to any district shall be elected or appointed for such term as the General Assembly may determine, and such special Superior Court Judges shall have the same jurisdiction, power and authority in the Courts which may be held by them as is now conferred upon and exercised by the regular judges of the Superior Courts of the State. Justices of the Supreme Court shall be elected by the voters of the whole State. Judges of the Superior Courts may be elected by the voters of the whole State or by the voters of their respective districts or divisions as the General Assembly may provide. The Governor shall by appointment fill all vacancies occurring from death, resignation or otherwise, until the next election to be held more than thirty days after such vacancy has arisen.

§ 8. The Judicial Council.—The Chief Justice and Associate Justices of the Supreme Court and the Judges of the Superior Courts shall constitute a Judicial Council, which shall meet once each year at the call of the Chief Justice. Except as otherwise provided in this Constitution, the Judicial Council shall have power to make, alter and amend all rules relating to pleading, practice and procedure in the several courts of the State execept in the Supreme Court, the practice and procedure of which shall be prescribed by the rules of that Court.

§ 9. Courts inferior to the Superior Courts.— The General Assembly shall provide by general laws for the creation and jurisdiction of courts inferior to the Superior Courts with appeal therefrom to the Superior Courts; but shall pass no special or local laws with relation to such courts. Courts of special or limited jurisdiction now existing in North Carolina, including courts of justices of the peace, shall be continued until otherwise provided by the General Assembly as a result of the passage of general laws under this section.

§ 10. Solicitors.—A solicitor shall be elected for each judicial district, or for such other division of the State as the General Assembly may determine, by the qualified voters thereof. He shall hold office for the term of four years and shall prosecute on behalf of the State in all criminal actions in the Superior Courts, advise the officers of justice in his district and perform such other duties as may be imposed on him by law.

§ 11. Removal of judges of the various courts for inability. — Any Justice of the Supreme Court, or Judge of the Superior Courts, and the presiding officers of such courts inferior to the Superior Court, as may be established by law, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both houses of the General Assembly. The justice, judge or presiding officer against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereon.

§ 12. Fees, salaries and emoluments. — The General Assembly shall prescribe and regulate the fees, salaries and emoluments of all officers provided for in this article; but the salaries of Justices of the Supreme Court and Judges of the Superior Courts shall not be diminished except by tax levies common to others during the time for which they shall have been elected.

ARTICLE V

Revenue, Taxation and Public Debt

§ 1. State taxation.—The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended or contracted away. 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.

§ 2. Limitation on State debt.—The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State for the following purposes:

To fund or refund a valid existing debt;

To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes;

To supply a casual deficit;

To suppress riots or insurrections, or to repel invasions.

For any purpose other than these enumerated, the General Assembly shall have no power to contract new debts in excess of two-thirds of the amount by which its outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State, and be approved by a majority of those who shall vote thereon. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation. The State shall never pay any debt incurred in the prosecution of the War Between the States, or for the emancipation of any slave, or pay any outstanding bonds issued by the so-called Reconstruction Legislatures of 1868, 1869, and 1870, or the Convention of 1868, which said bonds have been declared invalid by prior constitutions.

§ 3. County and municipal taxation. — The General Assembly shall, by general laws, provide a uniform system of taxation for the counties, cities, towns or other municipal corporations; and no county, city, town or other municipal corporation shall exercise the power of taxation except in accordance with such general laws.

§ 4. Supervision of taxes and finances of local governments.—The General Assembly shall, by general laws, provide appropriate regulations governing the budgets and tax levies of counties, cities, towns and other municipal corporations, and prescribe the method by which public notice of such budgets and tax levies shall be given.

§ 5. County and municipal indebtedness limited. —No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit unless by a vote of the majority of the qualified voters thereof, except for the purpose of funding or refunding a valid existing debt, or meeting appropriations made for the current fiscal year in anticipation of the collection of taxes and revenues for such year; Provided, however, that a county, city, town or other municipal corporation which shall have reduced the total of its bonded indebtedness within a given year may, to meet its necessary expenses and debts, issue bonds to an amount not exceeding one-half of the reduction so made, without such vote. No election shall authorize any county, city, town or other municipal corporation to contract any debt, pledge its faith or loan its credit, unless the majority of the votes cast in favor of it are at least one-fourth of the number of votes cast in such county, city, town or other municipal corporation for the office of Governor of the State at the last gubernatorial election.

§ 6. Exemptions.—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. The General Assembly may also exempt, to a value not exceeding three hundred dollars, wearing apparel, household and kitchen furniture, mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments, or any other personal property.

§ 7. Disbursement of public funds.—No money shall be drawn from the Treasury of the State, or of any county, city, town or other municipal corporation, but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

§ 8. Use of sinking funds.—No part of any sinking fund of the State, or of any sub-division or municipality thereof, which shall have been created to retire specific bonds or indebtedness, shall be used for any other purpose until such bonds or indebtedness shall have been paid.

ARTICLE VI

Suffrage and Eligibility to Office

§ 1. Who may vote.—Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this Article, and presents himself in person, shall be entitled to vote at any election by the people in the State, except as herein otherwise provided. Voting otherwise than in person by persons physically disabled or absent from the county in which they are entitled to vote may be provided by the General Assembly under properly restrictive regulations.

§ 2. Qualification of voters.—The voter shall have resided in the State of North Carolina for one year, and in the precinct, ward, or other election district, in which he offers to vote, four months next preceding election: Provided, that removal from one precinct, ward, or other election district to another shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal. No person who has been convicted, or who has confessed his guilt in open court, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote, unless the said person shall have been first restored to citizenship in the manner prescribed by law.

§ 3. Voters to be registered.—Every person offering to vote shall be at the time a legally

registered voter as prescribed by law, and every person presenting himself for registration, unless already registered as provided by the laws of North Carolina, shall be able to read and write any section of this Constitution in the English language.

§ 4. Elections by the people and the General Assembly.—All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce.

§ 5. Eligibility to office; official oath.—Every voter in North Carolina shall be eligible to office, except as in this article disqualified; but before entering upon the duties of the office he shall take and subscribe the following oath:

"I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ..... So help me, God."

§ 6. Disqualification for office.—The following classes of persons shall be disqualified for office: First, all persons who shall deny the being of Almighty God; Second, all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

ARTICLE VII

Education

§ 1. Education encouraged.—Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

§ 2. Uniform State system of schools.—The General Assembly shall provide by taxation, or otherwise, for a general and uniform system of free public schools in North Carolina, wherein equal opportunities, so far as practicable, shall be provided for all the children of the State, and shall enact such laws as it may deem necessary to carry out the provisions of this article.

§ 3. Six months minimum term.—The State shall maintain a system of free public schools throughout the State for a term of at least six months in every year; and it shall be the duty of the General Assembly to provide adequate revenue for the support thereof. The General Assembly may provide for and maintain a longer school term.

§ 4. Property devoted to educational purposes.—The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; also the net proceeds from the sale of estrays, and the clear proceeds of all penalties and forfeitures, and all fines collected in the several counties from any breach of the penal or military law of the State; also the net proceeds of all sales of the swamp lands belonging to the State and all other grants, gifts or devices that have been or may hereafter be made to the State and not otherwise appropriated by the State or by the terms of the grant, gift, or devise shall be paid into the State Treasury and, together with so much of the revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated and used for establishing and maintaining in this State a uniform system of free public schools, and for no other use or purpose whatsoever.

§ 5. State Board of Education.—The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall be vested in a State Board of Education, to consist of seven members. The State Superintendent of Public Instruction shall be a member of said board, and its chairman and chief executive officer. The other members of the Board shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The first appointment under this section shall be three members for two years, and three members for four years, and thereafter all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired term. The board shall elect a vice-chairman who shall preside in the absence of the chairman, and also shall elect a secretary, who need not be a member of the board. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the members of the board shall be provided by the General Assembly.

§ 6. Powers and duties of board.—The State Board of Education shall have power to divide the State into a convenient number of school districts without regard to township or county lines; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the text books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this Section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.

§ 7. School attendance; separation of races.—The General Assembly is empowered to enact laws fixing the age within which pupils may attend the public schools, regulating the conditions under which they may attend, and requiring attendance unless educated by other means than in the public schools. The children of the white and colored races shall be taught in separate schools, but equal opportunity of education shall be afforded all the children of the State regardless of race.

§ 8. Higher education.—The General Assembly shall maintain a system of higher education in

the State, to be comprised of the University and such other educational institutions as the General Assembly may deem wise. The General Assembly shall have power to provide for the election of trustees for the University and other educational institutions of the State, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof in anywise granted to or conferred upon the trustees of said institutions; and the General Assembly may make such provisions, laws and regulations from time to time as may be necessary and expedient for the maintenance and management of said University and other institutions.

§ 9. Benefits of State educational institutions.—The General Assembly may provide that the benefits of the University and other educational institutions of the State, as far as practicable, be extended to the youth of the State free of expense for tuition; and all property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.

ARTICLE VIII

Homesteads and Exemptions

§ 1. Exemptions of personal property.—The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court issued for the collection of any debt.

§ 2. Homestead.—Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwellings and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt and may be exempt from taxation in the discretion of the General Assembly. But no property shall be exempt from payment of obligations contracted for the purchase of said premises.

§ 3. Homestead exempt from debt. — The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of his children, or any of them.

§ 4. Laborer's lien.—The provisions of Sections one and two of this Article shall not be construed to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

§ 5. Benefit of widow.—If the owner of a homestead die, leaving a widow but no children, the same shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she be the owner of a homestead in her own right.

§ 6. Deed for homestead.—Nothing contained in the foregoing Sections of this Article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the voluntary signature and assent of his wife, signified on her private examination according to law.

§ 7. Insurance for benefit of wife and children exempt.—Insurance on the life of a citizen of this State payable to his wife or minor children, shall not be subjected to the claims of his creditors, either during his lifetime or after his death.

§ 8. Property of married women secured to them.—The real and personal property of any woman in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such woman, and shall not be liable for any debts, obligations, or engagements of her husband.

ARTICLE IX

Public Welfare, Penal and Charitable Institutions, and Punishments

§ 1. State Board of Public Welfare.—Constructive promotion of the social welfare or the common good being one of the first duties of a State, the General Assembly shall make provision for a Board of Public Welfare whose duties shall be the following, and such other duties as the General Assembly may prescribe: To study and promote the welfare of childhood, especially the welfare of the underprivileged child; to study and promote the public welfare especially as related to such subjects as unemployment, physical infirmities, mental health, poverty, vagrancy, housing, crime, marriage and divorce, public amusement, care and treatment of prisoners and other delinquents; to recommend needed social legislation; to visit and inspect all charitable and penal institutions with such powers of supervision as the General Assembly may prescribe, and to report annually to the Governor upon their condition with suggestions for their improvement.

§ 2. Public, charitable, reformatory or penal institutions.—Such charitable, sanitary, benevolent, reformatory or penal institutions as the claims of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

§ 3. Death punishment.—The object of punishment being not only to satisfy justice but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

§ 4. Institutions self-supporting.—It shall be steadily kept in view by the General Assembly, the State Board of Public Welfare and the governing boards of all penal and charitable institutions that such institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.

ARTICLE X

Militia

§ 1. Who are liable to militia duty.—All able-bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in the militia: Provided, that all persons who may be adverse to bearing arms, from religious scruples, shall be exempt therefrom.

§ 2. Organization of militia.—The General Assembly shall provide for the organizing, arming, equipping, and discipline of the militia, and for their compensation when called into active service.

§ 3. Exemptions.—The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the militia.

ARTICLE XI

Agriculture, Industry and Miscellaneous Provisions

§ 1. Agriculture, industry and natural resources; industrial relations; bank supervision.—Proper agencies of government shall be maintained at all times for promoting the agricultural and industrial development of the State. In formulating legislation, constant objects of State policy shall include the conservation of natural resources such as soils, minerals, water power and fisheries, the encouragement of proper forestry policies, the maintenance of soil fertility, the preservation of natural or scenic beauty, and the promotion of thrift and home ownership. The General Assembly shall have power to adjust the taxing system so as to encourage home ownership, the development of forestry and the conservation of all natural resources. The State shall endeavor to serve the interests of both employers and employees by encouraging the peaceful adjustment of industrial disputes. The General Assembly shall provide proper regulation for the protection of industrial workers, especially women and children, and shall also safeguard the earnings of citizens by adequate protective legislation and supervision of banks and other financial institutions or investment agencies.

§ 2. Mechanic's lien.—The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.

§ 3. Seat of government and boundaries of State.—The seat of government in this State shall be at the City of Raleigh, and the limits and boundaries of the State shall remain as they now are.

§ 4. Dual office-holding forbidden.—No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly; Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, school committeemen, notaries public, commissioners and trustees of public charities and institutions, or commissioners for special purposes.

§ 5. Intermarriage of whites and negroes prohibited.—All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation, inclusive, are hereby forever prohibited.

§ 6. Corporations under general laws. — No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations, and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.

ARTICLE XII

Amendments, Existing Laws and Offices

§ 1. Constitutional Convention.—No convention of the people of this State shall ever be called by the General Assembly, unless by the concurrence of two-thirds of all of the members of each House of the General Assembly, and except the proposition, Convention or No Convention, be first submitted to the qualified voters of the whole State in a manner to be prescribed by law. And should a majority of the votes cast be in favor of said convention, it shall assemble on such day as may be prescribed by the General Assembly. A convention, when called, shall be limited to 120 delegates and such delegates shall be elected upon basis of the membership in the House of Representatives.

§ 2. Amendment of the Constitution. — No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each House of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.

§ 3. Laws to remain in force.—The laws of North Carolina, not repugnant to this Constitution or the Constitution and laws of the United States, shall be and remain in force until lawfully altered. The provisions of the prior Constitution and its amendments not embodied herein, shall, except as inconsistent with the provisions of this Constitution, remain in force as statutory law subject to the power of the General Assembly to repeal or modify any or all of them.

§ 4. This Constitution not to vacate existing offices.—The changes made in the prior Constitution of North Carolina by this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the said Constitution and the laws of the State made in pursuance thereof.

APPENDIX VII
RULES OF COURT

PART I
RULES OF PRACTICE IN THE SUPREME COURT OF NORTH CAROLINA

Editor's Note. — Only the amended or corrected paragraphs or sub-divisions of the rules as they appear in vols. 200, 203 and 204 N. C. Reports are inserted herein, and they should be read in connection with the rules appearing in the Code of 1931.

5. Appeals—When Heard

Appeals in criminal cases shall each be heard at the term at which they are docketed, unless for cause or by consent they are continued: Provided, however, that an appeal in a civil case from the First, Second, Nineteenth and Twentieth districts which is tried between first day of January and the first Monday in February, or between first day of August and fourth Monday in August, is not required to be docketed at the immediately succeeding term of this Court, though if docketed in time for hearing at said first term the appeal will stand regularly for argument.

6. Appeals—Criminal Actions

Appeals in criminal cases, docketed fourteen days before the call of the docket for their districts, shall be heard before the appeals in civil cases from said districts. Criminal appeals docketed after the time above stated shall be called immediately at the close of argument of appeals from the Eleventh District, unless for cause otherwise ordered, and shall have priority over civil cases placed at the end of the docket.

7. Call of Judicial Districts

Appeals from the several districts will be called for hearing in the following order:

From the First and Twentieth Districts, the first week of the term.

From the Second and Nineteenth Districts, the second week of the term.

From the Third and Eighteenth Districts, the fourth week of the term.

From the Fourth and Seventeenth Districts, the fifth week of the term.

From the Fifth and Sixteenth Districts, the seventh week of the term.

From the Sixth and Fifteenth Districts, the eighth week of the term.

From the Seventh District, the tenth week of the term.

From the Fourteenth District, the eleventh week of the term.

From the Eighth and Thirteenth Districts, the thirteenth week of the term.

From the Ninth and Twelfth Districts, the fourteenth week of the term.

From the Tenth and Eleventh Districts, the sixteenth week of the term.

In making up the calendar for the two districts allotted to the same week, the appeals will be docketed in the order in which they are received by the clerk, but only those from the district first named will be called on Tuesday of the week to which the district is allotted, and those from the district last named will not be called before Wednesday of said week, but appeals from the district last named must nevertheless be docketed not later than 14 days preceding the call for the week.

8. End of Docket

At the Spring Term, causes not reached and disposed of during the period allotted to each district, and those for any other cause put to the foot of the docket, shall be called at the close of argument of appeals from the Eleventh District, and each cause, in its order, tried or continued, subject to Rule 6.

10. Submission on Printed Arguments

An appeal submitted under this rule must be docketed before the call of appeals from the Ninth District has been entered upon, unless it appears to the Court from the record that there has been no delay in docketing the appeal, and that it has been docketed as soon as practicable, and that public interest requires a speedy hearing of the case.

22. Printing Transcripts. (But see Rule 25.)

Twenty-five copies of the transcripts in every case docketed, except in pauper appeals, shall be printed and filed immediately after the case has been docketed unless printed before the case has been docketed, in which event the printed copies shall be filed when the case is docketed. It shall not be necessary to print the summons and other papers showing service of process if a statement signed by counsel is printed giving the names of all the parties and stating that summons has been duly served. Nor shall it be necessary to print formal parts of the record showing the organization of the court, the constitution of the jury, etc.

25. Mimeographed Records and Briefs

Counsel may file in lieu of printed records and briefs 25 mimeographed copies thereof, to be prepared under the immediate supervision and direction of the clerk of this Court, the cost of such copies not to exceed $1.10 per page of an average of 40 lines and 400 words to the page: Provided, however, that it shall be permissible and optional with counsel to file printed transcripts and briefs when it is possible to print such documents without unnecessary delay and inconvenience to the Court and appellee's counsel, and within time for an appeal to be heard in its regular order under Rule 5. (Rule 5

governs the time of docketing appeals in Supreme Court.)

The clerk of this Court is required to purchase the stencil sheets, arrange all matter to be mimeographed for the operator, to supervise the work, to carefully read the proof, and to index the mimeographed transcripts and mail copies promptly to counsel. A cash deposit covering estimated cost of this work is required as in Rule 23 (Rule 23 requires cash deposit sufficient to cover cost of printing; or, upon waiver by clerk of cash deposit and failure to pay for printing before argument, appeal will be dismissed) under the same penalty as therein prescribed for failure to pay the account due for such work.

28. Appellant's Brief

Appellant shall, upon delivering a copy of his manuscript brief to the printer to be printed or to the clerk of this Court to be printed or mimeographed, immediately mail or deliver to appellee's counsel a carbon typewritten copy thereof. If the printed or mimeographed copies of appellant's brief have not been filed with the clerk of this Court, and no typewritten copy has been delivered to appellee's counsel by 12 o'clock noon on the second Saturday preceding the call of the district to which the case belongs, the appeal will be dismissed on motion of appellee, when the call of that district is begun, unless for good cause shown the Court shall give further time to print the brief.

34. Certiorari.

In order to support a motion for certiorari it is required that appellant file transcript of the record proper and give appellee notice of the motion, and appellee's transcript of record filed on motion to docket and dismiss, under rule 17, cannot avail the appellant on his motion for certiorari. Hinnant v. American Fire, etc., Ins. Co., 204 N. C. 306, 168 S. E. 199.

43. Executions

(2) Issuing and Return of. Executions issuing from this Court may be directed to the proper offices of any county in the State. At the request of a party in whose favor execution is to be issued, it may be made returnable on any specified day after the commencement of the term of this Court next ensuing its teste. In the absence of such request, the Clerk shall, within thirty days after the certificate of opinion is sent down, issue such execution to the county from which the cause came, making it returnable on the first day of the next ensuing term. The execution may, when the party in whose favor judgment is rendered shall so direct, be made returnable to the term of the Superior Court of said county held next after the date of its issue, and thereafter successive executions will only be issued from said Superior Court, and when satisfied, the fact shall be certified to this Court, to the end that an entry to this effect be made here.

44. Petition to Rehear

(3) Two Copies to be Filed, How Endorsed. The petitioner shall endorse upon the petition, of which he shall file two copies, the names of the two justices, neither of whom dissented from the opinion, to whom the petition shall be referred by the clerk, and it shall not be docketed for rehearing unless both of said Justices endorse thereon that it is a proper case to be reheard: Provided, however, that when there have been two dissenting Justices, it shall be sufficient for the petitioner to file only one copy of the petition and designate only one Justice, and his approval in such case shall be sufficient to order the petition docketed.

The clerk shall, upon the receipt of a petition to rehear, immediately deliver a copy to each of the Justices to whom it is to be referred, unless the petition is received during a vacation of the Court, in which event it shall be delivered to the Justice designated by the petitioner on the first day of the next succeeding term of Court.

(4) Justices to Act in Thirty Days. The clerk shall enter upon the rehearing docket and upon the petition the date when the petition is filed in the clerk's office, the names of the Justices to whom the petitioner has requested that the petition be referred, and also the date when the petition is delivered to each of the Justices. The Justices will act upon the petition within thirty days after it is delivered to them, and the clerk is directed to report in writing to the Court in conference all petitions to rehear not acted on within the time required.

45. Sitting of the Court

The Court will sit daily, during the terms, Sundays and Mondays excepted, from 10 a. m. to 2 p. m., for the hearing of causes except when the docket of a district is exhausted before the close of the week allotted to it.

APPENDIX VIII.

TABLE SHOWING CODIFICATION OF PUBLIC LAWS OF 1933

Ch.	Sec.	Code
2		7663
3		1443
5		3878
6	1	3857(a)
6	2	3857(b)
7		2776(s)
8	1, 2	7077(g)
8	3	7077(i)
8	4	7077(p)
8	5	7077(t)
9	1	7109
9	2	7093
9	3	7088(a), 7089(a)
10		4458
11	1	6116(d)
11	2	6116(e)
11	3	6116(f)
11	4	6116(g)
11	5	6116(h)
11	6	6116(i)
11	7	6116(j)
11	8	6116(k)
12		2500(f) Repealed
12		7575
13	1	1802
13	2	1802(a)
14		1443
15		198
16		65(a)
17		5192
18		5184
19		5175(b)
20		5175(a)
21	1, 2	6150(a)
23		4636(a)
24		483
26		5177
28		1681
29		2334
30		7642(a)-7642(c) Repealed
31	1	2492(5)
31	2	2492(6)
32		6618
34		6358
35		6554(a)
36		2593(f)
38		5193(a)
39		3846(25)
40		3893
43		4283(a)
44		1443
45		1443
45	1	1443
46	1	7521(k)
46	2	7521(l) Repealed
46	3	7521(m)-7521(q), 7521(t)-7521(v)
46	3	7521(r), (s)
46	4	7521(r)
46	5	7521(s)
46	6	7521(w) Repealed
46	7	7521(y)
47		6360
48		3907
49		65(a)
49	1	2202(a)
49	2	2202(b)
49	3	2202(c), (d)
49	4	2202(e)
49	5	2202(f)
49	6	2202(g)
50		1316(a)
53	1	7880(177)a
56	1	5968(b)
57		5168(ddd)
60		6442
61		3484
63		1389
64		4283(a)
65	1, 3	5968(c)
66	1	7312(y)
66	2	7312(z)
66	3	7312(aa)
66	4	7312(bb)
68	1	1259
69		2623
70		6054
71	1	1659
71	2	1659
71	2, 3	1661
73	1	2621(29)a
75	2	1461
76		1443
77		1443
78	1	3890
78	2	3890(a) Repealed
79	1	690(a)
80	1	2868
80	2	2871
80	3	2871(a)
80	4	2871(b)
80	5	2847
81		1443
83	1	5968(d)
84		3904
86		2366
88	2	7880(184)a
89		2314
92		2334
93		4283(a)
95	1	5003(u)
95	2	5003(p)
96	1	687(a)
96	2	687(b)
96	3	687(c)
97		8005(f)
98		765
99		106
100		49
101	6	2490
102		2649
103		222(o)1
104	1	5968(f)
105	1	1349(a)
106		1889
106	2	1890
106	3	1891
106	4	1892
106	5	1893
106	6	1893(a)
107		1443
108	1	4870(g)
108	2	4870(h)
108	3	4870(i)
108	4	4870(j)
108	5	4870(k)
108	6	4870(l)
108	7	4870(m)
109		1608(cc)
109	8	4870(n)
111	1	7757(a)
111	2	7757(b)
111	3	7757(c)
111	4	7757(d)
112		1443
113		160
114		4149
116		1443
117		1443
119		1443
120	1	220(gg)
120	3	222(l)
120	4	222(m)
120	5	222(n)
122	1	5203(a)
122	2	5203(b)
123		1744
124		1148(a)
125		1443
126		1443
127		1608(f)4
128	1	1608(t)
129		1443
130		2326
131		840
132		3908
133		4140(a)
134		1023-1034 Repealed
134	2	1112(a)
134	3	1112(b)
134	4	1112(c)
134	5	1112(d)
134	6	1112(e)

Ch.	Sec.	Code
134	7	1112(f)
134	8	1112(g)
134	9	1112(h)
134	10	1112(i)
134	11	1112(j)
134	12	1112(k)
134	13	1112(l)
134	14	1112(m)
134	15	1112(n)
134	16	1112(o)
134	17	1112(p)
134	18	1112(g)
137	1	2613(i12)-2613(i12)c, 2613(i16), 2613(i17)
140		2808
141	1, 2	5968(e)
142	1	1608
143		2492(27)
145		1443
146	1-4	4468(a)
150		2532
152		1443
153		1443
154		2373
155	1	264(a)
155	2	264(b)
155	3	264(c)
155	4	264(d)
155	5	264(e)
155	6	264(f)
155	7	264(g)
155	8	264(h)
155	9	264(i)
155	10	264(j)
155	11	264(k)
155	12	264(l)
158		2532
159		219(a)
159	1	225(o)
159	2	219(a)1
159	3	219(a)2
159	4	219(a)3
159	5	219(a)4
160		3904(a)
161		176(a)
162		8081(b)
163		1659(a)
165	1	5913, 5921-5923
165	2	5924-5927
165	3	5928-5935
165	4	5937
165	5	5940, 5947
165	7	5969-5971 Repealed
165	8	5984-5992
165	9	5993-5998
165	10	, 5999
165	11	6009-6013
165	12	6022, 6023
165	13	6025 Repealed
165	14	6026
165	15	6030
165	16	6037
165	17	6040, 6052
165	18	6054
165	19	6054(b)
165	20, 21	6055(a9)
165	22	6055(a10), 6055(a11)
165	23	6055(a28)
165	24	6055(a26), 6055(a35)
165	25	4185(a)
166		1539
168		4793(a)
170		4283(a)
172	1	7748(a)
172	2	7748(b)
172	3	7748(c)
172	4	7748(d)
172	5	7748(e)
172	6	7698-7702, 7708-7711 Repealed
172	6	7748(f)
172	7	7748(g)
172	8	7748(h)
172	9	7748(i)
172	10	7748(j)
172	11	7748(k)
172	13	7716
172	14	7748(l)
172	15	3846(f) Repealed
172	16	3846(f1)
172	17	7748(m)
172	18	7748(n)
172	19	7748(o)
172	20	7748(p)
172	21	7748(g)
172	22	7748(r)
172	23	7748(s)
172	24	7748(t)
172	25	7748(u)
172	26	7748(v)
172	27	7748(w)
172	28	7748(x)
172	29	7748(y)
172	30	7748(z)
172	31	, 7748(aa)
172	32	7748(bb)
172	33	7748(cc)
173	1	6108
175	1	7684
175	2	218(c)
176		3904(a)
177	1	8012(b)
178	1	6140(c)
178	2	6140(d)
178	3	6140(e)
178	4	6140(f)
178	5	6140(g)
178	6	6140(h)
178	7	6140(i)
178	8	6140(j)
178	9	6140(k)
178	10	6140(l)
178	11	6140(m)
178	12	6140(n)
178	13	6140(o)
178	14	6140(p)
178	15	6140(q)
178	16	6140(r)
178	17	6140(s)
179	1	5259(1)
179	2	5259(2)
179	3	5259(3)
179	4	5259(4)
179	5	5259(5)
179	6	5259(6)
179	7	5259(7)
179	8	5259(8)
179	9	5259(9)
179	10	5259(10)
179	11	5259(11)
179	12	5259(12)
179	13	5259(13)
179	14	5259(14)
179	15	5259(15)
179	16	5259(16)
179	17	5259(17)
179	18	5259(18)
179	19	5259(19)
179	20	5259(20)
179	21	5259(21)
179	22	5259(22)
179	23	5259(23)
179	24	5259(24)
179	25	5259(25)
179	26	5259(26)
179	27	5259(27)
179	28	5259(28)
179	29	5259(29)
180		1443
181	1	8034(a)
181	2	8034(b)
181	3	8034(c)
181	4	8034(d)
181	5	8034(e)
181	6	8034(f)
181	7	8034(g)
181	8	8034(h)
181	9	8034(i)
181	10	8034(j)
181	11	8034(k)
181	12	8034(l)
181	13	8034(m)
181	14	8034(n)
182		457
183	1	5003(y)
185	1	4335(f)
185	2	4335(g)
185	3	4335(h)
185	4	4335(i)
185	5	4335(j)
185	6	4335(k)
187		84, 3240

Ch.	Sec.	Code
188		150
189		4215
190		1013
191		1334(61)
192		2285
193	1	1382(1)
193	2	1382(2)
193	3	1382(3)
193	4	1382(4)
193	5	1382(5)
193	6	1382(6)
193	7	1382(7)
193	8	1382(8)
193	9	1382(9)
193	10	1382(10)
193	10½	1382(11)
194	1	1382(12)
194	2	1382(13)
194	3	1382(14)
194	4	1382(15)
194	5	1382(16)
194	6	1382(17)
194	7	1382(18)
194	7½	1382(19)
195	1	1382(20)
196		176(a)
197		4651
198		7994(a)
199		2578
201	1	1317(a)
203		6729(a)
204	1-810	7971(1)-7971(97)
205	1	2492(63)
205	2	2492(64)
205	3	2492(65)
205	4	2492(66)
205	5	2492(67)
205	6	2492(68)
205	7	2492(69)
205	8	2492(70)
206	1, 2	6658
207	1	182-191 Repealed
207	1	191(1)
207	2	191(2)
207	3	191(3)
207	4	191(4)
207	5	191(5)
207	6	191(6)
207	7	191(7)
207	8	191(8)
207	9	191(9)
207	10	191(10)
207	11	191(11)
209		5003(1)
210	1	215(1)
210	2	215(2)
210	3	215(3)
210	4	215(4)
210	5	215(5)
210	6	215(6)
210	7	215(7)
210	8	215(8)
210	9	215(9)
210	10	215(10)
210	11	215(11)
210	12	215(12)
210	13	215(13)
210	14	215(14)
210	15	215(15)
210	16	215(16)
210	17	215(17)
210	18	215(18)
210	20	204-207 Repealed
210	20	208-215 Repealed
211	1	2613(i15)
213	1	2304(gg)
213	2	2304(hh)
213	3	2304(ii)
214	1, 2	3846(hhh)
214	3	3846(iii)
214	4	3846(jjj)
214	5	3846(kkk)
214	6	3846(lll)
214	7	4870(1)
214	8	4870(2)
214	9	4870(f)
214	10	2621(3)
215	1	3225(a)
216	1	3411(dd)
216	2	3411(ee)
216	3	3411(ff)
216	4	3411(gg)
216	5	3411(hh)
216	6	3411(ii)
216	7	3411(jj)
216	8	3411(kk)
216	11	3411(mm)
219		2355
220		4391(1)
221	1	2621(30)
222	1	6476(z)
224		2304(h)-2304(l) Repealed
224	1	2304(m)
224	2	2304(n)
224	3	2304(o)
224	4	2304(p)
224	5	2304(q)
224	6	2304(r)
224	7	2304(s)
224	8	2304(t)
224	9	2304(u)
224	10	2304(v)
224	11	2304(w)
224	12	2304(x)
224	13	2304(y)
224	14	2304(z)
224	15	2304(aa)
224	16	2304(bb)
224	17	2304(cc)
224	18	2304(dd)
224	19	2304(ee)
224	20	2304(ff)
225	1	1288
226		8034(n)
228		265-276 Repealed
228	1	276(a)
228	2	276(b)
228	3	276(c)
228	4	276(d)
228	5	276(e)
228	6	276(f)
228	7	276(g)
228	8	276(h)
228	9	1632
228	11	276(i)
229		3411(mm)
231		1443
232	1	1443
232	2	1443
233		4703(h)
234	1	1443
234	2	1443
235		1959(h)
236		2078(r)
238		218(c)1
239	1	220(e)
240		1443
242		7971(20)
243		386
244		7310(b)
245		1266(a)
248	1	473
249		4201
250	1	1443
250	2	1443
250	3	1443
250	4	1443
251	1	1526
253		2066(a)
256	1	2500(g)
257	1	2492(72)
257	2	2492(73)
257	3	2492(74)
257	4	2492(75)
258	1	2492(15)
258	2	2492(49)
258	3	1334(11a)
258	4	2492(50a), 2492-(50)b
259		2933
259	1	2919, 2937-2959
259	2	1334(5)-1334(11), 1334(33), 1334(41)
261	1	5112(a)
262	1	2202(10)
262	2	2202(13)
264		1443
265		4283(a)
266		3904(a)
267		218(u)
268		4930(f)
269	1	2494
270		6649
271	1	217(m)1
271	2	217(m)2

Ch.	Sec.	Code
271	3	217(m)3
271	4	217(m)4
271	5	217(m)5
271	6	217(m)6
271	7	217(m)7
271	8	217(m)8
271	9	217(m)9
271	10	217(m)10
271	11	217(m)11
271	12	217(m)12
271	13	217(m)13
272		7971(20)
274		1443
275	1	2593(b)
275	2	2593(c)
275	3	2593(d)
275	4	2593(e)
281		3904(a)
283	1	2621(146)
283	2	2621(147)
283	3	2621(148)
283	4	2621(149)
284	1, 2	7251(w)1
284	3	7251(w)2
284	4	7251(w)3
285		7971(20)
286		1443
287		4458
297	1	3411(11)
302		3838(b)
303	1, 2	220(a)
306		1443
307	1	1112(1)
307	2	1112(2)
307	3	1112(3)
307	4	1112(4)
307	5	1112(5)
307	6	1112(6)
307	7	1112(7)
307	8	1112(8)
307	9	1112(9)
307	10	1112(10)
307	11	1112(11)
307	12	1112(12)
307	13	1112(13)
307	14	1112(14)
307	15	1112(15)
307	16	1112(16)
307	17	1112(17)
307	18	1112(18)
307	19	1112(19)
307	20	1112(20)
307	21	1112(21)
307	22	1112(22)
307	23	1112(23)
307	24	1112(24)
307	25	1112(25)
307	26	1112(26)
307	27	1112(27)
307	28	1112(28)
307	29	1112(29)
307	30	1112(30)
307	31	1112(31)
307	32	1112(32)
307	33	1112(33)
307	34	1112(34)
307	35	1112(35)
307	36	1112(36)
308		1864
309		4352
311		1443
312	1	2492(71)
314		8034(n)
315		1572
316	2	1572(b)
317	1	2187
318	1	442
319	1	3411(1)
319	2	3411(2)
319	3	3411(3)
319	4	3411(4)
319	5	3411(5)
319	6	3411(6)
319	7	3411(7)
319	8	3411(8)
319	9	3411(9)
319	10	3411(10)
319	11	3411(11)
319	12	3411(12)
319	13	3411(13)
319	14	3411(14)
319	15	3411(16)
319	16	3411(17)
319	17	3411(18)
319	18	3411(19)
319	19	3411(20)
319	20	3411(21)
319	21	3411(22)
319	22	3411(23)
319	23	3411(24)
319	24	3411(26)
319	25	3411(27)
319	27	3411(28)
320	1	5912(j)
320	2	5912(k)
320	3	5912(l)
321		2943
322	1	2806(i)
324	1	4689(1)
324	2	4689(2)
324	3	4689(3)
324	4	4689(4)
324	5	4689(5)
324	6	4689(6)
324	7	4689(7)
324	8	4689(8)
324	9	4689(9)
324	10	4689(10)
324	11	4689(11)
324	12	4689(12)
324	13	4689(13)
324	14	4689(14)
324	15	4689(15)
324	16	4689(16)
324	17	4689(17)
324	18	4689(18)
324	19	4689(19)
324	20	4689(20)
324	21	4689(21)
324	22	4689(22)
324	23	4689(23)
324	24	4689(24)
325	1, 2, 3	6988
326		3904(a)
327	1	6054
329		8034(n)
331		215(10)
332		2492(36)
333		1443
335	1	1461(5)a
335	2	1461(5)b
335	3	1461(5)c
335	4	1461(5)d
335	5	1461(5)e
335	6	1461(5)f
336		2015
337	1	2141(aaa)
337	2	2141(ccc)
337	3	2141(ddd)
337	4	2141(eee)
339	1	7251(hh)1
339	2	7251(hh)2
339	3	7251(hh)3
339	4	7251(hh)4
339	5	7251(hh)5
339	6	7251(hh)6
339	7	7251(hh)7
339	8	7251(hh)8
339	9	7251(hh)9
339	10	7251(hh)10
339	13	7251(hh)11
340	1	4831(F)1
341		2304(f)
342	1	6153(a)
342	2	6185
343	1	7251(w)5
344		218(v), 2621(16)
346		1908
348		2492(70)
349		867, 1013
350	1	5259(ee)
350	2	5259(d)
350	2-4	5259(x)
351		8034(n)
352	1	7284(8)
353		2808
354	1	1179
354	2	1179(a)
355		7661
357		2141(j)1
359		220(b)
360		2621(17)
361		1802
362		4283(a)
363		962
365	1	2694

Ch.	Sec.	Code
365	2	2696
365	3	2696(a), 2696(b)
365	4	2697
365	5	2699
365	6	2702
365	7	2702(b)
366	1	1260
366	2	1276
368		2808
372		7971(20)
374		2492(33)
375	1	2621(29), 2621(30)-2621(31)d
375	2, 3, 5	2621(31)e
376		1334(76)a
377		8034(n)
384	1	7128(1)
384	2	7128(2)
384	3	7128(3)
384	4	7128(4)
384	5	7128(5)
384	6	7128(6)
384	7	7128(7)
384	8	7128(8)
384	9	7128(9)
384	10	7128(10)
384	11	7128(11)
384	12	7128(12)
384	13	7128(13)
384	14	7128(14)
384	15	7128(15)
384	16	7128(16)
384	17	7128(17)
384	18	7128(18)
384	19	7128(19)
384	20	7128(20)
384	21	7128(21)
384	22	7128(22)
384	23	7128(23)
384	24	7128(24)
384	25	7128(25)
384	27	7128(26)
385	1	1125(a)
385	2	1125(b)
385	3	1125(c)
385	4	1125(d)
385	5	1125(e)
385	6	1125(f)
385	7	1125(g)
385	8	1125(h)
385	9	1125(i)
385	10	1125(j)
385	11	1125(k)
385	12	1125(l)
391		8034(n)
392	1	7494(1)
392	2	7494(2)
392	3	7494(3)
392	4	7494(4)
392	5	7494(5)
392	6	7494(6)
392	7	7494(7)
393		3904(a)
394	1	3411(15)
399		8034(g)
400	1	7534(o)1
400	2	7534(o)2
400	3	7534(o)3
400	3-A	7534(o)4
401		8081(u)
402		8034(i)
405		1608(f)
405		1608(f) 3(c) Repealed
408	1	1224(g)
408	2	1224(h)
408	3	1224(i)
409		1443
410	1	2717(b)
412	1	3366(i)
413		1443
422	1	2141(u)
422	2	2141(bb)
422	4	2141(ii)
422	5	2141(jj)1
422	6	2141(jj)2
424		8034(n)
427		8034(n)
428		2135(a)
429		3904(a)
430		2078(ee)
431	1	7251(a)
431	2	7251(c)
431	3	7251(h)
431	4	7251(i)
432		3924(b)
433		1891
434		4428
435	1	615(a)
436		2492(27)
437		3904(b)
438		1970
439		3333(a)
440		2613(z) Repealed
440	1	2613(l)
441	1	7502(f)
441	2	7502(k)
442	1	6711, 6712, 6713, 6715, 6716
442	2	6721(a)
442	3	6722
442	4	6726
443		8108(1)
444		3411(12)
445	1-511	7880(1)-7880(195)
448		8081(i)
449		8081(r)
449	2	8081(ff)
451	1	220(r)
455	201	7880(109)
455	205	7880(113)
456		1443
456	2	1443
458		4283(a)
461	1, 1½	7691(b)1
464	1	5730
464	2	5733
464	3	5734
464	4	5738
464	5	5739
464	6	5742(a)
464	7	5742(b)
465	1	5168(d)
467	1	4930(a)
467	2	4930(b)
467	3	4930(c)
467	4	4930(d)
467	5	4930(e)
469		4636(a)
471		8034(n)
473	1-4	5430(a)
474		8081(zz)1
478		1443
479		3904(a)
480	1	3402(a)
481	1-4	1125(m)
482		2591
483		218(p)1
484		2621(83)
485		2366
489		3539(a)
490	1	7328(f)
492	1	6696
493		2583
494		5470 Repealed
494	2	5470(a)
497		5584(a)
498		176(a)
499		217(m)11
500	1	2492(62)
502		8034(n)
503		7880(34)
504	1	5373(g)
506		8081(gg)
507		7971(2)
507	2	7880(173)a
509		7880(42)
514		3904(a)
517	1	3846(j)
522		7880(156)cc
523	1, 2	8064(v)
523	3	8064(w)
525	1	1334
528		3481
529	1	437(a)
532	1	8037
532	2	8037(a½)
533		2621(29)
535		4335(l)
537	1	6126(b)
537	2	6126(c)
538	1	7251(hh)12
540	1	218(v)
542		4221(a)
542		6421 Repealed
543		7880(93)

Ch.	Sec.	Code
544	1	2621(127)
544	2	2621(128)
544	3	2621(129)
544	4	2621(130)
544	5	2621(131)
544	6	2621(132)
544	7	2621(133)
544	8	2621(134)
544	9	2621(135)
544	10	2621(136)
544	11	2621(137)
544	12	2621(138)
544	13	2621(139)
544	14	2621(140)
544	15	2621(141)
544	16	2621(142)
544	17	2621(143)
544	18	2621(144)
544	19	2621(145)
546		218(c)
548		8034(i)
549	1	4018(b)
550	1-3	7251(w)4
551		4690(a)
552	1, 2	7534(o)5
555	1	7251(jj)
555	2	7251(kk)
555	3	7251(ll)
555	4	7251(mm)
555	5	7251(nn)
558	3, 5	3411(25)
562	1-35	5780(1)-5780(40)

INDEX

ABDUCTION.
See "Kidnapping and Abduction."

ABSENT PERSONS.
See "Guardian and Ward."

ACKNOWLEDGMENTS.
Curative acts.
See "Probate and Registration."
Validation.
See "Probate and Registration."

ACTIONS.
Commencement of actions, § 483.
Costs.
See "Costs."
Mandamus.
See "Mandamus."
Taxation.
Action for recovery of taxes, § 7880(167).
Actions, when tried, § 7880(173).
Taxes recoverable by action, § 7880(170).
Taxes to be paid, § 7880(194).

ADOPTION.
Approval.
Tentative approval of petition, § 191(4).
Bond.
Bond of petitioner where child with estate is without guardian, § 191(7).
Change of name of child, § 191(6).
Completion.
Completion of adoption after one to two years, § 191(4).
County superintendent of public welfare, § 191(2).
Descent and distribution.
Right of inheritance, § 191(5).
Guardian.
Bond of petitioner where child with estate is without guardian, § 191(7).
Parent or guardian necessary party, § 191(3).
Name.
Change of name of child, § 191(6).
Parent.
Abandonment or unfitness of parents deemed forfeiture of rights, § 191(9).
Parent or guardian necessary party, § 191(3).
Parent whose rights have been forfeited and who takes child guilty of crime, § 191(11).
Relation of parent and child established, § 191(5).
Petition for adoption, § 191(1).
Recordation of order of adoption, § 191(8).
Revocation of order of adoption, § 191(8).
Statistics.
Change of name of child, § 191(6).
Entries on birth certificate, § 191(6).
Report to bureau of vital statistics, § 191(6).
Validation.
Past adoption orders validated, § 191(10).

ADVERTISEMENTS.
Licenses.
Outdoor advertising, § 7880(83).

AGRICULTURE.
Agricultural liens for advances.
Short form of liens, § 2490.
Commissioner of agriculture.
Existing laws amended so as to supply revenue department for department of agriculture, § 4870(2).
Division of purchase and contract.
Division of purchase and contract directed to give preference to home products, § 4793(a).
Fertilizers.
See "Fertilizers."
Insecticides and fungicides.
See "Insecticides and Fungicides."
Revenue.
Existing laws amended so as to supply revenue department for department of agriculture, § 4870(2).
Seed.
False certification of pure-bred crop seeds made misdemeanor, § 4831(f)1.

AMUSEMENTS.
See "Licenses."

ANIMALS.
Dogs.
See "Dogs."
Game laws.
See "Game Laws."
Stock law.
See "Fences and Stock Law."

APPEAL AND ERROR.
Criminal law.
Defendant may appeal without security for costs, § 4651.
General county courts.
Appeals to superior court in civil actions, § 1608(cc).
Judgment, § 1608(cc).
Record, § 1608(cc).
Time, § 1608(cc).
Appeal to supreme court, § 1608(cc).
Insane persons and incompetents.
Sterilization, §§ 2304(y), 2304(z).

APPRENTICES.
Cosmetics.
Period of apprenticeship, § 5259(11).

ARCHITECTS.
Licenses, § 7880(38).
Public works.
Employment of architects, etc., on public works when interested in sale of materials prohibited, § 7312(y).

ARREST.
Escape.
Arrest of escaped persons from penal institutions, § 1349(a).

ASSAULT AND BATTERY.
Evidence.
Threats of assault, § 4215.
Punishment for assault, § 4215.

ASSOCIATIONS.
Building and loan associations.
See "Building and Loan Associations."
Coöperative associations may form subsidiaries, § 5259(ee).

ATTORNEY AND CLIENT, §§ 198-215(18).
Admission to practice, § 215(10).
Applicants for license to practice law, § 215(10).
Bar associations.
See within this title, "North Carolina State Bar."
Disbarment and discipline, §§ 215(11)-215(15).
Evidence, § 215(12).
Judgments, § 215(15).
Jurisdiction, § 215(11).
Prosecutor, § 215(14).
Records, § 215(15).
Rights of accused person, § 215(13).
Witness fees, § 215(12).
Saving as to North Carolina bar association, § 215(18).
Disbarment.
See within this title, "Bar Associations."
Disqualification.
Persons disqualified, § 198.
Examinations, § 215(10).
Licenses, § 7880(38).
Applicants for license to practice law, § 215-(10).
North Carolina state bar, §§ 215(1)-215(18).
Admission to practice, § 215(10).
Annual and special meetings, § 215(16).
Change of judicial districts, § 215(5).
Compensation of councillors, § 215(6).
Compensation of prosecutor, § 215(14).
Councillors, §§ 215(4), 215(6), 215(7), 215(9).
Creation of North Carolina state bar as an agency of the state, § 215(1).
Designation of prosecutor, § 215(14).
Disbarment, §§ 215(11), 215(12).
Discipline, § 215(11).
Election of councillors, § 215(4).
Evidence, § 215(12).
Government, § 215(3).
Judgments, § 215(15).
List of members, § 215(17).
Meetings, § 215(16).
Membership, § 215(2).
Membership fees, § 215(17).
Officers and committees of the North Carolina state bar, § 215(8).
Organization of council, § 215(7).
Powers of council, § 215(9).
Privileges, § 215(2).
Publication of rules, regulations and by-laws, § 215(7).
Records, § 215(15).
Rights of accused person, § 215(13).
Saving as to North Carolina bar association, § 215(18).
Witnesses, § 215(12).

ATTORNEY GENERAL.
Legislative reference librarian transferred to attorney-general's department, § 6150(a).

AUCTIONS AND AUCTIONEERS.
Licenses.
Real estate auction sales, § 7880(41).

AUTOMOBILES.
Automobile insurance, §§ 2621(146)-2621(149).
Gasoline tax.
See "Gasoline Tax."
Licenses.
Automobiles and motorcycle dealers and service stations, § 7880(84).
Motor busses.
See "Motor Busses."

BAD CHECK LAW, § 4283(a).
Taxation.
Penalty for bad checks, § 7880(164).

BAIL AND RECOGNIZANCE.
Bastardy.
Bond for future appearance of defendant, § 276(h).

BANKRUPTCY AND INSOLVENCY.
Discharge of insolvent debtors, § 1632.

BANKS AND BANKING, §§ 217(m)1-264(l).
Branch banks.
Establishment of branches, § 220(r).
Closed banks.
Sale of deposits in closed banks.
Purchasers may offset against debts due bank, § 218(v).
Commissioner of banks, §§ 222(l)-222(o)1.
See within this title, "Dissolution and Liquidation."
Additional powers with relation to deposits, § 222(o)1.
Commissioner need not take over banks failing to meet deposit demands, § 222(n).
Deposits, § 222(o)1.
Examination of bank, § 264(b).
Orders of commissioner to be observed, § 222(m).
Powers, § 222(l).
Reorganization of closed banks, § 217(m)2.
Right of appeal, §§ 222(m), 264(l).
Supervision of commissioner of banks, § 219-(a)4.
Conservators.
Duties and powers, § 264(a).
Naming of conservator not liquidation, § 264(k).
New deposits, § 264(d).
Notice of turning bank back to officers, § 264(f).
Provision for bank conservators, § 264(a).
Reorganization on agreement of depositors and stockholders, § 264(e).
Rights and liabilities of conservator, § 264(j).
Segregation of recent depositors not effective after bank turned back to officers, § 264(f).
Special funds for paying depositors and creditors ratably, § 264(d).
Termination of conservatorship, § 264(c).
County treasurer.
Commissioners may abolish office and appoint bank, § 1389.
Creation, § 217(m)1-217(m)13.
Deposits.
Sale of deposits in closed banks.
Purchasers may offset against debts due bank, § 218(v).

BANKS AND BANKING—Cont'd.
Dissolution and liquidation, §§ 218(c)-218(p)1.
See within this title, "Reorganization of Banks."
Commissioner to report to secretary of state certain matters relative to liquidation of closed banks, § 218(p)1.
Copies, § 218(c).
Deposit of funds collected, § 218(c).
Fiduciaries authorized to enter depositors' agreements, § 218(u).
Liquidation of banks, § 218(c).
List of claims presented and deposits, § 218(c).
Publication of commissioner's report, § 218(p)1.
Reopening of closed banks, § 218(u).
Sale by commissioner of banks of corporate stocks in banks being liquidated, § 218(c)1.
When commissioner to take possession, § 218(c).
Examination of bank, § 264(b).
Holidays.
Governor empowered to proclaim banking holidays, § 220(gg).
Industrial banks.
Stockholders, individual liability of, § 225(o).
Investments.
Investment and loan limitation, suspension of, § 220(e).
Limitations on investments or securities, § 220(b).
Licenses.
Morris plan or industrial banks, § 7880(89).
Liquidation.
See within this title, "Dissolution and Liquidation."
Powers, §§ 220(a)-220(gg).
General powers, § 220(a).
Preferred stock, §§ 264(g)-264(i).
Issuance of preferred stock, § 264(g).
Limitations of preferred stock; not to be used as collateral for loans, § 264(i).
Rights and liabilities of preferred stockholders, § 264(h).
Reorganization of banks.
New deposits, § 264(d).
Reorganization of closed banks, §§ 217(m)1-217(m)13.
Approval by commissioner of banks, § 217(m)2.
Branch banks allowed, § 217(m)9.
Certification to clerk of superior court, § 217(m)2.
Commissioner of banks, § 217(m)12.
Determination of value of claims of objectors, § 217(m)5.
In general, § 217(m)1.
Notice of plan to stockholders, depositors and creditors, § 217(m)4.
Notice of reorganization, § 217(m)3.
Objections, §§ 217(m)3, 217(m)5-217(m)8.
Payment of claims of objectors, § 217(m)6.
Purpose and intent of statute as to reorganization, § 217(m)13.
Regulations, § 217(m)12.
Reorganization binding on all unless objected to by one-third of interested parties, § 217(m)7.
Rights of objectors preserved, § 217(m)8.
Rules, § 217(m)12.
Stockholders not relieved, § 217(m)10.

BANKS AND BANKING—Cont'd.
Reorganization of banks—Cont'd.
Reorganization of closed banks—Cont'd.
Subscription to capital stock, § 217(m)9.
Time limit for reorganization, § 217(m)13.
Transfer of trust estates, § 217(m)11.
Trust business preserved upon reorganization, § 217(m)11.
Two or more banks may reorganize together, § 217(m)9.
Special funds for paying depositors and creditors ratably, § 264(d).
Set-off, recoupment and counterclaim.
Sale of deposits in closed banks.
Purchasers may offset against debts due bank, § 218(v).
State treasurer.
Deposits of state funds in banks regulated, § 7684.
Deposits of state funds in banks that have provided for safety of deposits without requiring depository bonds, § 7691(b)1.
Stock and stockholders.
Individual liability of stockholders, § 219(a).
Industrial banks, § 225(o).
Provisions mandatory on banks hereafter organized, § 219(a)3.
Reorganization of closed banks, § 217(m)10.
Surplus fund in lieu of double assessment, §§ 219(a)1, 219(a)2.
Preferred stock.
See within this title, "Preferred Stock."
Surplus fund.
Existing state banks may set up surplus fund in lieu of double assessment, § 219(a)2.
New state banks to set up surplus fund in lieu of double assessment, § 219(a)1.
Taxation.
Banks, banking associations and trust companies, § 7971(59).
Private bankers, §§ 7971(38), 7971(39).
Trusts and trustees.
Fiduciaries authorized to enter depositors' agreements, § 218(u).

BAR ASSOCIATIONS.
See "Attorney and Client."

BARBERS, §§ 5003(p)-5003(y).
Davie county exempted from barbers law, § 5003(y).
Inspection, § 5003(p).
Licenses.
Barber shops, § 7880(71).
Misdemeanors, § 5003(u).
Posting rules, § 5003(p).
Rules for sanitation in barber shops and schools, § 5003(p).

BASTARDY, §§ 276(a)-276(i).
Bail and recognizance.
Bond for future appearance of defendant, § 276(h).
Death.
Death of mother no bar, § 276(d).
Indictments, informations and presentments, § 276(d).
Jurisdiction, § 276(f).
Limitation of actions.
Action must be commenced within three years after birth, § 276(c).

BASTARDY—Cont'd.
Non-support of bastard child by parents made misdemeanor, § 276(a).
Orders of court, § 276(f).
Power of court to modify orders, § 276(g).
Parties plaintiff, § 276(d).
Paternity.
Determination of fatherhood, § 276(d).
Place of birth of child no consideration, § 276(b).
Sentence and punishment.
Suspension of sentence, § 276(g).
Title of statute, § 276(i).
Witnesses.
Mother not compellable to testify against accused, § 276(e).
Mother not excused on ground of self-incrimination, § 276(e).
Mother not subject to penalty, § 276(e).

BEAUTY PARLOR.
See "Cosmetics."

BEER.
See "Intoxicating Liquors."

BENEFICIAL AND BENEVOLENT ASSOCIATIONS.
See "Fraternal Orders and Societies."

BICYCLES.
Licenses.
Bicycle dealers, § 7880(47).

BILLS, NOTES AND CHECKS.
Bad check laws, § 4283(a).
Licenses.
Installment paper dealers, § 7880(80).
Taxation.
Penalty for bad checks, § 7880(164).

BIRTH.
Registration of births and deaths, §§ 7088(a)-7109.

BROKERS.
Licenses.
Installment paper dealers, § 7880(80).
Loan agencies or brokers, § 7880(83½).
Security dealers, § 7880(63).
Taxation, § 7971(38).

BUDGET.
Balanced budget.
Emergency revenue to insure and make certain a balanced budget, § 7880(156)d.
Counties and county commissioners.
Supplemental budget, § 1334(61).
Division of personnel under the budget bureau, §§ 7521(k)-7521(y).
Applications for employment to be filed with assistant director of the budget, § 7521(s).
Appropriation for expenses of division of personnel, § 7521(y).
Changes in deed for personal service made by assistant director of the budget, § 7521(q).
Classification of number of employees needed, § 7521(n).
Copies of personnel reports to state auditor, § 7521(t).
Disputes between assistant director of the budget and agency heads settled by advisory budget commission, § 7521(u).

BUDGET—Cont'd.
Division of personnel under the budget bureau —Cont'd.
Division established, § 7521(k).
Employment of persons by certification of name to assistant director of the budget and by his investigation, § 7521(r).
Hours of labor, etc., § 7521(n).
List of qualified applicants, § 7521(s).
Nature of work, § 7521(n).
Payrolls submitted to assistant director of the budget; approval of payment of vouchers, § 7521(v).
Report of survey to governor and agency heads, § 7521(o).
Standard of salaries and wages, § 7521(n).
Survey of needs for personal service in all branches of state government, § 7521(m).
Education.
Budget for each unit, § 5780(12).

BUILDING AND LOAN ASSOCIATIONS, §§ 5175(a)-5259(ee).
Agent must obtain certificate, § 5192.
Annual meetings, § 5175(b).
Control of insurance commissioner, §§ 5192, 5193(a).
Different classes of shares, § 5177.
Dividends, § 5177.
Insurance commissioner, §§ 5192, 5193(a).
Licenses, § 7880(69).
May become members of and hold stock in federal home loan bank, § 5175(a).
Notice.
Month's notice required for withdrawals, § 5203(a).
Powers, § 5259(x.)
Power to borrow money, § 5184.
Purposes of organization, § 5259(d).
Receivers.
Notice required before appointment of receivers, § 5193(a).
Reserve fund, § 5177.
Taxation, §§ 7971(60), 7971(61).
Trusts and trustees.
Investment in building and loan associations, § 4018(b).
Withdrawals
Month's notice required for withdrawals, § 5203(a).
"Withdrawal or maturity fund," § 5203(b).

BUILDING CODE.
Building code council, § 7494(4).
Appeals to council, § 7494(5).
Created, § 7494(4).
Pay of members, § 7494(6).
Insurance commissioner.
Administration by insurance commissioner, § 7494((3).
North Carolina building code, § 7494(1).
Purpose of act, § 7494(2).
Title of act, § 7494(1).
Violation of act subjects offender to fine, § 7494(7).

BULK SALES.
Sales in bulk presumed fraudulent, § 1013.

CARRIERS.
See "Motor Busses."

CHANGE OF VENUE.
Additional jurors from other counties instead of removal § 473.

CHARITIES.
Merger of charitable and other corporations not under control of state, § 1224(g).

CHEESE FACTORIES.
See "Health."

CHILDREN.
Adoption of children.
See "Adoption."
Payment into court.
Payment of money for indigent children and persons non compos mentis, § 962.

CHIROPODISTS.
Licenses, § 7880(38).

CHIROPRACTIC, §§ 6711-6726.
Definitions of chiropractic, § 6715.
Educational requirements, § 6715.
Examinations, § 6715.
Jury.
Exempt from jury service, § 6721(a).
Licenses, § 7880(38).
Annual fee for renewal of license, § 6726.
Extent and limitation of license, § 6722.
State board of chiropractic examiners, § 6711.
Annual meetings, § 6716.
Appointment, § 6711.
First appointments, § 6712.
Meetings, § 6716.
Organization, § 6713.
Recommendations, § 6711.
Successors, § 6711.
Term, § 6711.
Vacancies, § 6713.

CITIES.
See "Municipal Corporations."

CITIZENSHIP.
Restoration of citizenship, § 386.

CIVIL ENGINEER.
Licenses, § 7880(38).

CLERKS OF COURT.
Fees.
Fees for issuing certificates of encumbrances, § 3904(b).
Fees for recording federal crop liens and chattel mortgages, § 3904(a).
Local modifications as to clerk's fees, § 3904.
Fees for filing transcripts of judgments by clerks of superior courts, § 615(a).
Inheritance taxes.
See "Inheritance Taxes."
Payment into court.
Payment of money for indigent children and persons non compos mentis, § 962.

COLLECTING AGENCIES.
Licenses, § 7880(43).

COMMENCEMENT OF ACTIONS, § 483.

COMMERCIAL FERTILIZERS.
See "Fertilizers."

COMMISSIONER OF REVENUE.
See "Licenses."

CONSTABLES.
Counties and county commissioners
Consolidation, annexation and joint administration of counties, §§ 1382(10), 1382(16).

CONSTITUTION OF NORTH CAROLINA.
Proposed new Constitution of North Carolina, see Appendix I.

CONTRACTORS.
Licenses, § 7880(53).
Heating contractors, § 7880(86).
Plumbing and heating contractors, § 5168-(ddd).

CONTRACTS.
Counties, § 1316(a).
Division of purchase and contract.
See "Division of Purchase and Contract."

CORONERS.
Autopsy.
Limitation upon right to perform autopsy, § 5003(1).

CORPORATION COMMISSION, §§ 1112(a)-1112(36).
Public Utilities Act of 1933.
See "Public Service Corporations."
Utilities commissioner, §§ 1112(a)-1112(q).
Associate commissioners, §§ 1112(i), 1112(j).
Certificate, § 1112(n).
Clerical assistance, § 1112(m).
Commissioner to call in associates to determine questions of facts where amount involved exceeds $3,000.00, § 1112(i).
Commissioner to keep himself informed as to utilities, § 1112(o).
Continuance of present rate inquiry by corporation commission, § 1112(q).
Existing powers of corporation commission devolve upon utilities commissioner, § 1112(f).
Express and implied powers, § 1112(e).
Governor to appoint commissioner, § 1112(c).
Judgments of commission, § 1112(k).
Oath of office, § 1112(d).
Office of utilities commissioner created, § 1112(a).
Pending investigations and hearings to be concluded by commissioner, § 1112(h).
Powers, § 1112(e).
Public record of proceedings, § 1112(l).
Rate inquiry, § 1112(q).
Records, § 1112(l).
Salary, § 1112(d).
Seal of office, § 1112(n).
Substitution of utilities commissioner for old designation, § 1112(g).
Supervisory powers, § 1112(b).
Surrender of present quarters to commissioner, § 1112(p).
Term of office, § 1112(c).

CORPORATIONS, §§ 1125(a)-1224(i).
Banks.
See "Banks and Banking."
Charter.
Charter cancelled for failure to report, § 7880-(158).
Corporate rights restored, § 7880(160).
Penalty for exercising corporate functions after cancellation of charter, § 7880(159).

CORPORATIONS—Cont'd.
Corporation commission.
See "Corporation Commission."
Dividends.
See "Dividends."
Forests.
See "Geological Survey and Forests."
Forfeiture of corporate charter and organization of new corporation, § 1148(a).
Franchise tax.
See "Taxation."
Housing law.
See "State Housing Law."
Income tax.
See "Income Tax."
Merger of corporations.
Merger of charitable and other corporations not under control of state, § 1224(g).
Property of all kinds vested in new corporation, § 1224(i).
Rights and powers of consolidated corporation, § 1224(h).
North Carolina state thrift society.
See "North Carolina State Thrift Society."
Partnership.
No personal liability on corporate manager of partnership, § 1179(a).
Public Utilities Act of 1933.
See "Public Service Corporations."
Service of process, § 483.
State housing law.
See "State Housing Law."
Taxation.
See "Taxation."
Income tax.
See "Income Tax."

COSMETICS, §§ 5259(1)-5259(29).
Annual renewal of certificates, § 5259(25).
Annual report to governor, § 5259(15).
Apprentice.
Definition, § 5259(9).
Period of apprenticeship, § 5259(11).
"Beauty parlor," etc., § 5259(4).
Board of cosmetic art examiners, §§ 5259(13)-5259(15).
Causes for revocation of certificates, § 5259(26).
Certificate of registration, § 5259(18).
Cosmetic art regulated, §§ 5259(1)-5259(29).
"Cosmetologist," § 5259(3).
Criminal law, § 5259(28).
Definition of cosmetic art, § 5259(2).
Examination.
Applicants for examination, § 5259(16).
Conduct of examinations, § 5259(17).
Exemptions, § 5259(22).
Expenses, § 5259(15).
Fees, § 5259(21).
Hearing on charges, § 5259(27).
"Itinerant cosmetologist," § 5259(7).
"Manager," § 5259(5).
"Manicurist," § 5259(8).
Misdemeanors, § 5259(28).
Office in Raleigh, § 5259(14).
"Operator," § 5259(6).
Operators from other states, § 5259(19).
Pay of board members, § 5259(15).
Posting of certificates, § 5259(24).
Practice of cosmetology regulated, § 5259(1).
Qualifications for certificate of registration, § 5259(10).

COSMETICS—Cont'd.
Qualifications for registered cosmetologist, § 5259(12).
Records to be kept by board, § 5259(29).
Registration.
Fees, § 5259(21).
Procedure, § 5259(20).
Sanitation.
Rules for sanitation, § 5259(23).
State board of cosmetic art examiners, §§ 5259-(13)-5259(15).

COSTS, §§ 1259-1288.
Counties.
Liability of counties in criminal actions, §§ 1259-1266(a).
County to pay costs in certain cases, if approved, audited and adjudged, § 1259.
Local modification as to counties paying costs, § 1260.
Sums due credited on taxes due by payee, § 1266(a).
Criminal cases.
Discharge of persons imprisoned for nonpayment of costs in criminal cases, § 1632.
Criminal costs.
Liability for criminal costs before justice, mayor, county or recorder's court, § 1288.
Witness' fees.
See "Witnesses."

COTTON.
Licenses.
Cotton buyers, and sellers on commission, § 7880(64).
Cotton compresses, § 7880(59).

COUNTIES.
Costs.
Liability of counties in criminal actions, §§ 1259-1266(a).
County to pay costs in certain cases, if approved, audited and adjudged, § 1259.
Local modification as to counties paying costs, § 1260.
Sums due credited on taxes due by payee, § 1266(a).
Libraries.
See "Libraries."

COUNTIES AND COUNTY COMMISSIONERS.
Budget.
Supplemental budget, § 1334(61).
Consolidation, annexation and joint administration of counties, §§ 1382(1)-1382(20).
Abolition of offices in merged county; transfer of books, records, etc., § 1382(15).
Constables, § 1382(10).
Contiguous counties may consolidate into one, § 1382(1).
Court records transferred; justices of the peace and constables hold over, § 1382(16).
Dissolution of county merged, § 1382(14).
Election laws applicable, §§ 1382(2), 1382(13).
Joint administrative functions of contiguous counties, § 1382(20).
Justices of the peace, § 1382(10).
Liability for bonded indebtedness, § 1382(9).
Membership in general assembly, § 1382(19).
Merging of one contiguous county with another authorized, § 1382(12).

COUNTIES AND COUNTY COMMISSIONERS—Cont'd.
Consolidation, annexation and joint administration of counties—Cont'd.
New county board of elections, § 1382(3).
Plan of government, § 1382(18).
Powers and duties of new officers, § 1382(7).
Representation in general assembly, § 1382(11).
Retention of old officers till qualification of new, § 1382(6).
Rights of annexing county, § 1382(17).
Salaries of new officers, § 1382(5).
Special election for new county officers, § 1382(4).
Term of new officers, § 1382(5).
Transfer of books, records, etc., § 1382(8).
Constables.
Consolidation, annexation and joint administration of counties, §§ 1382(10), 1382(16).
Contracts.
Contracts involving expenditure of $1,000 or more let after advertisement for bids, § 1316(a).
County finance act.
See "County Finance Act."
County fiscal control, §§ 1334(61)-1334(76)a.
County revenue.
Annual statement of claims and revenues to be published, § 1334.
County finance act.
See "County Finance Act."
Elections.
Consolidation, annexation and joint administration of counties, §§ 1382(2), 1382(13).
County board of elections.
See "Elections."
Fees, § 3904.
Jails.
Formation of district jail by contiguous counties, § 1317(a).
Justices of the peace.
Consolidation, annexation and joint administration of counties, §§ 1382(10), 1382(16).
Local government act.
See "Local Government Act."
Local units authorized to accept their bonds in payment of judgments, § 1334(76)a.
Prisoners.
Arrest of escaped persons from penal institutions, § 1349(a).
Publications.
Annual statement of claims and revenues to be published, § 1334.
Sentence.
Power of sentencing prisoners to work on county property unaffected by act of 1933, ch. 172, § 7748(aa).
Taxation.
Annual Assessments.
See "Taxation."
Quadrennial assessments.
See "Taxation."
Treasurers.
See "County Treasurers."

COUNTY COMMISSIONERS.
See "Counties and County Commissioners."

COUNTY COURTS.
See "General County Courts."

COUNTY FINANCE ACT, §§ 1334(5)-1334(41).
Accelerating maturity of bonds and notes of counties and municipalities, § 1334(11a).
Bonded debt payable in installments, § 1134(33).
Funding or refunding bonds, § 1334(11).
Local government act.
County finance act applicable, § 2492(75).
Maturities of bonds, §§ 1334(11), 1334(11a).
Order of governing body required, § 1334(9).
Purposes for which bonds may be issued and taxes levied, § 1334(8).
Revenue anticipation loans for debt service, § 1334(5).
Taxes levied for payment of bonds, § 1334(41).

COUNTY TREASURER.
Banks and banking.
Commissioners may abolish office and appoint bank, § 1389.
Commissioners may abolish office and appoint bank, § 1389.

COURTS.
Judicial districts.
Superior courts, § 1443.
Justices of the peace.
See "Justices of the Peace."
Recorders' courts.
See "Recorders' Courts."
Reporter.
See "Reporter."
Stenographers.
Court stenographers, § 1461.
Superior courts.
Judicial districts, § 1443.
Terms of court.
See "Terms of Court."
Transfer of civil cases, § 1608(f)4.

CREAMERIES.
See "Health."

CRIMINAL LAW.
Appeal and error.
Defendant may appeal without security for costs, § 4651.
Assault and battery, § 4215.
Barbers, § 5003(u).
Bastardy.
See "Bastardy."
Cosmetics, § 5259(28).
Costs.
Liability of counties in criminal actions.
See "Costs."
Demurrer to the evidence, § 4636(a).
Drunkenness.
Public drunkenness, § 4458.
Elections, § 4185(a).
Intimidation of voters by officers made misdemeanor, § 4185(a).
False pretenses and cheats, § 4283(a).
Fertilizers, §§ 4689(18), 4689(23), 4689(24).
See "Fertilizers."
Gaming, § 4428.
Homicide, § 4201.
Jury.
Waiving jury trial, § 4636(a).
Kidnapping, § 4221(a).
Liquid fuels, §§ 4870(h), 4870(k), 4870(m).
Lotteries, § 4428.
Oils, §§ 4870(h), 4870(k), 4870(m).
Pleas, § 4636(a).

CRIMINAL LAW—Cont'd.
Schools.
Soliciting during school hours without permission of school head, § 4391(1).
Seeds.
False certification of pure-bred crop seeds made misdemeanor, § 4831(f)1.
Storage batteries, §§ 4335(f)-4335(l).
Defacing word "rental" prohibited, § 4335(g).
Identification of rental storage batteries, § 4335(f).
Rebuilding storage batteries out of old parts and sale of, regulated, § 4335(l).
"Rental battery" defined, § 4335(f).
Repairing another's rental battery prohibited, § 4335(i).
Sale, etc., of rental battery prohibited, § 4335(h).
Time limit on possession of rental battery without written consent, § 4335(j).
Violation made misdemeanor, § 4335(k).
Streets and highways.
Using profane or indecent language on public highways, § 4352.
Trial in superior court, § 4636(a).

DAIRY.
Health.
Misbranding milk or cream prohibited, § 7251(w)5.
Purchase of containers regulated, § 7251(w)2.
Regulation of use of milk containers, § 7251(w)1.
Supervision of dairy products by department of agriculture, § 7251(w)4.
Violation made misdemeanor, § 7251(w)3.

DEAD BODIES.
Autopsy.
Limitation upon right to perform autopsy, § 5003(1).

DEAF, DUMB AND BLIND.
Mattress.
Blind persons exempt from tax, § 7251(hh)12.
Taxation.
Free privilege licenses for blind people, § 7880(177)a.

DEATH.
Bastardy.
Death of mother no bar, § 276(d).
Registration of births and deaths, §§ 7088(a)-7109.

DEATH BY WRONGFUL ACT.
Executors and administrators, § 160.

DEBTOR AND CREDITOR.
Discharge of insolvent debtors, § 1632.

DEEDS OF TRUST.
See "Mortgages and Deeds of Trust."

DEMURRER TO THE EVIDENCE.
Criminal law, § 4636(a).

DENTISTS.
Licenses, § 7880(38).
Revocation of license, § 6649.

DEPARTMENT OF LABOR.
Authority, powers and duties of commissioner, § 7310(b).
Commissioner, § 7310(b).

DESCENT AND DISTRIBUTION.
Adoption.
Right of inheritance, § 191(5).
Inheritance taxes.
See "Inheritance Taxes."

DETECTIVES.
Licenses, § 7880(39).

DIVIDENDS.
Directors' liability for impairing capital, § 1179.
Dividends from profits only, § 1179.

DIVISION OF PERSONNEL UNDER THE BUDGET BUREAU.
See "Budget."

DIVISION OF PURCHASE AND CONTRACT, §§ 7502(f)-7502(k).
Awarding of contract, § 7502(f).
Bids, § 7502(f).
Consolidation of estimates by director, § 7502(f).
Preference given to North Carolina products and articles manufactured by state agencies, § 7502(k).
Sales tax considered, § 7502(k).

DIVORCE.
Affidavit of intention to file complaint, § 1661.
Affidavit to be filed with complaint, § 1661.
Divorce after separation of two years on application of either party, § 1659(a).
Grounds for absolute divorce, § 1659.

DOGS.
License taxes on dogs, § 1681.

DRAINAGE DISTRICTS.
No drainage assessments for original object may be levied on property when once paid in full, § 5373(g).

DRAINS AND SEWERS.
Municipal corporations.
Authority to fix sewerage charges; lien thereof, § 2806(i).

DRUGS AND DRUGGISTS.
License.
Application and examination for license, prerequisites, § 6658.
Practice of pharmacy.
Application and examination for license, prerequisites, § 6658.

DRUNKENNESS.
Detention and treatment of inebriates, § 2304(f).
Public drunkenness, § 4458.

DYING DECLARATIONS.
Executors and administrators, § 160.

EDUCATION.
Accounting as to special school funds, § 5780(37).
Audit of all school funds ordered, § 5780(25).
Biennial appropriation for eight months term, § 5780(1).

EDUCATION—Cont'd.
Bonds for protection of school funds, § 5780(22).
Budget.
Budget for each unit, § 5780(12).
Certification by local units to commission of school organization, § 5780(9).
Checking school requirements, § 5780(27).
City superintendent made secretary to city board of trustees, § 5780(38).
Conflicting laws repealed, § 5780(40).
Consolidation of units for purposes of economy, § 5780(6).
Coördination with department of highways and public works as to repair agencies, § 5780(35).
Cost of other items determined, § 5780(14).
Counties as administrative units, § 5780(5).
County boards of education.
Fuel for use in schools, § 5430(a).
County superintendents and city superintending-principals, § 5780(8).
Determination of number of teachers required in each unit, § 5780(10).
Determination of salary requirements, § 5780-(13).
Economies effected, § 5780(17).
Educational institutions of the state.
See "Universities and Colleges."
Employment of drivers, § 5780(33).
Fuel.
Fuel for use in schools, § 5430(a).
General supervision of commission, § 5780(29).
High school instruction, § 5780(11).
Intent of act to effect reduction in ad valorem taxes, § 5780(39).
Items of school cost, supplying funds for other objects, § 5780(20).
Laying out of routes of school trucks, § 5780(32).
Limit on tax levies, § 5780(4).
Method of disbursing school funds, § 5780(24).
Month defined, § 5780(19).
North Carolina state thrift society.
See "North Carolina State Thrift Society."
Payment of state funds in monthly installments, § 5780(23).
Principal as teacher in schools of certain size, number of principals, § 5780(18).
Provision for supplementing items of school expenditure, § 5780(21).
Pupils from one unit attending school in another in interest of economy, § 5780(36).
Retention of bonded districts for debt purposes only, § 5780(7).
Revenue for the public schools.
How to estimate the salary fund for the special charter or city schools, § 5598.
Salaries of employees in school transportation system, § 5780(34).
Salaries of teachers.
How to estimate the salary fund for the special charter or city schools, § 5598.
Salary.
See within this title, "Teachers."
Sale of school property, § 5470(a).
School districts.
Abolished, § 5780(4).
Counties as administrative units, § 5780(5).
Retention of bonded districts for debt purposes only, § 5780(7).

EDUCATION—Cont'd.
School funds.
How to estimate the salary fund for the special charter or city schools, § 5598.
Schoolhouses.
Sale of school property, § 5470(a).
School Law of 1933, §§ 5780(1)-5780(40).
Accounting as to special school funds, § 5780(37).
Audit of all school funds ordered, § 5780(25).
Biennial appropriation for eight months' term, § 5780(1).
Bonds for protection of school funds, § 5780(22).
Budget for each unit, § 5780(12).
Certification by local units to commission of school organization, § 5780(9).
Checking school requirements, § 5780(27).
City superintendent made secretary to city board of trustees, § 5780(38).
Conflicting laws repealed, § 5780(40).
Consolidation of units for purposes of economy, § 5780(6).
Coördination with department of highways and public works as to repair agencies, § 5780(35).
Cost of other items determined, § 5780(14).
Counties as administrative units, § 5780(5).
County superintendents and city superintending-principals, § 5780(8).
Determination of number of teachers required in each unit, § 5780(10).
Determination of salary requirements, § 5780(13).
Economies effected, § 5780(17).
Employment of drivers, § 5780(33).
General supervision of commission, § 5780-(29).
High school instruction, § 5780(11).
Intent of act to effect reduction in ad valorem taxes, § 5780(39).
Items of school cost, supplying funds for other objects, § 5780(20).
Laying out of routes of school trucks, § 5780(32).
Limit on tax levies, § 5780(4).
Method of disbursing school funds, § 5780(24).
Month defined, § 5780(19).
Payment of state funds in monthly installments, § 5780(23).
Principal as teacher in schools of certain size, number of principals, § 5780(18).
Provision for supplementing items of school expenditure, § 5780(21).
Pupils from one unit attending school in another in interest of economy, § 5780(36).
Retention of bonded districts for debt purposes only, § 5780(7).
Salaries of employees in school transportation system, § 5780(34).
School month defined, § 5780(19).
School transportation, § 5780(30).
Special school districts abolished, § 5780(4).
Standard salary schedule to be fixed, § 5780(16).
State Board of Equalization abolished, state School Commission created, § 5780(2).
State School Commission, § 5780(2).
Summer school requirement suspended, § 5780(15).

EDUCATION—Cont'd.
School Law of 1933—Cont'd.
Surrender of all locally owned transportation facilities to commission, § 5780(31).
Taxes for debt service unaffected, § 5780(26).
Tax for vocational instruction allowed, § 5780(4).
Uniform term of eight months adopted, § 5780(3).
Workmen's compensation act applicable to school employees, § 5780(28).
School month defined, § 5780(19).
School transportation, § 5780(30).
Special school districts abolished, § 5780(4).
Standard salary schedule to be fixed, § 5780-(16).
State board.
See within this title, "Text-Books."
State Board of Equalization abolished, state School Commission created, § 5780(2).
State School Commission, § 5780(2).
Summer school requirement suspended, § 5780(15).
Superintendents.
County superintendents and city superintending-principals, § 5780(8).
Surrender of all locally owned transportation facilities to commission, § 5780(31).
Taxes for debt service unaffected, § 5780(26).
Tax for vocational instruction allowed, § 5780-(4).
Teachers.
Colleges to aid as to certificates, § 5884(a).
Determination of number of teachers required in each unit, § 5780(10).
Determination of salary requirements, § 5780(13).
Principal as teacher in schools of certain size, number of principals, § 5780(18).
Standard salary schedule to be fixed, § 5780(16).
Text-books.
Acquisition of manuscripts for text-books permitted, § 5742(a).
Basal and supplementary books, § 5733.
Basal books not to be displaced by supplementary, § 5734.
Contracts for distribution of text-books through depositories or a state agency, § 5742(b).
Duties of commission, § 5738.
Elementary grades, § 5730.
State board of education adopts, § 5730.
State board of education makes all contracts, § 5739.
Uniform term of eight months adopted, § 5780(3).
Vocational education.
Tax for, § 5780(4).
Workmen's compensation act applicable to school employees, § 5780(28).

EJECTMENT.
Landlord and tenant.
See "Landlord and Tenant."

ELECTIONS.
Absent voters, §§ 5968(b)-5968(f).
Not applicable to Mitchell county, § 5968(f).
Not applicable to Randolph county, § 5968(d).
Not applicable to Union county, § 5968(b).

ELECTIONS—Cont'd.
Absent voters—Cont'd.
Not applicable to Yadkin county, § 5968(e).
Only applicable to certain elections in Yancey county, § 5968(c).
Abstract votes, §§ 5987, 5988.
Secretary of state to record abstracts, § 5998.
State board to prepare abstracts and declare results of elections, § 5996.
Assistants at polls.
Pay, § 6055(a35).
When allowed, § 6055(a35).
Ballots.
Arrangements, § 6055(a9).
Assistance to voters, § 6055((a26).
Ballots for each precinct wrapped separately, § 6055(a10).
Counting of ballots, § 5984.
Improperly marked ballots not counted; when, § 6055(a28).
Method of marking ballots, § 6055(a28).
Number of ballots, § 6055(a9).
Number of ballots to be furnished polling places, § 6055(a11).
What ballots shall contain, § 6055(a9).
Board of elections.
See within this title, "County Board of Elections;" "State Board of Elections."
Contests.
How tie broken, § 5999.
Corrupt practices.
See within this title, "Criminal Law."
Counties and county commissioners.
Consolidation, annexation and joint administration of counties, §§ 1382(2), 1382(13).
County board of elections, §§ 5924-5927.
Appointment, § 5924.
County board of elections to canvass returns and declare results, § 5986.
County elections board to prepare duplicate abstracts to be sent to state board of elections; penalty, § 5989.
Duties, § 5927.
Meetings, § 5925.
Pay, § 5925.
Qualifications, § 5924.
Removal of member of county board of elections, § 5926.
Returns, § 5984-5998.
Board to prepare abstracts and declare results of elections, § 5996.
Chairman of county board of elections to furnish county officers certificate of election, § 5992.
Clerk of superior court to send statement of votes, to secretary of state in general election, § 5990.
County board of elections to canvass returns and declare results, § 5986.
County elections board to prepare duplicate abstracts to be sent to state board of elections; penalty, § 5989.
How precinct returns are to be made and canvassed, § 5985.
Meeting of state board of elections to canvass returns of a special election for congressmen, § 5995.
Meeting of state board of elections to canvass returns of the election, § 5994.

ELECTIONS—Cont'd.
County board of elections—Cont'd.
Returns—Cont'd.
Preparation of original abstracts; where filed, § 5988.
Results certified to the secretary of state; certificate of election issued, § 5997.
Secretary of state to record abstracts, § 5998.
State board of elections to canvass returns for higher offices, § 5993.
What returns placed on same abstracts, § 5987.
Who declared elected by county board; proclamation of results, § 5991.
Term of office, § 5924.
Vacancies, § 5925.
Criminal law, § 4185(a).
Intimidation of voters by officers made misdemeanor, § 4185(a).
Election laws of 1929, §§ 6055(a9)-6055(a35).
Judges of elections, §§ 5928-5935.
Appointment, § 5928.
Clerk of superior court to send statement of votes to secretary of state in general election, § 5990.
Compensation, § 5932.
Counting of ballots, § 5984.
County board of elections to canvass returns and declare results, § 5986.
County elections board to prepare duplicate abstracts to be sent to state board of elections; penalty, § 5989.
How precinct returns are to be made and canvassed, § 5985.
Names to be published, § 5929.
Preparation of original abstracts; where filed, § 5988.
Proceedings when polls close, § 5984.
Qualifications, § 5928.
Removal, § 5931.
Vacancies, how filled, § 5930.
What returns placed on same abstracts, § 5987.
Meetings.
Meeting of state board of elections to canvass returns of a special election for congressmen, § 5995.
Meeting of state board of elections to canvass returns of the election, § 5994.
Municipal elections.
See "Municipal Corporations."
Political party.
Definition, § 5913.
Precinct election officers and election precincts, §§ 5928-5935.
Alteration of election precinct, § 5934.
Compensation of precinct officers, § 5932.
Duties of registrars and judges of elections, § 5933.
Establishment of election precincts, § 5934.
Judges of elections.
See within this title, "Judges of Elections."
Names of precinct officers published by board, § 5929.
New registration of voters or revision of registration books; how made, § 5935.
Registrars.
See within this title, "Registrars."
Removal of precinct officers, § 5931.
Vacancies in precinct offices, § 5930.

ELECTIONS—Cont'd.
Presidential electors, §§ 6009-6013.
Arrangement of names of presidential electors, § 6010.
Casting of state's votes for president and vice-president, § 6012.
Conduct of presidential election, § 6009.
Declaration and proclamation of results by state board, § 6012.
How returns for president shall be made, § 6011.
Penalty for presidential elector failing to attend and vote, § 6013.
Primary elections.
See "Primary Elections."
Qualifications of voters, §§ 5937, 5940.
Recorders' courts.
Elections to establish recorders' courts, § 1608.
Registrars, §§ 5928-5935.
Appointment, § 5928.
Compensation, § 5932.
Names to be published, § 5929.
Qualifications. § 5928.
Removal, § 5931.
Vacancies, how filled, § 5930.
Registration, §§ 5940-5968(f).
Absent voters.
See within this title "Absent Voters."
New registration of voters or revision of registration books; how made, § 5935.
Oath and duty of registrar, § 5947.
Qualification as to residence for voters; oath to be taken, § 5940.
Time when registration books shall be opened and closed, § 5947.
Result.
Clerk of superior court to send statement of votes to secretary of state in general election, § 5990.
County board of elections to declare results, § 5986.
Presidential electors, § 6012.
Results certified to the secretary of state; certificate of election issued, § 5997.
State board to prepare abstracts and declare results of elections, § 5996.
Returns, §§ 5984-5998.
Board to prepare abstracts and declare results of elections, § 5996.
Chairman of county board of elections to furnish county officers certificate of election, § 5992.
Clerk of superior court to send statement of votes to secretary of state in general election, § 5990.
County board of elections to canvass returns and declare results, § 5986.
County elections board to prepare duplicate abstracts to be sent to state board of elections; penalty, § 5989.
How precinct returns are to be made and canvassed, § 5985.
Meeting of state board of elections to canvass returns of a special election for congressmen, § 5995.
Meeting of state board of elections to canvass returns of the election, § 5994.
Preparation of original abstracts; where filed, § 5988.

ELECTIONS—Cont'd.
Returns—Cont'd.
Results certified to the secretary of state; certificate of election issued, § 5997.
Secretary of state to record abstracts, § 5998.
State board of elections to canvass returns for higher offices, § 5993.
What returns placed on same abstract, § 5987.
Who declared elected by county board; proclamation of result, § 5991.
Secretary of state.
Clerk of superior court to send statement of votes to secretary of state in general election, § 5990.
Results certified to the secretary of state; certificate of election issued, § 5997.
Secretary of state to record abstracts, § 5998.
State board of elections, §§ 5921-5923.
Appointment, § 5921.
Duties of the state board of elections, § 5923.
Meetings of board, § 5922.
Pay, § 5922.
Returns, §§ 5984-5998.
Board to prepare abstracts and declare results of elections, § 5996.
Chairman of county board of elections to furnish county officers certificate of election, § 5992.
Clerk of superior court to send statement of votes to secretary of state in general election, § 5990.
County board of elections to canvass returns and declare results, § 5986.
County elections board to prepare duplicate abstracts to be sent to state board of elections; penalty, § 5989.
How precinct returns are to be made and canvassed, § 5985.
Meeting of state board of elections to canvass returns of a special election for congressmen, § 5995.
Meeting of state board of election to canvass returns of the election, § 5994.
Preparation of original abstracts; where filed, § 5988.
Results certified to the secretary of state; certificate of election issued, § 5997.
Secretary of state to record abstracts, § 5998.
State board of elections to canvass returns for higher offices, § 5993.
What returns placed on same abstract, § 5987.
Who declared elected by county board; proclamation of result, § 5991.
Term of office, § 5921.
Vacancies, § 5922.
Tie.
How tie broken, § 5999.

ELECTRICIANS.
Licenses, § 7880(86).

ELECTRICITY.
Electrical materials, devices, appliances and equipment, §§ 7251(jj)-7251(nn).
Acceptable listings as to safety of goods, § 7251(ll).
Identification marks required, § 7251(kk).

ELECTRICITY—Cont'd.
Electrical materials, devices, appliances and equipment—Cont'd.
Legal responsibility of proper installations unaffected, § 7251(mm).
Sale of electrical goods regulated, § 7251(jj).
Violation made misdemeanor, § 7251(nn).
Storage batteries, §§ 4335(f)-4335(l).

EMBALMERS.
Licenses, § 7880(38), 7880(44).

EMINENT DOMAIN.
Sanitary districts, § 7077(i).

EMPLOYMENT AGENTS.
Licenses, § 7880(85).

ENGINEERS.
Licenses, § 7880(38).

ESCAPE.
Arrest.
Arrest of escaped persons from penal institutions, § 1349(a).
Penalty for escaping or assisting in, § 7748(v).

EUGENICS BOARD.
See "Insane Persons and Incompetents."

EVIDENCE.
Reporter.
Transcripts by reporter competent as evidence, § 1461(5)f.

EXCHANGE OF PROPERTY.
Income tax, § 7880(138).

EXECUTIONS.
See "Judicial Sales."
Claim and delivery, § 840.
Stay of execution.
Justices of the peace.
Nature of undertaking, § 1526.

EXECUTORS AND ADMINISTRATORS.
Accounts.
Clerk may compel account, § 106.
Settlement.
See within this title, "Settlement."
Actions.
Action by and against representatives, § 160.
Death by wrongful act, § 160.
Assets.
Payment to clerk of sums not exceeding $300 due and owing intestates, § 65(a).
Recovery in death by wrongful act not assets, § 160.
Clerk.
Clerk may compel account, § 106.
Payment to clerk of sums not exceeding $300 due and owing intestates, § 65(a).
Collectors.
Appointment of collectors, § 24.
Death by wrongful act, § 160.
Dying declarations, § 160.
Inheritance taxes.
See "Inheritance Taxes."
Inventory.
Compelling inventory, § 49.
Mortgages and deeds of trust.
Representative succeeds on death of mortgagee or trustee in deeds of trust, § 2578.

EXECUTORS AND ADMINISTRATORS—Cont'd.
Notice.
Notice of sale as on execution, § 84.
Power to renew obligation, § 176(a).
Renewal of obligation.
No personal liability, § 176(a).
Power to renew obligation, § 176(a).
Sales of real property.
Notice of sale as on execution, § 84.
Settlement.
Representative must settle after two years, § 150.

EXEMPTIONS.
Cosmetics, § 5259(22).

EXPRESS COMPANIES.
Taxation, §§ 7880(113), 7971(66).

FALSE PRETENSES AND CHEATS, § 4283(a).

FEES.
Clerks of court.
See "Clerks of Court."
Cosmetics, § 5259(21).
Judgments and decrees, § 615(a).
Optometry.
Annual fees, § 6696.
Collection of fees by suit, § 6696.
Failure to pay, § 6696.
Register of deeds.
Local modification as to fees of registers of deeds, § 3907.
Sheriffs, § 3908.
Witness' fees.
See "Witnesses."

FENCES AND STOCK LAW.
Fowls.
Depredations of domestic fowls in certain counties, § 1864.

FERTILIZERS.
Analyses.
Chemical analyses, § 4689(11).
Chlorine content, § 4689(13).
Commercial fertilizers, § 4690(a).
Certification of fertilizer laboratories, § 4690(a).
Commercial value, § 4689(14).
Commissioner of agriculture, § 4689(2).
Criminal law, §§ 4689(18), 4689(23), 4689(24).
Deception and fraud, § 4689(18).
Definitions, § 4689(3).
Enforcing official, § 4689(2).
Fillers, § 4689(16).
Fraud and deceit, § 4689(18).
High grade, § 4689(6).
Inspection, § 4689(8).
Liability for deficiency or damage, § 4689(9).
Marking, § 4689(5).
Misdemeanors, § 4689(23).
North Carolina fertilizer law, §§ 4689(1)-4689(24).
Penalties and forfeitures.
Penalties for unauthorized sale, sale without tax tags, and misuse of tax tags, § 4689(24).
Plant food.
Materials containing unavailable plant food, § 4689(17).
Minimum plant food content, § 4689(15).
Plant food deficiency, § 4689(12).

FERTILIZERS—Cont'd.
Publications, § 4689(21).
Registration, § 4689(4).
Regulations for enforcement of law, § 4689(22).
Reports of shipments, § 4689(20).
Sale.
Penalties for unauthorized sale, sale without tax tags, and misuse of tax tags, § 4689(24).
Sales of materials to consumers, § 4689(19).
Samples.
Chemical analyses, § 4689(11).
Official sample, § 4689(9).
Samples by purchaser or consumer, § 4689(10).
Taxation.
Tonnage tax, § 4689(7).
Title of act, § 4689(1).
Tonnage tax, § 4689(7).
Use of the term "high grade," § 4689(6).

FIRE INSURANCE.
Foreign companies.
Deposits by foreign companies, § 6442.
Amount and nature of deposits required, § 6442.
Husband and wife.
Policy issued to husband or wife on joint property, § 6438.
Policy, § 6438.
Notice, umpire, § 6438.
Policy issued to husband or wife on joint property, § 6438.
Size of policy, § 6438.
Statement and blanks, § 6438.

FISH AND FISHERIES, §§ 1889-2078(ee).
Commercial fishing, § 1970.
General regulations, § 1970.
Local regulations, § 2015.
Onslow county, § 2066(a).
Roanoke river, § 2015.
Commissioners of inland fisheries.
New office created, § 2141(j)1.
Office abolished, § 2141(j)1.
Licenses.
Dealers.
Collection, § 1893.
License tax on dealers and packers, § 1892.
Purchase tax on dealers, § 1893.
Schedule, § 1893.
Licenses for the artificial propagation of fish, § 2078(ee).
Licenses for various appliances and their users, § 1891.
License tax on dealers and packers, § 1892.
Non-resident state license, § 2078(r).
Purse seines or shirred nets, § 1890.
Schedule, § 1891.
Trawl boats, § 1893(a).
Oysters.
See "Oysters."
Purse seines or shirred nets.
Tax, § 1890.
Shellfish.
Leases of bottoms.
Term and rental, § 1908.
Sunday fishing, § 1970.

FOREIGN CORPORATIONS.
Fire insurance.
See "Fire Insurance."

FOREIGN CORPORATIONS—Cont'd.
Franchise tax, § 7880(119).
Income tax, §§ 7880(128), 7880(129).
Taxation.
Foreign building and loan associations, § 7971(61).
Foreign corporations not exempt, § 7971(87).
Franchise tax, § 7880(119).
Law applicable to foreign corporations, § 7880(178).

FORESTS.
See "Geological Survey and Forests."
State forests.
See "State Forests."

FRANCHISE TAX.
See "Taxation."

FRATERNAL ORDERS AND SOCIETIES.
Service of process, § 483.

FRAUD AND DECEIT.
Fertilizers, § 4689(18).

FRAUDULENT AND VOLUNTARY CONVEYANCES.
Bulk sales.
Sales in bulk presumed fraudulent, § 1013.

GAME LAWS.
See "Fish and Fisheries."
County game commission.
Powers of county game commission, § 2141(u).
Dealers, §§ 2141(ccc)-2141(eee).
Department of conservation and development.
Protection of public hunting grounds by department of conservation and development, § 2141(jj)1.
Foxes.
No closed season on foxes in certain counties, § 2135(a).
Hunting upon another's lands.
Consent in writing, § 2141(jj)2.
Licenses.
Amount of license, § 2141(aaa).
Applicants must be residents, § 2141(eee).
Duplicate license for each employee of dealer, $10 each, § 2141(eee).
License to be good only in county of residence, § 2141(aaa).
Payment to state treasurer of license fees, § 2141(bb).
Permits may be issued to non-resident dealers, § 2141(ddd).
What counties may levy tax, § 2141(ccc).
Local by counties, § 2135(a).
Open seasons, § 2141(ii).
State forests.
License fees for hunting and fishing on government-owned property unaffected, § 6126(c).
State game warden.
New office created, § 2141(j)1.
Office abolished, § 2141(j)1.

GAMING, § 4428.

GASOLINE.
Division of inspection transferred to revenue department, § 4870(1).

GASOLINE—Cont'd.
Sale of automobile fuels, §§ 4870(f)-4870(n).
Aiding and assisting in violation of article prohibited, § 4870(l).
Imitation of standard equipment prohibited, § 4870(i).
Inspection duties devolve upon revenue department, § 4870(f).
Juggling trade names, etc., prohibited, § 4870(j).
Mixing different brands for sale under standard trade name prohibited, § 4870(k).
Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited, § 4870(g).
Sale of fuels, etc., different from advertised name prohibited, § 4870(h).
Valid parts of article upheld, § 4870(n).
Violation made misdemeanor, § 4870(m).
Taxation, §§ 2613(i12)-2613(i17).
Actions for tax, § 2613(i12).
Auditing books of licensed distributors, § 2613(i12)a.
Boats and vehicles transporting motor fuels must register, § 2613(i12)c.
Double liability, § 2613(i12).
Forwarding of information to other states, § 2613(i17).
Fuels purchased for farm tractors, motor boats and manufacturing processes entitled to rebates, § 2613(i15).
License constitutes distributor trust officer of state for collection of tax, § 2613(i12)b.
Rebates, § 2613(i15).
Reports of carriers, § 2613(i16).

GENERAL ASSEMBLY.
Compensation of employees of general assembly; mileage, § 3857(a).
Repeal of laws, § 3857(b).
Consolidation, annexation and joint administration of counties, §§ 1382(11), 1382(19).
Enrollment of acts, § 6108.
Lobbying.
See "Lobbying."

GENERAL COUNTY COURTS, §§ 1608(f)-1608(cc).
See "Recorders' Courts."
Appeal and error.
Appeals to superior court in civil actions, § 1608(cc).
Judgment, § 1608(cc).
Record, § 1608(cc).
Time, § 1608(cc).
Appeal to supreme court, § 1608(cc).
Establishment authorized; official entitlement; jurisdiction, § 1608(f).
Jurisdiction, § 1608(f).
Procedure in civil actions, § 1608(t).
Return of process, § 1608(t).
Title, § 1608(f).

GEOLOGICAL SURVEY AND FORESTS.
Corporations for protection and development of forests, § 6140(c)-6140(s).
Appeal by corporations to governor, § 6140(h).
Application of corporate income, § 6140(r).
Corporation may not sell or convey without consent of director, or pay higher interest rate than 6%, § 6140(o).

GEOLOGICAL SURVEY AND FORESTS—Cont'd.
Corporations for protection and development of forests—Cont'd.
Cutting and sale of timber, § 6140(n).
Director of department of conservation and development, §§ 6140(f), 6140(g), 6140(o), 6140(q).
Directors, § 6140(e).
Director to approve development of forests, § 6140(q).
Dissolution of corporation, § 6140(m).
Duties of supervision by director of department of conservation and development, § 6140(f).
Earnings above dividend requirements payable to state, § 6140(l).
Issuance of securities prohibited, § 6140(j).
Limitation on bounties to stockholders, § 6140(k).
Limitations as to dividends, §§ 6140(c), 6140(i).
Manner of organizing, § 6140(d).
Powers of director, § 6140(g).
Power to borrow money limited, § 6140(p).
Private limited dividend corporations may be thus formed, § 6140(c).
Reorganization of corporations, § 6140(s).
State forests.
See "State Forests."

GOVERNOR.
Parole.
See "Pardon."

GRAND JURY.
Counties.
Grand juries in certain counties, § 2334.

GRANTS.
See "Public Lands."

GUARDIAN AND WARD.
Absent persons.
See within this title, "Guardian of Estates of Missing Persons."
Accounting.
Procedure to compel accounting, § 2187.
Guardian of estates of missing persons.
Appointment, § 2202(a).
Discharge of guardian upon return of missing person, § 2202(f).
General laws applicable, § 2202(d).
Guardian not liable except for misconduct, § 2202(g).
Jurisdiction, § 2202(b).
Other managerial powers conferred, § 2202(e).
Powers and duties; bond, § 2202(c).
Missing persons.
See within this title, "Guardian of Estates of Missing Persons."
Veterans' guardianship act, §§ 2202(10)-2202(13).
Guardian's accounts to be filed, § 2202(10).
Hearing on accounts, § 2202(10).
Investment of funds, § 2202(13).

GYPSIES.
Licenses, § 7880(55).

HAWKERS AND PEDDLERS.
Licenses, § 7880(51).

HEALTH.
Cheese factories.
See within this title, "Ice Cream Plants, Creameries, and Cheese Factories."
Creameries.
See within this title, "Ice Cream Plants, Creameries, and Cheese Factories."
Dairy.
Misbranding milk or cream prohibited, § 7251(w)5.
Purchase of containers regulated, § 7251(w)2.
Regulation of use of milk containers, § 7251(w)1.
Supervision of dairy products by department of agriculture, § 7251(w)4.
Violation made misdemeanor, § 7251(w)3.
Electrical materials, devices, appliances and equipment.
See "Electricity."
Housing law.
See "State Housing Law."
Ice cream plants, creameries, and cheese factories, §§ 7251(a)-7251(i).
Animals, § 7251(a).
Cleanliness and sanitation enjoined, § 7251(a).
Inspection fees; wholesalers; retailers and cheese factories, § 7251(i).
Purity of products, § 7251(c).
Standards of purity and sanitation, § 7251(h).
Wash rooms and toilets, living and sleeping rooms, § 7251(a).
Manufacture, etc., of bedding, §§ 7251(hh)1-7251(hh)12.
Blind persons exempt from tax, § 7251(hh)12.
Defacing tag forbidden, § 7251(hh)4.
Definitions, § 7251(hh)1.
Effective date, § 7251(hh)11.
Enforcement, § 7251(hh)6.
Enforcement funds, § 7251(hh)5.
Licenses, § 7251(hh)7.
Penalty, § 7251(hh)10.
Sterilization, § 7251(hh)2.
Swearing out warrants, § 7251(hh)9.
Tagging, § 7251(hh)3.
Unit of offense, § 7251(hh)8.
Mattress.
See within this title, "Manufacture, etc., of Bedding."
Milk.
Misbranding milk or cream prohibited, § 7251(w)5.
Purchase of containers regulated, § 7251(w)2.
Regulation of use of milk containers, § 7251(w)1.
Supervision of dairy products by department of agriculture, § 7251(w)4.
Violation made misdemeanor, § 7251(w)3.
Prisons and prisoners.
Sanitary and health conditions supervised by board of health, § 7748(r).
Sanitary districts, §§ 7077(g)-7077(t).
Additional bonds, § 7077(p).
Corporate powers, § 7077(g).
Eminent domain, § 7077(i).
Powers, § 7077(g).
Power to condemn property, § 7077(i).
Service charges and rates, § 7077(t).
State housing law.
See "State Housing Law."

HISTORICAL COMMISSION.
Legislative reference library.
Legislative reference librarian transferred to attorney-general's department, § 6150(a).

HOMICIDE.
Manslaughter.
Punishment for manslaughter, § 4201.

HOSPITALS AND ASYLUMS.
See "Hospitals for the Insane."
Funds of deceased inmates.
Applied to debts due by such inmates to such hospitals or institutions, § 7284(8).

HOSPITALS FOR THE INSANE, § 6153(a).
Idiots not admitted, § 6185.
Morganton for white insane, § 6153(a).
Raleigh for white insane, § 6153(a).

HUNTING.
See "Game Laws."

HUSBAND AND WIFE.
Fire insurance.
Policy issued to husband or wife on joint property, § 6438.
Surety to keep the peace.
Wife may testify in applications for peace warrants, § 1802(a).
Witnesses.
Husband and wife as witnesses in criminal actions, § 1802.
Wife may testify in applications for peace warrants, § 1802(a).

ICE CREAM.
Licenses.
Manufacturers of ice cream, § 7880(92).

ICE CREAM PLANTS.
See "Health."

IMPRISONMENT FOR DEBT.
Discharge of persons imprisoned for nonpayment of costs in criminal cases, § 1632.

INCOME TAX, §§ 7880(124)-7880(155).
Additional taxes, § 7880(153).
Appeal, § 7880(155).
Collection, §§ 7880(150)-7880(155).
Commissioner of revenue.
Revision by commissioner of revenue, § 7880(155).
Corporations, §§ 7880(128)-7880(130).
Domestic corporations, § 7880(128).
Foreign corporations, §§ 7880(128), 7880(129).
In general, § 7880(128).
Public service corporations, § 7880(130).
Railroads, § 7880(130).
Correction and changes, § 7880(152).
Deductions, § 7880(140).
See within this title, "Exemptions."
Items not deductible, § 7880(141).
What deductions allowed, § 7880(140).
Definition, § 7880(126).
Determination of gain or loss, § 7880(137).
Enforcement of tax, §§ 7880(150)-7880(155).
Examination of returns, § 7880(151).
Exchange of property, § 7880(138).

INCOME TAX—Cont'd.
Exemptions.
See within this title, "Deductions."
Conditional and other exemptions, §§ 7880-(132), 7880(142).
Fiduciaries, §§ 7880(133), 7880(145).
Foreign corporations, §§ 7880(128), 7880(129).
Gain or loss.
Determination of gain or loss, § 7880(137).
Gross income defined, § 7880(135).
Imposition of tax, §§ 7880(127)-7880(149).
Individuals, § 7880(127).
Information at the source, § 7880(146).
Inventory, § 7880(139).
Municipal corporations.
Municipalities not to levy income and inheritance tax, § 7880(175).
Net income.
Basis of return of net income, § 7880(136).
Definition, § 7880(134).
Nonresidents.
Credit for taxes in case of taxpayers other than residents of the state, § 7880(143).
Payment.
Time and place of payment of tax, § 7880(150).
Penalties, § 7880(154).
Public service corporations, § 7880(130).
Purpose, § 7880(125).
Railroads, § 7880(130).
Returns.
Blank forms to be kept on file with the register of deeds and deputy commissioners, § 7880(148).
Changes, § 7880(152).
Correction, § 7880(152).
Examination of returns, § 7880(151).
Failure to file returns, § 7880(149).
Fiduciary returns, § 7880(145).
Information at the source, § 7880(146).
Supplementary returns, § 7880(149).
Time and place of filing returns, § 7880(147).
Who to make returns, § 7880(144).
Short title, § 7880(124).
Taxable year, § 7880(131).
Taxes.
Credit for taxes in case of taxpayers other than residents of the state, § 7880(143).
Time and place of payment of tax, § 7880(150).
Title of act, § 7880(124).
Trusts and trustees, §§ 7880(133), 7880(145).

INCOMPETENTS.
See "Insane Persons and Incompetents."

INDIANS.
Cherokee Indians admitted to Stonewall Jackson Training School, § 7328(f).

INDICTMENTS, INFORMATIONS AND PRESENTMENTS.
Bastardy, § 276(d).

INFANTS.
Adoption of infants.
See "Adoption."
Service of process, § 483.
Tax sales, § 8034(j).

INHERITANCE TAXES, §§ 7880(1)-7880(29)a.
Clerk of court, § 7880(8).
Duties of the clerks of the superior court, § 7880(22).
Commissioner of revenue.
Commissioner of revenue may order executor, etc., to file account, etc., § 7880(26).
Supervision by commissioner of revenue, § 7880(24).
Deductions, § 7880(7).
Discharge from liability, § 7880(14).
Discount.
Discount for payment in six months, § 7880(15).
Enforcement.
Additional remedies for enforcement of tax, § 7880(29)a.
Estate tax, § 7880(6).
Executors and administrators.
Commissioner of revenue may order executor, etc., to file account, etc., § 7880(26).
Executor defined, § 7880(29).
Executor, etc., shall deduct tax, § 7880(17).
Failure of administrator, executor, or trustee to pay tax, § 7880(27).
Information by administrator and executor, § 7880(23).
Exemptions, §§ 7880(2), 7880(3).
General provisions, § 7880(1).
Interest.
Interest after twelve months, § 7880(15).
Legacy for life.
Tax to be retained upon whole amount, § 7880(18).
Legacy upon real estate.
Heir or devisee to deduct and pay to executor, § 7880(19).
Life insurance.
Life insurance policies, § 7880(11).
Municipal corporations.
Municipalities not to levy income and inheritance tax, § 7880(175).
Non-resident decedents.
Computation of tax on non-resident decedents, § 7880(20).
Payment.
Failure of administrator, executor, or trustee to pay tax, § 7880(27).
Payment not made within two years, §§ 7880(15), 7880(16).
Penalty.
Penalty after two years, § 7880(15).
Rate of tax, §§ 7880(3)-7880(5).
Class A, § 7880(3).
Class B, § 7880(4).
Class C, § 7880(5).
Recurring taxes, § 7880(12).
Repayment.
Proportion of tax to be repaid upon certain conditions, § 7880(25).
Revenue Act of 1933, §§ 7880(1)-7880(29)a.
Safe deposits.
Regulations governing access to safe deposits of a decedent, § 7880(23½).
Sheriffs.
Collection to be made by sheriff if not paid in two years, § 7880(16).
INHERITANCE TAXES—Cont'd.
Stock and stockholders.
Commissioner of revenue to furnish blanks and require reports of value of shares of stock, § 7880(10).
Tax to be paid on shares of stock before transferred, and penalty for violation, § 7880(9).
Uniform valuation, § 7880(28).

INNS AND INNKEEPERS.
Licenses, § 7880(57).

INQUISITION OF LUNACY, § 2285.

INSANE PERSONS AND INCOMPETENTS.
Appeal and error.
Sterilization, §§ 2304(y), 2304(z).
Committee, § 2285.
Corrupt admissions.
Civil liability for corrupt admissions, § 2304(ii).
Drug addicts.
Hospitals and sanatoriums may restrain and treat alcohol and drug addicts, § 2304(gg).
Drunkenness.
See within this title, "Inebriates."
Eugenics board.
See within this title, "Sterilization of Persons Mentally Defective."
Guardianship, § 2285.
Hospitals for the insane.
See "Hospitals for the Insane."
Inebriates.
Department for inebriates, § 2304(f).
Hospitals and sanatoriums may restrain and treat alcohol and drug addicts, § 2304(gg).
Inquisition of lunacy, § 2285.
Payment into court.
Payment of money for indigent children and persons non compos mentis, § 962.
Restraining devices.
Use of restraining devices limited, § 2304(hh).
Service of process, § 483.
Sterilization of persons mentally defective, §§ 2304(m)-2304(ff).
Appeal to superior court, § 2304(y).
Appeal to supreme court, § 2304(aa).
Civil or criminal liability of parties limited, § 2304(bb).
Consenting to operation, § 2304(x).
Definitions, § 2304(ee).
Discharge of patient from institution, § 2304(ff).
Eugenics board, §§ 2304(q)-2304(y).
Appeal to superior court, § 2304(y).
Appeal to supreme court, § 2304(aa).
Board may deny or approve petition, § 2304(w).
Consenting to operation, § 2304(x).
Consideration of matter by board, § 2304(v).
Copy of petition served on patient, § 2304(u).
Created, § 2304(q).
Orders may be sent parties by registered mail, § 2304(x).
Proceedings before board, § 2304(t).
Quarterly meetings, § 2304(r).
Secretary of board and duties, § 2304(s).
Necessary medical treatment unaffected by article, § 2304(cc).

INSANE PERSONS AND INCOMPETENTS —Cont'd.
Sterilization of persons mentally defective—Cont'd.
Operations on mental defectives not in institutions, § 2304(n).
Permanent records of proceedings before board, § 2304(dd).
Prosecutors, § 2304(p).
Restrictions on operations, § 2304(o).
State institutions authorized to sterilize mental defectives, § 2304(m).
Valid parts of act upheld, § 2304(ee).

INSECTICIDES AND FUNGICIDES, § 4703(h).
Statement.
Statement mailed, § 4703(h).
What shown, § 4703(h).

INSPECTION.
Fertilizers, § 4689(8).

INSURANCE.
Assessment companies, §§ 6358-6360.
"Assessment plan" printed on application and policy; waiver by commissioner, § 6358.
Deposits and advance assessments required, § 6360.
Mutual burial or assessment insurance associations.
Must pay death benefits in coin instead of services, § 6476(z).
Automobile liability insurance.
Regulation of automobile liability insurance rates, §§ 2621(146)-2621(149).
Fire insurance.
See "Fire Insurance."
Franchise tax, § 7880(116).
Mutual burial or assessment insurance associations.
Must pay death benefits in coin instead of services, § 6476(z).
Mutual insurance.
See within this title, "Assessment Companies."
Mutual burial or assessment insurance associations, § 6476(z).
Taxation, § 7880(116).

INTOXICATING LIQUORS.
Beer of not more than 3.2% alcoholic content, §§ 3411(dd)-3411(mm).
See within this title, "Beverage Control Act of 1933."
County license fee of $25, § 3411(gg).
Laws prohibiting advertisement of beer and light wines repealed, § 3411(mm).
Revenue department to make regulations; revenue to general fund, § 3411(ff).
Sale in places used expressly for purpose prohibited, § 3411(ii).
Sale of beer and light wines in state allowed, § 3411(dd).
Sale to minors under 18 made misdemeanor, § 3411(kk).
Sale without license made misdemeanor, § 3411(jj).
Shipment into state of beer and light wines permitted, § 3411(ll).

INTOXICATING LIQUORS—Cont'd.
Beer of not more than 3.2% alcoholic content—Cont'd.
Tax for municipalities, $10, § 3411(hh).
Tax $2 per barrel; on bottles, 2c., § 3411(ee).
Beverage Control Act of 1933, §§ 3411(1)-3411(28).
Additional tax, § 3411(18).
Administrative provisions, § 3411(24).
Amount of retail license tax, § 3411(11).
Appropriation of 3% of revenue for administration, § 3411(26).
Books, records, reports, § 3411(21).
Bottlers' license, § 3411(6).
Character of license, § 3411(10).
Conflicting laws repealed, § 3411(28).
County license to sell at retail, § 3411(13).
Definitions, § 3411(2).
Enforcement by commissioner of revenue of tax provisions, § 3411(25).
Expiration of licenses, § 3411(15).
Issuance of license mandatory, § 3411(14).
License shall be posted, § 3411(23).
Manufacture, § 3411(5).
Payment of tax by retailers, § 3411(20).
Railroad trains, § 3411(8).
Regulations, § 3411(3).
Revocation of license, § 3411(16).
Salesmen's license, § 3411(9).
School or college grounds, § 3411(22).
Schools and churches protected, § 3411(14).
State license, § 3411(17).
Tax payable by wholesale distributors, § 3411(19).
Title, § 3411(1).
Transportation, § 3411(4).
Use of stamps, etc., § 3411(25).
Violation of cited act made misdemeanor, § 3411(27).
Wholesalers' license, § 3411(7).
Who may sell at retail, § 3411(12).
Licenses.
See within this title, "Beer of Not More than 3.2% Alcoholic Content"; "Beverage Control Act of 1933."
Rewards.
Sections 3401 and 3402, repealed, as to still rewards; counties excepted, § 3402(a).
Seizure and forfeiture of property, § 3402(a).
Taxation.
See within this title, "Beer of Not More than 3.2% Alcoholic Content"; "Beverage Control Act of 1933."

INTOXICATION, § 4458.

INVESTMENTS.
North Carolina state thrift society, § 1125(k).

JAILS.
Counties and county commissioners.
Formation of district jail by contiguous counties, § 1317(a).

JOINT TENANTS AND TENANTS IN COMMON.
Tax sales, § 8034(j).

JUDGMENTS AND DECREES.
Fees, § 615(a).
Municipal, state and county securities.
Local units authorized to accept their bonds in payment of judgments, § 1334(76)a.

JUDICIAL DISTRICTS.
See "Courts."

JUDICIAL SALES, §§ 687(a)-690(a).
Advance bid.
Reopening judicial sales, etc., on advanced bid, § 2591.
Claim and delivery.
Proceedings, § 840.
Property claimed by third person, § 840.
Commissioner of sale to account in sixty days, § 765.
Immediate advertisement, § 687(a).
Minimum notice required in all sales, § 687(b).
Mortgage sales.
See "Mortgages and Deeds of Trust."
Notice of sale and resale, § 687(a).
Partition sales of real estate.
Notice of partition sale, § 3240.
Sales on other days validated, § 690(a).
Validation, §§ 687(c), 690(a).

JURISDICTION.
Bastardy, § 276(f).
General county courts, § 1608(f).
Recorders' courts.
Civil jurisdiction may be conferred, § 1589.

JURY.
Challenges.
Causes of challenge to juror drawn from box, § 2326.
Chiropractic.
Exempt from jury service, § 6721(a).
Criminal law.
Waiving jury trial, § 4636(a).
Drawing.
Manner of drawing panel for term from box, § 2314.
Recorders' courts, §§ 1572-1572(b).

JUSTICES OF THE PEACE.
Counties and county commissioners.
Consolidation, annexation and joint administration of counties, §§ 1382(10), 1382(16).
Stay of execution.
Nature of undertaking, § 1526.

KIDNAPPING AND ABDUCTION.
Kidnapping, § 4221(a).

LABOR.
Commissioner of labor, § 7310(b).
Hours of work for women in industry, § 6554(a).
Women.
Hours of work for women in industry, § 6554(a).

LANDLORD AND TENANT.
Agricultural tenancies.
Landlord's lien on crops for rents, advances, etc., enforcement, § 2355.
Ejectment.
See within this title, "Summary Ejectment."
Eviction.
Summary ejectment, §§ 2366, 2373.

LANDLORD AND TENANT—Cont'd.
Summary ejectment.
Refusal to perform contract ground for dispossession, § 2366.
Undertaking on appeal; when to be increased, § 2373.

LEGISLATIVE REFERENCE LIBRARY.
Transferred to attorney-general's department, § 6150(a).

LIABILITY INSURANCE.
Regulation of automobile liability insurance rates, §§ 2621(146)-2621(149).

LIBRARIES.
Counties.
See within this title, "Public Libraries."
Municipal corporations.
See within this title, "Public Libraries."
Public libraries, §§ 2694-2702(b).
Annual report of trustees, § 2697.
Combined counties, § 2702(b).
Contract with existing libraries, § 2702.
Existing libraries, § 2702.
Librarians now acting, § 2696(b).
Libraries established upon petition and popular vote, § 2694.
Library certification board, § 2696(a).
Powers and duties of trustees, § 2696.
Temporary certificates, § 2696(b).
Title to property vested in the city, town or county, § 2699.

LICENSES.
Adding machines, § 7880(49).
Advertisements.
Outdoor advertising, § 7880(83).
Amusements, §§ 7880(31)-7880(37).
Amusement parks, § 7880(31).
Carnival companies, § 7880(36).
Certain exhibitions, § 7880(37).
Circuses, § 7880(35).
Dog shows, § 7880(35).
Exemption from license tax, § 7880(37).
Menageries, § 7880(35).
Merry-go-rounds, § 7880(62).
Moving pictures, §§ 7880(33), 7880(34).
Pony shows, § 7880(35).
Traveling theatrical companies, § 7880(32).
Wild west shows, § 7880(35).
Architects, § 7880(38).
Attorney and client, § 7880(38).
Auctions and auctioneers.
Real estate auction sales, § 7880(41).
Automobiles.
Automobiles and motorcycle dealers and service stations, § 7880(84).
Bagatelle tables, § 7880(62).
Banks and banking.
Morris plan or industrial banks, § 7880(89).
Barbers.
Barber shops, § 7880(71).
Bicycles.
Bicycle dealers, § 7880(47).
Billiard tables, § 7880(60).
Bills, notes and checks.
Installment paper dealers, § 7880(80).
Bottlers, § 7880(65).
Bowling alleys, § 7880(60).
Branch stores, § 7880(93).

LICENSES—Cont'd.
Brokers.
Installment paper dealers, § 7880(80).
Loan agencies or brokers, § 7880(83½).
Security dealers, § 7880(63).
Building and loan associations, § 7880(69).
Cap pistols, § 7880(78).
Carnival companies, § 7880(36).
Cash registers, § 7880(49).
Chain stores, § 7880(93).
Change of name.
Effect of change in name of firm, § 7880(101).
Change of place of business.
License may be changed when place of business changed, § 7880(102).
Chiropodists, § 7880(38).
Chiropractic, § 7880(38).
Annual fee for renewal of license, § 6726.
Extent and limitation of license, § 6722.
Circuses. § 7880(35).
Civil engineer, § 7880(38).
Clerk.
Sheriff and city clerk to report, § 7880(108).
Coal dealers, § 7880(42).
Coke dealers, § 7880(42).
Collecting agencies, § 7880(43).
Commissioner of revenue.
Duties of commissioner of revenue, § 7880(106).
Manner of obtaining license from the commissioner of revenue, § 7880(99).
Construction companies, § 7880(53).
Contractors, § 7880(53).
Plumbing and heating contractors, §§ 5168(ddd), 7880(86).
Cotton.
Cotton buyers, and sellers on commission, § 7880(64).
Cotton compresses, § 7880(59).
Dealers in horses and mules, § 7880(45).
Dentists, § 7880(38).
Revocation of license, § 6649.
Detectives, § 7880(39).
Dogs.
See "Dogs."
Drugs and druggists.
Application and examination for license, prerequisites, § 6658.
Electricians, § 7880(86).
Embalmers, §§ 7880(38), 7880(44).
Emergency revenue.
See "Taxation."
Emigrant and employment agents, § 7880(85).
Employment agents, § 7880(85).
Engaging in business without license, § 7880(98).
Each day's continuance in business without a state license a separate offense, § 7880(105).
Levy on business for tax, § 7880(104).
License to be procured before beginning business, § 7880(107).
Misdemeanor, § 7880(104).
Unlawful to engage in any taxable business without license, § 7880(98).
When license due and payable, § 7880(104).
Engineers, § 7880(38).
Exemptions, § 7880(37).
Property used in a licensed business not exempt from taxation, § 7880(103).
Fireworks, § 7880(78).
Fish and fisheries.
See "Fish and Fisheries."

LICENSES—Cont'd.
Fortune tellers, § 7880(55).
Game laws, § 2141(bb).
Amount of license, § 2141(aaa).
Applicants must be residents, § 2141(eee).
Duplicate license for each employee of dealer, $10 each, § 2141(eee).
License to be good only in county of residence, § 2141(aaa).
Permits may be issued to non-resident dealers, § 2141(ddd).
What counties may levy tax, § 2141(ccc).
Gypsies, § 7880(55).
Hawkers and peddlers, § 7880(51).
Hotels, § 7880(57).
Ice cream.
Manufacturers of ice cream, § 7880(92).
In general, § 7880(30).
Inns and innkeepers, § 7880(57).
Installment paper dealers, § 7880(80).
Intoxicating liquors.
See "Intoxicating Liquors."
Laundries, § 7880(82).
Lightning rod agents, § 7880(56).
Loan agencies, § 7880(83½).
Manner of obtaining, § 7880(99).
Marble yards, § 7880(91).
Marriage license, § 7880(90).
Mattress, § 7251(hh)1.
Mercantile agencies, § 7880(54).
Morris plan or industrial banks, § 7880(89).
Moving pictures, §§ 7880(33), 7880(34).
Admissions, § 7880(34).
Selling, leasing and distributing, § 7880(33).
Newsdealers on trains, § 7880(75).
Newspaper contests, § 7880(67).
Oils.
Persons, firms, or corporations selling certain oils, § 7880(68).
Optometry, § 6696.
Revocation of license, § 6696.
Osteopathy, § 7880(38).
Outdoor advertising, § 7880(83).
Oysters.
Licenses for oyster boats, § 1889.
Schedule, § 1889.
Packing houses, § 7880(66).
Patents.
Patent rights and formulas, § 7880(94).
Pawnbrokers, § 7880(48).
Peddlers, § 7880(51).
Photographers, § 7880(38).
Phrenologists, § 7880(46).
Physicians and surgeons, § 7880(38).
Bond may rescind license, § 6618.
Pianos, organs, victrolas, records, radios, accessories, § 7880(79).
Pilots.
Acting as pilot without license, § 6988.
Pistols, § 7880(77).
Plumbers, § 7880(86).
Pool tables, § 7880(60).
Population.
Census determined, § 7880(191).
Pressing clubs, dry cleaning plants, and hat blockers, § 7880(70).
Process tax, § 7880(88).
Professions, § 7880(38).
Railroads.
Newsdealers on trains, § 7880(75).
Real estate auction sales, § 7880(41).

LICENSES—Cont'd.
Refrigerating machines, § 7880(49).
Restaurants, § 7880(58).
Sales tax.
See "Taxation."
Seals and sealed instruments.
Tax on seals affixed by officers, § 7880(97).
Security dealers, § 7880(63).
Service stations.
Automobiles and motorcycle dealers and service stations, § 7880(84).
Sewing machines, § 7880(50).
Sheriffs.
Sheriff and city clerk to report, § 7880(108).
Shoeshine parlors, § 7880(72).
Slot locks, § 7880(61).
Slot machines, § 7880(61).
Soda fountains, soft drink stands, § 7880(76).
Soft drinks.
Manufacturers, producers, bottlers, and distributors of soft drinks, § 7880(65).
Soda fountains, soft drink stands, § 7880(76).
Summons and process.
Process tax, § 7880(88).
Taxes under the provision, § 7880(30).
Theaters and shows.
See within this title, "Amusements."
Tobacco.
Tobacco and cigarette retailers and jobbers, § 7880(81).
Tobacco warehouses, § 7880(73).
Tourist homes, § 7880(57½).
Trading stamps, § 7880(87).
Two or more businesses.
Persons, firms, and corporations engaged in more than one business to pay tax on each, § 7880(100).
Typewriters, § 7880(49).
Undertakers, §§ 7880(38), 7880(44).
Warehouses and warehousemen.
Tobacco warehouses, § 7880(73).
Washing machines, § 7880(49).
Weapons.
Dealers in pistols, etc., § 7880(77).

LIENS.
Agricultural liens for advances.
Short form of liens, § 2490.
Landlord and tenant.
Landlord's lien on crops for rents, advances, etc., enforcement, § 2355.
Taxation.
See "Taxation."

LIFE INSURANCE.
Inheritance taxes.
Life insurance policies, § 7880(11).

LIMITATION OF ACTIONS.
Bastardy.
Action must be commenced within three years after birth, § 276(c).
Limitations, other than real property, §§ 437(a), 442.
Mortgages and deeds of trust.
Actions to recover deficiency judgments limited to within one year of foreclosure, § 437(a).
Two-year limitation, § 442.
Usury, § 442.

LOBBYING, §§ 6116(d)-6116(k).
Application of law, § 6116(j).
Contingent fees prohibited, § 6116(f).
Counties, § 6116(j).
Definition, § 6116(d).
Detailed statement of expenses to be filed, § 6116(h).
Expenses, § 6116(h).
Going upon floor during session prohibited, § 6116(i).
Legislative docket for registration, § 6116(e).
Municipalities, § 6116(j).
Punishment for violation, § 6116(k).
Registration, § 6116(d).
Written authority to be filed, § 6116(g).

LOCAL GOVERNMENT ACT, §§ 2492(5)-2492(75).
Adjustment of indebtedness of units when refunding, § 2492(50)a.
Appointment of unit administrator of finance in event of default, § 2492(33).
Commission.
Creation of local government commission, § 2492(5).
County finance act.
County finance act applicable, § 2492(75).
County readjustment commission created, § 2492(63).
Executive committee.
Powers, § 2492(6).
Quorum, § 2492(6).
Funding and refunding of debts of local units other than counties, cities and towns, §§ 2492(72)-2492(75).
County finance act applicable, § 2492(75).
General law applicable, § 2492(73).
Local units, other than counties, cities and towns, authorized to fund outstanding debts, § 2492(72).
Taxes to pay new obligations authorized, § 2492(74).
Investment of unit sinking funds, § 2492(27).
Notes and bonds of units redeemable before maturity, § 2492(49).
Provisions in bond resolutions set out, § 2492(50)b.
Readjustment of indebtedness of counties and municipalities, §§ 2492(63)-2492(71).
Agreement as to readjustment tentative, § 2492(70).
Assistance to local units in readjustment plan; notice of hearing; findings as to ability to pay; negotiations with bondholders, § 2492(64).
Conference with creditors to agree upon readjustment, § 2492(65).
Consent of two-thirds of creditors, § 2492(65).
County readjustment commission created, § 2492(63).
Debt service levies reducible in proportion to terms of readjustment, § 2492(68).
Expense of investigation borne by units affected, § 2492(67).
Findings of commission and readjustments filed with secretary of state, § 2492(68).
If no election petition filed, then agreement may be put into effect, § 2492(70).
Investigation by courts into affairs of local unit, § 2492(66).

LOCAL GOVERNMENT ACT—Cont'd.
Readjustment of indebtedness of counties and municipalities—Cont'd.
Local units may borrow money to purchase their own bonds at discounts, § 2492(69).
Minority may seek redress in courts, § 2492(66).
Publication of proposed plan, § 2492(70).
R. F. C. loans authorized, § 2492(69).
Supplemental to existing laws, § 2492(71).
Tender of agreed adjustment to minority third of creditors, § 2492(66).
Sale of bonds and notes, § 2492(15).
Sinking fund.
Investment of unit sinking funds, § 2492(27).
Unit must levy sufficient taxes to provide for maturing obligations, § 2492(36).
Validation of certain funding and refunding bonds, § 2492(62).

LOCAL IMPROVEMENTS.
Municipal corporations, § 2717(b).

LOTTERIES, § 4428.

MANDAMUS.
Money demand, § 867.

MANICURIST.
See "Cosmetics."

MARRIAGE, §§ 2494, 2500(g).
Affidavit of groom as to physical condition when applying for marriage license, § 2500(g).
Capacity to marry, § 2494.
License, § 7880(90).

MASTER AND SERVANT.
Taxation.
Aiding and/or abetting officers, agents, or employee in violation of this act a misdemeanor, § 7880(162).
Each day's failure a separate offense, § 7880(163).
Officers, agents, and employees; misdemeanor failing to comply with tax law, § 7880(161).
Workmen's compensation act.
See "Workmen's Compensation Act."

MATTRESS.
See "Health."

MEDICINE.
See "Physicians and Surgeons."

MERCANTILE AGENCIES.
Licenses, § 7880(54).

MILK.
Health.
Misbranding milk or cream prohibited, § 7251(w)5.
Purchase of containers regulated, § 7251(w)2.
Regulation of use of milk containers, § 7251(w)1.
Supervision of dairy products by department of agriculture, § 7251(w)4.
Violation made misdemeanor, § 7251(w)3.

MILLS AND MILLDAMS.
Miller to grind according to turn, § 2532.
Public mills, § 2532.
Tolls regulated, § 2532.

MORTGAGES AND DEEDS OF TRUST.
Executors and administrators.
Representative succeeds on death of mortgagee or trustee in deeds of trust, § 2578.
Foreclosure.
See within this title, "Mortgage Sales."
Foreclosure of sale, §§ 687(a)-690(a).
Limitation of actions.
Actions to recover deficiency judgments limited to within one year of foreclosure, § 437(a).
Mortgage sales, §§ 2591-2593(f).
Advanced bid, § 2591.
Conflicting laws repealed; not applicable to tax suits, § 2593(e).
Deficiency judgments abolished where mortgage represents part of purchase price, § 2593(f).
Injunction of mortgage sales on equitable grounds, § 2593(b).
Ordering resales before confirmation, § 2593(c).
Receivers for property, § 2593(c).
Reopening judicial sales, etc., on advanced bid, § 2591.
Right of mortgagee to prove in deficiency suits reasonable value of property by way of defense, § 2593(d).
Tax foreclosures, § 2593(e).
Tax payments, § 2593(c).
Parties to action, § 2578.
Sales.
See within this title, "Mortgage Sales."
Trustee.
Clerk appoints successor to incompetent trustee, § 2583.
Representative succeeds on death of trustee, § 2578.

MOTION PICTURES.
See "Moving Pictures."

MOTOR BUSSES.
Application for franchise certificate, § 2613(l).
Carriers.
Sections 3536-3539, extended to motor busses used as common carriers, § 3539(a).

MOTOR CARRIERS.
See "Motor Busses."

MOTOR VEHICLES.
Carriers.
See "Motor Busses."
Consolidation of activities under the motor vehicle bureau, §§ 2621(127)-2621(145).
Abolishing inspection appropriation, § 2621-(144).
Adulteration of articles prohibited, § 2621-(130).
Amendment of laws, § 2621(145).
Analysis certificate admissible in evidence, § 2621(133).
Board to sample articles to be inspected, § 2621(131).
Compensation of members of new department, § 2621(143).
Deputy commissioner, § 2621(127).
Field force limited, § 2621(141).
Inspection duties of highway patrol, § 2621-(134).

MOTOR VEHICLES—Cont'd.
Consolidation of activities under the motor vehicle bureau—Cont'd.
Laboratory analysis, § 2621(132).
Laws amended, § 2621(145).
"Licensee" defined, § 2621(139).
Measuring equipment to be inspected, § 2621(140).
Minimum standards for articles inspected, § 2621(129).
Motor vehicle and inspection board created, § 2621(128).
Motor vehicle bureau set up in department of revenue, § 2621(127).
Penalty for failure to report or to pay taxes promptly, § 2621(137).
Power of commissioner of revenue to cancel license and surrender bond, § 2621(136).
Samples taken of bulk shipments and from retail distributors, § 2621(135).
The commissioner of revenue may estimate motor fuel received, § 2621(138).
Vehicles for hire regulated, § 2621(142).
Violation of act by distributors cause of revocation of license, § 2621(136).
Dealers.
Registration by manufacturers and dealers, § 2621(17).
Department of motor vehicles.
Commissioners, § 2621(3).
Duties of department and vehicle commissioner, § 2621(3).
Registration by manufacturers and dealers, § 2621(17).
Transfer of title or interest, § 2621(16).
Gasoline tax.
See "Gasoline."
Insurance rates.
See within this title, "Regulation of Automobile Liability Insurance Rates."
License.
See within this title, "Registration Fees."
Manufacturers.
Registration by manufacturers and dealers, § 2621(17).
Motor busses.
See "Motor Busses."
Motor vehicle bureau.
See within this title, "Consolidation of Activities under the Motor Vehicle Bureau."
Registration fees, § 2621(29).
Collection of delinquent taxes by duress, § 2621(31).
Effect on existing law; current license unaffected, § 2621(31)e.
Exempt from registration fees, § 2621(30).
License fee for semi-trailers towed by passenger cars, § 2621(29)a.
No other state license taxes imposed, § 2621(31)d.
Passenger vehicles, § 2621(29).
Property hauling vehicles, § 2621(29).
Quarterly payments, § 2621(31)b.
Schedule of rates, § 2621(29).
Semi-trailers, § 2621(29)a.
Taxes compensatory, § 2621(31)c.
Transfer of license, § 2621(31)a.
Regulation of automobile liability insurance rates, §§ 2621(146)-2621(149).
Adjustment of unreasonable rates, § 2621(148).
MOTOR VEHICLES—Cont'd.
Regulation of automobile liability insurance rates—Cont'd.
Approval by insurance commissioner of automobile liability insurance rates, § 2621(146).
Compliance with fixed rates mandatory, § 2621(147).
Refunds by mutuals and exchanges unaffected, § 2621(149).
Trailers and towed vehicles, § 2621(83).
Transfer.
Transfer of title or interest, § 2621(16).
Uniform act regulating operation of vehicles on highways.
Trailers and towed vehicles, § 2621(83).

MOVING PICTURES.
Licenses, §§ 7880(33), 7880(34).
Admissions, § 7880(34).
Selling, leasing and distributing, § 7880(33).

MUNICIPAL CORPORATIONS, §§ 2623-2959.
Charters.
Adoption of city charters, § 2847.
Manner of adoption, § 2847.
Petition filed, § 2847.
Different forms of municipal government.
See within this title, "Forms of Municipal Government."
Drains and sewers.
Authority to fix sewerage charges; lien thereof, § 2806(i).
Elections.
Application of law, and exceptions, § 2649.
Elections regulated, § 2649.
Finance act.
See within this title, "Municipal Finance Act."
Forms of municipal government, §§ 2868-2871(b).
Approval of contracts, § 2871(b).
City council, election and term of office, § 2868.
Salaries of mayor and council, § 2871.
Supervisory power of mayor, § 2871(a).
Income tax.
Municipalities not to levy income and inheritance tax, § 7880(175).
Inheritance tax.
Municipalities not to levy income and inheritance tax, § 7880(175).
Libraries.
See "Libraries."
Lighting.
Power to fix and enforce rates, § 2808.
Local government act.
See "Local Government Act."
Local improvements, § 2717(b).
Municipal elections.
See within this title, "Elections."
Municipal finance act, §§ 2919-2959.
Amount and nature of bonds determined, § 5951.
Bonded debt payable in installments, § 2952.
Definitions, § 2919.
Determining periods for bonds to run, § 2942.
For what purpose bonds may be issued, § 2937.
General provisions, § 2919.
Meaning of terms, § 2919.
Money borrowed to pay judgments or interest, § 2933.
Ordinance for bond issue, § 2938.

MUNICIPAL CORPORATIONS—Cont'd.
Municipal finance act—Cont'd.
Ordinance not to include unrelated purposes, § 2939.
Permanent financing, §§ 2937-2959.
Sworn statement of indebtedness, § 2943.
Taxes levied for payment of bonds, § 2959.
Temporary loans, § 2933.
Ordinances.
See "Ordinances."
Plans in city government.
See within this title, "Forms of Municipal Government."
Powers, § 2623.
Authority to fix sewerage charges; lien thereof, § 2806(i).
Taxation.
Taxes levied for payment of bonds, § 2959.
Water companies and waterworks.
Power to fix and enforce rates, § 2808.
Zoning.
Districts, § 2776(s).

MUNICIPAL, STATE AND COUNTY SECURITIES.
Consolidation, annexation and joint administration of counties.
Liability for bonded indebtedness, § 1382(9).
County finance act.
See "County Finance Act."
Finance act.
See "Municipal Corporations."
Judgments and decrees.
Local units authorized to accept their bonds in payment of judgments, § 1334(76)a.
Local government act.
See "Local Government Act."
Municipal finance act.
See "Municipal Corporations."
Ordinances.
Ordinance for bond issue, § 2938.
Ordinance not to include unrelated purposes, § 2939.
Taxation.
Taxes levied for payment of bonds, § 2959.

MUTUAL INSURANCE.
See "Insurance."

NEGLIGENCE.
Workmen's compensation act.
See "Workmen's Compensation Act."

NORTH CAROLINA FERTILIZER LAW.
See "Fertilizers."

NORTH CAROLINA STATE BAR.
See "Attorney and Client."

NORTH CAROLINA STATE THRIFT SOCIETY, §§ 1125(a)-1125(m).
Charter perpetual, § 1125(b).
Depositories, § 1125(h).
Deposits of school children, § 1125(g).
Directors, § 1125(c).
Exemption from taxation, § 1125(i).
Expense to state, § 1125(l).
Formation, § 1125(a).
Incorporation, § 1125(a).
Investments, § 1125(k).
Liability of state, § 1125(l).
Loan of funds to college students, § 1125(j).

NORTH CAROLINA STATE THRIFT SOCIETY—Cont'd.
Membership, § 1125(c).
Officers of society, § 1125(e).
Powers of purchase and sale, § 1125(f).
Purchase, § 1125(f).
Sale, § 1125(f).
Thrift instruction provided by superintendent of public instruction in schools, § 1125(m).
Vacancies, § 1125(d).

NOTICE.
Building and loan associations.
Month's notice required for withdrawals, § 5203(a).
Partition.
Notice of partition sale, § 3240.

NURSES, § 6729(a).
Committee on standardization, § 6729(a).

OATHS.
Taxation.
See "Taxation."

OBSCENITY.
Using profane or indecent language on public highways, § 4352.

OCCUPATION OR PRIVILEGE TAXES.
See "Licenses"; "Taxation."

OFFICERS AND AGENTS OF PRIVATE CORPORATIONS.
Taxation.
Aiding and/or abetting officers, agents, or employees in violation of this act a misdemeanor, § 7880(162).
Each day's failure a separate offense, § 7880(163).
Officers, agents, and employees; misdemeanor failing to comply with tax law, § 7880(161).

OILS.
Division of inspection transferred to revenue department, § 4870(1).
Licenses.
Persons, firms, or corporations selling certain oils, § 7880(68).
Lubricating oils, §§ 4870(f)-4870(n).
Aiding and assisting in violation of article prohibited, § 4870(l).
Imitation of standard equipment prohibited, § 4870(i).
Inspection duties devolve upon revenue department, § 4870(f).
Juggling trade names, etc., prohibited, § 4870(j).
Mixing different brands for sale under standard trade name prohibited, § 4870(k).
Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited, § 4870(g).
Sale of fuels, etc., different from advertised name prohibited, § 4870(h).
Valid parts of articles upheld, § 4870(n).
Violation made misdemeanor, § 4870(m).

OPTOMETRY.
Fees.
Annual fees, § 6696.
Collection of fees by suit, § 6696.
Failure to pay, § 6696.

OPTOMETRY—Cont'd.
License, § 6696.
Revocation of license, § 6696.
ORDERS OF COURT.
Bastardy, § 276(f).
Power of court to modify orders, § 276(g).
ORDINANCES.
Municipal, state and county securities.
Ordinance for bond issue, § 2938.
Ordinance not to include unrelated purposes, § 2939.
OSTEOPATHY.
Licenses, § 7880(38).
OYSTERS.
Licenses.
Licenses for oyster boats, § 1889.
Schedule, § 1889.
Planting of certain kinds of oysters prohibited, § 1959(h).
PARDON.
Parole, §§ 7757(a)-7757(d).
Appointment of parole supervisors, § 7757(c).
Case histories of prisoners provided for, § 7757(d).
Governor empowered to set up new parole system, § 7757(a).
Governor's powers unaffected by act of 1933, ch. 172, § 7748(y).
Method of paroling prisoners, § 7757(b).
Supervisors, § 7757(c).
PARENT AND CHILD.
Adoption.
See "Adoption."
Bastardy.
See "Bastardy."
PAROLE.
See "Pardon."
PARTIES.
Action by or against one for benefit of a class, § 457.
Joinder of parties, § 457.
Mortgages and deeds of trust, § 2578.
PARTITION.
Judgments in partition of remainders validated, § 3225(a).
Notice.
Notice of partition sale, § 3240.
PARTNERSHIP.
Corporations.
No personal liability on corporate manager of partnership, § 1179(a).
PATENTS.
Licenses.
Patent rights and formulas, § 7880(94).
PAYMENT INTO COURT.
Payment of money for indigent children and persons non compos mentis, § 962.
PENALTIES AND FORFEITURES.
Fertilizers.
Penalties for unauthorized sale, sale without tax tags, and misuse of tax tags, § 4689(24).
PENALTIES AND FORFEITURES—Cont'd.
Income tax, § 7880(154).
Taxation.
See "Taxation."
PENSIONS.
County board, § 5168(d).
PHARMACY.
See "Drugs and Druggists."
PHOTOGRAPHERS.
Licenses, § 7880(38).
PHYSICIANS AND SURGEONS.
Licenses, § 7880(38).
Board may rescind license, § 6618.
PILOTS.
License.
Acting as pilot without license, § 6988.
PLUMBERS.
Licenses, § 7880(86).
POLICE.
Railroads.
See "Railroads."
State highway patrol.
See "Streets and Highways."
POLITICAL PARTY.
Definition, § 5913.
Political party defined for primary elections, § 6052.
POLL TAXES.
Commissioners' power to exempt, § 7971(51).
Exemption, § 7971(51).
Levy of poll taxes, § 7971(51).
Where polls and personal property shall be listed, § 7971(45).
PRACTICE.
Costs.
See "Costs."
PRESIDENTIAL ELECTORS.
See "Elections."
Compensation, § 3878.
PRIMARY ELECTIONS, §§ 6022-6054(b).
Ballots.
How choice indicated on ballot, § 6030.
How names of candidates placed on, § 6030.
Printing and furnishing, § 6037.
Provisions as to names of candidates printed thereon, § 6037.
Contests over primary results, § 6054(b).
Counties excepted, § 6054.
Exception of certain counties, § 6054.
Expenses, § 6026.
Filing fees required of candidates in primary, § 6023.
Filing notices and pledges of candidates, § 6022.
Notices of candidates, § 6022.
Payment of expense for primary elections, § 6026.
Pledges of candidates, § 6022.
Political party defined for primary elections, § 6052.
Precinct officers, § 6040.
Township officers, § 6040.

PRISONS AND PRISONERS.
Camps.
Additional prison camps authorized, § 7748(o).
Central prison at Raleigh retained, § 7748(l).
Gainful employment of prisoners intended, § 7748(l).
Powers and duties, § 7748(l).
Warden to be named, § 7748(l).
Children.
Disposition of child born of female prisoner, § 7748(x).
Escape.
See "Escape."
Recapture of escaped prisoners, § 7748(q).
Grading prisoners, § 7748(s).
Health.
Sanitary and health conditions supervised by board of health, § 7748(r).
Labor.
Prison labor furnished other state agencies, § 7748(z).
Parole.
See "Pardon."
Sale of convict made goods prohibited, § 4468(a).
Sentence and punishment.
Power of sentencing prisoners to work on county property unaffected by act of 1933, ch. 172, § 7748(aa).
State highway and public works commission.
See "Streets and Highways."
State prison.
See "State Prison."

PROBATE AND REGISTRATION.
Curative acts.
Defective acknowledgment on old deeds validated, § 3333(a).
Validation of corporate deed with mistake as to officer's name, § 3366(i)1.

PROFANITY.
Using profane or indecent language on public highways, § 4352.

PROHIBITION.
See"Intoxicating Liquors."

PUBLIC HEALTH.
See "Health."

PUBLIC HOSPITALS.
See "Hospitals and Asylums."

PUBLIC LANDS.
Grants.
Price to be paid for land, § 7575.

PUBLIC OFFICERS.
Elections.
See "Elections."
Salaries.
Presidential electors, § 3878.
Secretary of state.
See "Secretary of State."

PUBLIC SERVICE CORPORATIONS.
Corporation commission.
See "Corporation Commission."
Franchise tax, § 7880(111).
Income tax, § 7880(130).
Public Utilities Act of 1933, §§ 1112(1)-1112(36).
Abandonment of service, § 1112(32).
Accounting system, § 1112(13).

PUBLIC SERVICE CORPORATIONS—Cont'd.
Public Utilities Act of 1933—Cont'd.
Actions to recover penalties, § 1112(30).
Annual reports, § 1112(15).
Assumption of certain liabilities and obligations to be approved by commission, §§ 1112(18)-1112(36).
Applications to receive immediate attention, § 1112(21).
Commission may act jointly with agency of another state where utility operates, § 1112(28).
Commission may approve in whole or in part or refuse approval, § 1112(19).
Contents of application for permission, § 1112(20).
Continuances, § 1112(21).
Debentures of court receivers, § 1112(25).
Failure to obtain approval not to invalidate securities or obligations, § 1112(27).
Guarantee on part of state, § 1112(23).
Necessity of application to commission, § 1112(18).
Note issues, § 1112(24).
Notice to commission, § 1112(25).
Notifying commission as to disposition of securities, § 1112(22).
Periodical or special reports, § 1112(26).
Renewals of note, § 1112(24).
Reports, § 1112(26).
Change of rates, § 1112(7).
Changing unreasonable rates after hearing, § 1112(8).
Compelling efficient service after hearing, § 1112(10).
Compelling telephone and telegraph companies to form continuous lines to certain points, § 1112(9).
Definitions, § 1112(1).
Discrimination prohibited, § 1112(6).
Establishment of accounting system, § 1112-(13).
Fixing standards, classifications, etc., § 1112-(11).
Forfeiture for willful disobedience, § 1112(36).
Investigation into management of utilities, § 1112(16).
Penalties to school fund, § 1112(31).
Permission of commission to pledge assets, § 1112(17).
Pledge of assets, § 1112(17).
Rate schedules to be filed with commission, § 1112(4).
Rates higher than schedule prohibited, § 1112(5).
Rates must be just and reasonable, § 1112(2).
Reduction of service, § 1112(32).
Refusal to permit commission to inspect records made misdemeanor, § 1112(35).
Reports, § 1112(15).
Reports from municipalities operating own utilities, § 1112(34).
Service, §§ 1112(3), 1112(10), 1112(11) 1112(322).
Testing service, § 1112(11).
Valuing and revaluing utility property, § 1112(12).
Visitorial and inspection powers of commission, § 1112(14).

PUBLIC SERVICE CORPORATIONS—Cont'd.
Public Utilities Act of 1933—Cont'd.
Water gauging stations, § 1112(33).
Willful acts of employees deemed those of utility, § 1112(29).
Willful disobedience to orders of commission incurs forfeiture, § 1112(36).
Taxation, §§ 7971(64)-7971(86).
See "Railroads."
Companies failing to pay tax, § 7971(75).
Franchise tax, § 7880(111).
State board of appraisers and assessors for public utilities, §§ 7971(76)-7971(78).
Total value for each county, § 7971(74).
Value per mile, § 7971(73).

PUBLIC UTILITIES ACT OF 1933.
See "Public Service Corporations."

PUBLIC WORKS.
Architects.
Employment of architects, etc., on public works when interested in sale of materials prohibited, § 7312(y).
Building code.
See "Building Code."
Drawing of plans by material furnisher prohibited, § 7312(z).
Specifications to carry competitive items, § 7312(aa).
State building contracts.
Allowance for convict labor must be specified, § 7534(o)2.
Competitive bids required before letting public construction contracts, § 7534(o)1.
Highway and prison departments excepted, § 7534(o)4.
Limitation of application of act, § 7534(o)5.
No evasion permitted, § 7534(o)3.
Violation of chapter made misdemeanor, § 7312(bb).

PURCHASE.
See "Division of Purchase and Contract."

RAILROADS.
Discontinuance of passenger service, § 3481.
Income tax, § 7880(130).
Operation of fast mail trains, § 3481.
Police.
Civil liability of railroads, § 3484.
Governor may appoint and commission railroad police, § 3484.
Taxation.
Board of assessment to certify; when tax payable, § 7971(84).
Franchise or privilege tax on Pullman, sleeping, chair, and dining cars, § 7880(112).
Franchise or privilege tax on railroads, § 7880(110).
Leased roads, § 7971(81).
Refrigerator and freight-car companies, § 7971(68).
State board may subpoena witnesses and compel production of records, § 7971(82).
Tangible and intangible property assessed separately, § 7971(79).
Taxes on railroads shall be a lien on property of the same, § 7971(83).
Where road both within and without state, § 7971(80).

REAL PROPERTY.
Entries and grants.
Price to be paid for land, § 7575.

RECEIVERS.
Building and loan associations.
Notice required before appointment of receivers, § 5193(a).

RECORDERS' COURTS.
County recorders' courts, §§ 1572-1572(b).
Jury trial as in municipal court, § 1572.
Jury trials in Henderson county recorders' court, § 1572(b).
Elections to establish recorders' courts, § 1608.
Jurisdiction.
Civil jurisdiction may be conferred, § 1589.
Jury, §§ 1572-1572(b).

REFORMATORIES.
Stonewall Jackson Manual Training and Industrial School.
Cherokee Indians admitted, § 7328(f).

REGISTERS OF DEEDS.
Fees.
Local modification as to fees of registers of deeds, § 3907.

REGISTRATION.
Fertilizers, § 4689(4).

REMAINDERS, REVERSIONS AND EXECUTORY INTERESTS.
Partition.
Judgments in partition of remainders validated, § 3225(a).
Remainders to uncertain persons, § 1744.
Procedure for sale, § 1744.
Proceeds secured, § 1744.

REMOVAL OF CAUSES.
Transfer of civil cases, § 1608(f)4.

REPORTER.
Court reporter for second judicial district, §§ 1461(5)a-1461(5)f.
Appointment, § 1461(5)a.
Compensation, § 1461(5)e.
Oath of reporter, § 1461(5)c.
Recording of appointment in clerk's office, § 1461(5)b.
Reporter pro tem, § 1461(5)d.
Transcripts competent as evidence, § 1461(5)f.
Evidence.
Transcripts by reporter competent as evidence, § 1461(5)f.

REPORTS.
Secretary of state.
Transmits statutes and reports to other states, § 7661.

REVENUE.
See "Taxation."

ROADS.
See "Streets and Highways."

SALARIES.
Legislative department.
See "General Assembly."

SALES.
Bulk sales, § 1013.
Convicts.
Sale of convict made goods prohibited, § 4468(a).
Tobacco.
See "Tobacco."

SALES TAX.
See "Taxation."

SANITARY DISTRICTS.
See "Health."

SCHOOLS.
Criminal law.
Soliciting during school hours without permission of school head, § 4391(1).

SEALS AND SEALED INSTRUMENTS.
Licenses.
Tax on seals affixed by officers, § 7880(97).

SECRETARY OF STATE.
Elections.
See "Elections."
Reports.
Transmits statutes and reports to other states, § 7661.
Statutes.
Distribution of statutes, § 7663.
Transmits statutes and reports to other states, § 7661.

SECURITIES LAW, § 3924(b).
Definitions, § 3924(b).

SENTENCE AND PUNISHMENT.
Bastardy.
Suspension of sentence, § 276(g).
Indeterminate sentences, § 7748(t).

SERVICE OF PROCESS.
Beneficial and benevolent associations, § 483.
Corporations, § 483.
Infants, § 483.
Insanity, § 483.
Return of process.
General county courts, § 1608(t).
Service by copy, § 483.

SET-OFF, RECOUPMENT AND COUNTER-CLAIM.
Banks and banking.
Sale of deposits in closed banks.
Purchasers may offset against debts due bank, § 218(v).

SHERIFFS.
Compensation, § 3908.
Fees, § 3908.
Taxation.
Failure of sheriff to execute order, § 7880(172).

SHIPS AND SHIPPING.
Taxation.
Steamboat companies, § 7971(86).

SINKING FUND.
Local government act.
Investment of unit sinking funds, § 2492(27).

SLEEPING-CAR COMPANIES.
Taxation, § 7971(67).

SLOT MACHINES.
Licenses, § 7880(61).

SOLICITORS.
Compensation, §§ 3878, 3890.

STATE.
Division of purchase and contract.
See "Division of Purchase and Contract."

STATE BOARD OF ELECTIONS.
See "Elections."

STATE FORESTS, §§ 6126(b)-6126(c).
Funds paid by the national government, § 6126(b).
Game laws.
License fees for hunting and fishing on government-owned property unaffected, § 6126(c).
License fees for hunting and fishing on government-owned property unaffected, § 6126(c).

STATE HIGHWAY SYSTEM.
See "Streets and Highways."

STATE HOUSING LAW, §§ 7128(1)-7128(26).
Acquisition of housing property after approval of project; § 7128(13).
Consolidation of projects, § 7128(8).
Corporations.
Acquisition of housing property after approval of project, § 7128(13).
Annual surpluses applied to rent reductions, § 7128(21).
Articles of incorporation, § 7128(14).
Consolidation of projects, § 7128(8).
Earnings transferred to surplus, § 7128(20).
Fees of board for examination chargeable against housing corporation, § 7128(25).
Fixing of rental and purchase prices, § 7128-(10).
Income debenture certificates, § 7128(17).
Injunction against corporations violating law, § 7128(12).
Investigation into limited dividend housing corporatons, § 7128(6).
Limitation on dividends, §§ 7128(6), 7128(15).
Limit of existence of housing corporations, § 7128(26).
Limit on stocks and bonds, § 7128(16).
Loans and security therefor regulated, § 7128-(19).
Powers of board over housing corporations, § 7128(9).
Powers of corporations limited, § 7128(18).
Reorganization of limited dividend corporations, § 7128(11).
Powers of board as to study of housing conditions and approval of housing projects, § 7128(7).
Public interest demands housing for families of low income, § 7128(2).
State board of housing.
Acquisition of housing property after approval of project, § 7128(13).
Application to, and approval of, board as to transfer of housing property, § 7128(23).
Approval of housing projects, § 7128(5).
Board as defendant in foreclosure actions, § 7128(22).
Choosing officers and employees, § 7128(4).

STATE HOUSING LAW—Cont'd.
State board of housing—Cont'd.
Consolidation of projects, § 7128(8).
Corporations.
See within this title, "Corporations."
Created, § 7128(3).
Fees of board for examination chargeable against housing corporation, § 7128(25).
Fixing of rental and purchase prices, § 7128-(10).
Injunction against corporations violating law, § 7128(12).
Investigation into limited dividend housing corporations, § 7128(6).
Notice to board before execution on judgments, § 7128(24).
Powers of board as to study of housing conditions and approval of housing projects, § 7128(7).
Powers of board over housing corporations, § 7128(9).
Reorganization of limited dividend corporations, § 7128(11).
Title, § 7128(1).

STATE LANDS.
See "Public Lands."

STATE PRISON.
Prisoners sent to state prison, § 7716.
Sentencing of persons for felonies and misdemeanors, § 7716.

STATE TREASURER, §§ 7684-7691(b).
Banks and banking.
Deposits of state funds in banks regulated, § 7684.
Deposits of state funds in banks that have provided for safety of deposits without requiring depository bonds, § 7691(b)1.

STATISTICS.
Adoption.
Change of name of child, § 191(6).
Entries on birth certificate, § 191(6).
Report to bureau of vital statistics, § 191(6).
Taxation.
Publication of statistics, § 7880(184).
Vital statistics.
Registration of births and deaths, §§ 7088(a)-7109.
Control of board over district, § 7088(a).
County health officer may act as registrar, § 7089(a).
Duties of local registrar, as to certificates, § 7109.
Reports, § 7109.
Stillborn children to be registered, § 7093.

STATUTES.
Consolidated statutes.
Reference in statutes to Michie's North Carolina Code or to the Code of 1931, § 8108(1).
Curative acts.
See "Probate and Registration."
Secretary of state.
Distribution of statutes, § 7663.
Transmits statutes and reports to other states, § 7661.

STENOGRAPHERS.
Courts.
Court stenographers, § 1461.

STERILIZATION, §§ 2304(m)-2304(z).

STOCK AND STOCKHOLDERS.
Banks and banking.
See "Banks and Banking."
Inheritance taxes.
Commissioner of revenue to furnish blanks and require reports of value of shares of stock, § 7880(10).
Tax to be paid on shares of stock before transferred, and penalty for violation, § 7880(9).
Reduction of capital stock.
Directors' liability for impairing capital, § 1179.

STOCK LAW.
See "Fences and Stock Law."

STREET RAILWAYS.
Taxation.
Street railway, waterworks, electric light and power, gas, ferry, bridge, and other public utility companies, § 7971(69).

STREETS AND HIGHWAYS.
Criminal law.
Using profane or indecent language on public highways, § 4352.
Neighborhood public roads, § 3838(b).
Prison camps, 3846(25).
Prisoners on roads.
Control and custody of prisoners, § 7748(e).
Control of prison property to new commission, § 7748(d).
Intent of state to maintain public roads with prison labor, § 7748(a).
Minimum term for commitment, § 3846(25).
Prisoners previously sentenced, § 7748(f).
Sentencing of prisoners to central prison, § 7748(g).
Sentencing to public roads, § 7748(h).
State highway and public works commission created, § 7748(b).
Surrender of highway and prison property to new commission, § 7748(c).
State highway and public works commission.
Additional prison camps authorized, § 7748(o).
Annual reports to governor, § 7748(k).
Central prison at Raleigh retained, § 7748(l).
Gainful employment of prisoners intended, § 7748(l).
Powers and duties, § 7748(l).
Warden to be named, § 7748(l).
Ch. 2, Public Laws 1921, amended, § 7748(m).
Consolidation of present state prison department, § 7748(bb).
Control and custody of prisoners, § 7748(e).
Control of prison property to new commission, § 7748(d).
Created, § 7748(b).
C. S. ch. 130, likewise amended, § 7748(n).
Degree of protection against violence allowed, § 7748(w).
Existing prison and highway departments abolished, § 7748(i).
Grading prisoners, § 7748(s).

STREETS AND HIGHWAYS—Cont'd.
State highway and public works commission—Cont'd.
Indeterminate sentence, § 7748(t).
1927 bond issue directed to providing needed prison facilities, § 7748(p).
Oath of office of new commission members, § 7748(j).
Parole powers of governor unaffected, § 7748(y).
Power of sentencing prisoners to work on county property unaffected, § 7748(aa).
Prison indebtedness not assumed by highway commission, § 7748(cc).
Prison labor furnished other state agencies, § 7748(z).
Recapture of escaped prisoners, § 7748(q).
Sanitary and health conditions supervised by board of health, § 7748(r).
Segregation as to race, sex and age, § 7748(u).
Surrender of highway and prison property to new commission, § 7748(c).
State highway patrol, §§ 3846(hhh)-3846(lll).
Additional duties, § 3846(iii).
Analysis by commissioner of agriculture, § 3846(lll).
Deputy inspectors of weights and measures, § 3846(jjj).
Duties, § 3846(iii).
Inspection duties of highway patrol, § 2621(134).
Inspection of pumps, etc., § 3846(kkk).
State highway patrol transferred to revenue department, § 3846(hhh).
State highway system, §§ 3846(f1)-3846(j).
Limit of compensation paid by commission, § 3846(f1).
Powers of commission, § 3846(j).
State highway commission, §§ 3846(f1)-3846(j).
Uniform act regulating operation of vehicles on highways.
Trailers and towed vehicles, § 2621(83).

SUMMONS AND PROCESS.
Licenses.
Process tax, § 7880(88).

SUNDAYS AND HOLIDAYS.
Banks.
Governor empowered to proclaim banking holidays, § 220(gg).
Fishing, § 1970.

SUPERIOR COURTS.
See "Courts."

SURETY TO KEEP THE PEACE.
Husband and wife.
Wife may testify in application for peace warrants, § 1802(a).

TAXATION.
Actions.
Action for recovery of taxes, § 7880(167).
Actions, when tried, § 7880(173).
Taxes recoverable by action, § 7880(170).
Taxes to be paid, § 7880(194).
Administration.
See within this title, "General Administration."
Agency.
Who may list through agents, § 7971(37).

TAXATION—Cont'd.
Annual assessments, §§ 7971(29)-7971(63).
Abstracts of property furnished state board of assessment, § 7971(58).
Appeal from board of equalization and review, §§ 7971(54), 7971(55).
Bankers, § 7971(38).
Banks, § 7971(59).
Board of aldermen or other governing bodies of cities and towns lying in two or more counties may appoint municipal tax assessors, § 7971(34).
Board of commissioners not to change valuation, § 7971(53).
Board of county commissioner to list property escaping taxation in previous years, § 7971(50).
Brokers, § 7971(38).
Building and loan associations, § 7971(60).
Compensation of county supervisors of taxation and assistants, § 7971(31).
County board of equalization and review, § 7971(52).
County commissioners to cause tax duplicate to be made, § 7971(57).
County commissioners to levy tax, § 7971(56).
Date of levy, § 7971(56).
Deduction of bona fide indebtedness, § 7971(47).
Failure to list personal property a misdemeanor, § 7971(93).
Foreign building and loan associations, § 7971(61).
Forms for listing and assessing property, § 7971(49).
How to list property, § 7971(36).
Listing in years other than quadrennial, § 7971(41).
List of exempt property, § 7971(40).
List takers and assessors administer oath, § 7971(42).
List takers and assessors furnish list of exempt property, § 7971(40).
Machinery for annual assessments, § 7971(29).
Meeting of county supervisors and assistants, § 7971(32).
Oath of supervisor and assistant, § 7971(30).
Oath of taxpayers, § 7971(43).
Omitted property, § 7971(50).
Poll tax levied, commissioners' power to exempt, § 7971(51).
Private bankers, § 7971(39).
Private banks, § 7971(38).
Reports from domestic corporations, § 7971(62).
Secrecy directed, § 7971(63).
State board of assessment to fix day and hear appeal, § 7971(55).
State board of assessment to keep record of corporations, associations, banks, § 7971(63).
Township assistants to advertise, § 7971(33).
Township assistant to make tax list, § 7971(35).
Trust companies, § 7971(59).
Warehouses and coöperative associations to furnish lists of property stored, etc., § 7971(48).
What tax list shall contain, § 7971(46).
Where polls and personal property shall be listed, § 7971(45).

TAXATION—Cont'd.
Annual assessments—Cont'd.
Where to list real estate, mineral and quarry lands, § 7971(44).
Who may list through agents, § 7971(37).
Assessments.
Annual assessments.
See within this title, "Annual Assessments."
Correction of assessment roll, § 7971(91).
Quadrennial assessments.
See within this title, "Quadrennial Assessments."
State board of assessment.
See within this title, "State Board of Assessment."
Assessors.
See within this title, "Annual Assessments."
Authority.
Authority for imposition of tax, § 7880(193).
Bad checks.
Penalty for bad checks, § 7880(164).
Banks and banking.
Banks, banking associations and trust companies, § 7971(59).
Private bankers, §§ 7971(38), 7971(39).
Beer.
See "Intoxicating Liquors."
Bills, notes and checks.
Penalty for bad checks, § 7880(164).
Blanks.
Blanks furnished by commissioner of revenue, § 7880(182).
Blind.
Free privilege licenses for blind people, § 7880(177)a.
Board of assessment.
See within this title, "State Board of Assessment."
Brokers, § 7971(38).
Building and loan associations, §§ 7971(60), 7971(61).
Canal companies, § 7971(86).
Collection of taxes, § 8005(f).
Action for recovery of taxes, § 7880(167).
Additional remedies, § 7880(171).
Collection of arrears of tax for years 1923 to 1931 by personal representative, § 8005(f).
Warrant for the collection of taxes, § 7880(169).
Commissioner of revenue.
See within this title, "Emergency Revenue."
Blanks furnished by commissioner of revenue, § 7880(182).
Clerks, § 7880(187).
Commissioner and deputies to administer oaths, § 7880(188).
Construction of act, § 7880(191).
Deputies, § 7880(187).
Discretion of commissioner over penalties, § 7880(165).
Oaths, § 7880(188).
Powers, § 7880(185).
Records, § 7880(183).
Report on system of other states, § 7880(184)a.
Rules and regulations, § 7880(189).
Time for filing reports extended, § 7880(190).
Constitutional law.
Machinery act.
Purpose of act, § 7971(97).
TAXATION—Cont'd.
Constitutional law—Cont'd.
Unconstitutionality or invalidity of any part of act, §§ 7880(195), 7971(96).
Corporations.
Charter cancelled for failure to report, § 7880(158).
Corporate rights restored, § 7880(160).
Penalty for exercising corporate functions after cancellation of charter, § 7880(159).
Personal liability of officers, trustees, or receivers, § 7880(181).
Reports from domestic corporations, § 7971(62).
Counties and county commissioners.
See within this title, "Annual Assessments"; "Quadrennial Assessments."
County indebtedness to be reported, § 7971(90).
Taxes payable in installments in certain counties, § 7994(a).
County board of equalization and review.
Appeal from board of equalization and review, § 7971(54).
Board of commissioners not to change valuations, § 7971(53).
County commissioners the board of equalization and review, § 7971(52).
State board of assessment fix day and hear appeal, § 7971(55).
County supervisor.
See within this title, "Annual Assessments."
Debt.
Tax a debt, §§ 7880(156)s, 7880(166).
Deduction of bona fide indebtedness, § 7971(47).
Definitions, § 7880(173)a.
Disclosure.
Secrecy required of officials, § 7880(186).
Discounts.
Discounts and penalties in payment of taxes, § 7971(92).
Emergency revenue, §§ 7880(156)a-7880(156)cc.
Additional tax, § 7880(156)u.
Annual return.
When annual return to be made, § 7880(156)t.
Appropriation of 2% of collections of act, § 7880(156)bb.
Balanced budget.
To insure and make certain a balanced budget, § 7880(156)d.
Commissioner of revenue.
Aggrieved person may file petition, § 7880(156)r.
Commissioner or agent may examine books, etc., § 7880(156)y.
Commissioner to make regulations, § 7880(156)x.
Duty and power of commissioner, § 7880(156)p.
Records, § 7880(156)u.
Remittances made to commissioner, § 7880(156)u.
To prevent unfair trade practices, commissioner of revenue may require tax passed on to consumer, § 7880(156)cc.
Consumers' tax, §§ 7880(156)e, 7880(156)f.
Contingency, § 7880(156)c.
Credit sales, § 7880(156)i.

TAXATION—Cont'd.
Emergency revenue—Cont'd.
Debt due state.
Tax shall constitute debt due state, § 7880(156)s.
Definitions, § 7880(156)e.
Disclosures.
Letters in report not to be divulged, § 7880(156)v.
Excess payment, § 7880(156)z.
Exemptions, § 7880(156)f.
Imposition of tax, §§ 7880(156)g-7880(156)cc.
License must be obtained, § 7880(156)g.
Liens.
Tax shall be lien, § 7880(156)q.
Purpose, §§ 7880(156)b, 7880(156)d.
Records.
Commissioner of revenue, § 7880(156)u.
Remittances, § 7880(156)u.
Taxpayer must keep records, § 7880(156)p.
Refunds, § 7880(156)z.
Retail merchants, § 7880(156)g.
Returns.
Annual returns, §§ 7880(156)k, 7880(156)n.
Commissioner to correct error, § 7880(156)o.
Duty of commissioner, § 7880(156)p.
Extension of time for making, § 7880(156)m.
Failure to make returns, § 7880(156)p.
Forms for making returns. § 7880(156)l.
Penalty, § 7880(156)w.
Power of commissioner, § 7880(156)p.
Quarterly returns, § 7880(156)j.
Taxpayer must keep records, § 7880(156)p.
Unlawful to refuse to make returns, § 7880(156)w.
Right of action.
Prior rights or actions not affected by this act, § 7880(156)aa.
Short title, § 7880(156)a.
Taxes payable, § 7880(156)h.
Time of payment, § 7880(156)h.
Title, § 7880(156)a.
To insure and make certain a balanced budget, § 7880(156)d.
Warrant for collection of tax, § 7880(156)s.
When taxes payable, § 7880(156)h.
Wholesale merchants, § 7880(156)g.
Equalization.
See within this title, "County Board of Equalization and Review."
Estate tax, § 7880(6).
Exemption from taxation.
Emergency revenue, § 7880(156)f.
Foreign corporations not exempt, § 7971(87).
Income tax, §§ 7880(132), 7880(142).
Inheritance taxes, §§ 7880(2), 7880(3).
Licenses, § 7880(37).
List of exempt property, § 7971(40).
List takers and assessors furnish list of exempt property, § 7971(40).
North Carolina state thrift society, § 1125(i).
Personal property exempted, § 7971(19).
Poll taxes, § 7971(51).
Property used in a licensed business not exempt from taxation, § 7880(103).
Real property exemptions, § 7971(17).
Sales tax, § 7880(156)f.
Tax exemption repealed, § 7880(177).
TAXATION—Cont'd.
Express companies, §§ 7880(113), 7971(66).
Fertilizers.
Tonnage tax, § 4689(7).
Fiduciaries.
See within this title, "Trusts and Trustees."
Tax upon settlement of fiduciary's account, § 7880(168).
Foreign corporations.
Foreign building and loan associations, § 7971(61).
Foreign corporations not exempt, § 7971(87).
Law applicable to foreign corporations, § 7880(178).
Franchise tax, §§ 7880(109)-7880(123½).
Additional taxes, § 7880(123½).
Corporations, §§ 7880(118), 7880(121).
Defining taxes in this article, § 7880(109).
Dining cars, § 7880(112).
Domestic corporations, §§ 7880(118), 7880(121).
Electric light companies, § 7880(111).
Express companies, § 7880(113).
Foreign corporations, § 7880(119).
Franchise or privilege taxes; when payable, § 7880(123).
Gas companies, § 7880(111).
Insurance companies, § 7880(116).
Notice of franchise tax assessed, § 7880(120).
Payment.
Penalty for nonpayment, § 7880(122).
When payable, § 7880(123).
Penalty for nonpayment, § 7880(122).
Public service corporations, § 7880(111).
Pullman cars, § 7880(112).
Railroads, § 7880(110).
Sleeping cars, § 7880(112).
Street railways, § 7880(111).
Telegraph companies, § 7880(114).
Telephone companies, § 7880(115).
Water companies, § 7880(111).
Gasoline tax.
See "Gasoline."
General administration, §§ 7880(157)-7880(195).
General provisions, §§ 7880(173)a-7880(195).
Income tax.
See "Income Tax."
Increases.
When increases operative, § 7880(192).
Indebtedness.
Deduction of bona fide indebtedness, § 7971(47).
Information.
Information must be furnished, § 7880(179).
Inheritance taxes.
See "Inheritance Taxes."
Installments.
Taxes payable in installments in certain counties, § 7994(a).
Insurance, § 7880(116).
Intoxicating liquors.
See "Intoxicating Liquors."
Licenses.
See "Licenses."
Lien for taxes.
Emergency revenue.
Tax shall be lien, § 7880(156)q.
For what period, and when a lien, § 7880(174).
Notes, §§ 8034(c)-8034(f).
Taxes on railroads shall be a lien on property of the same, § 7971(83).

TAXATION—Cont'd.
Lien for taxes—Cont'd.
Tax liens for 1926 and prior years, not yet foreclosed, barred, § 8034(g).
Liens.
See within this title, "Lien for Taxes."
Machinery Act of 1933, §§ 7971(1) et seq.
Definitions, § 7971(2).
Official title, § 7971(1).
Title, § 7971(1).
Master and servant.
Aiding and/or abetting officers, agents, or employees in violation of this act a misdemeanor, § 7880(162).
Each day's failure a separate offense, § 7880(163).
Officers, agents, and employees; misdemeanor failing to comply with tax law, § 7880(161).
Municipal corporations.
Taxes levied for payment of bonds, § 2959.
Municipal, state and county securities.
Taxes levied for payment of bonds, § 2959.
Oaths.
Commissioner and deputies to administer oaths, § 7880(188).
List takers and assessors administer oath, § 7971(42).
Oath of county supervisor and assistant, § 7971(30).
Oath of taxpayer, § 7971(43).
Occupation or privilege taxes.
See within this title, "Franchise Tax." And see "Licenses."
Officers and agents of private corporations.
Aiding and/or abetting officers, agents, or employees in violation of this act a misdemeanor, § 7880(162).
Each day's failure a separate offense, § 7880(163).
Officers, agents, and employees; misdemeanor failing to comply with tax law, § 7880(161).
Omitted taxes.
Board of county commissioners to list property escaping taxation in previous years, § 7971(50).
Collection of arrears of tax for years 1923 to 1931 by personal representative, § 8005(f).
Payment.
Taxes payable in national currency, § 7880(174).
Penalties.
Discounts and penalties in payment of taxes, § 7971(92).
Discretion of commissioner over penalties, § 7880(165).
Emergency revenue, § 7880(156)w.
Failure of a person, public utility and/or public-service corporation to file report, § 7880(157).
Failure to list personal property a misdemeanor, § 7971(93).
Misdemeanor for refusal to inspect records or respond to subpoena, § 7971(95).
Officers, agents, and employees; misdemeanor failing to comply with tax law, § 7880(161).
Penalty for bad checks, § 7880(164).
Penalty for exercising corporate functions after cancellation of charter, § 7880(159).
Penalty for failure to make report, § 7971(94).
Secrecy required of officials, § 7880(186).

TAXATION—Cont'd.
Personal property, §§ 7971(18), 7971(19).
Poll taxes.
See "Poll Taxes."
Population.
Census determined, § 7880(191).
Property.
Listing property.
See within this title, "Annual Assessments."
Property and effects subject to taxation, §§ 7971(13)-7971(19).
Exemptions.
See within this title, "Exemption from Taxation."
General provisions, § 7971(13).
Personal property.
Personal property exempted, § 7971(19).
Personal property included, § 7971(18).
Where polls and personal property shall be listed, § 7971(45).
Real property.
Corporate real property, § 7971(16).
Definition, § 7971(14).
Real property exemptions, § 7971(17).
To whom assessed, § 7971(15).
Where assessed, § 7971(15).
Where to list real estate, mineral and quarry lands, § 7971(44).
Public service corporations, § 7971(69).
See "Railroads."
Companies failing to pay tax, § 7971(75).
State board of appraisers and assessors for public utilities, §§ 7971(76)-7971(80).
Creation and constitution of board, § 7971(76).
Railroads, annual schedule of rolling stock, etc., to be furnished state board, § 7971(78).
Railroads; tangible and intangible property assessed separately, § 7971(79).
Railroads; where road both within and without state, § 7971(80).
Returns to state board by railroad, etc., companies, § 7971(77).
Total value for each county, § 7971(74).
Value per mile, § 7971(73).
Public utilities, §§ 7971(64)-7971(86).
Quadrennial assessments, §§ 7971(20)-7971(28).
All property to be listed with reference to ownership on April first of each year, § 7971(20).
Appointment of list takers and assessors, § 7971(21).
Appropriate county officer to prepare final scroll, § 7971(27).
County commissioners may employ experts, § 7971(24).
County supervisors and assessors to jointly review the valuations and assessments and make tentative scroll, § 7971(26).
First meeting of county supervisors of taxation and list takers and assessors, § 7971(22).
Further powers and duties of supervisor of taxation and other officers contained in, § 7971(28).
Methods of determining values, § 7971(25).
Oath of county supervisor, list taker and assessor, § 7971(23).
Railroads.
See "Railroads."

TAXATION—Cont'd.
Real property.
See within this title, "Property and Effects Subject to Taxation."
Records.
Commissioner of revenue to keep records, § 7880(183).
Refusal to inspect records, § 7971(95).
Reports.
Charter cancelled for failure to report, § 7880(158).
Failure of a person, public utility and/or public-service corporation to file report, § 7880(157).
Report on system of other states, § 7880(184)a.
Time for filing reports extended, § 7880(190).
Returns.
Returns required, § 7880(180).
Revenue.
See within this title, "Emergency Revenue."
Revenue Act of 1933, §§ 7880(1)-7880(195).
Sales for taxes.
Real property, §§ 8012(b)-8037(a½).
Counties excepted, § 8034(n).
Default of single installment of note given by landowner, § 8034(c).
Extension of foreclosure on other taxes till October 1, 1934, § 8034(h).
Interest and penalties to be remitted, § 8034(i).
Judgments pro confesso by clerk as to non-answering defendants, § 8037(a½).
Lands already foreclosed and purchased by local units redeemable on five-year note; note secured by deed of trust, § 8034(l).
Lands of infants, § 8034(j).
Local units directed to extend payment of taxes over period of five years and to remit penalties; time limit; payment of 1932 taxes as condition precedent, § 8034(a).
Notation to be made on record of certificates, § 8034(e).
Note given by landowner, § 8034(b).
Note given by landowner constitutes superior lien, § 8034(c).
Note given by landowner not a novation, § 8034(c).
Notes are continuing lien, § 8034(d).
Notes to be recorded in office of register of deeds, § 8034(f).
Purchaser shall foreclose, § 8037.
Redemption where certificate is in hands of third person, § 8034(m).
Right of foreclosure preserved when note given by landowner, § 8034(c).
Rights of mortgagees to take title after notice to owners, § 8034(k).
Schedule of discounts on delinquent taxes, § 8034(i).
Tax liens for 1926 and prior years, not yet foreclosed, barred, § 8034(g).
Tax sales for 1931-32 on day other than law provides and certificates validated, § 8012(b).
Tenants in common, § 8034(j).
Sales tax.
See within this title, "Emergency Revenue."
Secrecy.
Penalty for violation, § 7880(186).
Secrecy required of officials, § 7880(186).
TAXATION—Cont'd.
Sheriffs.
Failure of sheriff to execute order, § 7880(172).
Ships and shipping.
Steamboat companies, § 7971(86).
Sleeping-car companies, § 7971(67).
State board of appraisers and assessors for public utilities, §§ 7971(76)-7971(80).
State board of assessment, §§ 7971(3)-7971(12).
Annual report to governor, § 7971(6).
Appeal from county board of equalization, §§ 7971(54), 7971(55).
Board has access to public books and records and empowered to subpoena witnesses, § 7971(9).
Board to direct members to hear complaints, § 7971(11).
Board to have access to books and records of persons, firms, and corporations, § 7971(10).
Board to keep records, § 7971(12).
Board to prescribe forms, books, and records, require abstracts to be filed, and to make rules and regulations, § 7971(7).
Creation, § 7971(3).
Duties of state board of assessment, § 7971(5).
Forms for listing and assessing property, § 7971(49).
Manner of assessment, § 7971(72).
Oath, § 7971(4).
Personnel, § 7971(3).
Sessions of board, where to be held, § 7971(8).
State board of assessment may require additional information, § 7971(70).
State board of assessment shall examine statements, § 7971(71).
Value per mile, § 7971(73).
State taxes, § 7880(176).
Statistics.
Publication of statistics, § 7880(184).
Steamboat companies, § 7971(86).
Street railways.
Street railway, waterworks, electric light and power, gas, ferry, bridge, and other public utility companies, § 7971(69).
Succession tax.
See "Inheritance Taxes."
Tax list.
See within this title, "Annual Assessments."
Tax sales.
See within this title, "Sales for Taxes."
Telegraph and telephone companies.
Franchise tax, §§ 7880(114), 7880(115).
Telegraph companies, § 7971(64).
Telephone companies, § 7971(65).
Trust companies, § 7971(59).
Trusts and trustees.
Banks and banking.
Fiduciaries authorized to enter depositors' agreements, § 218(u).
Tax upon settlement of fiduciary's account, § 7880(168).
Valuation.
Clerk of cities and towns to furnish information as to valuation, taxes levied, and indebtedness, § 7971(89).
Defining actual value in money, § 7971(88).
Warrant.
Warrant for the collection of taxes, § 7880(169).
Water companies and waterworks, § 7971(69).

TAXATION—Cont'd.
Witnesses.
Refusal to respond to subpoena, § 7971(95).
Worthless checks.
Penalty for bad checks, § 7880(164).

TELEGRAPH AND TELEPHONE COMPANIES.
Franchise tax, §§ 7880(114), 7880(115).
Taxation.
See "Taxation."

TERMS OF COURT.
Superior courts, § 1443.

THEATRES AND SHOWS.
Licenses.
See "Licenses."

THREATS AND THREATENING LETTERS.
Assault and battery.
Threats of assault, § 4215.

THRIFT SOCIETY.
See "North Carolina State Thrift Society."

TOBACCO.
Boards of trade, § 4930(f).
Leaf tobacco sales, §§ 4930(a)-4930(f).
Allowance for weight of baskets and trucks, § 4930(c).
Counties excepted, § 4930(e).
Nested, shingled or over-hung tobacco, § 4930(a).
Organization and membership of tobacco boards of trade, § 4930(f).
Price fixing prohibited, § 4930(f).
Rules and regulations, § 4930(f).
Sale under name other than that of true owner prohibited, § 4930(b).
Violation made misdemeanor, § 4930(d).
Licenses.
Tobacco and cigarette retailers and jobbers, § 7880(81).
Tobacco warehouses, § 7880(73).
Price fixing, § 4930(f).

TRADING STAMPS.
Licenses, § 7880(87).

TRAINED NURSES.
See "Nurses."

TRAINING SCHOOLS.
See "Reformatories."

TREASURER.
See "State Treasurer"; "County Treasurer."

TRUSTS AND TRUSTEES.
Building and loan associations.
Investment in building and loan associations, § 4018(b).
Income tax, §§ 7880(133), 7880(145).

UNDERTAKERS.
Licenses, §§ 7880(38), 7880(44).

UNIVERSITIES AND COLLEGES.
Educational institutions of the state.
Colleges to aid as to certificates, § 5884(a).
Non-residents may be charged higher fees, § 5912(l).
Repeal of certain sections, § 5912(k).

UNIVERSITIES AND COLLEGES—Cont'd.
Educational institutions of this state—Cont'd.
State-supported institutions required to charge tuition fees, § 5912(j).
Non-residents.
Higher fees from non-residents may be charged, § 5912(l).
Teachers.
Colleges to aid as to certificates, § 5884(a).
Tuition fees.
State-supported institutions required to charge tuition fees, § 5912(j).

USURY.
Limitation of actions, § 442.

VETERANS.
Guardianship act.
See "Guardian and Ward."

VITAL STATISTICS.
See "Statistics."

WAREHOUSES AND WAREHOUSEMEN.
Licenses.
Tobacco warehouses, § 7880(73).

WATER COMPANIES AND WATERWORKS.
Municipal corporations.
Power to fix and enforce rates, § 2808.
Taxation, § 7971(69).

WEAPONS.
Machine guns, § 5112(a).
Sale of machine guns and other like weapons, § 5112(a).
Sale of weapons, § 5112(a).

WEIGHTS AND MEASURES.
Certain measures regulated, § 8064(w).
Hominy or grits, § 8081(b).
State highway patrol.
Deputy inspectors of weights and measures, § 3846(jjj).
Transfer of divisions of weights and measures to department of revenue, § 8064(v).
Uniform weights and measures, §§ 8064(v)-8064(w).

WILLS.
Probate of will, §§ 4140(a)-4149.
Certified copy of will proved in another state, § 4147.
Clerk to notify legatees and devisees of probate of wills, § 4140(a).
Probate when witnesses are nonresident, § 4149.

WITNESSES.
Compensation, §§ 3878, 3893.
Fees and mileage of witnesses, § 3893.
Trafficking in witness tickets regulated, § 1276.
Husband and wife.
Husband and wife as witnesses in criminal actions, § 1802.
Wife may testify in applications for peace warrants, § 1802(a).

WOMEN.
Labor.
Hours of work for women in industry, § 6554(a).

WORKING CONTRACTS.
Building code.
See "Building Code."
State building contracts.
Allowance for convict labor must be specified, § 7534(o)2.
Competitive bids required before letting public construction contracts, § 7534(o)1.
Highway and prison departments excepted, § 7534(o)4.
Limitation of application of act, § 7534(o)5.
No evasion permitted, § 7534(o)3.

WORKMEN'S COMPENSATION ACT, §§ 8081(i)-8081(zz)1.
Casual employees, § 8081(u).
Compromise, § 8081(r).
Convicts, § 8081(u).
Definitions, § 8081(i).
Evidence, § 8081(r).
Exceptions, § 8081(u).
Infant illegally employed, § 8081(r).

WORKMEN'S COMPENSATION ACT—Cont'd.
Insurance carriers.
Reducing to judgment outstanding liability of insurance carriers withdrawing from state, § 8081(zz)1.
Limitation of actions, § 8081(ff).
Medical treatment and supplies, § 8081(gg).
Other rights and remedies excluded, § 8081(r).
Railroads, § 8081(u).
Right to compensation barred after one year, § 8081(ff).
School employees, § 5780(28).
Tort feasors, § 8081(r).

WORTHLESS CHECKS, § 4283(a).
Taxation.
Penalty for bad checks, § 7880(164).

ZONING.
Building code.
See "Building Code."
Municipal corporations.
Districts, § 2776(s).